

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

Walton J. McLeod, IV, Circuit Court Judge

AUG 14 2019

SC Court of Appeals

Appellate Case Number.: 2018-002236

Case No. 2016-CP-32-00950

Amy S. Davis, as Personal Representative of the Estate of
Utricia Shealy, deceased, ... Respondent,

v.

Agape Nursing Rehabilitation Center, Inc., Agape Management Services, Inc., John Doe, Richard
Roe Corporation, Jane Doe, and Mary Doe Corporation, ... Defendants

Of which Agape Nursing Rehabilitation Center, Inc. and Agape Management Services,
Inc., are the Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-32-00650

Amy S. Davis, Personal Representative of the
Estate of Utricia Shealy, deceased,

Agape Nursing & Rehabilitation Center, Inc.,
Agape Management Services, Inc., John Doe,
Richard Roe Corporation, Jane Doe, and
Mary Doe Corporation,

PLAINTIFF

DEFENDANTS

Submitted by: Walton J. McLeod, IV, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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 :

INFORMATION FOR THE JUDGMENT INDEX

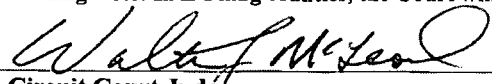
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Amy S. Davis as Personal Representative of the Estate of Utricia Shealy, deceased	Agape Nursing & Rehabilitation Center, Inc. and Agape Management Services, Inc.	\$297,500.00
		\$
		\$

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.


Circuit Court Judge

2765
Judge Code

10/26/2018
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Amy S. Davis as Personal Representative of	)	Civil Action No: 2016-CP-32-00950
The Estate of Utricia Shealy, deceased,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Agape Nursing Rehabilitation Center, Inc.,	)	
Agape Management Services, Inc., John	)	
Doe, Richard Roe Corporation, Jane Doe,	)	
and Mary Doe Corporation,	)	
	)	
Defendants.	)	
	)	

A jury trial was held in the above-captioned case beginning on October 22, 2018. Following five (5) days of trial, the jury returned a verdict in favor of Plaintiff Amy S. Davis as Personal Representative of the Estate of Utricia Shealy, deceased ("Plaintiff"), in a personal injury action against Defendants Agape Nursing & Rehabilitation Center, Inc. ("Agape Nursing") and Agape Management Services, Inc. ("Agape Management") (collectively as "Defendants"). Following the trial, on November 5, 2018, the Defendants filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, a Motion for a New Trial Absolute, or in the alternative, a Motion for a New Trial *Nisi Remittitur* (collectively as the "Motions"). After a review of the Motions and the file, the court denies each of the Defendants' Motions as specified in the following findings of facts and conclusions of law:

STATEMENT OF FACTS

The injuries that form the basis of this action arise from Utricia Shealy's ("Ms. Shealy") 27-hour admission to Defendants' skilled nursing facility. On July 1, 2014, Ms. Shealy was admitted to Agape Nursing & Rehabilitation Center in West Columbia, South Carolina for short-

term rehabilitation. Ms. Shealy remained a resident there until July 2, 2014, when she was emergently transferred to Lexington Medical Center after experiencing a fall, which was not witnessed.

Plaintiff filed this action on March 16, 2016, which was twice amended, alleging causes of action for professional negligence and “ordinary” negligence and seeking punitive damages. During the aforementioned trial, Plaintiff presented the case that during Ms. Shealy’s residency, Defendants were responsible for protecting Ms. Shealy from avoidable injury and providing the services necessary to keep her safe. Plaintiff presented that the duties Defendants were obligated to uphold included acting with due care and ensuring sufficient financial and operational resources be allocated to comply with all standards of care, laws, codes, and regulations in place to prevent harm to residents of the facility, including Ms. Shealy, and that as a consequence of Defendants’ negligence, Ms. Shealy suffered a fall resulting in significant injuries. These injuries included a right femoral neck fracture requiring hospitalization and surgery, a facial contusion, conscious pain and suffering, mental distress, disability, and significant medical expenses, amongst other damages. After hearing testimony from family members of Ms. Shealy, employees of Defendants, and Plaintiff’s nursing expert, Ellen Lewis, the Plaintiff rested. The Defendants then made a motion for a directed verdict, which was denied. After the Defendants rested, they renewed their motion for a directed verdict, which was also denied. The Plaintiff made a motion for a directed verdict as to Defendants’ intervening cause defense, which was granted.

After hearing closing arguments, the jury that found Ms. Shealy’s injuries were proximately caused by the professional and ordinary negligence of Defendants acting in concert under theories of agency, joint venture, and amalgamation of interests and awarded \$47,500.00 in economic damages and \$250,000.00 as compensation for Ms. Shealy’s non-economic injuries.

LEGAL STANDARDS

A. Judgment Notwithstanding the Verdict and/or Granting a New Trial:

It is within the discretion of the trial judge to grant or deny a motion for a new trial, and his or her decision “will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard v. Roberson, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007). A motion for judgment notwithstanding the verdict under Rule 50(b), SCRCP is simply a renewal of a motion for directed verdict. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). When a party makes a motion for directed verdict, he or she “must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law.” Rule 50(a), SCRCP; RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2001). It follows that “[o]nly the grounds raised in the directed verdict motion may properly be reasserted” in a motion for judgment notwithstanding the verdict. RFT Mgmt. Co., at 331, 732 S.E.2d at 170; In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). In deciding motions for judgment notwithstanding the verdict, the trial court does not have the authority to decide “credibility issues or to resolve conflicts in the testimony or the evidence.” RFT Mgmt. Co., at 332, 732 S.E.2d at 332.

B. South Carolina’s Thirteenth Juror Doctrine and a New Trial Upon the Facts:

Under the “thirteenth juror doctrine” a judge may grant a new trial absolute when he or she finds that the evidence does not justify the verdict. Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). In effect, the trial judge as the thirteenth juror “hangs” the jury. Id. Such veto power or “discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict[,] and the judge’s view of them.” S.C. State Highway Dep’t v. Townsend, 265 S.C.

253, 258, 217 S.E.2d 778, 781 (1975) (citing Fallon v. Rucks, 217 S.C. 180, 60 S.E.2d 88 (1950)). This ruling constitutes “granting of a new trial upon the facts” and should only be used when the court “is convinced that a new trial is necessitated on the basis of the facts in the case.” Vinson v. Hartley, 324 S.C. 389, 402-03, 477 S.E.2d 715, 722 (Ct. App. 1996).

C. Granting a New Trial Absolute or New Trial *Nisi Remittitur* due to Excessive Verdict:

Discretion in granting or denying a motion for a new trial rests with the trial judge, and his or her decision “will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard, at 149, 654 S.E.2d at 880. “A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” Vinson, at 404, 477 S.E.2d at 723 (citing Rush v. Blanchard, 310 S.C. 375, 379-80, 426 S.E.2d 802, 805 (1993)). Granting a new trial absolute is appropriate only if the amount of the verdict is “grossly inadequate” or so excessive “as to shock the conscience”; it must clearly indicate that the figure reached was the result of “passion, caprice, prejudice, partiality, correction[,], or some other improper motives.” Vinson, at 404, 477 S.E.2d at 723. In contrast, a motion for new trial *nisi remittitur* is a request to reduce an excessive verdict. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006).

ANALYSIS

A. The Motion for a New Trial Absolute is Denied Because the Court was Proper in Granting Plaintiff’s Motion for Directed Verdict on Defendants’ Defense of Intervening Cause.

Defendants’ argue that this court should alter or amend its decision granting a motion for directed verdict in favor of Plaintiff on Defendants’ affirmative defense of intervening or superseding clause.

A defendant has the burden of proof in establishing his or her affirmative defense by the preponderance of the evidence. Cole v. South Carolina Electric and Gas, Inc., 355 S.C. 183, 195, 584 S.E.2d 405, 412 (2003) (internal citation omitted). The affirmative defense of intervening cause requires that the intervening cause “be one which breaks the sequence or causal connection between the defendant’s negligence and the injury alleged.” Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013).

To establish negligence by a physician, a party must provide “evidence, through expert testimony, showing (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the physician’s field of medicine under the same or similar circumstances, and (2) that the physician departed from the recognized and generally acceptable standards.” Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E.2d 886, 893 (Ct. App. 2010). Also, the party must show that the physician’s departure from such standards was the proximate cause of the patient’s injuries and damages. David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 248, 626 S.E.2d 1, 4 (2006).

Here, Defendants argue that there was evidence that Dr. Gal D. Margalit’s conduct was an intervening and superseding cause of Ms. Shealy’s fall. However, such evidence must be established by a preponderance of the evidence. Defendants failed to use an expert witness to show that Dr. Gal D. Margalit was subject to certain recognized and generally acceptable standards, that his or her conduct departed from such standards, and that as a result of such departure, Ms. Shealy suffered injuries. The court finds that Defendants failed to provide evidence to support this assertion.

The Defendants also argue that the jury could have inferred from testimony of Plaintiff’s nurse expert, Ellen Lewis, that Dr. Gal Margalit’s supervening decision as the “treating physician,

not to order restraints . . . is a sufficient break in the sequence or causal connection between all of the Defendants' alleged negligence . . .". Def's Mot. 7. Ellen Lewis was tendered, without objection, as an expert in the field of nursing. She is not a medical doctor nor did she hold herself out as competent to testify concerning the standard of care by members of that profession. In this action, there was simply little to no evidence of, let alone the preponderance of evidence of, negligence by a third-party physician, including Dr. Gal D. Margalit. As such, the court finds that Defendant's reliance on Ellen Lewis' testimony to support their affirmative defense of intervening cause fails as a matter of law and the directed verdict on the matter was appropriate.

Because the court finds there was sufficient evidence to support the court's grant of Plaintiff's motion for directed verdict, Defendant's Motion for New Trial Absolute based on this issue is denied.

B. Defendants' Motion for Judgement Notwithstanding the Verdict is Denied Because there is Sufficient Evidence to Support the Court's Denial of Defendants' Motions for Directed Verdict Regarding Professional Negligence and Ordinary Negligence.

1. Neither Defendant is Entitled to Entry of Judgment Notwithstanding the Verdict on Plaintiff's Claims for Professional Negligence or Ordinary Negligence.

The Defendants argue that the court committed error when it refused to grant Defendants' motion for directed verdict on the Plaintiff's claims of professional negligence and ordinary negligence.

The Defendants allege that the Plaintiff failed to present adequate expert testimony whereby the jury could adequately determine either Defendant's liability under the Plaintiff's claim for professional negligence.

Similarly, the Defendants assert that the Plaintiff failed to present any direct or circumstantial evidence that Ms. Shealy's fall was the proximate result of ordinary, non-

professional negligence. They assert that the Plaintiff argued that because Ms. Shealy suffered an unwitnessed fall in a nursing home, it must have been the result of some negligence and that such an approach is equivalent to the doctrine of *res ipsa loquitur*, which is not recognized in South Carolina.

To show professional negligence, South Carolina requires expert testimony to show: (1) the generally recognized and accepted practices and procedures or standard of care; (2) the defendant departed from those standards; and (3) the defendant's departure proximately caused the plaintiff's alleged injuries and damages. S.C. Code Ann. § 15-79-125 (2017); David, at 247-48, 626 S.E.2d at 4. However, not every injury suffered in a nursing home results from malpractice or requires expert testimony to establish a claim for professional negligence. See Dawkins v. Union Hosp. Dist., 408 S.C. 171, 177, 758 S.E.2d 501 504 (2014). Moreover, "if the patient receives allegedly negligent professional medical care, then expert testimony as to the standard of that type of care is necessary, and the action sounds in medical malpractice"; although, "if the patient instead receives 'nonmedical, administrative, ministerial, or routine care,' expert testimony establishing the standard of care is not required, and the action instead sounds in ordinary negligence." Dawkins, at 177, 758 S.E.2d at 504 (internal citation omitted).

In contrast, ordinary negligence simply requires a plaintiff to show "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligence act or omission; and (3) damages proximately resulting from the breach." Crolley v. Hutchins, 300 S.C. 355, 356, 387 S.E.2d 416, 717 (Ct. App. 1989). Administrative acts whose performance requires no professional knowledge, skill, or expert experience can constitute negligence and do not require expert testimony. Additionally, no expert testimony is needed if the subject matter lies with the ambit of

common knowledge and experience so that no special learning is needed to evaluate the conduct of the defendant. Peterson v. Gould, 288 S.C. 141, 143, 341 S.E.2d 633, 634 (1986).

Ordinary negligence may also be shown by a violation of a rule or regulation that is designed primarily for the safety of nursing home residents if the violation proximately results in the injury. Madison ex rel. Bryan v. Babcock Ctr., Inc., 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006). This is called negligence *per se*. Likewise, a defendant's violation of their own internal policies, procedures, and rules can be considered as evidence of negligence as such violations may be relevant on the issue of the defendant's failure to exercise due care. Caldwell v. K-Mart Corp., 306 S.C. 27, 31-32, 410 S.E.2d 21, 24 (Ct. App. 1991); see also Madison, at 140-41, 638 S.E.2d at 659.

Considering the testimony and other evidence offered at trial, the record is replete with evidence to support the jury's findings of negligence committed by Defendants. Though only offered as examples, evidence presented at trial confirmed Ms. Shealy was "extremely prone to fall", had "no safety awareness", and "need[ed] constant supervision." Ellen Lewis testified that Defendants deviated from the standard of care owed to Ms. Shealy by failing to provide a safe environment for Ms. Shealy, failing to conduct appropriate assessments, failing to provide an adequate and effective interim care plan, failing to implement a host of appropriate interventions to protect Ms. Shealy, and failing to properly train caregivers. In particular, Ellen Lewis identified numerous interventions that could have been implemented by Defendants to prevent Ms. Shealy's fall and resulting injuries, including, but not limited to, the engagement of her family, contact of a physician upon observed changes in condition, more frequent rounding, closer observation to ensure Ms. Shealy remained in line of sight of facility staff, engagement of a sitter, chair alarms, placement in a group setting, and so on.

As required to support a claim of professional negligence, Ellen Lewis testified that, within a reasonable degree of nursing probability, Defendants' breaches of the standard of care regarding the steps of the nursing process constituted professional negligence and caused harm to Ms. Shealy, including her fall and right fractured hip. With ample evidence in the record to support this conclusion, denial of Defendants' request for directed verdict regarding professional negligence was appropriate and proper. The court finds that this evidence was affirmed by the jury's verdict and that the jury's finding should not be overturned pursuant to Rules 50(b) and 59(a), SCRCPP or the Thirteenth Juror Doctrine.

Ellen Lewis also testified that Defendants breached a multitude of their own policies and procedures (Joint Ex. 20) in the provision of care to Ms. Shealy. Testimony of Defendants' employees and Ms. Shealy's family members further confirmed numerous violations of internal policies and procedures, as well as a disregard of promises and commitments made to residents and family members through various marketing materials (Pl.'s Ex. 2), employee handbooks (Joint Ex. 23), code of conduct and compliance (Joint Ex. 25), and training documents and video relating to fall prevention (Joint Ex. 22 and 28). The testimony and evidence reflected that the failure to ensure appropriate staff were hired and trained, the misrepresentations made to consumers about services offered at the facility by "Team Agape", and the failure to manage and supervise the overall operations of the company with due care all constitute ordinary negligence. Furthermore, Ellen Lewis testified that the Defendants violated federal and statute regulations. These violations included inadequate training and the retention of unqualified staff. No expert testimony is required for ordinary negligence, and the jury is allowed to rely upon their ambit of common knowledge and experience to evaluate the conduct of the Defendants. Based on this evidence, the Defendants are incorrect in their assertion that the case at hand appears to be an application of the doctrine of

res ipsa loquitur, which is not allowed under South Carolina law. See Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857, 859 (1940). Again, the court finds that based on the evidence, it properly denied Defendants' motion for directed verdict regarding ordinary negligence as there was sufficient evidence to support the Defendants' liability and the jury agreed. The court further finds that the jury's findings should be upheld and not be overturned pursuant to Rules 50(b) and 59(a), SCRPC or the Thirteenth Juror Doctrine.

2. Defendant Agape Management Operated, Managed, and Controlled Defendant Agape Nursing and was, Therefore, Liable for Professional Negligence.

The Defendants argue that there is no basis in fact whereby the jury could conclude that Defendant Agape Management is liable for professional negligence because it fails to meet any definition under S.C. Code Ann. § 15-79-110 (2017) whereby it may be liable for professional negligence. Defendants suggest that the only evidence at trial outlining Agape Management's role in connection with the nursing home is the "Agreement to Provide Management Services" (Joint Ex. 18) and the consistent testimony of Gregory Scott Middleton, an owner and officer of both Defendants.

"Vicarious liability attaches to a parent company or employer as the result of negligence on behalf of its employees, such as through the doctrine of *respondeat superior*." Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773, S.E.2d 144, 146 (2015) (citing Martin C. McWilliams, Jr. & Hamilton E. Russell, III, Hospital Liability for Torts of Independent Contractor Physicians, 47 S.C. L. Rev. 431, 439 (1996)). Direct liability also "attaches due to a breach of a duty [that] runs directly between a parent company and a patient, arising from negligence in actions such as leaving a hospital underfunded, understaffed, or undertrained so as to provide substandard care." Id. (internal citation omitted). Thus, "the two

theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessarily preclude a finding of the other. Id.

Moreover, in South Carolina, a corporate defendant may be liable to third persons for negligence and other malfeasance and omissions of duty of the agent acting within the scope of the agency. See generally, Crystal Ice Co. of Columbia v. First Colonial Corp., 273 S.C. 306, 308-09, 257 S.E.2d 496, 497 (1979). A defendant may also be liable if engaged in a joint venture or enterprise that involves the operation, management, or control of an entity responsible for negligence. Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 147, 425 S.E.2d 764, 774 (Ct. App. 1992). Furthermore, where defendants are amalgamated “so as to blur the legal distinction” between the entities they are in effect one and the same as far as their representation and operation of the nursing home, and the actions of one should apply to the others. Kincaid v. Landing Dev. Corp., 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986).

In her Second Amended Complaint, Plaintiff alleged that Defendants were directly liable for their own wrongful conduct or vicariously or indirectly liable for wrongful conduct under alternative legal theories of alter ego, agency, joint venture, or amalgamation of interests. Second Am. Complaint at ¶ 23(a)-(c). Plaintiff also alleged that Defendants made “operational, budgetary, and administrative decisions that were determined more by the financial needs and goals of Defendants than by the custodial, medical, and nursing needs of residents of the facility, including Ms. Shealy.” Second Am. Complaint at ¶ 28. Plaintiff further alleged that “Defendants entered into a continuing course of negligent conduct, creating, implementing[,] and enforcing dangerous operational budgets, practices, and policies at the facility which deprived residents, including Ms. Shealy, of safe, adequate, and essential care and resources.” Second Am. Complaint at ¶ 29.

During the trial, Plaintiff offered numerous evidentiary examples of Defendant Agape Management's involvement in the operation, management, and control of the nursing home. For example, Defendants' "Team Agape" marketing materials hold themselves out as offering an "integrated networking including assisted living, physician services, therapy, and skilled nursing", medical staff and other services, as well as a "team of professional registered nurses, licensed practical and nurses' assistances," which provide "24-hour nursing care." Defendants' facility management agreement (Joint Ex. 18) further illustrated Defendant Agape Management's control over nursing home operations, including operational budgets, provision of in-service training for nursing home staff, development, preparation of employee policies and procedures, and provision of technological systems used by the facility.

Defendants' corporate representative, Danielle "DeeDee" Henderson, also affirmed Defendant Agape Management's integral role in training of nursing home employees, or their failure to do so, their responsibility for implementation of corporate policies and procedures, and ensuring compliance with such guidelines. She further testified regarding Defendant Agape Management's supervision and involvement during regulatory surveys, response to those surveys, and negotiation of penalties and corrective action for deficiencies. Additionally, Plaintiff offered evidence to show common ownership and control of owners, officers, shareholders, and location of Defendants, including Gregory Scott Middleton as President and Gregory A. Middleton as Vice President of each company. In short, the evidence of Defendant Agape Management's participation in the overall operation of the nursing home and the direct impact its activities had on patient care overwhelmingly supports the court's denial of Defendants' motion for directed verdict as to professional negligence. As such, the jury's findings should not be overturned pursuant to Rules 50(b) and 59(a), SCRCR or the Thirteenth Juror Doctrine.

C. The Motion for a New Trial Absolute Based on Improper Evidence is Denied because the Court was Proper in Admitting Evidence over the Defendants' Objections.

Defendants argue that the court erred in allowing Plaintiff to present evidence to the jury of certain Department of Health and Environmental Control (DHEC) survey results. Defendants contend that this admission of evidence of allegedly similar "bad acts" was error that warrants a new trial.

1. Notice of Similar Deficiencies.

During the trial, Plaintiff was permitted, over objection, to inquire of Defendants' witnesses about recent deficiencies cited by DHEC prior to Ms. Shealy's admission. The reports at issue are available to the public through DHEC, are generated in accordance with its regulatory oversight duties, and are kept in the normal course of business by the agency. See Rule 803(8), SCRE. Although witnesses were questioned about the Defendants' notice and knowledge of DHEC survey findings, the report itself was not offered or admitted into evidence. The court allowed evidence of relevant violations for the purpose of establishing motive, intent, and the absence of mistake of the nursing home operator as well as prior knowledge or notice of dangerous condition existing on the Defendants' premises. Rule 404(b), SCRE; see also Rutledge v. St. Paul Fire and Marine Ins. Co., 286 S.C. 360, 369, 334 S.E.2d 131, 136-37 (Ct. App. 1985). It is well established that "notice" evidence aids the jury in determining whether a reasonably careful defendant would have taken further precaution under the facts and circumstances. Rutledge, at 369, 334 S.E.2d at 136-37.

Therefore, the court finds that no improper evidence was admitted and that a new trial on the matter is not warranted.

2. Evidence of "Financial Information".

Plaintiff was also permitted to elicit testimony regarding certain financial information or exhibits that included matters of a financial nature. Examples of such evidence include the testimony by Gregory Scott Middleton, owner and Chief Executive Officer of Defendants, regarding the following: the sales price the Defendants received for the acquisition of three (3) skilled nursing facilities, including Agape Nursing in West Columbia; and compensation for corporate officers, including payments to family members unilaterally appointed by him in those roles. Defendants now challenge the admission of a redacted Medicare Cost Report (Pl.'s Ex. 3). In each of these instances, the testimony or exhibits were admitted for a proper purpose.

The information was admissible for purposes unrelated to the financial condition of Defendants, including for the purpose of showing bias, for impeachment, and to show Defendant Agape Management's operation, management, and control of the nursing home and other indicia relevant to theories of alter ego, agency, joint venture, and/or amalgamation of interests. For example, the Medicare Cost Report, which had been redacted by Defendants to remove any references to financial figures, was admitted to show related parties of Defendants with whom the nursing home contracted for services, further evincing Defendant Agape Management's operation, management, and control of the nursing home.

Plaintiff had the burden to show such control and intertwining of entities and operations to support her legal theories, and an element of such evidence is illustrated by the parent's exercise of control over the subsidiary, including an amalgamation of corporate interests so as to blur the legal distinction existing between the corporations. Walbeck v. The P'On Co., LLC, 2018 WL 3748668, *19 (Ct. App. 2018); Kincaid v. Landing Development Corp., 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986).

Therefore, the court finds that no improper evidence was admitted and that a new trial on the matter is not warranted.

D. The Motions for a New Trial Absolute or a New Trial *Nisi Remittitur* Based on an Excessive Jury Verdict are Denied Because there is Sufficient Evidence to Support the Verdict and the Verdict is Reasonable.

Defendants assert that the court should order a new trial absolute or new trial *nisi remittitur* because the verdict is objectively excessive, not supported by the evidence, and is the clear result of undue prejudice or passion caused by the improper admission of evidence and argument pertaining to the same.

In a personal injury action, a plaintiff can recover economic damages, such as the reasonable value of medical services, as determined by the jury. South Carolina Damages, Personal Injury Damages, § 3.A.1.a(1) (2d ed. 2009). Generally, this includes “necessary and reasonable expenses caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense[,] and care and nursing.” Sossamon v. Nationwide Mut. Ins. Co., 243 S.C. 552, 559, 135 S.E.2d 87, 91 (1964). Damages for pain and suffering attributable to personal injury have no market price and rest in the sound discretion of the jury. Harper v. Bolton, 239 S.C. 541, 547-48, 124 S.E.2d 54, 57 (1962). Damages for pain and suffering are meant to compensate the victim for physical discomfort and mental sensation related to the pain. Boan v. Blackwell, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2000). Additional non-economic damages include disfigurement, disability, emotional or mental distress, and loss of enjoyment of life. See generally, South Carolina Damages at § 3.

In the case at hand, the jury awarded \$47,500.00 in economic damages to include Ms. Shealy’s medical expenses. The evidence to support an award of this amount includes stipulated medical records and bills (Joint Ex. 5, 6, 7, and 8). The jury also awarded \$250,000.00 as

compensation for Ms. Shealy's non-economic injuries. These non-economic damages include pain and suffering (which has no market price), disfigurement, disability, emotional or mental distress, and loss of enjoyment of life, and the amount of these damages rests with the sound discretion of the jury. It appears that the jury did overly weigh the testimony regarding Ms. Shealy's recovery and the fact that Ms. Shealy was more ambulatory and more independent in her ambulation within a week of her fall. Based on the testimony of several witnesses, there is evidence supporting an award of this amount.

As such, the court finds that there was sufficient evidence to support the jury's finding of economic and non-economic damages and that the awards were not actuated by passion, caprice, or prejudice. Further, the court finds that the awards were not so grossly excessive that it shocks the conscience of the court. Lastly, the court finds that the verdict was reasonable and not merely excessive as alleged by the Defendants.

CONCLUSION

THEREFORE, based upon the foregoing, **IT IS HEREBY ORDERED** that Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, Motion for a New Trial Absolute, or in the alternative, Motion for a New Trial *Nisi Remittitur* are each **DENIED**.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Amy S Davis Personal Representative , plaintiff, et al VS Agape
Nursing & Rehabilitation Inc , defendant, et al
Case Number: 2016CP3200950
Type: Order/Other

So Ordered

s/Walton J. McLeod, 2765

Electronically signed on 2018-11-30 14:24:29 page 17 of 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Amy S. Davis as Personal Representative	)	Civil Action No: 2016-CP-32-00950
of the Estate of Utricia Shealy, deceased,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING LEAVE TO
v.	)	DEPOSIT AND STAY ACCRUAL
	)	OF INTEREST AND EXECUTION
Agape Nursing Rehabilitation Center,	)	
Inc., Agape Management Services, Inc.,	)	
John Doe, Richard Roe Corporation,	)	
Jane Doe, and Mary Doe Corporation,	)	
	)	
Defendants.	)	
	)	

This matter came before this court on Defendants' Motion for Leave to Deposit and Stay the Accrual of Interest and Execution Pending a Ruling on Post-Trial Motions and any Appeal (the "Motions"). In their Motions, Defendants seek leave to deposit the amount of the sum of the judgment and accrued interest with the court and an order recognizing the stay of the accrual of interest and any execution upon the judgment pending the court's ruling on Defendants' contemporaneously filed post-trial motions to alter or amend the judgment and for new trial and the final resolution of any appeal that may be initiated in this action by either party.

PROCEDURAL HISTORY

Plaintiff commenced this personal injury action on March 16, 2016, following the purported negligent care and treatment of Utricia Shealy at Defendants' skilled nursing facility located in West Columbia, South Carolina. In accordance with Rule 68, SCRCP and S.C. Code Ann. § 15-35-400 (2017), Plaintiff filed and served her Amended Offer of Judgment on Defendants on February 1, 2017. Plaintiff's Offer of Judgment agreed to resolve all claims of the pending action against Defendants for the stated sum. Plaintiff's Offer of Judgment further advised she

would move the court to award 8% interest computed on the amount of the verdict from the date of the offer if Plaintiff ultimately obtains a verdict at least as favorable as the rejected offer. Defendants did not accept the offer within twenty (20) days and, therefore, rejected the Offer of Judgment¹.

Beginning on October 22, 2018, this matter was tried before a jury in Lexington County, and after five (5) days, the jury rendered a verdict in favor of Plaintiff in the amount of Two Hundred Ninety-Seven Thousand Five Hundred Dollars (\$297,500.00) on October 26, 2018. The court executed the judgment via Form 4 Order on October 26, 2018, which was entered by the Clerk of Court on October 29, 2018.

In addition to the Motions at hand, Defendants filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute, or in the alternative, for a New Trial *Nisi Remittitur* on November 5, 2018. The court has ruled against the Defendants on these post-trial motions, which will facilitate Defendants' ability to perfect an appeal should Defendants so desire.

The issue before this court is whether the court may deny a defendant's request to deposit funds with the court and stop the interest on the judgment from accruing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants argue that Rule 67, SCRPC grants Defendants the right to deposit the amount of the judgment obtained by Plaintiff into the account of the Lexington County Clerk of Court, which purportedly stays the accrual of interest. Defendants assert that because they wish to deposit the entire amount of the judgment, plus all accrued interest as discussed below, then there is no

¹ The court acknowledges that Plaintiff filed a Notice and Motion for Costs and Interest Pursuant to Offer of Judgment. Although a ruling on the aforementioned motion would affect the total award amount at issue, the court will rule on the motion by way of subsequent order due to the differing analysis required.

basis under Rules 62 or 67, SCRCF for the court to deny Defendants' request to deposit these sums. Defendants correctly identify that the pre-judgment interest rate under S.C. Code Ann. § 15-35-400 (2017) is a simple interest rate of eight (8) percent per annum. Therefore, the amount of pre-judgment interest accrued, from February 1, 2017, to October 26, 2018 (a period of 1.73 years), equals \$41,174.00. Additionally, S.C. Code Ann. § 34-31-20(B) (2017) and South Carolina Supreme Court Order 2018-01-04-02 provide that the post-judgment interest rate in the period of January 15, 2018, through January 14, 2019, is eight and one-half (8.5) percent. As a result, the current per diem interest rate on the judgment, beginning on October 27, 2018, equals \$69.28.

The South Carolina Supreme Court has held that "[t]he granting of leave to deposit money with the court pursuant to Rule 67, SCRCF is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) (internal citations omitted). However, the specific issue as to whether the court may refuse to allow a debtor to deposit money with the court and to stay the accrual of interest via Rule 67, SCRCF has yet to be addressed in the appellate courts of South Carolina. Rule 67, SCRCF, in whole, provides:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, **and by leave of court**, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution upon the check of the clerk of court in favor of the party to whom the order of the court directs.

(emphasis added).

Based on the plain reading of Rule 67, SCRCF, the court determines that a defendant is not entitled to an automatic right to deposit judgment funds with the court to avoid the accrual of the post-judgment interest as mandated in S.C. Code Ann. § 34-31-20 (2017). The notes to Rule 67, SCRCF indicate that the rule is “substantially” similar to the federal equivalent of the same rule. A federal district court determined that Rule 67, FRCP “is a matter committed to the sound discretion of the district court.” Cajun Elec. Power Cooperative v. Riley Stoker Corp., 901, F.2d 441, 445 (5th Cir. 1990); see also Roberts v. Peterson, 292 S.C. 149, 151-52, 355 S.E.2d 280, 281 (Ct. App. 1987) (noting that where a state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive to state courts interpreting the state rule) (internal citation omitted). Based on this persuasive authority, the court finds that Rule 67, SCRCF leaves to the discretion of the trial court to determine whether to permit the deposit of the funds and stay the accrual of interest.

The next issue is to determine the factors to be taken into consideration when deciding whether to allow the deposit. Again, South Carolina case law gives little guidance to the court as to the factors to specifically consider in this determination. However, courts in other jurisdictions have considered a number of factors including: (1) whether the judgment debtor would be able to satisfy the judgment at a later date (see Qwest Corp. v. City of Portland, 204 F.R.D. 468 470 (D.Or. 2001)); (2) whether the depositor is likely to succeed on the merits when the motion to deposit is filed (see Precision Shooting Equip. Co. v. Allen, 646 F.2d 313, 320 (7th Cir. 1981)); and (3) whether judgment debtor denies liability to the judgment (see Tarpey v. Crescent Ridge Dairy, Inc., 47 Mass. App. Ct. 380, 393, 713 N.E.2d 975, 984 (1991)). The court finds these factors persuasive and applicable here.

The court also notes that the intent behind Rule 67, SCRCP is to benefit the judgment creditor in ensuring the funds will be available at the conclusion of a lengthy appellate process. Russo v. Sutton, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995). The court in Russo further provided that “[t]he rationale for the rule is that a judgment creditor’s appeal delays his [or her] right to the judgment, and the debtor, therefore, should not be required to pay interest.” Id., at 443, 454 S.E.3d at 896 (internal citation omitted).

In analyzing the first factor, the court has heard no allegation that Defendants would be unable to satisfy the judgment at a later date. Based on Plaintiff’s insistence that the judgment not be deposited, it is clear that Plaintiff is not concerned about Defendants’ ability to pay the judgment, with interest, upon the conclusion of the post-trial and appellate process. In analyzing the second factor, the court determines that the jury verdict and the court’s denial of Defendants’ post-trial motions speak directly to the merits of the case. In analyzing the third factor, it is clear that Defendants not only contest the amount of the jury verdict but also challenged liability itself for the judgment in their post-trial motions. Further, in contrast to the Russo case, Plaintiff did not ask the court for a judgment notwithstanding the verdict, for a new trial, for a new trial *nisi remittitur*, or appeal the judgment or award amount.

Therefore, denying post-judgment interest by depositing the funds with the Clerk of Court and staying the accrual of the funds would be prejudicial to Plaintiff. Plaintiff will not be penalized and denied post-judgment interest while the appellate court considers Defendants’ case on appeal.

CONCLUSION

THEREFORE, based upon the foregoing, Defendants’ Motions are **DENIED**. As a result, Defendants may not deposit the judgment, and the accrual of interest on the judgment shall continue pursuant to South Carolina law.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Amy S Davis Personal Representative , plaintiff, et al VS Agape
Nursing & Rehabilitation Inc , defendant, et al
Case Number: 2016CP3200950
Type: Order/Other

So Ordered

s/Walton J. McLeod, 2765

Electronically signed on 2018-11-30 14:40:09 page 7 of 7

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

UTRICIA SHEALY, by and through her
Attorney-in-Fact, LARRY D. KOON,

Plaintiff,

v.

AGAPE NURSING & REHABILITATION,
INC.; AGAPE MANAGEMENT SERVICES,
INC.; AGAPE SENIOR PRIMARY CARE,
INC.; AGAPE SENIOR, LLC; JOHN DOE,
RICHARD ROE CORPORATION; JANE DOE;
AND MARY DOE CORPORATION

Defendants.

) IN THE COURT OF COMMON PLEAS

) **2016 CP 3200950**

) **SUMMONS**

) C.A.# _____

) **JURY TRIAL DEMANDED**

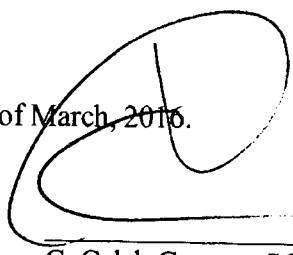
FILED

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2016 MAR 16 AM 9:36

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is hereby served upon you, and to serve a copy of your Answer to said
Complaint on the subscriber at their offices, 224 Park Ave SE, Aiken, SC 29801, within thirty
(30) days after the service hereof, exclusive of the date of such service; and if you fail to answer
the Complaint within the time aforesaid, judgment by default will be rendered against you for the
relief demanded in the Complaint.

Respectfully submitted, this the 16th day of March, 2016.


C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
CONNOR & CONNOR, LLC
224 Park Ave SE
Aiken, SC 29801
803-226-0543 (p)
800- 480-9715 (f)
caleb@theconnorfir.com

ORIGINAL

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2016 CP 3200950

UTRICIA SHEALY, by and through her
Attorney-in-Fact, LARRY D. KOON,

Plaintiff,

v.

AGAPE NURSING & REHABILITATION,
INC.; AGAPE MANAGEMENT SERVICES,
INC.; AGAPE SENIOR PRIMARY CARE,
INC.; AGAPE SENIOR, LLC; JOHN DOE,
RICHARD ROE CORPORATION; JANE DOE;
AND MARY DOE CORPORATION

Defendants.

COMPLAINT

C.A.#

JURY TRIAL DEMANDED

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COMES NOW Utricia Shealy, by and through her Attorney-in-Fact Larry D. Koon, and files this Complaint for Damages against Defendants Agape Nursing and Rehabilitation, Inc.; Agape Management Services, Inc.; Agape Senior Primary Care, Inc.; and Agape Senior, LLC and alleges as follows:

PARTIES, JURISDICTION AND VENUE

Plaintiff

1. Plaintiff Larry D. Koon ("Plaintiff") is Attorney-in-Fact of his sister, Utricia Shealy ("Ms. Shealy") and was duly appointed by Ms. Shealy to be her Power-of-Attorney on January 17, 2013. Plaintiff is therefore authorized to bring this action in tort in order to recover for Ms. Shealy's injuries, conscious pain and suffering, mental distress, medical bills, and loss of quality of life. S.C.R.P. 17.

Defendants

2. Upon information and belief, Defendant Agape Nursing and Rehabilitation, Inc. ("Agape Nursing and Rehab, Inc.") was at all material times a South Carolina for-profit corporation authorized to do business in South Carolina. Agape Nursing and Rehab, Inc. may be served through its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

3. Upon information and belief, Defendant Agape Management Services, Inc. ("Agape Management Services, Inc.") was at all material times a South Carolina for-profit corporation doing business in South Carolina. Agape Management Services, Inc. may be served through its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

4. Upon information and belief, Defendant Agape Senior Primary Care, Inc. ("Agape Senior Primary Care, Inc.") was at all material times a South Carolina for-profit corporation doing business in South Carolina. Agape Senior Primary Care, Inc. may be served through its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

5. Upon information and belief, Defendant Agape Senior, LLC ("Agape Senior, LLC") was at all material times a South Carolina for-profit corporation authorized to do business in South Carolina. Agape Senior, LLC may be served through its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

6. Whenever the term "Defendants" is utilized within this Complaint, such term collectively refers to and includes all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.

7. At all material times, the Defendants remained actively engaged in and transacted business in Lexington County, South Carolina by establishing, acquiring, owning, maintaining, managing and/or operating Agape Nursing and Rehabilitation Center ("the facility"), a skilled nursing facility located at 300 Agape Drive, West Columbia, South Carolina, 29169.

8. At all material times, the Defendants were responsible for ensuring that the operations of the facility complied with all applicable state and federal statutes, laws, and regulations pertaining to operation of such facilities.

9. Additionally, upon information and belief, at all material times, the facility was a participant in the Medicare and Medicaid programs and therefore, was required to comply with the provisions of 42 CFR § 483.1 *et seq.*

10. Whenever in this Complaint it is alleged that the Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of the designated Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with said Defendants.

Unknown Defendants

11. Plaintiff intends to name as Defendants each corporation, partnership and individual or other entity that, either directly or in concert with others, was negligent and breached the applicable standard of care in assessing, diagnosing, planning for, caring for and treating Ms. Shealy while she was a resident at the facility and was responsible for acts and omissions that caused Ms. Shealy's injuries. Defendants John Doe and Richard Roe Corporation are as-yet-unknown entities which participated in these acts and omissions.

12. Plaintiff also intends to name as Defendants any other corporation, partnership, and individual who is or was an *alter ego* of the Defendants, or who is a joint venturer with the

Defendants. Defendants Jane Doe and Mary Doe Corporation are as-yet unknown entities that are or were *alter egos* of the Defendants or joint venturers with the Defendants in the establishment, ownership, operation, management or control of the facility. Plaintiff cannot determine the exact number or identities of such individuals or entities at this time.

Jurisdiction and Venue

13. Defendants are subject to the jurisdiction of this Honorable Court.
14. The cause of action sued upon arose in Lexington County, South Carolina.
15. Defendants are joint tort-feasors and were all jointly, directly, and vicariously liable for the care and treatment Ms. Shealy received. Venue is, therefore, proper for all Defendants in Lexington County, South Carolina.
16. Plaintiff and Defendant completed pre-suit mediation pursuant to S.C. Code § 15-79-125 on March 4, 2016, and the parties were unable to reach a settlement in this matter. Proof of mediation is attached as Exhibit A to this Complaint.

NATURE OF THE DEFENDANTS' LIABILITY: DIRECT AND VICARIOUS LIABILITY

17. The Defendants are directly liable by virtue of their own conduct for the wrongful acts detailed herein. The Defendants are also vicariously or indirectly liable and responsible for the wrongful conduct detailed herein under one or more of the following alternative legal theories:

- a. ***Alter Ego***: At all times material to this lawsuit, the Defendants were *alter egos* of one another. The Defendants conducted the business of these entities, including the facility, as if they were one by commingling them on an interchangeable basis or confusing separate properties, records, or control. Furthermore, the facility was a subsidiary, affiliate, and/or alter ego of the Defendants. The management and operations of the facility were so assimilated

within the Defendants that Agape Nursing and Rehabilitation Center was simply a name through which the Defendants conducted their business. The Defendants dominated and controlled the operations of the facility, and any assertions by the Defendants that each was a separate corporate enterprise with an independent and separate existence is a sham and part of a scheme to perpetrate fraud, promote injustice, and evade existing legal and fiduciary obligations.

b. ***Agency:*** At all times material to this lawsuit, the Defendants acted as agents for one another and each ratified or authorized the acts or omissions of the other.

c. ***Amalgamation of Interests:*** The Defendants each remain liable for the acts and omissions of the other because the Defendants are and have been operating as an amalgamation of interests creating a blurred corporate identity through an integrated enterprise and/or joint venture in the establishment, operation, management, and control of the facility. The Defendants shared a common purpose in establishing, operating, managing, and controlling the facility and combined their property and labor in the facility for the purpose of making a profit and to blur the legal distinction between the entities and their activities.

FACTS COMMON TO ALL COUNTS

18. Ms. Shealy was admitted to the facility on July 1, 2014, at the age of seventy-five, for skilled nursing care. During her residency, Ms. Shealy was dependent on the staff at the facility for nursing and rehabilitative care, as well as for assistance with all of her daily needs including, but not limited to, fall prevention, transfers, mobility, turning and repositioning, pressure relief, adequate nutrition and hydration, toileting, hygiene and grooming, and other activities of daily living.

19. At all material times, the Defendants represented that: (a) they were competent to provide Ms. Shealy with the necessary care, treatment and services and would provide the same; and (b) that Ms. Shealy's condition was capable of being successfully managed by them.

20. During her admission to the facility, Ms. Shealy suffered multiple injuries at the hands of the Defendants including, but not limited to: (a) a fall that resulted in a contusion to her face and a femoral neck fracture of her right hip; (b) insults to her human dignity; (c) violation of her rights; (d) physical suffering; and (e) mental anguish.

21. At all times relevant to this action, the Defendants were fully aware that the delivery of care and custodial services to residents in the facility, including Ms. Shealy, required: (a) provision of adequate and appropriate staffing in the facility; and (b) appropriate census levels and census mixes within the facility.

22. Despite this knowledge, the Defendants made operational, budgetary, and administrative decisions that were determined more by the financial needs and goals of the Defendants than by the custodial, medical and nursing needs of residents of the facility, including Ms. Shealy.

23. The Defendants entered into a continuing course of negligent conduct, creating, implementing and enforcing dangerous operational budgets, practices, and policies at the facility which deprived residents, including Ms. Shealy, of safe, adequate, and essential care and resources to meet their needs, including, but not limited to, appropriate plans of care, assessment and continued monitoring of her condition, appropriate medication administration, assistance with activities consistent with daily living, and nutrient and fluids to prevent dehydration and malnutrition.

24. Notwithstanding the Defendants' decisions, directives, and practices which resulted in inadequate and inappropriate staffing of the facility, the Defendants sought to market, recruit and admit higher acuity, heavier care, higher pay residents to the facility, even though the needs of the resident population, including the needs of Ms. Shealy, exceeded the capacity of the staff.

25. At all material times, the Defendants had a duty to allocate resources and exercise fiscal policies with reasonable care, so as to prevent the infliction of harm on residents of the facility, including Ms. Shealy.

26. The Defendants breached their duty by failing to allocate sufficient financial and operational resources to the facility, thereby causing harm to residents, including Ms. Shealy.

27. At all material times, the Defendants knew or should have known that the delivery of essential and necessary care would suffer due to their budgetary and operational decisions, causing resident injury if they did not provide needed resources to adequately staff and operate the facility.

28. As a result of the Defendants' conduct, dependent residents, including Ms. Shealy, suffered repeated and ongoing neglect and were subjected to dangerous conditions including the routine deprivation of basic custodial care.

29. The neglect and injuries of Ms. Shealy were foreseeable to the Defendants. The Defendants were placed on notice that the same kind of dangerous conduct and conditions which caused injury to Ms. Shealy were occurring and had occurred on an ongoing basis by virtue of:

- a. Complaints and concerns registered to the Defendants and/or to regulatory agencies by facility staff, residents and the families of residents about

substantially similar conditions and neglect as that experienced by Ms. Shealy;
and

- b. The Defendants' own records and communications about substantially similar conditions and neglect as that experienced by Ms. Shealy.

30. The repeated notice and warning of ongoing violations of the minimum standards of care experienced by other similarly situated residents in the facility was inextricably intertwined and connected to that neglect experienced by Ms. Shealy and relevant to the Defendants' knowledge, indifference, negligence, and willful and wanton conduct.

31. Upon information and belief, not only did the Defendants refuse to heed these warnings, but Defendants also failed as a routine practice to report occurrences at the facility, which the Defendants knew required reporting to, and investigation by, authorities.

32. On June 22, 2014, Ms. Shealy suffered a fall at home resulting in a left hip fracture that required hospitalization and surgical repair at Lexington Medical Center.

33. Upon her discharge from Lexington Medical Center, Ms. Shealy was identified as a fall risk due to her history of falls, her recent surgery impacting her mobility, and her increased confusion associated with her diagnosis of dementia.

34. On July 1, 2014, Ms. Shealy was admitted to the facility for skilled nursing care and for rehabilitation following her left hip fracture.

35. At the time of her admission to the facility, Ms. Shealy required assistance with many activities of daily living, including bed mobility, transfers, eating, toileting, and personal hygiene.

36. On July 2, 2014, only one day after her initial admission, Ms. Shealy sustained a fall.

37. Ms. Shealy was subsequently transferred to Lexington Medical Center Emergency Department for evaluation of a contusion to her face and right hip.

38. A CT scan of her right hip revealed a femoral neck fracture, which required surgical repair.

39. Ms. Shealy underwent surgery on July 3, 2014 and physical therapy was subsequently ordered.

**FIRST CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE**

40. Plaintiff incorporates paragraphs 1 through 39 above as though set forth fully *verbatim*.

41. The Defendants, individually and collectively and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as joint venturers in the establishment, operation, management, and/or control of the facility, and while acting through the nursing staff employed by them at the facility, owed a duty to Ms. Shealy to comply with the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances as those presented by Ms. Shealy during her residency at the facility.

42. The Defendants, individually and collectively, and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as joint venturers in the establishment, operation, management, or control of the facility, and while acting through the nurses employed by them at the facility, violated the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances such as those presented by Ms. Shealy in their care and treatment of her. Their professional negligence includes, but is not limited to, the following:

- a. Failure to provide an accurate and appropriate admission assessment of Ms. Shealy;
- b. Failure to provide a safe environment;
- c. Failure to provide adequate and appropriate fall prevention interventions;
- d. Failure to provide adequate and appropriate care plans specific for Ms. Shealy related to fall and safety;
- e. Failure to provide adequate and appropriate services in the facility to accommodate the individual needs of Ms. Shealy;
- f. Failure to provide staff with the knowledge, skills, and competencies to care for residents with dementia and frequent falls; and
- g. Failure to provide Ms. Shealy with the necessary care and services to allow her to attain or maintain the highest practicable physical, mental, and psychosocial well-being.

43. In addition to being negligent and breaching the standard of care, the conduct of the Defendants violated provisions of applicable federal and state law, including but not limited to provisions of the Code of Federal Regulations (42 CFR § 483.1 *et seq.*), the South Carolina Adult Protection Act (S.C. Code § 43-35-5, *et seq.*); the South Carolina Department of Health and Environmental Control Regulations for Nursing Homes (Regulation 61-17, *et seq.*); the South Carolina Bill of Rights for Residents of Long Term Care Facilities (S.C. Code § 44-81-10 *et seq.*); and the South Carolina Nurse Practice Act (S.C. Code § 40-33-5, *et seq.*), constituting negligence *per se*.

44. As a direct and proximate result of the violations of the Defendants' negligent conduct as described above, Ms. Shealy suffered multiple injuries which included, but were not limited to: a facial contusion, femoral neck fracture of her right hip, conscious pain and suffering, mental distress, disability, and incurred medical expenses as a result of the treatment of her injuries.

45. To the extent an affidavit pursuant to SC Code § 15-36-100 is required, Plaintiff has attached as Exhibit B to this Complaint the affidavit of Ellen L. Lewis, RN, MSN, GNP-C, who is qualified as an expert on the issues raised in this Complaint. This affidavit specifies at least one negligent act or omission on the part of Defendants and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit. The attached affidavit is not inclusive of each act, error, or omission that has been committed, or may not have been committed by the Defendants, and Plaintiff reserves the right to contend and prove additional acts, errors, and omissions on the part of the Defendants that reflect a departure from the requisite standard of care required by law.

46. If any of the acts or omissions complained of in Paragraph 42 are deemed by the court to involve ordinary negligence rather than professional negligence, they are alternatively incorporated and averred as part of Paragraph 49 of this Complaint.

**SECOND CAUSE OF ACTION
ORDINARY NEGLIGENCE/SIMPLE NEGLIGENCE**

47. Plaintiff incorporates Paragraphs 1 through 39 as though set forth fully herein *verbatim*.

48. The Defendants had a duty to exercise ordinary and reasonable care in providing services to Ms. Shealy, including, but not limited to, the following: providing Ms. Shealy with appropriate assistance with transfers; assisting Ms. Shealy with activities necessary for daily living; and observing, documenting and reporting abnormal findings to nurses and physicians.

49. The Defendants, individually and collectively, and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as joint venturers in the establishment, operation, maintenance, supervision, management, or control of the facility, and while acting through staff employed by them, failed to exercise

ordinary and reasonable care in provision of services for Ms. Shealy. The Defendants' ordinary negligence included, but was not limited to:

- a. Ongoing failure to keep a complete, concise and accurate medical record for Ms. Shealy;
- b. Repeated failure to hire, adequately screen, and train adequate and appropriate personnel to monitor, supervise, care for, and/or treat Ms. Shealy;
- c. Continuing retention and assignment of unfit, unqualified and incompetent direct care staff to monitor, supervise, care for, and/or treat Ms. Shealy;
- d. Repeated failure to establish and implement appropriate corporate budgeting policies which were consistent with the needs of residents of the facility, including Ms. Shealy;
- e. Creation and enforcement of dangerous operational budgets which deprived residents of adequate staffing, supplies, and caused neglect;
- f. Repeated and systemic failure to establish, implement, and/or enforce appropriate safety, training, staffing, and fundamental policies and procedure to prevent harm to Ms. Shealy and avoid the known consequences of inadequate care;
- g. Failure to have systems in place to ensure that that the staff functioned within the scope of their professional practice, education and training to meet the needs of residents, including Ms. Shealy;
- h. Failure to have systems in place to ensure communication between nurses and nursing assistants regarding changes in resident condition for all residents to prevent harm to Ms. Shealy;
- i. Failure to provide licensed health care professionals with the knowledge and ability to accurately and regularly assess the condition of each resident in order to prevent harm to Ms. Shealy;
- j. Persistent failure to investigate and correct known systemic breakdowns in the delivery of care at the facility to avoid the consequences and harm to Ms. Shealy; and
- k. Failure to provide proper care and services in accordance with Ms. Shealy's rights and needs.

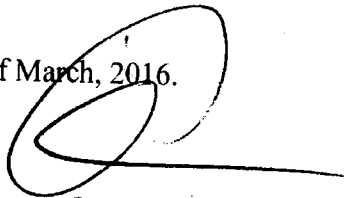
50. As a direct and proximate result of the violations of the Defendants' negligent conduct as described above, Ms. Shealy suffered injuries as more particularly described in paragraphs 42 and 49, which resulted in medical expenses.

51. If any of the acts or omissions complained of in Paragraph 49 are deemed by the court to involve professional negligence by the Defendants rather than ordinary negligence, they are alternatively incorporated and averred as part of Paragraph 42 of this Complaint.

WHEREFORE, Plaintiff prays for the following relief:

- (a) That a process be issued as to Defendants;
- (b) That Plaintiff, as Attorney-in-Fact for Ms. Shealy, recover a judgment against the Defendants, jointly and severally, for the actual damages in the sum deemed appropriate by the jury;
- (c) That Plaintiff recover the costs of this action;
- (d) That Plaintiff be granted a full jury of 12 to try this case; and
- (e) That the Court and jury grant such other and further relief as may be just and proper.

Respectfully submitted, this the 16th day of March, 2016.



C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
CONNOR & CONNOR, LLC
224 Park Ave SE
Aiken, SC 29801
803-226-0543 (p)
800- 480-9715 (f)
caleb@theconnorfir.com

Attorneys for Plaintiff

FILED
2016 MAR 16 10:37

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Utricia Shealy, by and through her
Attorney-in-Fact, Larry D. Koon,

Plaintiff,

vs.

AGAPE Nursing & Rehabilitation, Inc.,
AGAPE Management Services, Inc.;
AGAPE Senior Primary Care, Inc.;
AGAPE Senior, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

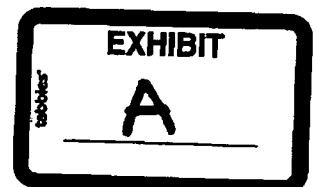
C/A No. 2015-NI-32-23

**CERTIFICATION OF PRE-SUIT
MEDIATION**

This is to certify that a pre-suit mediation was held in this case on March 4, 2016. Attorneys and representatives for each party were present. All parties acted in good faith. The case did not settle and an impasse was declared.

F. Earl Ellis, Jr.
F. EARL ELLIS, JR., ESQUIRE
Mediator

Columbia, South Carolina
March 4, 2016



State of Georgia
County Gwinnett

AFFIDAVIT OF ELLEN L. LEWIS, R.N., MSN, GNP-C

Comes now before me, an officer authorized to administer oaths, Ellen L. Lewis, R.N., MSN, GNP-C, who having been duly sworn, deposes and says:

1.

My Name is Ellen L. Lewis, R.N., MSN, GNP-C, and my address is 1540 Runnymede Court S.W., Lilburn, Georgia 30047.

2.

I make this affidavit in support of an action to be filed in connection with the care and treatment received by Utricia Shealy, while a resident of Agape Nursing and Rehabilitation Center in West Columbia, South Carolina from July 1st 2014 through July 2nd, 2014. The opinions contained in this affidavit are expressed as a nurse expert in the provision of nursing care to residents in a nursing facility environment such as Agape Nursing and Rehabilitation Center

3.

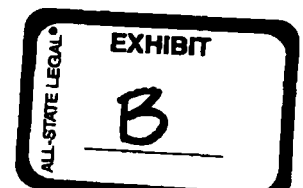
I have been a registered nurse duly licensed by the appropriate regulatory agency in the state of Georgia for 20 years and have actively practiced professional nursing since my graduation from nursing school in 1994. I received my Bachelor of Science Degree in Nursing in 1994 from Emory University in Atlanta, Georgia, and my Masters of Science in Nursing - Gerontological Nurse Practitioner in 1997 also from Emory University. I hold certifications as a Certified Gerontological Nurse Practitioner. I am currently employed as a Gerontological Nurse Practitioner with Creative Care Concepts, and Mehmood Medhi, M.D., providing general nursing services as well as psychiatric services and medication management to nursing home residents and acute care patients in and around Atlanta, Georgia. I am also in private practice, providing wound care consultations for residents of nursing homes in and around Atlanta, Georgia. I have served as a Consultant and Staff Nurse during my nursing career. I attach my CV for reference hereto.

4.

The opinions contained in this Affidavit are based upon my own knowledge, education and experience.

5.

As a result of having been regularly and continuously engaged in the active practice of nursing from 1994 to present, I have actual professional knowledge and experience in the area of providing care and oversight to residents such as Utricia Shealy while she was a resident of



Agape Nursing and Rehabilitation Center from July 1st, 2014 through July 2nd, 2014. My active practice of nursing has regularly included assessing, developing plans of care, providing nursing care and evaluating and re-evaluating the efficacy of nursing interventions to residents in facilities similar to those in Agape Nursing and Rehabilitation Center. Furthermore, for at least three of the last five years immediately preceding this opinion related to the negligence and breaches of the standard of care described below, I was engaged in the active practice of nursing providing care to residents similar to Utricia Shealy.

6.

Pursuant to the provisions of SC Code § 15-36-100, which requires that an affidavit of an expert witness must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit, I make this affidavit in support of an action to be filed on behalf of Utricia Shealy alleging, among other things, negligence with regard to her care and treatment while a resident of Agape Nursing and Rehabilitation Center. My opinions contained in this affidavit are expressed as a nursing expert engaged in providing care to similar patients. To date, I have reviewed medical records from the following facilities and documents related to Utricia Shealy:

Southeastern Neurology and Memory Clinic	05/12/14-07/24/14
Lexington Medical Center	06/22/14-07/01/14
Agape Nursing and Rehabilitation Center	07/01/14-07/02/14
Lexington Medical Center	07/02/14-07/08/14
Lexington Medical Center –Misc. Labs	07/12/14-08/20/14
Lexington Orthopaedics – Office Notes	06/22/12-08/28/14

7.

FACTUAL OVERVIEW

On 06/22/14, Utricia Shealy fell at home fracturing her left hip. She was hospitalized at Lexington Medical Center, requiring surgical intervention and developed an increase in her baseline confusion postoperatively. During the time period in question, prior to her admission to the hospital, Utricia Shealy was living independently under the care and supervision of her family, despite the progression of her Dementia symptoms. To aid in her care, Utricia Shealy was discharged to Agape Nursing and Rehabilitation Center for strengthening, rehabilitation and to receive basic nursing and custodial services. During her residency, Utricia Shealy was described as alert but very confused, with periods of increased agitation and anxiety. She required assistance with all of her activities of daily living, including maximum assistance with transfers, walking, dressing, toileting and eating. Utricia Shealy was documented to have limited mobility, incontinent, and had a Fall Risk Score of 17, representative of a high risk for falls.

On 07/02/14, one day after her admission, while under the care of the staff at Agape Nursing and Rehabilitation Center, Utricia Shealy suffered a fall to the floor in a hallway outside of the Physical Therapy room. Utricia had been documented to have increased agitation and combativeness prior to the incident. Immediately after falling, Utricia Shealy complained of right hip pain, right shoulder pain

and head pain. Utricia Shealy required emergent transport to Lexington Medical Center, where, as a result of the fall, she was diagnosed with a valgus femoral neck fracture, which required operative repair. On 07/03/14, Utricia Shealy underwent surgery which consisted of open treatment of her right femoral neck fracture with percutaneous pinning.

Following surgical intervention to repair her right femoral neck fracture, Utricia Shealy underwent vigorous physical therapy while in the hospital. After a 6 day hospitalization, she was able to ambulate only with the assistance of one person, using a gait belt and rolling walker. She required contact guarded assistance while ambulating. On 07/08/14, Utricia Shealy was transferred to Lexington Medical Center - Extended Care Center for continuation of physical and occupational therapies. Upon her hospital discharge, Utricia Shealy was allowed to have weight bearing as tolerated to her lower extremity, and was to continue physical therapy in an attempt to obtain full weight bearing steady ambulation.

Since her fall on 07/02/14, Utricia Shealy's mentation has declined, she has been unable to return to her baseline pre-fall ambulatory status, and has required extensive physical and restorative nursing therapies. Without these therapies, Utricia Shealy was documented to most certainly be wheelchair bound.

8.

NEGLIGENT/BREACHES OF THE STANDARD OF CARE

It is my professional opinion, which I express within a reasonable degree of nursing certainty, that the nursing care and treatment provided to Utricia Shealy by Agape Nursing and Rehabilitation Center was negligent and below the applicable standard of care/standard of practice for nursing facilities treating residents with the same or similar conditions. The nursing staff at Agape Nursing and Rehabilitation Center:

- **Failed to provide a safe environment for Utricia Shealy free of accident hazards**
- **Failed to provide adequate and appropriate care plans**
- **Failure to provide care plan interventions specific to Utricia Shealy**
- **Failure to provide an accurate and consistent admission assessment of Utricia Shealy**
- **Failure to properly train caregivers regarding the care and safety of Dementia residents**

In addition to breaching the standard of care, the State regulations that were violated by **Agape Nursing and Rehabilitation Center** include but are not limited to Regulations 61-17, Standards for Licensing Nursing Homes, promulgated by the South Carolina Department Health and Environmental Control, specifically, section 803, Individualized Care Plan and section 1001c, General Resident Care and Services as well as provisions of the South Carolina Nurse Practice Act.

9.

All of the opinions stated in this Affidavit are expressed within a reasonable degree of nursing certainty and are based upon my education, personal knowledge, personal experience, review and consideration of the facts and the medical records noted above, and upon my familiarity with the standard of care. It is my opinion that the acts, omissions and violations of state law on the part of Agape Nursing and Rehabilitation Center, as summarized above, caused and contributed to Utricia Shealy's injury, pain and suffering, and physical and mental decline.

10.

This Affidavit is by no means to be construed as an exhaustive recitation of all my opinions with regard to the care and treatment Utricia Shealy received while she was a resident of Agape Nursing and Rehabilitation Center. Moreover, I reserve the right to supplement, amend or change these opinions should additional information be brought to my attention.

FURTHER AFFIANT SAYETH NOT.

Ellen L. Lewis, RN, MSN, GNP-C
Ellen L. Lewis, RN, MSN, GNP-C

Sworn to me and subscribed before
this 3rd Day of November, 2015.

Q. Badwan
Notary Public

My commission expires _____ Q. BADWAN
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
My Commission Expires October 7, 2019

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Ellen L. Lewis, RN, MSN, GNP-C
1540 Runnymede Court, S.W.
Lilburn, Georgia 30047
770-361-4910

PROFESSIONAL EXPERIENCE

Dr. Medhi
Loganville, GA
3/14 to present
Position: Gerontological Nurse Practitioner; Provide psych services and medication management to patients in an acute care hospital setting.

Creative Care Concepts
Atlanta, GA
3/13 to present
Position: GNP; Provide psych services and medication management to elderly Residents in nursing homes.

Ellen Lewis Consulting, Inc.
Lilburn, Georgia
1/12 to present
Position: Nurse Practitioner, Wound Care Consultant
Provide wound care as a consultant to residents in nursing homes.

Salus Behavioral Health
Atlanta, Georgia
9/11 to present
Position: Gerontological Nurse Practitioner, Certified
Provide psych services and medication management to elderly residents in nursing homes.

Simple Care Solutions, LLC
Decatur, Georgia
2/11 to 9/11
Position: Gerontological Nurse Practitioner, Certified
Provide primary care to elderly residents in nursing homes.
(Medical/Psych visits)

Dr. Syamala Erramilli
Tucker, Georgia
1/09 to 4/11
Position: Gerontological Nurse Practitioner, Certified
Provide primary care to elderly residents in nursing homes.

Psych Consult Services
Atlanta, Georgia
11/07 to 4/09
Position: Gerontological Nurse Practitioner, Certified
Provide psych services/medical services to elderly residents in nursing homes.

Dr. Miles Johnson
1/05 to 10/07



Smyrna, Georgia

Position: Gerontological Nurse Practitioner, Certified

Provide primary care to elderly residents in nursing homes.

PROFESSIONAL EXPERIENCE (continued)

Dr. Pamela Erdman

Tucker, Georgia

4/04 to 9/04

Position: Gerontological Nurse Practitioner, Certified

Provide primary care to elderly residents in nursing homes.

United Health Care

1/98 to 4/04

Position: Gerontological Nurse Practitioner, Certified

Provide primary care to elderly residents in nursing homes

Wesley Woods Geriatrics Hospital

Position: Float Pool Nurse

8 /96-3/98

5/93 to 3/98

Clinical Nurse II Psych Unit 7/95-8/96

Clinical Nurse I Rehab Unit 6/94-7/95

Student Nurse Extern 5/93- 6/94

EDUCATION

Emory University, Atlanta, Georgia

Master of Science in Nursing

12/97

Gerontological Nurse Practitioner

GPA: 4.0

Emory University, Atlanta, Georgia

Bachelor of Science in Nursing

5/94

GPA: 3.4

Dekalb College, Dunwoody, Georgia

Prerequisites for nursing

12/89-8/92

HONORS

Dean's List 6 quarters at Dekalb College

Student of the Quarter at Dekalb College

Sigma Theta Tau (Alpha Epsilon Chapter)

Graduated Summa Cum Laude 12/97

PROFESSIONAL ORGANIZATION

Member of NCGNP 1996-2003

ADDITIONAL EDUCATION

**Completion of Wound Course at Emory University's Wound, Ostomy and Continence
Program**

6/11

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known addresses and telephone numbers, and dates of employment for all nursing personnel who worked at the facility during the admission of the resident.

INTERROGATORY NO. 4: If you contend that Interrogatory No. 3 is overbroad, please provide the contact information, including last known addresses and telephone numbers, and dates of employment for all nursing personnel who provided care or services to the resident at the facility (regardless of whether such care or services are documented in the records).

INTERROGATORY NO. 5: Please describe how you determined that the persons identified in response to Interrogatory No. 4 are all of the only nursing personnel who provided care or services to the resident at the facility.

INTERROGATORY NO. 6: Identify and provide the contact information, including last known addresses and telephone numbers, and dates of employment of all department heads and managerial employees for the facility during the residency.

INTERROGATORY NO. 7: Identify and provide the contact information, including last known addresses and telephone numbers, and dates of employment of all persons who served on the governing body of the facility during the residency.

INTERROGATORY NO. 8: If any contract personnel, including temporary/pool personnel, provided nursing care, nursing related services, medical services, personal care, custodial care, or other services to the resident during her time at the facility, please identify all such persons as well as their employer or the contracting party through which personnel was obtained.

INTERROGATORY NO. 9: Identify and provide the contact information, including last known addresses and telephone numbers, and dates of employment of each person who was involved in the formulation of care plans for Utricia Shealy while she was a resident at the facility.

INTERROGATORY NO. 10: Since 2010, has this nursing home been operated by a management company or leased in whole or in part by another organization? If so, identify said management company or lessee by full name, business address, and, if a corporation, the officers and directors which are known to you.

INTERROGATORY NO. 11: During the residency, identify every business entity who had the ability to influence the expenditure of money at the facility, manage or direct the management or operations of the facility, or create and modify the policies of the nursing home.

INTERROGATORY NO. 12: Identify all persons employed at a corporate, division, regional, district or area level during the resident's stay in the facility whose job responsibilities included oversight or monitoring any aspect of the operations of the facility, including financial performance, staffing, census, compliance with budget, and the performance of the administrator or department heads.

INTERROGATORY NO. 13: What was the resident census for the facility for each day during the residency?

INTERROGATORY NO. 14: During the residency period, please state the actual per patient day (PPD) staffing levels for the following nursing personnel: certified nurse aides only; licensed nurses only; registered nurses only; and all nursing personnel providing direct care to residents of the facility.

INTERROGATORY NO. 15: Please identify every conversation or contact made with any of the resident's physicians or healthcare providers after the resident's discharge from the facility. Include the dates such contacts were made, the location and persons present.

INTERROGATORY NO. 16: State whether you have obtained statements in any form from any person regarding any of the events underlying Plaintiffs' Complaint or referred to in the Complaint and corresponding affidavit and if so, state the identity of the person from whom such statements were taken, the dates on which such statements were taken, the identity of the persons, and the custodian of such statements.

INTERROGATORY NO. 17: Are all physician and nursing evaluations, observations, communications and interventions relating to the care and treatment provided by the Defendants, or their agents, servants and/or employees to Utricia Shealy, contained in the medical records of the facility? If not, describe in detail all such information not contained in the records and state the location of any records containing such information.

INTERROGATORY NO. 18: If you utilized any form of electronic documentation to monitor, describe, report or maintain information regarding the care and/or condition of the resident, please identify the documentation system and state the dates during which it was in operation.

INTERROGATORY NO. 19: Identify all persons who registered concerns or made complaints about the facility or any employee (including, but not limited to, complaints in the form of resignation letters, e-mails, suggestion box, notes to supervisors, calls to corporate or management offices, surveys, hotlines, or otherwise) during the residency and during the three (3) month period immediately prior to and following the residency. If you object to this interrogatory on the grounds of privacy concerns, please describe the complaint or concern to which objection is made, without identifying the person for whom a privacy concern is raised.

INTERROGATORY NO. 20: State the style, case/cause number, and location of filing of every lawsuit brought against Defendants by or on behalf of any nursing home resident within the last four years. If you contend that this information is public and equally available to Plaintiff, then please identify at least the counties and states in which such actions were filed.

INTERROGATORY NO. 21: If you were in reasonable anticipation of the litigation at any time prior to the date you were served with this action, then please state the earliest date on which you were in such reasonable anticipation and the ground for such anticipation.

INTERROGATORY NO. 22: Do you contend that Utricia Shealy, or any member of her family, did or failed to do anything that caused or contributed to her injury? If so, specify what they did or failed to do and how it caused him harm.

INTERROGATORY NO. 23: For each expert witness you expect to call at the trial of this

action, state: a) the expert's name, residence address, business address, and medical specialty and/or subspecialty; b) the subject matter on which each expert is expected to testify; c) the substance of the facts and opinions to which each expert is expected to testify; and d) a summary of the grounds for each opinion to which each expert is expected to testify.

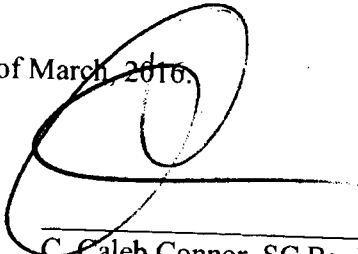
INTERROGATORY NO. 24: If you contend that the affidavit of Ellen Lewis, RN, MSN, GNP-C is deficient in any respect to meet the requirements of SC Code § 15-36-100, please set forth in detail and with specificity each such alleged deficiency and the legal and/or medical basis or authority for such contention of deficiency.

INTERROGATORY NO. 25: If you contend that the affidavit of Ellen Lewis, RN, MSN, GNP-C is incorrect factually in any respect, please state which factual statements you contend are incorrect and state what you contend are the true and correct facts incident to each such statement. Include in your answer the name and address of all persons who have knowledge of what you contend are the incorrect facts stated by Ellen Lewis, RN, MSN, GNP-C.

INTERROGATORY NO. 26: If you objected to any portion of the above interrogatories on the basis of a privilege, please state a sufficient basis for the privilege assertion to permit the parties and the court to ascertain the facial validity of the privilege.

INTERROGATORY NO. 27: If you objected to any of Plaintiff's Requests for Production served with these interrogatories on the basis of a privilege, please state a sufficient basis for the privilege assertion to permit the parties and the court to ascertain the facial validity of the privilege.

Respectfully submitted, this the 16th day of March, 2016.


C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
CONNOR & CONNOR, LLC
224 Park Ave SE
Aiken, SC 29801
803-226-0543 (p)
800- 480-9715 (f)
caleb@theconnorfirm.com

Attorneys for Plaintiff

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

UTRICIA SHEALY, by and through her
Attorney-in-Fact, LARRY D. KOON,

Plaintiff,

v.

AGAPE NURSING & REHABILITATION,
INC.; AGAPE MANAGEMENT SERVICES,
INC.; AGAPE SENIOR PRIMARY CARE,
INC.; AGAPE SENIOR, LLC; JOHN DOE,
RICHARD ROE CORPORATION; JANE DOE;
AND MARY DOE CORPORATION

Defendants.

2016 CP 3200950

C.A.#

JURY TRIAL DEMANDED

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PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANTS

Plaintiff, by and through undersigned counsel, and pursuant to the provisions of the South Carolina Rules of Civil Procedure, hereby submits the following Request for Production of Documents to Defendants AGAPE NURSING & REHABILITATION, INC., AGAPE MANAGEMENT SERVICES, INC., AGAPE SENIOR PRIMARY CARE, INC., and AGAPE SENIOR, LLC. Defendants are requested to produce the requested documents within the time provided by law at the offices of Plaintiffs' attorneys, Connor & Connor, LLC, 224 Park Avenue SE, Aiken, South Carolina 29801. In lieu of said production, Defendants may send copies of the requested documents to the Plaintiff attorneys' office at the aforementioned address.

GENERAL INSTRUCTIONS

If any request set forth below "overlaps" another request so as to call for the same documents or tangible things, it shall be sufficient response to state under the "overlapping request" that the identical items have been produced under another request, which should be specifically identified. Thus, where a document or tangible thing has been produced under a request, identical copies of the same document or thing need not be produced again unless it contains different markings, additions, or deletions or its content form, or makeup is distinguishable in any manner.

With respect to any resident of the Nursing Home other than the resident whose name or other identifying information appears in any document that is responsive to this request, please redact such name or identifying information prior to producing such documents.

"Document," is used in the broadest sense and means and includes all written, recorded, or graphic matters whatsoever and all non-identical copies thereof, including electronically stored or created information.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce color copies of all documentation pertaining to the resident's care, treatment and condition, including, but not limited to:

- (a) The nursing home chart pertaining to the resident;
- (b) ADL records;
- (c) Wound tracking forms;
- (d) Physician notifications and communications;
- (e) 24-hour reports or shift change reports;
- (f) Change in condition reports;
- (g) Acuity/need evaluations;
- (h) Incident/accident/problem reports;
- (i) Therapy/restorative records;
- (j) Pharmacy and controlled substance records;
- (k) Consultant records; and
- (l) Any photographs or videos of the resident or the resident's condition.

If any of the information sought pursuant to this request was created or maintained, or stored electronically, please provide this information in electronic form. If such production is not possible or not feasible, please advise as to the reason and produce a hard copy of the information.

If necessary to ensure accurate and legible copies, please reduce the copy size as needed.

REQUEST NO. 2: Please produce copies of all documents contained in, or considered a part of the resident's business/financial/admission file(s), including, but not limited to:

- (a) Admission documents;
- (b) Consents and authorizations;
- (c) Arbitration agreements or any other Alternative Dispute Resolution agreements;
- (d) Billing records; and
- (e) Correspondence.

REQUEST NO. 3: Please produce copies of the following:

- (a) Floor plans or diagrams of the facility as it existed during the resident's stay;
- (b) Photographs and videos of the facility which depicting the facility at or near the time of the resident's stay; and
- (c) Promotional materials provided to, or available to the resident or her family regarding the facility.

REQUEST NO. 4: For each entity or person identified in response to Interrogatory No. 8, please produce a copy of all agreements between such entity or person and the Defendants which were operative during the residency.

REQUEST NO. 5: Please produce copies of all agreements for management, consultation, and/or administrative services provided to the facility or its residents in effect during the residency.

REQUEST NO. 6: Please produce copies of each insurance policy which affords, or may afford, coverage to you or your agents, employees or officers for any conduct alleged in Plaintiff's Complaint, including documentation of in-house reserves and letters of credit/guarantees issued to guarantee any insurance policy, reserve fund, or self-insured retention.

REQUEST NO. 7: Please produce copies of all documents which show the dates, times and hours worked for all nursing and administrative personnel who worked at the facility during the residency, including, but not limited to:

- (a) **Time Records:** All documents which show actual time worked by all nursing personnel, including, but not limited to, time cards, edit reports, punch detail and/or punch detail report.
- (b) **Schedules And Assignment/Sign-In Sheets:** All sign-in sheets, assignment sheets, shower sheets, "get-up" lists, work schedules, room/hall assignments, Medicare sign-in sheets or any other documents which show actual and scheduled assignments.
- (c) **PPD Staffing Data:** All documents showing the actual number of hours of available nursing personnel time (on a per shift, per day and per month basis), or the actual number of nursing personnel on duty during the residency, including, but not limited to, all documents which track, analyze or examine the hours of licensed and unlicensed nursing care provided per patient day. This request includes all actual staff hour postings and all daily census posting records pursuant to 42 C.F.R. § 483.30(e).
- (d) **Actual Nursing Ratios:** All documents necessary to calculate on a per day and/or per shift basis the actual: a) nurse to resident ratio; b) certified nurse aide to resident ratio; and c) nursing personnel to resident ratio on a daily, monthly and/or periodic basis.
- (e) **Staffing Charts and Matrices:** All documents available to the facility to determine the appropriate type and number of nursing personnel to be on duty, including any staffing charts, staffing matrices or staffing tools utilized for this purpose.
- (f) **Pool Personnel and Contract Labor:** All documents which show the dates, times, and hours worked by pool personnel utilized to perform direct care services.
- (g) **Therapy Time:** All documents which show the date, time and hours worked by any therapy personnel, whether employed or contract personnel.
- (h) **Staffing Data Reported To CMS or Any State Regulatory Agency:** All documents containing: (a) nursing personnel or direct care staffing information submitted to the State of South Carolina, and/or any nurse to resident ratios, direct care staff to resident ratios, nurse aide to patient ratios or full-time equivalent nursing personnel on duty, and/or nursing personnel hours per patient day, submitted to CMS or any state regulatory agency; and (b) back-up staffing information used to support any nursing staffing information submitted to CMS or any state regulatory agency.

- (i) **Turnover Information And Reports:** All documents which address the subject of turnover at the facility, including, but not limited to, any reports or documents which analyze turnover in any department within the facility, including administrative personnel, nursing personnel and direct care staff.

If any of the information sought pursuant to this request was created or maintained, or stored electronically, please provide this information in electronic form. If such production is not possible or not feasible, please advise as to the reason and produce a hard copy of the information.

If any of the material sought pursuant to this request includes information in color, please provide color copies of such documents.

If necessary to ensure accurate and legible copies, please reduce the copy size as needed.

REQUEST NO. 8: For the persons listed in your responses to Interrogatories 3, 4 and 6 of Plaintiff's First Interrogatories, please produce copies of the following:

- (a) Job applications and interview notes;
- (b) Records pertaining to verification of references, employment history, and criminal background checks;
- (c) Records pertaining to certification/license verifications;
- (d) Records pertaining to job evaluations;
- (e) Records of discipline/counseling;
- (f) Records pertaining to orientation, skills tests, and training;
- (g) Records pertaining to transfers and termination, including resignation letters;
- (h) Records documenting acknowledgements of policies, procedures, and company directives; and
- (i) Job descriptions.

Please redact social security numbers and private health information from the documents produced.

REQUEST NO. 9: Please produce copies of all Training and In-Service Education documents used for training/education conducted from the three month period preceding the residency through the end of the residency. Please include all schedules and descriptions of each in-service education and training session, as well as all sign in/attendance records.

REQUEST NO. 10: Please produce copies of Policies and Procedures which were in effect at the facility during the resident's stay, including policies and procedures pertaining to:

- (a) Administration, management & operation of the facility
- (b) Admissions Process and Procedure
- (c) Care and treatment of residents
- (d) Investigation and correction of: (1) deficiencies, licensure violations or penalties found to exist at the facility; and/or (2) any complaint or criticism regarding the quality, adequacy, or quantity of care made about the facility by any person.
- (e) Documentation and Document Retention
- (f) Risk management
- (g) Employee/associate handbooks in effect during the residency

- (h) Corporate level policies and procedures which describe (1) the standard of care that any Defendants expected the facility to comply with, including but not limited to, standardized checklist and standard management and operational practices and procedures); (2) Strategies on Staffing; and (3) the criteria to be used in evaluating the job performance of healthcare professionals at the facility.

REQUEST NO. 11: Please produce copies of the following documents for the one year period immediately preceding the resident's final discharge from the facility through the three (3) month period immediately following the residency, unless otherwise stated:

- (a) Notice of Complaints and Criticisms: All criticisms and complaints made by or on behalf of residents pertaining to: (1) Ms. Shealy; or, (2) one or more of the same bases for negligence specifically described and set forth in Plaintiff's Complaint and corresponding affidavit. This request includes but is not limited to all documents, emails, care alert and care line report emails/communications, 1-800-Abuse and Neglect emails/communications, quality hotline emails/ communications, corporate compliance concerns/emails, employee resignation letters and employee responses to disciplinary action which memorialize such concerns communicated/sent by or filed by any employee working at the nursing home.
- (b) Regulatory Findings and Deficiencies: All communications to and from the State of South Carolina or any local, state or federal governmental agency which set forth regulatory findings, conclusions, violations, deficiencies, penalties, complaint investigations, actions or recommended sanctions regarding the nursing home.
- (c) Resident Council Meeting Minutes and Documentation: All documentation of resident council meetings and minutes regarding the resident or any complaint made the basis of Plaintiff's Complaint.
- (d) Family Council Meeting Minutes and Documentation: All documentation of family council meetings and minutes regarding the resident or any complaint made the basis of Plaintiff's Complaint.
- (e) Customer/Family Surveys and Data Compilations related to such Surveys
- (f) Employee Surveys and Data Compilations related to such Surveys

REQUEST NO. 12: Please produce copies of all license applications, licenses, disclosure of ownership, change of ownership/management documents, and changes of administrator or director of nursing documents generated in 2014.

REQUEST NO. 13: Please produce copies of the following for the period 2013 through 2014:

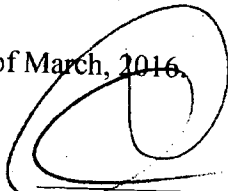
- (a) Budget Documentation: All documents containing budgets, budgetary guidelines, expense restrictions or limitations, suggested operational costs or expense ceilings for the nursing home, including, but not limited to, budget modifications, requests for modification, supplemental budgets, and financial forecasts.
- (b) Medicare and Medicaid Facility Cost Reports: Medicare and Medicaid cost reports submitted by or on behalf of the facility, including all explanation notes, supplemental documentation, exhibits and attachments.
- (c) Medicare and Medicaid Home Office Cost Reports: Medicare and Medicaid home office cost reports submitted by or on behalf of the Defendants, including all explanation notes, supplemental documentation, exhibits and attachments.

REQUEST NO. 14: Please produce copies of all statements identified in your response to Interrogatory No. 16, including documents and correspondence, of any person with knowledge of relevant facts, including, but not limited to, witness statements obtained in the normal course of business prior to notice of this lawsuit and statements of the resident and/or family members.

REQUEST NO. 15: For each expert witness you expect to call at the trial of this action, please produce a copy of all correspondence to such witness, correspondence or reports received from such witnesses, invoices or statement reflecting charges rendered by such witness, and all materials reviewed by such witness relating to her/her participation in this case.

REQUEST NO. 16: Please produce true, correct, complete and color copies of all records relating to Plaintiff or resident obtained through third parties, whether obtained through third party requests, subpoenas or otherwise.

Respectfully submitted, this the 16th day of March, 2016.



C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
CONNOR & CONNOR, LLC
224 Park Ave SE
Aiken, SC 29801
803-226-0543 (p)
800-480-9715 (f)
caleb@theconnorfirm.com

Attorneys for Plaintiff

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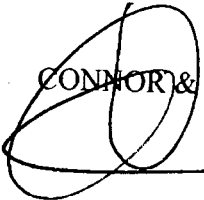
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reference material or case resource which has been identified in discovery.

A subpoena duces tecum is requested and the witness is instructed to bring with him/her the items listed on the attached Exhibit "A".

YOU ARE HEREBY INVITED TO ATTEND

Respectfully submitted this 16th day of March, 2016.


CONNOR & CONNOR, LLC

C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
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800- 480-9715 (f)
caleb@theconnorfir.com

Attorneys for Plaintiff

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EXHIBIT A SCHEDULE OF DOCUMENTS

1. Admissions/Business/Billing: Originals of all business/administrative records, including electronically stored information, involving Utricia Shealy, including but not limited to, preadmission screening, screening, admission, RUG application, and billing records.
2. Clinical Records: Originals of all clinical records regarding Utricia Shealy, including electronically stored information.
3. Private Health Information Disclosure Log: The complete Private Health Information (PHI) Disclosure Log required by 45 C.F.R. § 164.528 (2006) regarding Utricia Shealy.
4. A complete and unredacted copy of the entire audit trail pertaining to Utricia Shealy's medical records contained in any computerized system for patient data or order entry in use at Agape Nursing and Rehabilitation at the time of Utricia Shealy's residency. "Audit trail" refers to all documentation maintained by Defendant in any form which indicates the date, time, location and identity of all persons who made entries in the chart contemporaneous with clinical treatment, redacted, supplemented, changed, altered or made entries in the charge subsequent to care, printed any portion of the chart, or who viewed the chart at any time. This information is to include, but is not limited to the following:
 - A. Disclosures and /or log entries of each and every user who accessed Utricia Shealy's medical record or any other record during or after her residency or any time after her residency, including the date and time of each and every access by each and every user for each level of security;
 - B. Identification of each login by number and user (include full name and department and the location of the terminal from which the file was accessed) (passwords are not requested);
 - C. The action that each user authorized, ordered or completed and/or the portion of Utricia Shealy's record which was accessed whether or not any modifications or additions were made, and the time of such access;
 - D. All records which relate to any change, redaction, supplementation, amendment or any other entry into the electronic medical records system for Utricia Shealy.
5. All documents, to the extent not encompassed in the descriptions above, which were created or maintained by the nursing home, and which relate to the condition, care, and/or treatment of the resident.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

UTRICIA SHEALY, by and through her Attorney-
in-Fact, LARRY D. KOON,

IN THE COURT OF COMMON PLEAS

ORIGINAL 2016 CP 3200950

CIVIL ACTION COVERSHEET

Plaintiff(s))

vs.)

-CP -

AGAPE NURSING & REHABILITATION, INC.; AGAPE
MANAGEMENT SERVICES, INC.; AGAPE SENIOR
PRIMARY CARE, INC.; AGAPE SENIOR, LLC; JOHN
DOE, RICHARD ROE CORPORATION; JANE DOE; AND
MARY DOE CORPORATION

Defendant(s))

Submitted By: C. Caleb Connor

Address: 224 Park Ave SE, Aiken, SC 29801

SC Bar #: 100517

Telephone #: (803) 226-0543

Fax #: (800) 480-9715

Other:

E-mail: caleb@theconnorfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☒ Medical Malpractice (220) Previous Notice of Intent Case # 2015-032-23 ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

SCCA / 234 (06/2013)

00062

Date: 3/16/2016

Page 1 of 3

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Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From: Connor, Christopher Caleb
224 Park Avenue, SE
Aiken, SC 29801

Date: 3/16/2016
Receipt #: 191531
Clerk: jparker

Paying for: Shealy, Utricia

Transaction Type: Payment

Reference #: 3625

Payment Type: Check \$150.00

Comment:

Total Paid: \$150.00

Non-Refundable

Total Received: \$150.00
Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP3200950	Utricia Shealy VS Agape Nursing & Rehabilitation Inc	\$150.00	\$150.00	\$0.00

Total Cases: 1

\$150.00

\$150.00

\$0.00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	
AMY S. DAVIS, as Personal Representative of	)	SECOND AMENDED
the Estate of UTRICIA SHEALY, deceased,	)	COMPLAINT
	)	
Plaintiff,	)	
	)	
v.	)	C.A.# 2016-CP-32-00950
	)	
AGAPE NURSING & REHABILITATION	)	
CENTER, INC.; AGAPE MANAGEMENT	)	JURY TRIAL DEMANDED
SERVICES, INC.; JOHN DOE, RICHARD	)	
ROE CORPORATION; JANE DOE; AND	)	
MARY DOE CORPORATION	)	
	)	
Defendants.	)	
	)	

COMES NOW Amy S. Davis, as Personal Representative of the Estate of Utricia Shealy, deceased, and files this Second Amended Complaint for Damages against Defendants Agape Nursing and Rehabilitation Center, Inc.; John Doe; Jane Doe; Richard Roe Corporation; and Mary Doe Corporation and alleges as follows:

PARTIES, JURISDICTION AND VENUE

Plaintiff

1. Larry D. Koon was Attorney-in-Fact of his sister, Utricia Shealy ("Ms. Shealy") and was duly appointed by Ms. Shealy to be her Power-of-Attorney on January 17, 2013. At that time, Plaintiff was therefore authorized to bring an action in tort in order to recover for Ms. Shealy's injuries, conscious pain and suffering, mental distress, medical bills, and loss of quality of life. S.C.R.P. 17.
2. On March 16, 2016, Larry D. Koon brought suit against the Defendants on behalf of Ms. Shealy in C.A. #2016-CP-32-00950.

3. On June 17, 2017, Ms. Shealy passed away.

4. On July 31, 2017, Amy S. Davis ("Plaintiff") was appointed as Personal Representative of the Estate of Utricia Shealy.

5. On August 15, 2017, Defendants filed a Motion to Stay Action Due to the Death of the Plaintiff.

6. On August 29, 2017, the Court entered an Order Staying the Case Due to the Death of the Plaintiff.

7. On September 26, 2017, Plaintiff filed a Consent Motion to Substitute and Amend the Pleadings and the Case Caption. Counsel for Defendants consented to this motion.

8. On September 28, 2017, the Court entered a Consent Order ordering that the pleadings may be amended to reflect the substitution of Amy S. Davis, Personal Representative of the Estate of Utricia Shealy as Plaintiff in this case.

9. Plaintiff is therefore now authorized to continue this action in tort in to recover for Ms. Shealy's injuries, conscious pain and suffering, mental distress, medical bills, and loss of quality of life. S.C.R.P. 17.

Defendants

10. Upon information and belief, Defendant Agape Nursing and Rehabilitation Center, Inc. ("Agape Nursing and Rehab Center") was at all material times a South Carolina for-profit corporation authorized to do business in South Carolina. Agape Nursing and Rehab Center may be served through its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

11. Upon information and belief, Defendant Agape Management Services, Inc. ("Agape Management Services, Inc.") was at all material times a South Carolina for-profit

corporation doing business in South Carolina. Agape Management Services, Inc. may be served though its attorney, Jenkins Mann, Rogers Lewis - Attorneys at Law, 1330 Lady Street, Suite 400, Columbia, South Carolina, 29201.

12. Whenever the term "Defendants" is utilized within this Complaint, such term collectively refers to and includes all named Defendants in this lawsuit unless specifically restricted within a cause of action or as further defined below.

13. At all material times, the Defendants remained actively engaged in and transacted business in Lexington County, South Carolina by establishing, acquiring, owning, maintaining, managing and/or operating Agape Nursing and Rehabilitation Center ("the facility"), a skilled nursing facility located at 300 Agape Drive, West Columbia, South Carolina, 29169.

14. At all material times, the Defendants were responsible for ensuring that the operations of the facility complied with all applicable state and federal statutes, laws, and regulations pertaining to operation of such facilities.

15. Additionally, upon information and belief, at all material times, the facility was a participant in the Medicare and Medicaid programs and therefore, was required to comply with the provisions of 42 CFR § 483.1 *et seq.*

16. Whenever in this Complaint it is alleged that the Defendants did any act or failed to do any act, it is meant that the officers, agents, or employees of the designated Defendants respectively performed, participated in, or failed to perform such acts while in the course and scope of their employment or agency relationship with said Defendants.

Unknown Defendants

17. Plaintiff intends to name as Defendants each corporation, partnership, and individual or other entity that, either directly or in concert with others, was negligent and

breached the applicable standard of care in assessing, diagnosing, planning for, caring for and treating Ms. Shealy while she was a resident at the facility and was responsible for acts and omissions that caused Ms. Shealy's injuries. Defendants John Doe and Richard Roe Corporation are as-yet-unknown entities which participated in these acts and omissions.

18. Plaintiff also intends to name as Defendants any other corporation, partnership, and individual who is or was an *alter ego* of the Defendants, or who is a joint venturer with the Defendants. Defendants Jane Doe and Mary Doe Corporation are as-yet unknown entities that are or were *alter egos* of the Defendants or joint venturers with the Defendants in the establishment, ownership, operation, management or control of the facility. Plaintiff cannot determine the exact number or identities of such individuals or entities at this time.

Jurisdiction and Venue

19. Defendants are subject to the jurisdiction of this Honorable Court.

20. The cause of action sued upon arose in Lexington County, South Carolina.

21. Defendants are joint tort-feasors and were all jointly, directly, and vicariously liable for the care and treatment Ms. Shealy received. Venue is, therefore, proper for all Defendants in Lexington County, South Carolina.

22. Plaintiff and Defendants completed pre-suit mediation pursuant to S.C. Code § 15-79-125 on March 4, 2016, and the parties were unable to reach a settlement in this matter. Proof of mediation is attached as Exhibit A to this Complaint.

**NATURE OF THE DEFENDANTS' LIABILITY:
DIRECT AND VICARIOUS LIABILITY**

23. The Defendants are directly liable by virtue of their own conduct for the wrongful acts detailed herein. The Defendants are also vicariously or indirectly liable and responsible for

the wrongful conduct detailed herein under one or more of the following alternative legal theories:

a. ***Alter Ego***: At all times material to this lawsuit, the Defendants were *alter egos* of one another. The Defendants conducted the business of these entities, including the facility, as if they were one by commingling them on an interchangeable basis or confusing separate properties, records, or control. Furthermore, the facility was a subsidiary, affiliate, and/or alter ego of the Defendants. The management and operations of the facility were so assimilated within the Defendants that Agape Nursing and Rehabilitation Center was simply a name through which the Defendants conducted their business. The Defendants dominated and controlled the operations of the facility, and any assertions by the Defendants that each was a separate corporate enterprise with an independent and separate existence is a sham and part of a scheme to perpetrate fraud, promote injustice, and evade existing legal and fiduciary obligations.

b. ***Agency***: At all times material to this lawsuit, the Defendants acted as agents for one another and each ratified or authorized the acts or omissions of the other.

c. ***Amalgamation of Interests***: The Defendants each remain liable for the acts and omissions of the other because the Defendants are and have been operating as an amalgamation of interests creating a blurred corporate identity through an integrated enterprise and/or joint venture in the establishment, operation, management, and control of the facility. The Defendants shared a common purpose in establishing, operating, managing, and controlling the facility and combined their property and labor in the facility for the purpose of making a profit and to blur the legal distinction between the entities and their activities.

FACTS COMMON TO ALL COUNTS

24. Ms. Shealy was admitted to the facility on July 1, 2014, at the age of seventy-five, for skilled nursing care. During her residency, Ms. Shealy was dependent on the staff at the facility for nursing and rehabilitative care, as well as for assistance with all of her daily needs including, but not limited to, fall prevention, transfers, mobility, turning and repositioning, pressure relief, adequate nutrition and hydration, toileting, hygiene and grooming, and other activities of daily living.

25. At all material times, the Defendants represented that: (a) they were competent to provide Ms. Shealy with the necessary care, treatment and services and would provide the same; and (b) that Ms. Shealy's condition was capable of being successfully managed by them.

26. During her admission to the facility, Ms. Shealy suffered multiple injuries at the hands of the Defendants including, but not limited to: (a) a fall that resulted in a contusion to her face and a femoral neck fracture of her right hip; (b) insults to her human dignity; (c) violation of her rights; (d) physical suffering; and (e) mental anguish.

27. At all times relevant to this action, the Defendants were fully aware that the delivery of care and custodial services to residents in the facility, including Ms. Shealy, required: (a) provision of adequate and appropriate staffing in the facility; and (b) appropriate census levels and census mixes within the facility.

28. Despite this knowledge, the Defendants made operational, budgetary, and administrative decisions that were determined more by the financial needs and goals of the Defendants than by the custodial, medical and nursing needs of residents of the facility, including Ms. Shealy.

29. The Defendants entered into a continuing course of negligent conduct, creating, implementing and enforcing dangerous operational budgets, practices, and policies at the facility

which deprived residents, including Ms. Shealy, of safe, adequate, and essential care and resources to meet their needs, including, but not limited to, appropriate plans of care, assessment and continued monitoring of her condition, appropriate medication administration, assistance with activities consistent with daily living, and nutrient and fluids to prevent dehydration and malnutrition.

30. Notwithstanding the Defendants' decisions, directives, and practices which resulted in inadequate and inappropriate staffing of the facility, the Defendants sought to market, recruit and admit higher acuity, heavier care, higher pay residents to the facility, even though the needs of the resident population, including the needs of Ms. Shealy, exceeded the capacity of the staff.

31. At all material times, the Defendants had a duty to allocate resources and exercise fiscal policies with reasonable care, so as to prevent the infliction of harm on residents of the facility, including Ms. Shealy.

32. The Defendants breached their duty by failing to allocate sufficient financial and operational resources to the facility, thereby causing harm to residents, including Ms. Shealy.

33. At all material times, the Defendants knew or should have known that the delivery of essential and necessary care would suffer due to their budgetary and operational decisions, causing resident injury if they did not provide needed resources to adequately staff and operate the facility.

34. As a result of the Defendants' conduct, dependent residents, including Ms. Shealy, suffered repeated and ongoing neglect and were subjected to dangerous conditions including the routine deprivation of basic custodial care.

35. The neglect and injuries of Ms. Shealy were foreseeable to the Defendants. The Defendants were placed on notice that the same kind of dangerous conduct and conditions which caused injury to Ms. Shealy were occurring and had occurred on an ongoing basis by virtue of:

- a. Complaints and concerns registered to the Defendants and/or to regulatory agencies by facility staff, residents and the families of residents about substantially similar conditions and neglect as that experienced by Ms. Shealy; and
- b. The Defendants' own records and communications about substantially similar conditions and neglect as that experienced by Ms. Shealy.

36. The repeated notice and warning of ongoing violations of the minimum standards of care experienced by other similarly situated residents in the facility was inextricably intertwined and connected to that neglect experienced by Ms. Shealy and relevant to the Defendants' knowledge, indifference, negligence, and willful and wanton conduct.

37. Upon information and belief, not only did the Defendants refuse to heed these warnings, but Defendants also failed as a routine practice to report occurrences at the facility, which the Defendants knew required reporting to, and investigation by, authorities.

38. On June 22, 2014, Ms. Shealy suffered a fall at home resulting in a left hip fracture that required hospitalization and surgical repair at Lexington Medical Center.

39. Upon her discharge from Lexington Medical Center, Ms. Shealy was identified as a fall risk due to her history of falls, her recent surgery impacting her mobility, and her increased confusion associated with her diagnosis of dementia.

40. On July 1, 2014, Ms. Shealy was admitted to the facility for skilled nursing care and for rehabilitation following her left hip fracture.

41. At the time of her admission to the facility, Ms. Shealy required assistance with many activities of daily living, including bed mobility, transfers, eating, toileting, and personal hygiene.

42. On July 2, 2014, only one day after her initial admission, Ms. Shealy sustained a fall.

43. Ms. Shealy was subsequently transferred to Lexington Medical Center Emergency Department for evaluation of a contusion to her face and right hip.

44. A CT scan of her right hip revealed a femoral neck fracture, which required surgical repair.

45. Ms. Shealy underwent surgery on July 3, 2014 and physical therapy was subsequently ordered.

**FIRST CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE**

46. Plaintiff incorporates paragraphs 1 through 45 above as though set forth fully *verbatim*.

47. The Defendants, individually and collectively and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as joint venturers in the establishment, operation, management, and/or control of the facility, and while acting through the nursing staff employed by them at the facility, owed a duty to Ms. Shealy to comply with the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances as those presented by Ms. Shealy during her residency at the facility.

48. The Defendants, individually and collectively, and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as

joint venturers in the establishment, operation, management, or control of the facility, and while acting through the nurses employed by them at the facility, violated the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances such as those presented by Ms. Shealy in their care and treatment of her. Their professional negligence includes, but is not limited to, the following:

- a. Failure to provide an accurate and appropriate admission assessment of Ms. Shealy;
- b. Failure to provide a safe environment;
- c. Failure to provide adequate and appropriate fall prevention interventions;
- d. Failure to provide adequate and appropriate care plans specific for Ms. Shealy related to fall and safety;
- e. Failure to provide adequate and appropriate services in the facility to accommodate the individual needs of Ms. Shealy;
- f. Failure to provide staff with the knowledge, skills, and competencies to care for residents with dementia and frequent falls; and
- g. Failure to provide Ms. Shealy with the necessary care and services to allow her to attain or maintain the highest practicable physical, mental, and psychosocial well-being.

49. In addition to being negligent and breaching the standard of care, the conduct of the Defendants violated provisions of applicable federal and state law, including but not limited to provisions of the Code of Federal Regulations (42 CFR § 483.1 *et seq.*), the South Carolina Adult Protection Act (S.C. Code § 43-35-5, *et seq.*); the South Carolina Department of Health and Environmental Control Regulations for Nursing Homes (Regulation 61-17, *et seq.*); the South Carolina Bill of Rights for Residents of Long Term Care Facilities (S.C. Code § 44-81-10 *et seq.*); and the South Carolina Nurse Practice Act (S.C. Code § 40-33-5, *et seq.*), constituting negligence *per se*.

50. As a direct and proximate result of the violations of the Agape Defendants' negligent conduct as described above, Ms. Shealy suffered multiple injuries which included, but were not limited to: a facial contusion, femoral neck fracture of her right hip, conscious pain and suffering, mental distress, disability, and incurred medical expenses as a result of the treatment of her injuries.

51. To the extent an affidavit pursuant to S.C. Code § 15-36-100 is required, Plaintiff has attached as Exhibit B to this Complaint the affidavit of Ellen L. Lewis, RN, MSN, GNP-C, who is qualified as an expert on the issues raised in this Complaint. This affidavit specifies at least one negligent act or omission on the part of the Defendants and the factual basis for each claim based upon the available evidence at the time of the filing of the affidavit. The attached affidavit is not inclusive of each act, error, or omission that has been committed, or may not have been committed by the Defendants, and Plaintiff reserves the right to contend and prove additional acts, errors, and omissions on the part of the Defendants that reflect a departure from the requisite standard of care required by law.

52. If any of the acts or omissions complained of in Paragraph 48 are deemed by the court to involve ordinary negligence rather than professional negligence, they are alternatively incorporated and averred as part of Paragraph 55 of this Complaint.

**SECOND CAUSE OF ACTION
ORDINARY NEGLIGENCE/SIMPLE NEGLIGENCE**

53. Plaintiff incorporates Paragraphs 1 through 45 as though set forth fully herein *verbatim*.

54. The Defendants had a duty to exercise ordinary and reasonable care in providing services to Ms. Shealy, including, but not limited to, the following: providing Ms. Shealy with

appropriate assistance with transfers; assisting Ms. Shealy with activities necessary for daily living; and observing, documenting and reporting abnormal findings to nurses and physicians.

55. The Defendants, individually and collectively, and by virtue of their own independent actions and while acting as *alter egos* and agents of one another, and while acting as joint venturers in the establishment, operation, maintenance, supervision, management, or control of the facility, and while acting through staff employed by them, failed to exercise ordinary and reasonable care in provision of services for Ms. Shealy. The Defendants' ordinary negligence included, but was not limited to:

- a. Ongoing failure to keep a complete, concise and accurate medical record for Ms. Shealy;
- b. Repeated failure to hire, adequately screen, and train adequate and appropriate personnel to monitor, supervise, care for, and/or treat Ms. Shealy;
- c. Continuing retention and assignment of unfit, unqualified and incompetent direct care staff to monitor, supervise, care for, and/or treat Ms. Shealy;
- d. Repeated failure to establish and implement appropriate corporate budgeting policies which were consistent with the needs of residents of the facility, including Ms. Shealy;
- e. Creation and enforcement of dangerous operational budgets which deprived residents of adequate staffing, supplies, and caused neglect;
- f. Repeated and systemic failure to establish, implement, and/or enforce appropriate safety, training, staffing, and fundamental policies and procedure to prevent harm to Ms. Shealy and avoid the known consequences of inadequate care;
- g. Failure to have systems in place to ensure that that the staff functioned within the scope of their professional practice, education and training to meet the needs of residents, including Ms. Shealy;
- h. Failure to have systems in place to ensure communication between nurses and nursing assistants regarding changes in resident condition for all residents to prevent harm to Ms. Shealy;

- i. Failure to provide licensed health care professionals with the knowledge and ability to accurately and regularly assess the condition of each resident in order to prevent harm to Ms. Shealy;
- j. Persistent failure to investigate and correct known systemic breakdowns in the delivery of care at the facility to avoid the consequences and harm to Ms. Shealy; and
- k. Failure to provide proper care and services in accordance with Ms. Shealy's rights and needs.

56. As a direct and proximate result of the violations of the Defendants' negligent conduct as described above, Ms. Shealy suffered injuries as more particularly described in paragraphs 46, which resulted in medical expenses.

57. If any of the acts or omissions complained of in Paragraph 55 are deemed by the court to involve professional negligence by the Defendants rather than ordinary negligence, they are alternatively incorporated and averred as part of Paragraph 48 of this Complaint.

THIRD CAUSE OF ACTION PUNITIVE DAMAGES

58. Plaintiff incorporates Paragraphs 1 through 57 as though set forth fully herein *verbatim*.

59. The acts and omissions of the Defendants were reckless, willful, and wanton, and demonstrate a conscious failure to exercise due care and conscious indifference to and/or reckless disregard to the rights and safety of residents, including the safety, health, and welfare of Ms. Shealy.

60. The acts and omissions of the Defendants were extraordinary and outrageous.

61. As a result of the acts and omissions of the Defendants, Ms. Shealy suffered injuries and damages as alleged above.

62. The Defendants are liable for punitive damages to Plaintiff, as Personal Representative of the Estate of Utricia Shealy.

63. Punitive damages should be awarded to Plaintiff, as Personal Representative of the Estate of Utricia Shealy, and against the Defendants to deter them from repeated misconduct as set forth in this Complaint.

WHEREFORE, Plaintiff prays for the following relief:

- (a) That Plaintiff, as Personal Representative of the Estate of Utricia Shealy, recover a judgment against the Defendants, jointly and severally, for the actual damages in the sum deemed appropriate by the jury;
- (b) That Plaintiff, as Personal Representative of the Estate of Utricia Shealy, recover a punitive damages from the Defendants;
- (c) That Plaintiff recover the costs of this action;
- (d) That Plaintiff be granted a full jury of 12 to try this case; and
- (e) That the Court and jury grant such other and further relief as may be just and proper.

Respectfully submitted, this the 3rd day of October, 2017.

/s/ C. Caleb Connor
C. Caleb Connor, SC Bar No. 100517
Kenneth L. Connor, SC Bar No. 100298
Laura S. Jordan, SC Bar No. 101769
CONNOR & CONNOR, LLC
224 Park Ave SE
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing
Second Amended Complaint upon all attorneys in this action by United States Mail with
sufficient postage affixed thereto as follows:

Shaun C. Blake
Jenkins Mann
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street
Columbia, SC 29201

Attorneys for Defendants

Respectfully submitted, this 3rd day of October, 2017.

CONNOR & CONNOR, LLC

/s/ C. Caleb Connor
C. Caleb Connor, SC Bar No. 100517
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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

AMY S. DAVIS, as Personal Representative of the
Estate of UTRICIA SHEALY, deceased,

Plaintiff,

v.

AGAPE NURSING & REHABILITATION
CENTER, INC.; AGAPE MANAGEMENT
SERVICES, INC.; JOHN DOE; RICHARD ROE
CORPORATION; JANE DOE; AND MARY DOE
CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO: 2016-CP-32-00950

ANSWER TO SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

Each of the Defendants, to the extent such Defendants exist or may be found to be parties to this action, would answer the Plaintiff's Second Amended Complaint dated October 3, 2017 (the "Complaint") as follows:

FOR A FIRST DEFENSE

(Mandatory Dismissal under Rules 12(b)(2), (4), (5), and (6), SCRCP)

1. The Complaint fails to properly identify certain "Defendants" specifically named in the caption of this action and in paragraphs 2, 11, and 12 of the Complaint.
2. The Complaint fails to properly identify "John Doe," "Richard Doe Corporation," "Jane Doe," and "Mary Doe Corporation" (together the "Doe Defendants"), and it refers to them as "unknown defendants."
3. Because the Notice of Intent to File Suit failed to name any of the "Doe Defendants," or to otherwise identify them or provide them an opportunity to participate in pre-suit matters, Plaintiff has failed to comply with S.C. Code Ann. § 15-79-125 with respect to these Doe Defendants.
4. Additionally, the Affidavit of Ellen Lewis – the only expert affidavit presented by

the Plaintiff - fails to identify a negligent act or omission against any specific professional licensed by or registered with the State of South Carolina or by any Defendant that is in fact a licensed health care facility as required by S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100.

5. Therefore, this court does not possess personal jurisdiction over the Doe Defendants, and therefore the dismissal of these Defendants and the striking of their names from the caption of this case is appropriate under Rule 12(b)(2), SCRCPP.

6. Additionally, the service of the Summons and Complaint, as it is captioned and alleged, constitutes insufficient process and service of process on the Doe Defendants, and therefore the dismissal of these Defendants and the striking of their names from the caption of this case is appropriate under Rules 12(b)(4) & (5), SCRCPP.

7. Additionally, the failure to comply with S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100, as it is captioned and alleged, constitutes insufficient process and service of process on the Doe Defendants, and therefore the dismissal of these Defendants and the striking of their names from the caption of this case is appropriate under Rules 12(b)(4) & (5), SCRCPP.

8. Additionally, the Complaint fails to state facts sufficient to constitute a cause of action for professional negligence against any of the Defendants, and therefore the dismissal of the first cause of action alleged in the Complaint is appropriate under Rule 12(b)(6), SCRCPP. Moreover, neither Agape Management Services, Inc., nor any of its agents or servants acting on its behalf, engaged in the provision of any professional services to Ms. Shealy.

9. Additionally, the Complaint fails to state facts sufficient to constitute any cause of action against the Doe Defendants, and therefore the dismissal of these Defendants and the striking of their names from the caption of this case is appropriate under Rules 12(b)(4) & (5), SCRCPP.

FOR A SECOND DEFENSE
(Qualified General Denial)

10. Defendants hereby deny all allegations of the Complaint not herein after expressly admitted or otherwise responded to below.

11. All references to “paragraphs” below are references to the paragraphs in the Complaint.

12. Defendants lack information regarding the allegations of paragraph 1 and therefore deny the same pursuant to Rule 8(b), SCRCP.

13. Defendants admit paragraphs 2 and 3.

14. Defendants lack information regarding the allegations of paragraph 4 and therefore deny the same pursuant to Rule 8(b), SCRCP.

15. Defendants admit paragraphs 5 through 8.

16. Defendants lack information regarding the allegations of paragraph 9 and therefore deny the same pursuant to Rule 8(b), SCRCP.

17. Defendants deny paragraph 10 as stated, and instead state that, at one time, a duly formed domestic corporation known as Agape Nursing and Rehabilitation Center, Inc. (“Agape N&R”), operated a skilled nursing facility at 300 Agape Drive, West Columbia, South Carolina 29169 (the “SNF”). That entity ceased operations in 2015, and it no longer operates the SNF or any other business whatsoever.

18. Defendants deny paragraph 11 as stated, and instead state that Agape Management Services, Inc. (“Agape Management”), is a duly formed domestic corporation that once operated in South Carolina.

19. Paragraph 12 requires no response.

20. Defendants deny paragraph 13 through 15, and Defendants incorporate herein by

reference their response to paragraph 10 of the Complaint.

21. Paragraph 16 requires no response.

22. Defendants deny paragraph 17 and 18.

23. In response to paragraph 19, Defendants admit only that Agape N&R and Agape Management are subject to the jurisdiction of this Honorable Court.

24. Defendants deny that any cause of action has properly arose, and therefore Defendants deny paragraph 20 as stated.

25. Defendants deny paragraph 21.

26. In response to paragraph 22, Defendants admit only that Agape N&R and Agape Management participated in a pre-suit mediation and no settlement agreement was made.

27. Defendants deny paragraph 23 and its sub-parts.

28. In response to paragraph 24, Defendants only admit that Ms. Shealy was admitted to the SNF on July 1, 2014.

29. Defendants deny paragraph 25 and 26.

30. In response to paragraph 27, Defendants only admit that Agape N&R were subjected to staffing and census requirements prescribed by law.

31. Defendants deny paragraph 28 through 37.

32. Defendants admit paragraph 38 upon information and belief.

33. Paragraph 39 is written in the passive voice, and therefore Defendants lack information regarding the allegations of paragraph 39 and therefore deny the same pursuant to Rule 8(b), SCRCP.

34. Defendants admit paragraph 40.

35. Defendants deny paragraph 41 as stated, and admit that Ms. Shealy required

assistance with those activities of daily living to the extent reflected in the medical chart that Agape N&R has already provided to the Plaintiff's counsel.

36. Defendants admit paragraph 42.

37. Defendants lack information or belief regarding paragraphs 43 through 45 of the Complaint and therefore deny the same pursuant to Rule 8(b), SCRPC.

38. Defendant deny all remaining allegations of the Complaint or the Plaintiff's right to obtain any of the relief sought in the prayer for relief.

FOR A THIRD DEFENSE
(Non-Economic Damage Awards Act)

39. Defendants re-allege the preceding paragraphs herein.

40. Defendant pleads the applicable provisions of the South Carolina Non-Economic Damage Awards Act of 2005 (§15-32-200, *et seq.*) and §15-38-15, as such provisions may be applicable in this case.

FOR A FOURTH DEFENSE
(Standard of Care)

41. Defendants re-allege the preceding paragraphs herein.

42. In the alternative, Defendants allege, upon information and belief, that the care and treatment of Plaintiff met the regulatory requirements of skilled nursing facilities and nursing providers in the field, and therefore the Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A FIFTH DEFENSE
(Intervening Cause)

43. Defendants re-allege the preceding paragraphs herein.

44. To the extent that any injury or damage sustained by the Plaintiff's decedent as a result of the allegations contained in the Complaint were caused by the intervening and

superseding acts or omissions on the part of someone other than Defendant, over whom the Defendant had no control or right of control, the Defendant pleads these intervening and superseding acts or omissions as a complete bar to the present action.

45. Similarly, to the extent that any injury or damage sustained by the Plaintiff's decedent as a result of the allegations contained in the Complaint were due to and/or caused by the Plaintiff's decedent's physical and mental health infirmities and a natural disease process, the Defendant pleads these physical and mental health infirmities and natural disease processes as a complete bar to the present action.

FOR AN SIXTH DEFENSE
(Demand for Arbitration under Contract with the SNF)

46. Defendants re-alleges the preceding paragraphs herein.

47. Defendants allege that, upon information and belief, this matter is subject to binding arbitration in the Plaintiff's contract with the SNF, and as such the Defendants demand that this case dismissed without prejudice or, in the alternative, that this court stay this case and compel that this action be arbitrated.

FOR A SEVENTH DEFENSE
(Comparative Negligence)

48. Defendants re-alleges the preceding paragraphs herein.

49. If it is determined that any Defendant was negligent as alleged in the Complaint, which is expressly denied, then the negligence of Utricia Shealy or the Plaintiff, if any, must be compared to that of the Defendant and any other Defendant, and any damages awarded to Plaintiff should be proportionately reduced by the amount of Plaintiff's own fault and negligence in accordance with the Comparative Negligence Law of the State of South Carolina. If it is determined that Ms. Shealy or the Plaintiff's negligence contributed more than fifty percent (50%)

to cause the events set forth in the Plaintiff's Complaint, Plaintiff's Complaint is barred.

WHEREFORE, having fully answered the Complaint, the Defendants pray that the action be dismissed with costs assessed against the Plaintiff and for such other and further relief as the Court may decide. In the alternative, Defendants demand that this case be stayed as it is compelled to arbitration. In the alternative, Defendants demand a jury trial.

/s/ Jenkins Mann

Shaun C. Blake (S.C. Bar #76349)

Jenkins Mann (S.C. Bar #74894)

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October 18, 2017

Columbia, South Carolina

State of South Carolina
County of Lexington

Court of Common Pleas

Amy S. Davis,)
as Personal)
Representative of the)
Estate of Utricia)
Shealy,)
)
Plaintiff,)
v.)
)
Agape Nursing &)
Rehabilitation Center,)
et al.,)
)
Defendant.)

Transcript of Record
2016-CP-32-00950

October 22 - 26, 2018
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge; and
a jury.

A P P E A R A N C E S:

Caleb Connor, Esquire
Kip McAlister, Esquire
Attorneys for the Plaintiff

Shaun Blake, Esquire
Jenkins Mann, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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P R O C E E D I N G S

* * *

THE COURT: All right. Ladies and gentlemen, we're about to begin the trial of the case of Amy S. Davis as Personal Representative of the Estate of Utricia Shealy vs. Agape Nursing and Rehabilitation Center, Agape Management Services, Inc., John Doe, Richard Roe Corporation, Jane Doe, and Mary Doe Corporation.

Before -- I've got several questions, I need to ask you, but before I do that, I'd like to allow the attorneys and parties an opportunity to stand up and introduce themselves to you at this time. Plaintiff can go first.

MR. CONNOR: Caleb Connor here for the plaintiff. I'm with the law firm of Connor & Connor in Aiken.

MR. MCALISTER: Kip McAlister also with the law firm of Connor & Connor in Aiken.

MR. BLAKE: Shaun Blake with the office of Rogers Lewis Jackson Mann & Quinn.

MR. MANN: I'm Jenkins Mann, an attorney with Rogers Lewis Jackson Mann & Quinn.

THE COURT: Ms. Davis.

MR. CONNOR: Yes. And this is our plaintiff,

1 Amy Davis. She's from Leesville.

2 THE COURT: Thank you. Ladies and gentlemen,
3 is there anyone on the jury panel related by blood
4 or marriage to Ms. Davis who you just saw standing
5 up? If so, please stand..

6 And does any member of the jury panel have a
7 close social or personal relationship with the
8 plaintiff or the defendants in this case? If so,
9 please stand.

10 Yes, ma'am?

11 POTENTIAL JUROR: I know the defendant --

12 THE COURT: I'll tell you what, tell me your
13 juror number first.

14 POTENTIAL JUROR: 44.

15 THE COURT: Who do you know?

16 POTENTIAL JUROR: I know the defendant.

17 THE COURT: Who, specifically?

18 POTENTIAL JUROR: Scott Middleton.

19 THE COURT: Okay. Was Mr. Middleton -- did he
20 stand up and introduce himself?

21 MR. MIDDLETON: I'm Scott Middleton and I'm
22 representing Agape Nursing and Rehab Center and the
23 management company.

24 THE COURT: Ma'am, does your knowing the
25 defendant in this matter in any way affect your

1 ability to be fair and impartial?

2 POTENTIAL JUROR: Probably.

3 THE COURT: Okay. Thank you.

4 Yes, ma'am?

5 POTENTIAL JUROR: Juror 193. I'm familiar with
6 the Shealy family, the Davis family. I work with
7 her brother.

8 THE COURT: You work with whose mother?

9 POTENTIAL JUROR: Her brother, Amy's brother.

10 THE COURT: Okay. Do you believe that affects
11 your ability to be fair and impartial in any way?

12 POTENTIAL JUROR: I hope not.

13 THE COURT: Okay. Thank you.

14 Yes, sir?

15 POTENTIAL JUROR: Juror 88. I have a relative
16 that worked for Agape, but it wouldn't affect my
17 partiality.

18 THE COURT: Okay. Thank you.

19 All right. Ladies and gentlemen, the following
20 is a list of possible witnesses in this case:

21 Jennifer S. Bryant, Larry D. Koon, Helen F. Koon,
22 Debbie Schumpert, Ellen Lewis, RN, MSN, GNP-C;
23 Gregory A. Middleton, G. Scott Middleton,
24 Daniel [sic] DeeDee Henderson, Mitzi Myers, Deanna
25 Jones, Scott Smith, Ebonie McDaniel, Javan Vaughn,

1 Shander Murray, Ashley Holland, Kelly Moore, Donna
2 Shafer, Stephanie Bond, Norma Ambert, Matt Faris,
3 Pamela Duncan, Dr. David Krusling, Dr. James
4 McIntosh, Dr. Matison Boyer, Dr. Barnaby T. Dedmond,
5 Dr. Donald Schmechel, Dr. Grant Sullivan, Benjamin
6 Knight, Angela D. Navarro, Dr. Thomas Daley, Jill La
7 Posta, and Pamela Prewett, Janet DiNino, Betsy
8 Sippel, and Amanda M. Cooper.

9 Is any member of the jury panel related by
10 blood or marriage to any of these people I have just
11 listed or have a close personal or social
12 relationship with any of these folks? If so, please
13 stand.

14 All right. Is any member of the jury panel
15 related by blood or marriage or have a close
16 personal or social relationship with any of the
17 attorneys involved in this matter or their law
18 firms? That includes Kip McAlister and Caleb Connor
19 of Connor & Connor, LLC, and Shaun Blake and Jenkins
20 Mann of Rogers Lewis Jackson Mann & Quinn. If so,
21 please stand.

22 Has any member of the jury panel formed or
23 expressed an opinion about any issue or matter
24 involved in this case?

25 Is any member of the jury panel aware of any

1 bias or prejudice towards either the plaintiffs or
2 the defendants in this case?

3 Does any member of the jury panel know of any
4 reason whatsoever why he or she should not serve as
5 a juror in this case, with particular emphasis being
6 placed on your ability to be fair and impartial to
7 both the plaintiffs and the defendants?

8 Is there any member of the jury panel who is
9 familiar with the facts of this case or familiar
10 with the plaintiff's alleged damages, either by
11 firsthand knowledge or hearing about this case from
12 someone else?

13 Are any members of the jury panel employed in
14 or retired from the healthcare industry? I figured
15 we'd have a few. Let's just go from front to back.

16 Your juror number, please?

17 POTENTIAL JUROR: 60.

18 THE COURT: And you're employed where?

19 POTENTIAL JUROR: Palmetto Health.

20 THE COURT: Okay. Your employment at Palmetto
21 Health, would that affect you in any way in your
22 ability to be fair and impartial?

23 POTENTIAL JUROR: No.

24 THE COURT: All right.

25 Ma'am?

1 POTENTIAL JUROR: 43. I'm at Lexington Medical
2 Center.

3 THE COURT: Your working at Lexington Medical
4 Center, would that affect you in any way in your
5 ability to be fair and impartial?

6 POTENTIAL JUROR: No.

7 THE COURT: All right.

8 Yes, sir?

9 POTENTIAL JUROR: 172. I'm an emergency
10 physician.

11 THE COURT: Would that affect your ability in
12 any way to be fair and impartial in this case?

13 POTENTIAL JUROR: No.

14 THE COURT: Yes, ma'am?

15 POTENTIAL JUROR: 73. I work at Palmetto
16 Health as a registered nurse. It will not affect my
17 ability.

18 THE COURT: Thank you.

19 POTENTIAL JUROR: 47. I'm the patient liaison
20 for amputees for an office that makes prostheses.
21 And it will not affect my ability to be fair.

22 THE COURT: Thank you.

23 POTENTIAL JUROR: 134. I work at Wal-Mart
24 pharmacy as a pharmacist, but it will not affect my
25 ability.

1 THE COURT: Thank you very much.

2 Has any member of the jury panel ever been
3 involved in a lawsuit either as a plaintiff or a
4 defendant? If so, please stand.

5 Yes, sir?

6 POTENTIAL JUROR: 39. Lawsuit effecting a
7 trip-and-fall with Starbucks.

8 THE COURT: Were you a plaintiff or a
9 defendant?

10 POTENTIAL JUROR: My wife was a plaintiff.

11 THE COURT: Thank you, sir. And I ask, will
12 that affect your ability to be fair and impartial?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you.

15 Yes, sir?

16 POTENTIAL JUROR: 38. Sarbanes-Oxley
17 whistleblower case. I was a plaintiff.

18 THE COURT: Will that affect your ability in
19 any way to be fair and impartial?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you.

22 Yes, ma'am?

23 POTENTIAL JUROR: Plaintiff in a domestic
24 violence.

25 THE COURT: What is your juror number?

1 POTENTIAL JUROR: 157.

2 THE COURT: Yeah. You don't -- you say
3 domestic violence?

4 POTENTIAL JUROR: Yeah. I didn't know if I
5 needed to stand for that one.

6 THE COURT: Yeah. I should say a civil
7 lawsuit. This pertains to a civil lawsuit.

8 POTENTIAL JUROR: Okay. I just wanted to be
9 sure.

10 THE COURT: Thank you.

11 Yes, sir, your juror number?

12 POTENTIAL JUROR: 221. I'm not sure if this
13 qualifies either, but I was in a class action
14 lawsuit against Rite-Aid.

15 THE COURT: Okay. What was your juror number?

16 POTENTIAL JUROR: 221.

17 THE COURT: Would that affect your ability in
18 any way to be fair and impartial?

19 POTENTIAL JUROR: No.

20 THE COURT: All right.

21 Yes, sir, in the back?

22 POTENTIAL JUROR: 176. I'm not sure if this
23 qualifies, but I was a plaintiff in a car accident.

24 THE COURT: Would that affect your ability to
25 be fair and impartial in any way?

1 POTENTIAL JUROR: No.

2 THE COURT: Thank you.

3 Has any member of the jury panel or a close
4 member of your family worked at Agape Nursing and
5 Rehabilitation Center?

6 Your number, sir?

7 POTENTIAL JUROR: 88.

8 THE COURT: You had a relative work there?

9 POTENTIAL JUROR: Yes.

10 THE COURT: Who was the relative?

11 POTENTIAL JUROR: Joe Seal.

12 THE COURT: What was the relation?

13 POTENTIAL JUROR: Cousin.

14 THE COURT: Okay. That wouldn't affect your
15 ability to be fair and impartial?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: In the rear?

18 POTENTIAL JUROR: 176. My sister and no.

19 THE COURT: Your sister works or worked?

20 POTENTIAL JUROR: She worked, past-tense.

21 THE COURT: Okay. It would not affect your
22 ability?

23 POTENTIAL JUROR: (Shakes head.)

24 THE COURT: Has any member of the jury panel or
25 close member of your family ever experienced a hip

1 fracture? If so, please stand.

2 Your juror number, sir?

3 POTENTIAL JUROR: 115. My spouse was in a car
4 accident and had her hip replaced.

5 THE COURT: Would that affect your ability in
6 any way to be fair and impartial?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: Is any member of the jury panel --
9 I'm sorry. I didn't see you.

10 POTENTIAL JUROR: Number 129. My mother broke
11 her hip.

12 THE COURT: Would that affect your ability in
13 any way to be fair and impartial?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: Thank you.

16 POTENTIAL JUROR: 221. My father broke his
17 hip.

18 THE COURT: Will that affect your ability in
19 any way to be fair and impartial?

20 POTENTIAL JUROR: No.

21 THE COURT: Thank you.

22 What might help is if everybody stands up at
23 once and remains standing so I don't miss you.

24 POTENTIAL JUROR: 219. My mother fell and
25 broke her hip about a year ago. And, no, it won't.

1 THE COURT: Thank you, ma'am.

2 Any member of the jury panel or close member of
3 your family have experience with a loved one who
4 suffers from dementia or Alzheimer's? If so, please
5 stand.

6 POTENTIAL JUROR: 115. Both paternal
7 grandparents.

8 THE COURT: Will that affect your --

9 POTENTIAL JUROR: No.

10 THE COURT: Okay. Let's go from the front,
11 back.

12 POTENTIAL JUROR: Juror 201. Both
13 grandmothers, one on the maternal side and one on
14 the paternal side. Maternal side, Alzheimer's;
15 paternal side, dementia. And, no, it will not
16 affect my --

17 THE COURT: Thank you.

18 Yes, sir?

19 POTENTIAL JUROR: Juror 194. My grandfather on
20 my mom's side had Alzheimer's and my grandmother on
21 my dad's side had dementia. And, no, it will not.

22 THE COURT: Thank you.

23 POTENTIAL JUROR: 129, wife's grandmother,
24 dementia. And, no, it will not affect me.

25 THE COURT: Thank you.

1 POTENTIAL JUROR: Juror 33. My mother-in-law
2 is currently at PruittHealth Care. She has
3 dementia. And it won't affect my ability.

4 THE COURT: Thank you, sir.

5 POTENTIAL JUROR: Juror 8. My grandmother, one
6 of my aunts, and my mother, all three had
7 Alzheimer's. Thank God I was adopted, I guess.

8 THE COURT: Will that affect your ability in
9 any way to be fair and impartial, sir?

10 POTENTIAL JUROR: No, not a bit.

11 THE COURT: Thank you.

12 Has any member of the jury panel or close
13 member of your family received care at Agape Nursing
14 and Rehabilitation Center? If so, please stand.

15 Yes, ma'am, your juror number?

16 POTENTIAL JUROR: 43. My grandfather on my
17 mother's side.

18 THE COURT: Okay. Will that affect your
19 ability in any way to be fair and impartial?

20 POTENTIAL JUROR: No.

21 THE COURT: Thank you.

22 Ma'am, you stood, didn't you?

23 POTENTIAL JUROR: It was the wrong -- wrong
24 place. Sorry.

25 THE COURT: Okay.

1 Does any member of the jury panel have any
2 moral or religious conviction which makes you
3 opposed to the bringing of a lawsuit or for
4 compensating a person seeking damages for injuries
5 in a lawsuit? If so, please stand.

6 Okay. Can I see the lawyers up here real
7 quick?

8 (Sidebar conference.)

9 THE COURT: All right. Ladies and gentlemen,
10 that concludes the questions for this portion of
11 voir dire.

12 Do we have a list?

13 THE CLERK: How many alternates? Two or --

14 THE COURT: Let's do two.

15 All right. Ladies and gentlemen, we'll take a
16 very short break, 15 minutes. We'd appreciate you
17 being ready back in the courtroom at 11:05 and we'll
18 pick the jury for this case. Please don't discuss
19 this case or any other case. Focus on the weather
20 and sports, but not on matters that may be before
21 you at this time. We'll have you back in 15
22 minutes, ladies and gentlemen.

23 (Brief recess.)

24 THE COURT: Are we ready to proceed?

25 MR. BLAKE: Yes, Your Honor.

1 THE COURT: All right. Madam Clerk?

2 THE CLERK: Each side gets four strikes.

3 Please use the numbers to the far left and we're
4 using numbers 1 through 20 for jurors. Plaintiff
5 strikes first.

6 MR. CONNOR: Plaintiff strikes 17.

7 THE CLERK: Defense?

8 MR. BLAKE: Defense strikes 16.

9 THE CLERK: Plaintiff?

10 MR. CONNOR: Plaintiff strikes 4.

11 THE CLERK: Defense?

12 MR. BLAKE: Defense strikes 12.

13 THE CLERK: Plaintiff?

14 MR. CONNOR: Plaintiff strikes 14.

15 THE CLERK: Defense?

16 MR. BLAKE: Defense strikes 3.

17 THE CLERK: Plaintiff?

18 MR. CONNOR: Plaintiff strikes 19.

19 THE CLERK: And Defense?

20 MR. BLAKE: Defense strikes 2.

21 THE CLERK: Using numbers 21, 22, 23 for the
22 first alternate, Plaintiff strikes first.

23 MR. CONNOR: Plaintiff strikes 23.

24 THE CLERK: Defense?

25 MR. BLAKE: Defense strikes 21.

1 THE CLERK: And using numbers 24, 25, 26 for
2 the second alternate, Plaintiff?
3 MR. CONNOR: Plaintiff strikes 26.
4 THE CLERK: And Defense?
5 MR. BLAKE: Defense strikes 25.
6 THE CLERK: I'm going to read your strikes back
7 to you, if you'll please confirm. Plaintiff struck
8 numbers 17, 4, 14, and 19. Is that correct?
9 MR. CONNOR: Yes, ma'am.
10 THE CLERK: Defense struck 16, 12, 3, and 2.
11 Is that correct?
12 MR. BLAKE: Yes, ma'am. Thank you.
13 THE CLERK: First alternate: Plaintiff struck
14 23. Is that correct?
15 MR. CONNOR: Yes, ma'am.
16 THE CLERK: And Defense struck number 21?
17 MR. BLAKE: Yes, ma'am.
18 THE CLERK: And for the second alternate,
19 Plaintiff struck number 26?
20 MR. CONNOR: Yes, ma'am.
21 THE clerk: And Defense struck number 25?
22 MR. BLAKE: Yes, ma'am.
23 THE CLERK: When I call your name, bring your
24 belongings; the bailiff will show you where to sit
25 in the jury box. Shaun Thacker, Michael Keese,

1 Brian Worley, Jeffrey Lacount, Tiffany Key, Gregory
2 Tucker, James Mattox, Cynthia Meeler, John Lanzone,
3 Patrick Hedgepath, Elizabeth Clare, and Matthew
4 Jones.

5 First alternate, Jessica Anderson, and your
6 second is Sonya Blick.

7 THE COURT: All right. Ladies and gentlemen,
8 congratulations on being chosen for jury service. I
9 appreciate your service. I'll tell you that
10 throughout the week because it's the truth. It's
11 vitally important for our system.

12 It's 11:15. I'm going to send you back now to
13 your new home for the next few days, your jury room.
14 It's just down the hall from the courtroom. I'd
15 like you to go back and select a foreperson for this
16 jury. I have a few things I need to discuss with
17 the remaining jury panel and the attorneys, but I'll
18 bring you back out here in a few minutes.

19 But I'd like for you to go back and go ahead
20 and select a foreperson. Please don't discuss the
21 case in any way. Even though you haven't heard
22 anything about it, please don't discuss the case in
23 any way whatsoever. You can talk about anything
24 else, but just not the case. I'll get you back out
25 here as soon as possible.

1 Bailiff, please take them back to the jury
2 room.

3 (The jury exits the courtroom at 11:16 AM.)

4 THE COURT: All right. Ladies and gentlemen,
5 thank you for your patience. Sorry you weren't
6 selected for the case this week. You have a number
7 to call back in on your jury card. Make sure you
8 call back in after 6:00 PM tonight and you'll find
9 out what your marching orders are for tomorrow, as
10 far as whether we need you to come back tomorrow.
11 But as far as the rest of the day, I believe you're
12 free to go, so y'all can depart at this time. Make
13 sure you call the number on your card tonight after
14 6:00 PM to find out your instructions for tomorrow.
15 Thank you.

16 (Jury pool excused.)

17 THE COURT: Okay. Counsel, instead of bringing
18 the jury back in, what I want to do is just let them
19 have a long lunch, since we have some things to do.
20 I'm going to tell them to come back at 1:30 and,
21 hopefully, we can get started around there. And,
22 frankly, we can go back into chambers and discuss
23 some of these matters off the record, and at 1:30,
24 we'll try to put everything on the record we want to
25 put on the record. Fair enough?

1 MR. BLAKE: Fair enough.

2 THE COURT: All right.

3 (Luncheon recess 11:18 AM - 1:12 PM.)

4 THE COURT: I hope everyone had a nice short
5 lunch. We were going to go down, just for the
6 record, several motions in limine regarding the
7 plaintiff's motion. And, Counsel, I'll let you just
8 start off with what we discussed.

9 MR. CONNOR: Sure, Your Honor. Thank you.

10 It's my understanding, based off our discussion
11 in chambers, that the parties have reached the
12 following agreements: As to Plaintiff's motions in
13 limine 1, 2, and 3, we've agreed that those are
14 applicable and apply equally to both parties.

15 MR. BLAKE: Yes, Your Honor.

16 THE COURT: All right.

17 MR. CONNOR: As to number 4, I believe that the
18 defendants have agreed not to call any undisclosed
19 experts at this point as it relates to the issue on
20 the treatment at Lexington Extended Care after the
21 issues involved in this case occurred.

22 I believe the agreement is that if the
23 plaintiffs open the door and seek to claim any
24 injury that resulted at that facility, that we then,
25 somehow, have opened the door and make that stay

1 then relevant, but if we do not, then there'll be no
2 mention of the treatment received or the course of
3 care at that facility.

4 THE COURT: Okay.

5 MR. BLAKE: And, Your Honor, I put a little
6 different point on that. Actually, I think where we
7 left it, is I said we were going to reserve it as it
8 came up --

9 THE COURT: It was reserved to the extent that,
10 assuming --

11 MR. BLAKE: Assuming that they don't claim
12 damages and put on causation evidence for damages
13 that overlap with the time period and incidents that
14 happened at subsequent falls, we will not go into
15 it.

16 MR. CONNOR: Your Honor, that is not our
17 agreement. These damages that she sustained
18 continued beyond the time that she was in the
19 hospital. She required rehabilitation; she
20 continued to have pain. Your hip fracture doesn't
21 just magically disappear because you get transferred
22 out of the hospital. That's not what we're seeking
23 to -- I don't believe that's the issue in this case.

24 And the motion in limine deals with expert
25 testimony that hasn't been disclosed. I believe

1 that the ruling is that no undisclosed expert
2 testimony is permissible at this point.

3 THE COURT: The defendants have named no
4 experts --

5 MR. CONNOR: That's correct.

6 THE COURT: -- so, therefore, I don't see how
7 there will be any undisclosed expert testimony.
8 They -- as we discussed, the defendants do have fact
9 witnesses, which, depending upon the registered
10 nurse or whatever specific qualification they have,
11 the fact testimony may venture into what otherwise
12 might be expert testimony under certain
13 circumstances. It's tailored and limited to what
14 their personal knowledge was on the facts
15 surrounding the allegations in your complaint.

16 MR. CONNOR: That's correct. And there's been
17 no disclosure of damages by the defendants, a causal
18 link between the damages that she allegedly
19 sustained subsequently at this other nursing
20 facility. And, therefore, I don't see how they're
21 at all able to offer testimony.

22 The defendants have suggested that because --
23 if we seem to claim damages that extend beyond the
24 time of the hospital admission, that that somehow
25 opens the door, I would take issue with that and

1 would like to be heard on the record, if you --

2 THE COURT: Well, I believe what we discussed
3 is you weren't seeking any monetary economic damages
4 for any of the care she received after the initial
5 hospital visit. But, obviously, the recovery for a
6 fractured hip is -- can be longstanding. And to the
7 extent she suffered pain and suffering through that
8 course is separate than what the specific treatment
9 is that she had or the financials arising therefrom
10 at the subsequent facility. Is that correct?

11 MR. CONNOR: That's correct. And it's not our
12 intention whatsoever to seek to make a claim for the
13 bills that she incurred while a resident at this
14 subsequent home.

15 MR. BLAKE: And, Your Honor, the only
16 qualification I'm adding, and I don't -- all I'm
17 saying is if their expert is going to say that on
18 October 30th she was suffering pain and the records
19 shows she had two falls at that facility in October,
20 then I can say, well, expert -- Madam Expert, you
21 reviewed the records that were provided to us
22 because you reviewed them. Did you see intervening
23 causes of that pain? Did you see her fall and hit
24 the floor? Are you offering an opinion that those
25 falls didn't cause the pain that you described?

1 THE COURT: Let's see if he asks that question.

2 MR. BLAKE: Absolutely. And that's the only --
3 again, we're not saying we're going to put up an
4 expert, I'm just saying I want to be free on
5 cross-examination to probe causation and damages to
6 the extent the expert tries to link stuff.

7 THE COURT: Okay.

8 MR. CONNOR: Well -- yeah. And we'd seek to
9 exclude any attempts by the defendant to suggest
10 that they're the result of some negligence of a
11 nonparty, that source of that pain.

12 THE COURT: Okay.

13 MR. CONNOR: It is not our intention to make a
14 claim for any economic damages associated with the
15 care that she received at the nursing home that she
16 went to afterward. To suggest though that -- again,
17 for the record, to suggest though that we're somehow
18 precluded from talking about the general nature of
19 hip fractures and how they linger and the effects on
20 the patient, the defendant's own literature makes it
21 very clear that the sequelae of events that flows
22 from a hip fracture is often life-altering and
23 devastating and leads to death. Their own
24 literature shows that. To suggest that we're
25 somehow precluded from making that point just

1 because she had a fall with no injury subsequently
2 is --

3 THE COURT: Well, you can make that point
4 without even having to go to other falls.

5 MR. CONNOR: That's right.

6 MR. BLAKE: Absolutely. And I don't argue that
7 anything is precluded, I just don't want the door
8 shut on my cross.

9 THE COURT: I don't think your door is shut.
10 And you'll just have to question accordingly. And
11 we'll deal with it if it gets off the tracks.

12 MR. CONNOR: Thank you, Your Honor.

13 MR. BLAKE: Understood. Thank you.

14 MR. CONNOR: As to 5, I believe there's an
15 agreement on that and --

16 THE COURT: Yeah. That's as to the standard of
17 pretrial motions.

18 MR. BLAKE: Absolutely, Your Honor.

19 MR. CONNOR: And I believe you reserved ruling
20 on 6, 7, and 8.

21 THE COURT: And that -- and, Counsel, as to
22 your objection that it was just if he went down the
23 road of discussing policies and procedures, you
24 wanted to be able to address it on cross.

25 MR. BLAKE: Absolutely. And the example I gave

1 Your Honor is they bring out a DHEC survey covering
2 two years of alleged sins by the company, those
3 individuals should be able to take the stand and not
4 just live with the inference because it's in the
5 DHEC document, therefore it's true; they should be
6 able to get up and testify what they did in response
7 to the whatever plan for action was in place and
8 talk about whatever things they did to comply with
9 the applicable policies and procedures. Again --

10 THE COURT: That wouldn't come up until your
11 case in chief, will it?

12 MR. BLAKE: It would not. I can't imagine it
13 does. We don't have an affirmative defense that
14 relates to this. It's just that we -- if they open
15 the door by putting in two years of bad conduct
16 saying that, you know, there are other occasions
17 where they did not meet the standard of care, look
18 at this DHEC record that shows it, then they should
19 be able to get on the stand in rebuttal and say --
20 and that may be in our case in chief -- yes,
21 Plaintiff has put in that evidence of past bad acts,
22 in a regulatory reaction to it, here's our story on
23 how we responded to that and then complied with
24 policies and procedures or acted in accordance with
25 common law duties.

1 THE COURT: Well, I think if the plaintiffs put
2 in testimony through experts regarding standard of
3 care and applicable policies and procedures and any
4 deviations therefrom, you know, I understand, on
5 cross-examination, you could try to show the other
6 side of the equation, or if you have -- well, you
7 don't have an expert, so --

8 MR. BLAKE: No. I have staff. I have people
9 that are actually working there. They're all under
10 subpoena here this week. I can put up their
11 director of nursing, their medical director,
12 whoever, their administrators. We've got bodies
13 that get up and testify what they did in response to
14 those DHEC surveys.

15 THE COURT: Okay. Well, that will come -- if
16 you don't touch it on cross, it will come up in your
17 case in chief.

18 MR. BLAKE: That's right.

19 THE COURT: Okay. Let's see. Number 7.

20 MR. CONNOR: Yes, sir. I'm sorry. I thought
21 on 7, as well as 8, that the Court reserved ruling
22 on those until the evidence presents itself --

23 THE COURT: I'm just reading the notes.

24 MR. CONNOR: Oh, I'm sorry.

25 THE COURT: Okay. We'll just approach that

1 when we get to it.

2 MR. CONNOR: Sure. Now, the other issue is,
3 obviously, our notice to produce at trial. I
4 believe -- I haven't talked with Mr. Blake since our
5 break. I believe we've attempted to resolve that
6 by --

7 THE COURT: Y'all haven't talked since before
8 we started this hearing about what the status was of
9 those documents?

10 MR. BLAKE: They're actually on the way.

11 THE COURT: Okay.

12 MR. BLAKE: The ones that we talked about
13 during the break, our paralegal found in our e-mail
14 system, is Bates-labeling them, and bringing them
15 over.

16 THE COURT: Okay. So they're en route?

17 MR. BLAKE: Yes.

18 MR. CONNOR: Okay. So I think that will
19 resolve our motion to quash. We've withdrawn the
20 other areas with that agreement.

21 THE COURT: And to Defendants' motion -- just
22 to your motion in limine, as he just said, that
23 resolved one of your motions to quash.

24 MR. BLAKE: Absolutely. And my motion to quash
25 was one to talk about those attachments. And I

1 understand he's limiting the documents requested
2 and, therefore, the stuff he'll have foundation to
3 talk about to the attachments of the e-mail. And
4 then the other issue regarding the sale of the
5 companies and the financials associated with that
6 and all those other documents, that's off the table.

7 THE COURT: Okay. All right. Is everything --
8 is technology to your liking, as far as -- what are
9 y'all doing for openings and everything? Is
10 everything working?

11 MR. CONNOR: I believe on our end it is, Your
12 Honor.

13 THE COURT: I'll give you the opportunity to
14 check now so we don't have an issue during openings.

15 My plan will be to go 90 minutes to two hours
16 throughout the week, maybe a little shorter
17 sometimes depending on -- we've been here talking
18 for quite some time, so we'll probably do 90
19 minutes. Whenever you are at your witness at 5:00,
20 just know that we'd like to have them out by 5:30,
21 so try to plan accordingly.

22 MR. CONNOR: Yes, Your Honor. We do have a --
23 I don't know if you want us to move them in as soon
24 as we begin testimony or beforehand. We do have a
25 group of stipulated joint exhibits that have been

1 identified. I didn't know if y'all wanted to do
2 that --

3 THE COURT: Why don't y'all get them ready?
4 And then when you're ready to put them on the
5 record, we will.

6 MR. CONNOR: I believe they're ready.

7 THE COURT: Okay. Has the court reporter seen
8 them?

9 MR. CONNOR: We've got them labeled for her.

10 THE COURT: Okay. So what are --

11 MR. CONNOR: Yes, Your Honor. If -- you're
12 ready for us to go ahead and do this?

13 THE COURT: Yes. Go ahead and put the joint
14 exhibits on the record.

15 MR. CONNOR: And I've got a copy of the -- may
16 I approach, Your Honor? I've got a copy for you,
17 Judge, and a disc of those exhibits for you. May I
18 approach?

19 THE COURT: Yes, sir, please. This is a list
20 of all the exhibits and a CD that contains them?

21 MR. CONNOR: Yes, Your Honor. And we'll do the
22 same for the court reporter as well.

23 THE COURT: Are you planning to show these on
24 the big screen to the jury?

25 MR. CONNOR: We may not use them all. I think

1 we've agreed they're all admitted. At the end of
2 the trial, we may want to narrow down the list if
3 they were never touched on. I mean, but at this
4 point, those are the joint exhibits.

5 THE COURT: All right. So, for the record,
6 stipulated joint exhibits 1 through 28.

7 MR. CONNOR: Yes, Your Honor.

8 THE COURT: All right.

9 (Joint Exhibit Nos. 1 - 28 marked for
10 identification.)

11 MR. CONNOR: And I've got those here and
12 they've been marked and --

13 THE COURT: I'm thinking.

14 MR. CONNOR: Would you like us just to move
15 them all in at once?

16 THE COURT: Yes. They're evidence. We don't
17 have to talk about what they are. They're evidence.
18 We'll stand at ease.

19 MR. CONNOR: At this time, Your Honor, we'd
20 like to move into evidence Plaintiff's Joint 1,
21 which is Lexington County EMS records; Plaintiff's
22 Joint -- I'm sorry, I shouldn't say Plaintiff's --
23 Joint Exhibit 2, which are the Lexington Medical
24 Center Extended Care records and films. The films
25 are in a separate folder, 2A and B, just for ease of

1 access.

2 MR. BLAKE: I think you said extended care. I
3 think you meant the hospital. Right?

4 MR. CONNOR: Lexington Medical Center records,
5 yes. I apologize.

6 Joint Exhibit 3 are the Lexington Orthopedic
7 records; Joint Exhibit 4 are the Agape Nursing Home
8 Records; Joint Exhibit 5 are the Lexington County
9 EMS bills; Joint Exhibit 6 are the Lexington Medical
10 Center bills; Joint Exhibit 7 are the Lexington
11 Orthopedic bills; Joint Exhibit 8 are the Agape
12 billing records; Joint Exhibit 9 are the PR
13 appointment for Ms. Davis; Joint Exhibit 10 is the
14 2014 nursing home license application; Joint Exhibit
15 11 is the 2014 license for the nursing home; Joint
16 Exhibit 12 is the 2015 license application; Joint
17 Exhibit 13 is the 2015 license; Joint Exhibit 14 are
18 the DHEC survey documents for 2013 and '14; Joint
19 Exhibit 15 are the resident incident report --

20 MR. BLAKE: Caleb I think we got -- we have
21 joint exhibit -- we don't have the DHEC records.

22 (Brief pause in the proceedings.)

23 MR. CONNOR: Number 14, Your Honor, is the
24 resident incident report which was P23 before on the
25 disc; Joint Exhibit 15 is the ADL assistance and

1 support report; Joint Exhibit 16 is the ADL
2 completed task report; Joint Exhibit 17 is the
3 therapy soft file; Joint Exhibit 18 is the facility
4 management contract; Joint Exhibit 19 are the
5 inservice records; Joint Exhibit 20 are the Agape
6 policies and procedures. The first exhibit is the
7 table of contents, that's 20.

8 And then A is -- Joint 20A, that is the
9 admission note policy; 20B is the admissions to the
10 facility policy; 20C is the resident orientation to
11 facility policy; 20D is care planning
12 interdisciplinary team policy; 20E is the care plan
13 preliminary policy; 20F is the using the care plan
14 policy; 20G is the charting and documentation
15 policy; 20H is the charting errors and omissions
16 policy; 20I is the administering medication policy;
17 20J is the documentation of medication
18 administration policy; 20K is the PRN orders; 20L
19 are the answering the call lights policy; 20M is the
20 accident incident policy; 20N is the daily work
21 assignment policy, 20-O is the nursing service
22 manual policy and procedure manual; 20P is the
23 staffing policy; 20Q is the rehabilitative nursing
24 care policy; 20R is the scheduling therapy services
25 policy; 20S is the preventing resident abuse policy;

1 20T is the resident rights policy; 20U is the
2 accident and incident investigation and reporting
3 policy; 20V is the safety and supervision of
4 residents policy; 20W is the unmanageable resident
5 policy; 20X is the falls clinical protocol policy;
6 20Y is the falls and fall risk managing policy; 20Z
7 is the falls and fall risk managing policy -- I'm
8 sorry.

9 20Z is the fall risk assessment policy; 20 AA
10 is the assessing falls and their causes policy.

11 21A is the job description for the
12 administrator; 21B is the certified occupational
13 therapist assistant job description; 21C is the
14 director of nursing job description; 21D is the LPN
15 job description; 21E is the occupational therapist
16 job description; 21F is the physical therapy
17 assistant policy, and 21G is the RN policy.

18 The facility training records are Joint Exhibit
19 22; the facility employee handbook are Joint Exhibit
20 23; the floor plans, two pages, are Joint Exhibit
21 24; the code of conduct and compliance policies or
22 handbook is Joint 25; 26 is the OT initial treatment
23 plan; 27 is the PT initial treatment plan; and 28 is
24 the fall prevention video.

25 THE COURT: All right.

1 MR. CONNOR: So those have all been moved into
2 evidence, Your Honor.

3 THE COURT: All right. So noted. Joint
4 Exhibits 1 through 28 admitted into evidence by
5 consent of both parties.

6 (Joint Exhibit Nos. 1 - 28 admitted into
7 evidence.)

8 THE COURT: What about this summary? Just
9 fast-forwarding, I mean, do you want them to have a
10 copy of this? It kind of makes sense, just as a
11 guide, when they get back there with a box.

12 MR. BLAKE: It's a big box of records. I don't
13 see why we would not let the jury have that to
14 navigate that thing.

15 MR. CONNOR: And we'd be happy, Your Honor. We
16 have, obviously, more records that we intend on
17 introducing.

18 THE COURT: We'll cross that bridge when we get
19 there.

20 MR. CONNOR: Sure. I don't know if you want us
21 to update that at the time or what.

22 THE COURT: Well, this would be good -- well,
23 let's get through openings and we'll see where we go
24 from there.

25 MR. BLAKE: Thank you, Judge.

1 THE COURT: Anything else from the plaintiff
2 before we bring back the jury?

3 MR. CONNOR: Nothing from the plaintiff, Your
4 Honor.

5 THE COURT: From the Defense?

6 MR. BLAKE: Nothing, Your Honor.

7 THE COURT: We do have a foreperson,
8 Mr. Mattox. Juror No. 129, number 10 on your strike
9 sheet, James H. Mattox, will be our foreperson.

10 All right. Are we ready to go?

11 MR. CONNOR: Yes, sir.

12 MR. BLAKE: Yes, Your Honor.

13 THE COURT: Okay. Let's go. Bring in the
14 jury, please.

15 (The jury enters the courtroom at 1:40 PM.)

16 THE COURT: Okay. Ladies and gentlemen, I hope
17 you had a nice lunch break. Mr. Mattox, I
18 understand you agreed to serve as the foreperson of
19 this jury.

20 THE FOREMAN: Yes, sir.

21 THE COURT: Congratulations. I appreciate you
22 agreeing to serve in that capacity. I would like
23 you to sit in that seat for the remainder of the
24 week and the alternates to sit in those seats. The
25 rest of you can move around as you see fit, but I

1 just want to make sure that the three of you are in
2 the same seats at all times.

3 We're about to begin the trial of this case,
4 the case of Amy Davis as Personal Representative of
5 the Estate of Utricia Shealy vs. Agape Nursing &
6 Rehabilitation Center, Inc., Agape Management
7 Services, John Doe, Richard Roe Corporation, Jane
8 Doe, and Mary Doe Corporation.

9 This case arises out of the plaintiff's
10 allegations of negligence and professional
11 negligence regarding Ms. Utricia Shealy's
12 involvement with Agape Nursing and the other the
13 defendants -- Agape Nursing & Rehabilitation Center
14 and the other defendants. Before we -- and,
15 Counsel, you can sit down. Sorry.

16 Before we begin this trial, I want to tell you
17 that this trial will probably be different than what
18 you might expect. Many people do not have the
19 chance to attend actual court sessions, as you're
20 doing now, and may think, from watching television
21 or movies or reading books, that trials are always
22 full of high drama, intense action, and riveting
23 circumstances.

24 While all these things may be true at times,
25 this trial is not about entertainment. This

1 courtroom is a place of honor, dedicated to the
2 protection and preservation of citizens' rights
3 through what many have called the greatest justice
4 system ever created.

5 The attorneys appearing before you today are
6 advocates for the parties they represent. But,
7 first and foremost, they are officers of this court,
8 sworn to uphold the integrity and fairness of our
9 judicial system. You should expect them to be
10 professional, competent, and ethical in the
11 representation of their clients' interests.

12 Remember that you have taken an oath to try
13 this case and reach a fair and impartial verdict and
14 you're also expected to be professional, reasonable
15 and ethical. Thank you for accepting this important
16 responsibility of jury service and for your
17 contribution today to our jury system.

18 At this time, I'll ask the clerk to go ahead
19 and swear you in.

20 (Jury sworn.)

21 THE COURT: Mr. Foreperson, before the case
22 begins, I'd like to tell you how we will proceed.
23 The first thing that will occur is that the attorney
24 for the plaintiff -- the plaintiff is the person who
25 has brought this action or suit -- will make an

1 opening statement, which will be followed by a
2 similar statement by the attorney for the defendant.

3 These opening statements are not arguments.
4 Those arguments will come at the conclusion of the
5 case. The purpose of the opening statement is for
6 each party to outline their claims and the evidence
7 which they intend to present in support of these
8 claims. Following the opening statements, each side
9 will present its evidence with the plaintiff, once
10 again, going first.

11 Evidence may take many forms. It may be
12 testimony, documents, models, photographs, or the
13 like. You should pay close attention to all of the
14 evidence which is presented by each party. You, the
15 jury, are the sole finders of the facts in this
16 case, and no one else will be permitted to weigh the
17 evidence and render a verdict based upon it.

18 After all the evidence has been presented, the
19 attorneys will make their closing arguments. Unlike
20 these opening statements, the final remarks will be
21 true arguments; that is, each side will emphasize
22 certain portions of the evidence and try to persuade
23 you to agree with their version of the facts.

24 Keep in mind that opening statements as well as
25 closing arguments of the attorneys do not represent

1 evidence in this case. Give the attorneys your
2 undivided attention, but keep in mind what they say
3 is not evidence.

4 After the arguments are finished, I will
5 explain to you the law which applies to this case.
6 You will then retire to the jury room considering
7 the facts and the law, and once you have done so,
8 you'll return a verdict in favor of one side or the
9 other.

10 During the course of the trial, the plaintiff
11 has the burden of proving her claims. The plaintiff
12 must meet this burden by proving her claims by the
13 greater weight or preponderance of the evidence.
14 What we mean by greater weight of the evidence can
15 be illustrated by imagining a traditional set of
16 scales. When the case begins, the scales are even.
17 After all the evidence has been presented, if the
18 scales should remain evenly balanced or should tip
19 even slightly in favor of the defendant, then the
20 plaintiff would have failed to meet her burden of
21 proof, and your verdict would be for the defendant.

22 If, on the other hand, the scale would tip even
23 slightly in favor of the plaintiff, then he or she
24 will have met their burden of proof, and your
25 verdict would be for the plaintiff.

1 As we mentioned earlier, although I'm the only
2 person who can tell you what the law is, you're the
3 only ones who can determine the facts. I do not
4 have a right to indicate how I may feel about the
5 evidence presented. And throughout this trial, my
6 intention will be to act impartially towards each
7 party.

8 Second, from time to time, an attorney will
9 object to some bit of testimony or evidence which
10 the other side is seeking to prevent. As in the
11 sports business or any other structured activity,
12 there's certain rules that both sides must obey in
13 presenting evidence. These rules have a definite
14 purpose; they ensure that the information you
15 receive is most trustworthy and reliable information
16 available.

17 An objection is the procedure that is used for
18 an attorney to call a possible violation of the
19 rules to my attention as the judge of this court.
20 And for this reason, you should not hold an
21 attorney's objection against his or her client, nor
22 should you conclude from my ruling on the objection
23 that I favor one side or the other.

24 Finally, I'd ask you to pay close attention to
25 all the evidence presented to you. It is you, the

1 jury, that will determine the facts of the case.

2 And, as a result, you will have to evaluate the
3 credibility, which means believability, of each
4 witness who testifies in this matter.

5 You don't have any pads, but I'll ask that if
6 you do have anything on you, I do not want you
7 taking notes during the trial. I'll have to ask you
8 to focus on listening to all of the testimony and
9 evidence that is presented. We should take -- we
10 should plan to go about 90 minutes to two hours per
11 session. And then we'll -- I'll do my best to make
12 sure we take routine breaks for y'all as well as for
13 everyone else who is working in the courtroom.

14 Counsel, is there any objections to anything
15 I've told the jury in the initial charge?

16 MR. CONNOR: None from the plaintiff, Your
17 Honor.

18 MR. BLAKE: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 I'm glad you're here. I look forward to you
21 performing your duties accordingly, and we'll now
22 begin the trial of the case.

23 MR. MCALISTER: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. MCALISTER: Ladies and gentlemen, thank you

1 for being here. We're going to learn about falls
2 today. Falls are the top five causes of death from
3 injuries in the United States. They're the leading
4 cause of death for injuries for people over the age
5 of 65. Older adults have fallen previously -- who
6 have fallen previously, are two or three times more
7 likely to fall again within one year.

8 Falls are responsible for at least 95 percent
9 of hip fractures in older adults. Hip fractures
10 often cause older adults or the elderly to suffer
11 additional complications, loss of functional
12 abilities, development of other health problems, and
13 sometimes those fractures even cause death.

14 Now, conditions that increase one's risk for
15 falls are females who are white or Asian, 65 years
16 or older, thin in their build, they have a prior
17 history of falls, they may have lower body weakness,
18 may have a prior injury or some other condition that
19 causes them physical limitations, urinary
20 incontinence, dementia, and Alzheimer's, and
21 medications. All of those increase one's risk for
22 falls, in particular, someone who is a white female
23 over the age of 65.

24 Now, causes of falls include medications. You
25 know, are you taking a type of medication, are you

1 prescribed a medication that causes dizziness or
2 causes you to lose balance? Those can cause falls.
3 Environmental elements can cause falls. Is there
4 furniture in the way? Is there a rug that one can
5 trip over? All those things cause falls.

6 One's senses can also cause falls. Does a
7 person have problems with their vision? Do they
8 have dementia? Do they have a lack of safety
9 awareness? And then finally, strength. Does that
10 person have a preexisting injury? Now, prevention
11 of falls is the key. Most resident falls are
12 preventable, if you take a close look at residents,
13 you assess them properly, and then you've learned
14 how to identify risk factors.

15 Ladies and gentlemen, my dad was a high school
16 football coach. Over and over and over throughout
17 my lifetime, he would tell me, don't tell me, show
18 me. It's not about what you know, it's what you do
19 with what you know. It goes to your actions, and
20 are you taking actions that have a positive outcome.

21 The point of this fall analysis and this fall
22 training is to prevent catastrophic injuries. In
23 particular, elderly adults. This shows three screws
24 placed in a hip. And that's what happens after a
25 fracture of the femur and the ball at the top of the

1 femur, the femoral neck.

2 Now, the Judge just instructed you that I'm
3 with the plaintiff. I'm here on behalf of Amy Davis
4 who is personal representative of the estate of
5 Utricia Shealy. You'll hear, in a few minutes, from
6 my co-counsel, Caleb Connor. And we've brought a
7 lawsuit on behalf of Ms. Shealy's estate against
8 Agape Nursing & Rehab and Agape Management Services.

9 Now, those companies are inextricably
10 intertwined. Agape Management Services and Agape
11 Nursing & Rehab are both run by Scott Middleton and
12 his son Gregory. Agape Management Services
13 operates, manages, and controls the nursing home
14 facility.

15 Ms. Shealy was born in 1938. She's a lifetime
16 resident of Lexington County, she grew up on Ridge
17 Road in Leesville; she's a loving mother,
18 grandmother, and great-grandmother, and a devout
19 Christian. On June 22nd, 2014, she was at home
20 alone raking leaves in the yard where she suffered a
21 fall. As a result, she experienced a left hip
22 fracture that required hospitalization and surgical
23 repair at Lexington Medical Center.

24 After about a week's time, she progressed
25 enough through her rehab at Lexington Medical Center

1 where she is in a condition to be discharged to a
2 nursing home for additional rehabilitative care.

3 The hospital, along with the family, made
4 arrangements to have Ms. Shealy admitted to Agape.
5 Agape is marketing itself to the public as the place
6 to go for recovery after joint replacement or other
7 surgery. If you want to get back as soon as
8 possible, come to us. We have therapy seven days a
9 week; you can get stronger sooner, better faster,
10 back home doing the things you love to do before you
11 know it. Get back to your way of life. Those are
12 the marketing materials. That's how Agape holds
13 themselves out to the public, including patients
14 like Ms. Shealy.

15 If you've got a fall where you fracture your
16 hip, come to us; we'll get you through rehab and
17 we'll get you back on your feet; you can go home to
18 your family. Here's the welcome letter from
19 Mr. Middleton: The continuous improvement of our
20 services is one of our primary objectives. We
21 combine to provide excellence and safety in patient
22 care.

23 Now, Ms. Shealy was admitted on July 1st, 2014.
24 When she went to the facility, she was accompanied
25 by her daughters. She was ambulatory despite her

1 recent fracture. She was moving 60 or so feet at a
2 time through therapy with the assistance of a walker
3 or assistance device. Initial assessments
4 documented a history of falls. She was a maximum
5 assist, it would require one to two people to help
6 transfer her. And they scored her a risk of falls a
7 17, a high risk.

8 Now, she's suffering from dementia at that
9 point in time, experiencing confusion, she's on
10 medications that require close monitoring. Agape's
11 own doctor, at 8:45 AM, on July 2nd, evaluated her,
12 states she is a huge, huge fall risk.

13 Their physical therapist, on July 2nd, 2014,
14 says precautions: Falls. Ms. Shealy is having
15 hallucinations, she thinks she's seeing children
16 outside her window. The physical therapist, on July
17 2nd, 2014, says she's extremely prone to falls, no
18 safety awareness, not even a little bit, none, needs
19 constant supervision.

20 7:25 PM on July 2nd, 2014, 27 hours after
21 admission to Agape, she suffers another fall. The
22 nurse documents that she's found on the floor, she's
23 complaining of pain in her right hip, her right
24 shoulder, and her head. She's transported back to
25 Lexington Medical Center that night, just 27 hours

1 after being admitted.

2 Now, what really happened? Well, that's a good
3 question. Here, you'll see this document. This is
4 the incident report note. It says the fall was
5 non-witnessed; however, they say she tried to pull
6 herself up from her wheelchair on crown molding in a
7 hallway and fell to the floor on her right side. I
8 don't know how you know those details if it's not
9 witnessed. But that's in the incident report.

10 Here it is again. We also have other versions
11 of events, none of which are the same. Ms. Shealy
12 attempted to stand in her wheelchair in the hall
13 near the nurses station. Ms. Shealy fell, has right
14 shoulder pain, hip pain. And then we have the
15 Lexington County EMS note that says: Per staff,
16 patient was found in the floor in room. Staff
17 relays that patient has a history of dementia and
18 they are unable to determine if the patient is
19 injured.

20 Now, none of that adds up. So she's
21 transferred to Lexington Medical Center. She's
22 evaluated, they do imaging of her right side, they
23 find that she has a fracture of her right hip. And
24 she undergoes surgery on July 3rd. On July 8th,
25 2014, she's discharged from Lexington Medical

1 Center.

2 Now, this hip surgery, something I've had to
3 learn about -- I had a grandmother who also had a
4 fractured hip. And what they do is they put you
5 under anesthesia, they then place two to three pins
6 into your hip. They effectively drill them in.
7 They then take these screws and place them over
8 those pins, and then they screw those screws into
9 your hip bone. And that's pinning of a femoral
10 neck, the part of the bone that's the hip and socket
11 right above your femur.

12 Here's the result. And that's Ms. Shealy's
13 right hip fracture that she suffered under the care
14 and supervision of Agape. You say, well, how can
15 this happen? Well, it's a complete breakdown of the
16 nursing process. Breakdown in assessment,
17 diagnosis, plan, implementation, evaluation. There
18 it is. They completely failed.

19 The fundamental rules of nursing: Every
20 resident needs adequate assessment, every resident
21 needs individualized care plans. They also need
22 interventions to be implemented to carry out
23 strategies to carry out certain goals for that
24 patient. They must be evaluated to make sure that
25 all those things are working to get them to where

1 they want to be. In this case, home with their
2 family.

3 Ladies and gentlemen, we talked about a mess
4 earlier. The records in this case are what's a
5 mess. Here we have the admissions assessment.
6 You'll see she's documented a fall risk score.
7 Looks like a 17, maybe it's a 15. It's been struck
8 through. She's also entered into the Falling Star
9 program the following day. And that's a program to
10 closely monitor those that are higher risk for
11 falls.

12 There's a box here for meds that went unchecked
13 even though she's on a whole host of medications.
14 That's part of the fall risk assessment that goes on
15 at the facility. Here we have a document that shows
16 gait and balance being normal being checked, yet
17 right below that, we also have boxes checked for
18 problems with standing, problems while walking,
19 decreased muscular coordination. How could she
20 possibly have normal gait and balance if she has all
21 these other problems?

22 Here's a pain assessment. No pain reported.
23 This is a patient who has just come in from the
24 hospital, suffering a fractured hip just over a week
25 earlier. No pain reported, yet right below, it says

1 pain is stabbing. These are documents that are
2 supposed to help the nurses in the facility apply
3 the appropriate level of care.

4 Here's a skin assessment. We've got a score of
5 21, yet right below that, you can see where it's
6 been marked through and somebody wrote 17, then
7 wrote 21. We also have false charting. What I
8 didn't show you just a moment ago is this is in her
9 fall risk, this is very important: You have the 17.
10 Well, you're going to hear testimony that says
11 that's not my 7 from the nurse who reportedly
12 entered this information in the patient's chart.

13 Now, the policy says that when you chart and
14 make a change in the chart, you're supposed to put
15 your initials beside it. There are no initials
16 right here. Ms. Vaughn will tell you that.

17 Here's another example of false charting. This
18 says -- this is from nurse Donna Shafer. It says:
19 Patient got angry; called the family back that
20 night, midnight; after family left, she finally
21 started conversing with another patient, yet the
22 records ended at 11:30 PM. That's not possible.
23 That's not possible if the family was there at
24 midnight.

25 Here's another example. This is the night that

1 she fell. She fell at 7:25 PM. You see notations
2 at 7:28, 7:30, 7:35, 7:42. The note is entered at
3 3:22 PM. Now, remember earlier when I said what
4 happened? We don't know because the note is entered
5 four hours before she allegedly fell.

6 There's also medication administration policies
7 that require a patient who is receiving meds who is
8 a fall risk and those are PRN, which means as
9 needed, that you must document beforehand the reason
10 for giving that medication, and then you must
11 document afterwards your monitoring of that patient
12 to determine how she reacted to those meds.

13 ADL care, this is activities of daily living.
14 These are aides that are entering things in the
15 chart showing when the woman was taken to the
16 bathroom, when she was fed, all those things that
17 are considered parts of your daily life.

18 Now, right here 7/2/2014, the day she fell, it
19 says bowel movement. That's the last documentation
20 for her ADL care on that particular day. That means
21 there is not a single documentation showing that
22 someone came to take her to the bathroom between
23 2:20 PM and when she fell at 7:30 PM. That's pretty
24 important. That's a long time. Four and a half
25 hours before the fall was the last documented care

1 she received from an ADL standpoint.

2 This is a total lack of care that will be
3 confirmed by the family. When they met her at the
4 ER, her brief was full of urine. She clearly had to
5 go to the bathroom. She hadn't been to the bathroom
6 in four and a half hours. She's complaining of
7 thirst.

8 This is a pattern of misconduct at this
9 facility. You have surveys that show repeated
10 violations of the egregious conduct that's the issue
11 of this case. They've been fined substantially,
12 over \$100,000. They've been denied payment for
13 services. And this is all from the state agency
14 that oversees them. You have continuous turnover in
15 management.

16 Now, ladies and gentlemen, the Judge earlier
17 told you that he is going to instruct you on the law
18 at the end of this case, and that's right. I'm just
19 going to give you a little bit of background. We
20 have two claims in this case. Now, if I say
21 anything that's different from the Judge, please,
22 you stick with what he tells you.

23 We have claims for ordinary negligence and
24 professional negligence. Ordinary negligence is
25 duty to use reasonable care. It includes

1 administrative and operational acts at the nursing
2 home. It's the subject matter within the common
3 experience of people in the community.

4 It includes inadequate education, inadequate
5 training, inadequate and unqualified staff,
6 inadequate supervision, inadequate policies and
7 procedures and enforcement of those, and that's a
8 key; insufficient safety equipment, and then a
9 culture of indifference. Professional negligence is
10 shown by the failure to exercise the degree of care
11 and skill that would be employed by the profession,
12 generally, under similar conditions.

13 In this particular case, we have systematic
14 breakdowns at Agape. We have failure to provide a
15 safe environment for Ms. Shealy free of accident and
16 hazards, failure to provide staff with knowledge and
17 skills and competencies to care for residents with
18 dementia and history of falls.

19 And you're going to hear about all these things
20 from our expert who is a registered nurse and a
21 nurse practitioner with over 20 years of experience.
22 She's actively working with geriatric patients.
23 Failure to provide Ms. Shealy with the necessary
24 care and services to allow her to attain her highest
25 practical physical, mental, and psychosocial

1 well-being...

2 Now, ladies and gentlemen, we're going to talk
3 briefly about breaches in the standard of care. You
4 have breaches for assessments. We talked about some
5 of those earlier. Failure to provide accurate and
6 appropriate admissions assessment for Ms. Shealy.
7 You also have failures for breaches of standard of
8 care with respect to care plans, failure to provide
9 adequate and appropriate care plans specific to
10 Ms. Shealy, those individualized care plans.
11 Failure to provide adequate and appropriate
12 interventions for fall prevention, chair and bed
13 alarms rounding, rounding at appropriate times.

14 Those ADL care sheets that you see, had they
15 taken her to the restroom and rounded and checked on
16 her, you would have seen input after 2:20 PM.
17 Properly functioning wheelchairs. Do the
18 wheelchairs have brakes on them? Use of handrails,
19 call lights, hip pads, you know, similar to those
20 that you wear in a football game, the hip pads that
21 go in a girdle, same exact thing. All those can
22 prevent injuries related to falls.

23 These failures not only breached the standard
24 of care, they also violated policies and procedures
25 in state and federal regulations. That goes to

1 negligence per se. The Judge is going to instruct
2 you on all these items.

3 Here's some of the federal and state
4 regulations -- statutes and regulations that we
5 contend were violated; the federal OBRA regulations
6 that govern nursing homes; South Carolina's DHEC
7 regulations on nursing homes; South Carolina's bill
8 of rights for residents of long-term care, and the
9 South Carolina Nurse Practice Act. All of those
10 were violated in this case.

11 He also violated a number of policies and
12 procedures: Admissions to the facility, care plans,
13 charting, administering medications, accidents,
14 incidences, staffing, residents' rights, safety and
15 supervision of residents, assessing falls and their
16 causes, all of those things were violated in this
17 case; all of those go to negligence.

18 You say why did this happen? Team Agape, as
19 they call themselves, oversee the integrated network
20 including assisted living, physician services,
21 therapy, and skilled nursing. It's a coordinated
22 activity with all these corporate entities that are
23 intertwined to provide all these different services.
24 That's Team Agape.

25 Agape senior employees and physicians are

1 identified with their name badges. This is all
2 through their manuals. A team of professional
3 registered nurses, licensed practical nurses, and
4 nurse assistants provide 24-hour care. These are
5 all things that they promise. Twenty-four-hour care
6 if you come to their facility. They also promise to
7 keep folks safe, that employees will take steps to
8 ensure the safety of their residents. Not in this
9 particular case.

10 Now, I showed you the fall fact sheet. That's
11 one of their policies, one of their training
12 documents. Completely disregarded. And you've
13 heard Mr. Middleton earlier. Here's a picture of
14 his son. You'll hear testimony from him. You'll
15 also hear from Scott Smith, the director of nursing.
16 This is Agape's management team.

17 Team Agape's operations, management, and
18 control are intertwined. They're an amalgamation of
19 interest, and it starts from the top. Earlier we
20 showed you some false charting. Here's their
21 management services agreement. You have a services
22 agreement from Agape Nursing & Rehab Center, Inc.,
23 one of the defendants, and Agape Management
24 Services, Inc. Well, right here, we've got a
25 percentage that's just marked through and rewritten.

1 Same thing right here and right here with dates.
2 And both of these are signed by Gregory Middleton
3 and Gregory Middleton, vice president and vice
4 president for Agape Nursing & Rehab Center, Inc.,
5 and Agape Management Services, Inc. It all flows
6 from the top down, ladies and gentlemen.

7 This is a facility that received an overall
8 rating of one star. That is considered much below
9 average. Their quality measures received one star.
10 Quality measures include things like fall prevention
11 measures. There are about 16 criteria that are
12 considered, and these are all rated by CMS, the
13 Centers for Medicare and Medicaid Services. They
14 govern these facilities. They were 59 percent
15 higher than the South Carolina average for falls
16 with major injuries. That all goes to quality
17 measures.

18 Now, in this case, our client suffered damages,
19 compensatory and what we contend are punitive
20 damages. Compensatory damages include those items
21 such as economic damages, medical bills, rehab
22 expenses. They also have -- pain and suffering are
23 part of compensatory damages. That's the
24 noneconomic portion. We also contend that as a
25 result of the injuries she sustained, she never got

1 to return home and, as a result, lost her home.

2 Those are economic damages.

3 Now, punitive damages go to the reckless,
4 wanton conduct, and the conscious failure of due
5 care. Punitive damages are to punish a facility for
6 continued misconduct. We talked about it being a
7 culture from the top down. Ladies and gentlemen,
8 again, here, it's done right. This is Javan Vaughn
9 putting her initials beside a change in the medical
10 record. This is fraudulent charting; that's
11 recklessness; that's fraud. Same with this one. We
12 got 11:30 PM, but we're referencing care that was
13 around midnight.

14 Here we have a note from the night of her fall,
15 July 2nd, 2014, 8:07 PM, so roughly 40 minutes after
16 she fell. It's charted the patient has shown no
17 signs and symptoms of distress. Patient has no
18 complaints today. That's recklessness; that's
19 fraud. All of those go to punitive damages.

20 Ladies and gentlemen, you're also going to hear
21 about an audit trail. An audit trail is produced by
22 the facility and it shows all the changes that are
23 made in the chart over time. Well, that audit trail
24 shows change s that were made days and weeks after
25 the fact, long after Ms. Shealy left this facility.

1 Why are they going into a medical record and making
2 changes? All this goes to punitive damages, ladies
3 and gentlemen.

4 They had knowledge of her risk for injury and
5 they failed to take appropriate precautions to
6 prevent harm. They had knowledge of her risk for
7 injuries and they failed to enforce their own
8 policies and procedures. They had knowledge of her
9 risk for injuries and failed to properly train and
10 supervise staff.

11 Ladies and gentlemen, you're going to hear from
12 lots of witnesses. You're going to hear testimony
13 from family members. You're going to hear from
14 medical staff. You're going to hear nurses from the
15 facility. You're going to hear our expert. Pay
16 attention to the testimony. Look at the evidence;
17 look at the documents. All those things you should
18 consider.

19 We think the evidence of negligence in this
20 case is overwhelming. And we're going to ask you to
21 return a substantial verdict at the end of this
22 case, one that we think is well worth something in
23 excess of a million dollars. Thank y'all.

24 THE COURT: Defense?

25 MR. BLAKE: Thank you, Your Honor.

1 Ladies and gentlemen, thank you for your
2 patience with us today. My name is Shaun Blake. We
3 met earlier. I represent two companies that have
4 been sued in this case and are being blamed for a
5 fall that happened. And the fall did happen. We're
6 not here to talk about whether a fall happened.

7 What we're here to talk about is why the fall
8 happened and whether either of these companies are
9 legally liable for that fall. And throughout this
10 case, I'm going to ask y'all to please pay attention
11 closely to the testimony, because the question is
12 not whether Ms. Shealy fell; the question is why.
13 And I want you to ask yourselves, as you're
14 listening to the testimony that you hear from
15 witnesses in this case: Has the plaintiff shown you
16 a breach of the standard of care that caused
17 Ms. Shealy to fall? Because, as we all know in our
18 personal experience, people fall without somebody
19 being at fault.

20 And it's unfortunate when it happens. It's not
21 something any of us want to happen. It's not
22 something that any of us in this courtroom wanted to
23 happen to Ms. Shealy. But the question is not
24 whether she fell. The question is why and are two
25 companies legally responsible for it because they

1 have breached the standard of care in a way that
2 caused her to fall.

3 As I'm going to talk about with you briefly
4 this afternoon, I don't believe you're going to find
5 evidence that will tip that scale in your favor --
6 or in the plaintiff's favor, that is, that will show
7 that they have met that burden.

8 Ms. Shealy was living at home. She was
9 suffering from some early confusion and dementia in
10 June of 2014. As you heard, she had a fall at home.
11 I -- you will hear from Plaintiff's expert. I
12 asked, what caused that fall? Why did she fall? Do
13 you have any opinions? The expert that they're
14 going to pay to come here to talk to y'all isn't
15 going to give you an answer to that question. She
16 doesn't have an opinion as to what caused her to
17 fall then.

18 We know that she went to the hospital after her
19 daughter, her dutiful daughter, found her in the
20 yard with a broken hip. She broke her left hip.
21 She had that same pinning surgery that the
22 plaintiffs put up on the board and talked to you
23 about. She had that same pinning surgery at
24 Lexington Medical Center to correct the break in the
25 left hip that she suffered in her fall at home.

1 The need for that surgery, obviously the fall
2 is the -- it's why she needed the surgery. But is
3 anybody at fault for that fall? Their expert isn't
4 going to tell you that anybody is. It's a fall that
5 occurred, it's unfortunate, but nobody in this
6 courtroom wants that for Ms. Shealy, but it did
7 happen.

8 There are medical records that we've put into
9 evidence here that y'all will have the opportunity
10 to look through at some point when they get gone
11 through here in the courtroom this week. And at
12 some point, at the end of our case, once we finish
13 our deliberation, you'll get a chance to read about
14 her first day at Lexington Medical Center in June
15 following that fall.

16 A doctor, a treating physician that the
17 plaintiffs are going to ask to come talk to y'all,
18 is going to talk about the options he discussed with
19 the family about how to address that injury. It was
20 a fracture in her hip that didn't require a pinning.
21 I mean, a pinning is one way to treat it. There are
22 nonsurgical options that you can manage a hip break
23 like the type that she had on June 22nd. And the
24 family, hoping for a better recovery, chose to go
25 with a pinning surgery. And, as a result of that

1 surgery, she developed something called acute
2 encephalopathy, which is not a word that I even
3 really had run across in my cases in the past until
4 I had to read about it on this case.

5 But, as Plaintiff's expert is going to tell
6 y'all, encephalopathy is something -- it's basically
7 a brain disease that people sometimes develop after
8 an event. In this case, it was the surgery. And
9 her agitation levels went way up; her confusion
10 levels went way up. It protracted out her stay at
11 the hospital. And you'll read about it in the
12 records as they're trying to treat her for it.
13 That's not a result anyone intended. It's a bad
14 result, but it doesn't mean someone is at fault for
15 that result. It's something that happened and we
16 wish it didn't happen to Ms. Shealy, but it did
17 happen. Doesn't mean somebody did something wrong,
18 doesn't mean somebody owes her estate money as a
19 result of it. But it did complicate her hospital
20 stay.

21 You'll see in those records that on June 30th,
22 she was evaluated by physicians in the hospital.
23 They're hoping that this encephalopathy that she has
24 developed is improving and they're happy to report
25 that she does recognize her daughter and that she

1 has had some improvement, but she's still suffering
2 from confusion.

3 When the doctor is interviewing her, in fact,
4 the doctor writes that she doesn't even realize
5 she's in the hospital. She thinks she's at home in
6 her den, and she can't tell you where the window is
7 in the room. She's still suffering from the effects
8 of this.

9 The family said, can you run some tests to
10 stage her level of dementia? Let's see how bad this
11 disease process is. The hospital discharged her.
12 The hospital discharged her the next day. They
13 discharged her. She needed additional
14 rehabilitation, she needed additional care, and the
15 hospital sent her to Agape Nursing & Rehabilitation
16 Center.

17 Now, that nursing home is closed. It shut down
18 in 2015. The company doesn't have any operations
19 anymore, doesn't have any employees. Its only
20 existence now is to wrap up its liabilities, things
21 like this lawsuit, and close out its financial
22 books. But you'll hear from people at that nursing
23 home. You'll see the records that we've admitted
24 into evidence from that nursing home where you'll
25 learn about the nurses and what they did when they

1 received a very complicated patient, a patient who
2 is agitated, confrontational, through no fault of
3 her own, through this disease process that she's
4 suffering through, who has limited mobility. And
5 you'll learn about the assessments that they
6 performed.

7 You saw assessments up on the board that they
8 performed. Those assessments are, in fact, what was
9 required under the standard of care. And you'll
10 hear about that. You'll hear about the statutory
11 requirements for what's called an NDS assessment.
12 It happens during the first day. The regulations
13 that were cited up there by Plaintiff's counsel,
14 those regulations understand that nurses don't have
15 magical crystal balls. They're afforded an
16 opportunity, some time, to get to know this
17 resident, to get to know her needs, and to make
18 adjustments in a care plan, in her assessments, to
19 make sure they're adequately meeting it.

20 In fact, those regulations that are cited allow
21 the nursing home 14 days to really complete their
22 initial assessment and put in place a permanent
23 assessment. Now, Ms. Shealy wasn't in our facility
24 that long. She was there for 27 hours. And I
25 believe what you'll hear from the nurses as they

1 come through and testify in this trial, that, under
2 the circumstances, they did a good job; they met the
3 standard of care.

4 The assessments don't meet Plaintiff's expert,
5 the person they're paying to come testify this week,
6 don't meet with her requirements, you'll hear. But
7 we do believe they meet with the standard of care.
8 You saw the fall numbers. All right? The facility
9 determined she's a high risk for falls. They
10 identified that on day one. Whether it's a 15,
11 whether it's a 17, anything over 10 puts the
12 facility on notice that she's a high fall risk. And
13 was treated as such. The nurses are going to talk
14 about the interventions they put in place, the
15 orientation they provided her and her family, the
16 safeguards and measures that they put through to
17 help prevent her falls.

18 But they don't have an unlimited toolkit, and
19 the law doesn't impose upon them a duty to have
20 hands-on-the-body-24-hours' care. And the nurse
21 expert that they're going to have come testify to
22 you is going to confirm that and is going to agree
23 it's not a nursing home's duty to be with
24 Ms. Shealy, hands on her, physically securing her 24
25 hours a day.

1 Nursing homes can't do that; they can never do
2 that under how they get paid. The law doesn't
3 require it; the standard of care doesn't require it.
4 Hospitals don't do that. Hospitals have higher
5 standards of care than nursing homes. But that will
6 not be something that their expert is going to tell
7 you is the standard.

8 The question is, did they have the required
9 interventions in place? And there were a lot of
10 interventions listed up there that they talk about.
11 But bed rails aren't an issue in this case. Why?
12 She didn't fall in her bed -- she didn't fall out of
13 bed. Whether or not there are bed rails isn't
14 material to the question I want y'all to keep
15 asking, and that is: Have they shown a breach of
16 the standard of care that caused her to fall?

17 Now, they have pointed to your attention some
18 discrepancies in an electronic medical record. What
19 they're not going to be able to do is explain to you
20 what impact those have had in any way on the care
21 and treatment that Ms. Shealy was actually provided.
22 They can't explain to you why, for example, there's
23 dates -- the electronic medical record put those
24 electronic daytimes on there when they were printed.

25 And I don't know if we'll be able to find a

1 witness in the course of this trial who will explain
2 that to you either. However, it's sort of a red
3 herring; it's sort of a distraction, I believe.
4 And, again, whenever you look at those records,
5 listen to the staff, have them talk to you about --
6 we're going to give them every opportunity to do it.
7 Have them talk to you about whether they are, in
8 fact, attempting to create some type of fraudulent
9 record when that stamp gets on there.

10 Y'all will be the judge of credibility. You'll
11 look at these witnesses and decide whether or not
12 there's any reason why a nurse would put a four-hour
13 timestamp -- you know, or a timestamp on the bottom
14 of a document that's four hours before the fall
15 occurred.

16 You'll get to ask yourselves and judge the
17 credibility of what benefit would that provide her.
18 Why would she do that? Same thing with the failure
19 to initial that they showed you. Ask yourselves,
20 well, what's the benefit of changing it from a 15 to
21 a 17? Why would they do that? If there's fraud
22 there, if there's some intent to deceive, why?
23 What's the benefit of that? Sure, would we have
24 liked to have seen whatever professional is updating
25 those records like they're required to by law put

1 initials there? Absolutely we'd like to see that,
2 that way we know who scratched through.

3 Everyone in that nursing home who's treating
4 her and assessed her had a duty to continually
5 assess her. They showed you our circle of
6 evaluation and assessment and documentation. That's
7 part of the cycle. As you get to know somebody, as
8 you get to become more familiar with the resident,
9 these nurses are going to testify that, sure, we
10 update records all the time. Those are living
11 documents; they're required to be; that's how we
12 continue to assess, evaluate, and care-plan.

13 What I have not heard from the witnesses and I
14 don't think you're going to hear in this trial are
15 anything else that could have been put into that
16 care plan that, in fact, would have prevented this
17 fall from actually occurring, because the law
18 doesn't require the things that would have perhaps
19 prevented it. The law doesn't require us to provide
20 24-hour hands-on care.

21 Ms. Shealy was quite agitated when she came to
22 us on the first day. And she was sent over with a
23 prescription from her doctors over at Lexington
24 Medical Center for something called Ativan. And
25 Ativan was prescribed to help with the agitation

1 because, as you might imagine, somebody who is
2 suffering from dementia but is somewhat agitated and
3 combative is at a higher risk to the actual falling.

4 So you'll see in these records and you'll hear
5 from these nurses that, sure, on day one, she was
6 agitated. We gave her some Ativan to try to help
7 calm her down; the family assisted with helping to
8 calm her down. In fact, that record shows that they
9 were actually called back to help. Come please help
10 her; Mom is having a hard time tonight; help her
11 calm down so that something bad doesn't happen.
12 That's the type of interventions that you want these
13 nurses to do. That's what we expect them to do.
14 That meets the standard of care.

15 On the second day, a physician who is not
16 employed by any defendant in this case, a physician
17 came in and evaluated her. Now, the law gives that
18 physician a lot more time, less than 24 hours, to
19 come in and actually see it. The law does not
20 require that. However, Dr. Margalit was called in
21 to the home on November 2nd to check on Ms. Shealy,
22 to look at her medications, and to make sure that
23 she was being properly managed and cared for.
24 That's the kind of interventions that the law
25 requires. That's meeting the standard of care.

1 Now, Dr. Margalit actually said, she's so
2 agitated, we actually probably need to move this to
3 four times a day, the prescription of the Ativan.
4 And her hospital records show and these nurses are
5 going to talk about sundowning. It's a term that
6 basically describes patients with dementia having a
7 harder time in the evening. And it's sort of a
8 neurological phenomenon. And to treat the
9 sundowning, we actually have a physician order
10 saying make sure she gets Ativan around 5:30 to help
11 with sundowning.

12 So you'll see that she was given Ativan at 5:30
13 to help with her level of agitation, and because we
14 were so concerned about such a high fall risk, we
15 implemented an additional intervention. She was
16 moved from her room over by the nurses station.
17 Why? There's more nurses in the nurses station than
18 there is in any given patient's room at any given
19 time. And the thought is, if we're going to keep
20 eyes on her and do our best to help avoid her
21 falling, let's bring her by the nurses station.

22 Now, where she fell, it looks like a
23 discrepancy on the records. It's not. There's a
24 hallway -- there's a nurses station in the middle of
25 spokes, and she fell right at the beginning of a

1 hallway where there's a physical therapy door that's
2 directly across from where the nurses station is and
3 actually directly across from another desk where all
4 CNAs congregate and do their report at shift change.

5 She fell over there by the PT door, right away
6 from the nurses station. The records show that she
7 was agitated and they were having a hard time
8 keeping her right at the nurses station. But they
9 were doing their best. But she had a fall near that
10 nurses station by the PT door. And I'll tell you,
11 we hate the fact that she fell. We do. Nobody
12 wished that for Ms. Shealy. But the law did not
13 require there to be a nurse with a hand on her
14 shoulder. Okay? And the law says we can't --
15 cannot, without a doctor's order, physically
16 restrain her.

17 Short of physically restraining her, we want
18 y'all to look at the evidence and see what else
19 could they have done to prevent this fall? What did
20 they fail to do that actually caused her to fall?
21 Not quirky little discrepancies in electronic
22 records that were printed and generated for this
23 lawsuit, but what did they actually do that caused
24 her to fall?

25 There's no physician order, that you'll learn

1 about in this case, suggesting that the nursing home
2 was legally allowed to restrain Ms. Shealy. And
3 they were, in fact, not legally allowed to restrain
4 Ms. Shealy. And it's a term that sounds shocking to
5 people who aren't nurses and don't work in the
6 medical field, but they call it a right to fall.
7 The law would rather nursing homes not to be like
8 they were once upon a time where patients were
9 either chemically restrained, drugged to the point
10 where they can't get out of a chair or out of bed,
11 or tied down. Instead, they have freedom of
12 movement.

13 Nursing home is not a prison; it's not even a
14 hospital. Patients have freedom of movement. And
15 when people have freedom of movement, they sometimes
16 fall, even if it's nobody's fault. And I believe
17 that when you look at the weight of the evidence,
18 you'll be able to use a critical eye and make that
19 determination on your own.

20 We're going to do our best, ladies and
21 gentlemen, to move fast. We appreciate your
22 service. It's most appreciated. We cannot get
23 through our civil lawsuits without your service, so
24 we thank you. We're going to be respectful of your
25 time and try to get it done as quickly as we can

1 this week. And I really appreciated your attention
2 while I've talked. Thank you.

3 THE COURT: Plaintiff may call their first
4 witness.

5 MR. CONNOR: Yes, Your Honor. Plaintiff calls
6 Amy Davis.

7 THE COURT: Ms. Davis, please come forward.

8 AMY DAVIS
9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Have a seat and state your full
12 name.

13 THE WITNESS: Amy Shealy Davis.

14 MR. CONNOR: Your Honor, if you'll give us a
15 second. As you know, we've moved some documents
16 into evidence.

17 THE COURT: All right. Y'all need a few
18 minutes?

19 MR. CONNOR: Just a moment.

20 THE COURT: If you need more time, just let me
21 know.

22 MR. CONNOR: May it please the Court?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. CONNOR:

1 Q. Ma'am, please introduce yourself to the jury.

2 A. Amy Shealy Davis.

3 Q. Thank you, Ms. Davis. And tell the jury a
4 little about yourself.

5 A. I was born in Lexington County, raised in
6 Leesville where I still live. I went to Batesburg
7 schools, graduated in 1985. I attended Midlands
8 Technical College and graduated with an associate's
9 degree in office systems technology. I'm married
10 for 23 years to Troy Davis who works at Michelin
11 Tires. We have two children, Austin and Leslie
12 Davis, and they also reside at home.

13 I have two sisters and one brother; an older
14 sister Debbie Schumpert, a baby sister Jennifer
15 Hartley, and an older brother Ronnie Shealy.

16 Q. Ma'am, do you work outside the home?

17 A. At the present time, I'm a mother and
18 housewife.

19 Q. We're here today on behalf of a lawsuit
20 involving Utricia Koon Shealy. What's your relation
21 to Ms. Shealy?

22 A. She was my mother.

23 Q. And you indicated you have three other
24 siblings; correct?

25 A. Correct.

- 1 Q. And do they also reside in this county?
- 2 A. They do.
- 3 Q. Tell the jury a little bit about your mother.
- 4 A. She was born in Lexington County also.
- 5 Q. Okay.
- 6 A. She was raised in Leesville on Ridge Road.
- 7 That's a little bit outside of Leesville. They had
- 8 a family farmland, cotton field, big garden where
- 9 she picked cotton also.
- 10 Q. Okay.
- 11 A. She was born on May 5th, 1938. She was a
- 12 loving woman, caring, kind. She would do anything
- 13 for you.
- 14 Q. Did your mother have any siblings?
- 15 A. She did. She had nine. She was one of nine
- 16 kids.
- 17 Q. And they grew up on a cotton farm?
- 18 A. Right.
- 19 Q. Did your mother also end up residing on that
- 20 same family plat?
- 21 A. Right.
- 22 Q. So her home was on the --
- 23 A. On Ridge Road.
- 24 Q. -- farm?
- 25 A. It was, yes.

1 Q. And your mother, the name Utricia, it's not one
2 I've ever heard before. Any story behind that name?

3 A. I was just told that her brother-in-law named
4 her. They wanted to name her Patricia but they
5 didn't like it, so they just put a U in front of it.

6 Q. Okay. And did she go by Utricia?

7 A. Yes, she did.

8 Q. Tell me about your mother's schooling. Did she
9 attend --

10 A. She also attended Batesburg. She graduated
11 from high school. She didn't have any college
12 though.

13 Q. And then how about professionally? What is it
14 that she did?

15 A. She worked at a bank in Columbia as a teller.
16 She retired from the District 3, the school's
17 cafeteria. She also retired from Lexington County
18 Recreational Center as a child counselor. She baked
19 and decorated cakes.

20 Q. Any favorite?

21 A. Well, she liked wedding cakes -- to do wedding
22 cakes.

23 Q. Okay. Was she married?

24 A. She was to my father, James Shealy. They were
25 married 35 years.

1 Q. And being a Shealy from Leesville, any
2 connection to the barbecue?

3 A. Yes, sir.

4 Q. What's that?

5 A. That was my father's -- his father's brother.
6 So my dad's uncle, Victor Shealy.

7 Q. Gotcha.

8 Okay. Now, prior to the injuries that
9 necessitated your mom's need to be admitted to Agape
10 Rehab, how did your mother enjoy her time?

11 A. She loved to work in the yard, piddle in the
12 yard, gardening, spend time with her family, her
13 grandchildren, shopping, talking.

14 Q. And tell us a little bit about her personality.

15 A. She was a strong-willed woman even though she
16 didn't think she was. She was a protector, caring.
17 Like I said, always was involved in her children and
18 grandchildren's lives, wanted to know everything.
19 She would do anything for you, anything. She just
20 wanted to be all in the know.

21 Q. Was your mom particularly close with any of her
22 siblings or other family members?

23 A. She was. They were a close-knit family. I
24 mean, there were nine of them. But especially Larry
25 Koon, her youngest brother. They were the two

1 youngest and they grew up together in the same home
2 after, I guess, the other siblings had done left.

3 Q. Okay.

4 A. So they looked out for each other.

5 Q. Now, I understand that back in June of 2014,
6 your mother had a fall at home that required her
7 admission to Lexington Medical Center. Before we
8 talk about that, let me just ask you generally. At
9 this time, was your mom living at home alone?

10 A. Correct.

11 Q. Okay. And was she able to care for herself
12 independently?

13 A. She was.

14 Q. Could she ambulate?

15 A. Yes, sir.

16 Q. Could she clean her house and take care of her
17 housekeeping?

18 A. Yes, sir.

19 Q. Pay her bills?

20 A. Yes, with a little help, I mean, just make sure
21 she didn't pay them more than once.

22 Q. Okay. How about go to the grocery store, fix
23 her meals, those activities of daily living that
24 someone needs --

25 A. Right.

1 Q. -- help with in a nursing home? Was she able
2 to do that before her fall?

3 A. She did. She would cook little small meals.
4 But me and my sister made sure she had three meals a
5 day.

6 Q. Okay. Did she attend any church or socialize
7 with friends?

8 A. She did. Union Lutheran Church. That's also
9 in Leesville.

10 Q. Okay. And I'd like to ask you a couple
11 questions about some images that we have that the
12 family has provided of your mother. This is
13 Plaintiff's 13A. And I believe it's going to be
14 admitted without any objection.

15 MR. BLAKE: Without any objection, Your Honor.

16 THE COURT: All right. This will be
17 Plaintiff's Exhibit 1. Admitted without objection.

18 (Plaintiff's Exhibit No. 1A admitted into
19 evidence.)

20 BY MR. CONNOR:

21 Q. Ma'am, if you could, just describe for us what
22 we're seeing here.

23 A. That is my mother. I'm not exactly sure of the
24 age, but I believe it's in front of her house.

25 Q. And is this the home that she resided in back

1 on the farm?

2 A. Right.

3 Q. And that's the same property where she resided
4 at the time of her first fall?

5 A. Correct.

6 Q. Okay. And tell the jury what you're seeing
7 here.

8 A. That's also my mother.

9 Q. Not to comment on a woman's age, but I'm
10 assuming this is a little later in life.

11 A. Yeah, it was.

12 MR. CONNOR: And, again, I understand this is
13 admitted without objection. We'll do it as
14 Plaintiff's 1B. We'll just keep them all together.

15 MR. BLAKE: Fine with me.

16 THE COURT: Plaintiff's Exhibit 1B admitted
17 without objection.

18 (Plaintiff's Exhibit No. 1B admitted into
19 evidence.)

20 MR. CONNOR: And we'll mark -- just for the
21 record's clarity, we'll mark Plaintiff's 1A the
22 first photograph.

23 THE COURT: Thank you.

24 BY MR. CONNOR:

25 Q. Just a few more photographs that I'd like to

1 ask you about, ma'am. What are we seeing here,
2 ma'am?

3 A. That's also my mother and one of her
4 grandchildren, Brianna Bryant.

5 Q. Is her granddaughter graduating?

6 A. Correct.

7 Q. And is this from the high school graduation?

8 A. Right.

9 Q. And do you know what year, approximately, this
10 was taken?

11 A. I'm sorry. I don't.

12 Q. Certainly later in life as well?

13 A. Right.

14 MR. CONNOR: And I understand this is also
15 admitted without objection as Plaintiff's 1C.

16 MR. BLAKE: No objection, Your Honor.

17 THE COURT: Plaintiff's 1C admitted without
18 objection.

19 (Plaintiff's Exhibit No. 1C admitted into
20 evidence.)

21 BY MR. CONNOR:

22 Q. One more. If you could please describe to the
23 jury what we're seeing here?

24 A. That's my mother and her -- another grandchild,
25 her youngest. They're sitting on a bench in front

1 of my sister's home.

2 Q. When in time was this photograph taken in
3 relation to her fall?

4 A. That was in 2014, I believe.

5 Q. In 2014?

6 A. Yeah.

7 Q. So that would have been before her fall?

8 A. Right. Right.

9 Q. In the months before admission?

10 A. Uh-huh.

11 MR. CONNOR: Again, I understand, no objection?

12 MR. BLAKE: No objection, Your Honor.

13 THE COURT: All right. Plaintiff's Exhibit 1D
14 admitted into evidence without objection.

15 (Plaintiff's Exhibit No. 1D admitted into
16 evidence.)

17 BY MR. CONNOR:

18 Q. Now, ma'am, I understand your mother did
19 develop some dementia; is that correct?

20 A. Correct.

21 Q. Tell us a little bit about how -- what symptoms
22 you began to see that suggested something may be
23 going on with her cognitively.

24 A. Right. She would often tell a story, you know,
25 more than one time, like, two or three times. And

1 she may ask you the same question more than once and
2 things like that. Simple trying to work a remote
3 control, which I have trouble doing that. But other
4 than that, you know, things like that, just
5 slipping.

6 Q. Did you begin to wonder at some point that
7 maybe she was experiencing something like dementia?

8 A. I did.

9 Q. And did y'all actually take her to see a
10 professional about that condition?

11 A. We did.

12 Q. And what sorts of treatment was your mom
13 receiving that you can recall prior to the time that
14 she sustained her fall in the yard?

15 A. Just going to the doctors regularly. She was
16 administered Momentum, I believe it is.

17 Q. Okay. So that was a medication that you
18 understood was supposed to combat some of the
19 effects of the --

20 A. Yeah. It's a pill. Yeah.

21 Q. But other than having to take that pill and
22 following up with her doctor regularly, she was
23 relatively able to live independently?

24 A. Normal with her age. Right.

25 Q. Okay. Now tell us about this first fall. Tell

1 me what you can recall about that.

2 A. It was June 22nd, 2014, and she was in her yard
3 raking leaves.

4 Q. Is that something she enjoyed doing?

5 A. Yes, it was.

6 Q. Okay.

7 A. She had hit her toe on a brick and tripped and
8 fell.

9 Q. Did she call someone or did someone find her?

10 A. Luckily, my sister lives right behind her, so
11 she happened to see her in the yard.

12 Q. Which sister is that?

13 A. Jennifer Hartley.

14 Q. So Jennifer actually lives on the same property
15 right behind your mother?

16 A. Right.

17 Q. Does anyone else in the family live close by?

18 A. I do. I live back in the woods.

19 Q. Anybody else in addition to yourself?

20 A. Larry and Helen.

21 Q. So you've got Shealy and Koon family members
22 all over?

23 A. Right.

24 Q. Okay. Now, I understand she was admitted to
25 Lexington Medical Center as a result of that fall.

1 Correct?

2 A. Correct.

3 Q. Did y'all call an ambulance?

4 A. Yes, we did.

5 Q. And what sort of treatment is -- and I
6 understand you're not a doctor or a nurse, but what
7 sort of treatment do you understand she underwent
8 while she was in the hospital?

9 A. Well, they took an X-ray because she was aware
10 she hurt herself and her leg. So they took an X-ray
11 and established it was broke.

12 Q. And was a recommendation for surgery made?

13 A. Right, the next day, next morning.

14 Q. And did the family and your mother agree to
15 that surgery?

16 A. Correct. We did.

17 Q. And tell us about the surgery. Any
18 complications or anything like that?

19 A. Just, you know, she made it through good. Like
20 I said, the anesthesia did affect her some. She was
21 very confused with some agitation when she came out
22 of the surgery.

23 Q. Okay. And over the course of her admission,
24 which I understand spanned several days up until
25 July 1st, did you begin to see improvements in her

1 mentation?

2 A. Yes, we did.

3 Q. Was she able to recognize family?

4 A. Right. She could still say my name. So...

5 Q. Was she able to ambulate with assistance of
6 therapists towards the end of her admission?

7 A. Right. With someone helping her, correct.

8 Q. And was there a time when she got to the point
9 where the hospital recommended, okay, your mom has
10 reached a place we think it's time for her to be
11 discharged?

12 A. That's correct.

13 Q. And what was the recommendation about where she
14 should go next?

15 A. She would need to go to a rehabilitation center
16 for, like, four to six weeks to get the therapy she
17 needed to get back on her feet. And with guidance
18 from social services, that's how we came to the
19 decision of Agape.

20 Q. Okay. Now -- so the recommendation for this PT
21 and other therapy that she would be receiving was
22 made by a healthcare professional?

23 A. Correct.

24 Q. And you accepted those recommendations and
25 sought to find her a place that would be able to

1 meet her needs; is that right?

2 A. Right.

3 Q. Now, your mother was admitted to Agape nursing
4 home on July 1st of 2014; correct?

5 A. Correct.

6 Q. And tell us how is it that she ultimately ended
7 up at that specific facility versus another skilled
8 nursing facility in this community.

9 A. Well, we went by who had availability in rooms
10 that could take her right then. Kind of -- you
11 know, not too far from where we lived, things like
12 that.

13 Q. Okay. And did you actually visit the facility
14 before admitting her there?

15 A. I was -- no.

16 Q. Did you talk with any admissions folks, either
17 at the hospital or on the phone?

18 A. Just the social worker at the hospital.

19 Q. Okay. And was it your understanding, based
20 upon those discussions, that Agape West Columbia was
21 able to provide the services that they were
22 recommending for your mom?

23 A. Correct.

24 Q. And what was your understanding of the type of
25 care that she'd be receiving at Agape when you

1 ultimately took her there?

2 A. I expected the utmost care for what she needed
3 to get accomplished, and that was the physical
4 therapy and go back home. There wasn't no other
5 thought in my mind.

6 Q. So you had the expectation that your mother
7 would be discharged home at the end of her therapy
8 sessions?

9 A. Correct.

10 Q. And was that the same understanding that you
11 gathered through recommendations of her healthcare
12 providers?

13 A. Right.

14 MR. BLAKE: Object to form.

15 THE COURT: Form?

16 MR. BLAKE: Yeah. I would object to it. I
17 want her to elicit statements that she got without
18 the providers that aren't in the record.

19 THE COURT: Rephrase your question.

20 MR. CONNOR: Sure.

21 BY MR. CONNOR:

22 Q. Ma'am, was it your understanding, based upon
23 the information being conveyed to you about your
24 mother's admission to a skilled nursing facility,
25 that she'd be able to be discharged home?

1 A. Yes.

2 MR. BLAKE: She --

3 THE COURT: She's testifying to what her
4 knowledge was. You can ask her questions on cross.

5 MR. BLAKE: Fair enough, Judge. Thank you.

6 BY MR. CONNOR:

7 Q. Ma'am, I'd like to put up a couple different
8 documents to ask you about them. One of these we
9 saw in opening statement, and this is a marketing
10 brochure or advertisement provided by Agape Rehab
11 Post Acute Care Center about getting back to your
12 way of life faster.

13 Is this the sort of expectation that you had
14 when you left your mom at Agape Nursing & Rehab?

15 MR. BLAKE: Your Honor, can we approach real
16 quick?

17 THE COURT: Sure.

18 (Sidebar conference.)

19 MR. CONNOR: Your Honor, I'd like to ask the
20 court reporter to mark Plaintiff's next exhibit, it
21 was P37 on our exhibit list, for identification
22 purposes only, and then ask the witness some
23 questions about it.

24 THE COURT: You want it as 37 or --

25 MR. CONNOR: No. We'll mark it -- I'm sorry.

1 We'll mark it as P2. It was, for your benefit, if
2 you'd like to find it on the file, P37.

3 THE COURT: Plaintiff's 2 is marked for
4 identification purposes only.

5 MR. CONNOR: Yes, Your Honor.

6 THE COURT: All right.

7 (Plaintiff's Exhibit No. 2 marked for
8 identification.)

9 MR. CONNOR: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir.

12 BY MR. CONNOR:

13 Q. I've handed you what's been marked as
14 Plaintiff's Exhibit 2 for identification purposes,
15 some marketing materials that were in effect at the
16 time of your mother's residency. And I'd like to
17 ask you some questions about those. Okay?

18 A. Okay.

19 Q. If you could, flip through these and look at
20 some of the representations made in this document.
21 If you'll just let me know when you're done, I'll
22 have some questions about that.

23 A. Okay.

24 Q. Having had the opportunity to review some of
25 these materials, are these representations made

1 about the facility and the level of care offered
2 consistent with what your understanding was when you
3 admitted your mother to Agape Nursing & Rehab in
4 West Columbia?

5 A. Yes.

6 MR. BLAKE: Objection; leading.

7 THE WITNESS: Yes.

8 THE COURT: Overruled. But with that said,
9 let's --

10 MR. CONNOR: Understood.

11 THE COURT: Thank you.

12 BY MR. CONNOR:

13 Q. All right. I'd like to ask you about some of
14 these specifically. For example, now, the first
15 page of the document indicates or represents that
16 one of the purposes or benefits of admitting your
17 loved one to this facility is so that they can get
18 back to their way of life faster.

19 A. Right.

20 Q. Can you tell us whether or not that was an
21 expectation that you had when you admitted your mom
22 to the facility?

23 A. Yes, most definitely.

24 Q. If you'll flip to the second page, do you see
25 how that the West Columbia is identified as one of

1 the facilities associated with Agape that offers an
2 express recovery program?

3 A. Yes, I do.

4 Q. And, again, is that one of the reasons you
5 intended on her admission to this facility?

6 A. Yes, sir.

7 Q. Now, when your mother was admitted -- if you'll
8 flip to the next page. When your mother was
9 admitted to the facility, was she, in effect, in a
10 wheelchair?

11 A. Yes.

12 Q. And can you tell us whether, like in the image
13 identified on page 3 of the -- it's got a Bates
14 Agape Marketing 3, whether, again, you believed the
15 purpose of her admission was to help her transition
16 from a wheelchair to being able to ambulate
17 independently again?

18 A. Yes, I did.

19 MR. BLAKE: Your Honor, just, again, we're
20 leading and counsel is testifying and she's saying
21 yes or no. It's -- we need to get back to the
22 proper form of the question, if we can, please.

23 THE COURT: Sustained.

24 MR. CONNOR: Yes, Your Honor.

25 BY MR. CONNOR:

1 Q. When your mother was admitted, were you
2 provided a package of materials?

3 A. Yes, we were.

4 Q. And included within that, can you tell us
5 whether there were brochures and statements about
6 the representation -- that were representative of
7 the care that she'd receive?

8 A. Yes, it was. I remember going into a little
9 conference room and going over all this.

10 Q. Okay. So you've seen these documents before?

11 A. Yes. I'll be honest, I don't remember every
12 single word, but, yes.

13 MR. CONNOR: Your Honor, at this time I'd like
14 to move into evidence the documents marked for
15 identification as Plaintiff's 3 [sic]. I'd like to
16 move them into evidence.

17 THE COURT: All right.

18 MR. BLAKE: No objection, Your Honor.

19 THE COURT: Plaintiff's Exhibit 3 [sic] is
20 admitted into evidence without objection.

21 (Plaintiff's Exhibit No. 2 admitted into
22 evidence.)

23 BY MR. CONNOR:

24 Q. Now that these are admitted, ma'am, I'd like
25 to --

1 (Brief pause in the proceedings.)

2 MR. CONNOR: I apologize, Your Honor, that is
3 Exhibit 2.

4 THE COURT: That's correct.

5 BY MR. CONNOR:

6 Q. So since you've had an opportunity to review
7 these before and they're consistent with your
8 memory, tell us your impression, ma'am. I can't ask
9 you a leading question, so let me know what this
10 means to you.

11 A. Get back to your life. What it means to me is
12 if you needed help to get back on your feet,
13 physical therapy, you get back faster, you do it in
14 a short period of time.

15 Q. Okay. Moving to the next page, again, as it
16 relates to their express recovery program, can you
17 tell us whether or not that -- that Agape
18 represented that their facility in West Columbia
19 offered those services?

20 A. Yes, they did.

21 Q. And we talked about this earlier, but, ma'am,
22 can you tell us whether, again, based off the
23 representations of the facility and the services
24 that they offer, that this was the type of outcome
25 that you expected?

1 A. Most definitely.

2 Q. Now, was -- do you recall, as part of that
3 admissions packet, whether welcome materials such as
4 this by the president were included?

5 A. Yes, sir.

6 Q. And can you tell us whether, at the time that
7 you were deciding to leave your mom in the care of
8 this facility, that you would have relied on the
9 representations made within these types of
10 materials?

11 A. Correct.

12 Q. And the jury will have the opportunity to
13 review this in detail. I'm not going to go through
14 the whole thing.

15 Now, ma'am, let me ask you this: Based off
16 your experience admitting your mother within this
17 facility and reviewing the qualifications of this
18 facility, were you under the impression that Agape
19 was part of a team?

20 A. Yes.

21 Q. They offered an integrated network of services,
22 not just at the skilled nursing facility level, but
23 beyond that, to ensure that quality care be
24 provided?

25 A. Right.

1 Q. And under the nursing staff, what does it say,
2 ma'am, about the services that the facility will
3 provide? If you'll just read that into the record
4 for us.

5 A. I'm not sure that I can see that too good.

6 Q. That's okay. I can hand it to you.

7 A. For the nursing staff?

8 Q. Yes, ma'am.

9 A. A team of professional registered nurses,
10 licensed practical nurses, and nurse assistants
11 provides 24-hour nursing care. A nurse manager is
12 responsible for directing and coordinating nurse
13 care on each unit. Please feel free to contact your
14 nurse or nurse manager if you have any questions or
15 concerns.

16 Q. Now, ma'am, did you take comfort in this fact?

17 A. Yes.

18 Q. And this is something that you and your family
19 was not able to provide; correct?

20 A. Right. I mean, they assured us that she'd be
21 taken care of. I do remember that conversation.

22 Q. Now, you were here for the opening; correct?

23 A. Yes.

24 Q. And you heard Mr. Blake argue that this
25 facility was not obligated by law to provide 24-hour

1 care. Do you recall hearing that?

2 A. Yes.

3 Q. But certainly they've represented to customers
4 like yourself that that's something that they do
5 afford?

6 A. Right.

7 Q. If you'll flip to page 32 at the bottom,
8 there's a handout on why choose skilled
9 rehabilitative care. Do you see that?

10 A. Yes. Yes.

11 Q. Okay. And there are nine benefits listed;
12 correct?

13 A. Right.

14 Q. Tell us whether, if you could, reviewing this,
15 you expected and relied upon the facility to provide
16 these.

17 A. Yes.

18 Q. Okay. And, again, these are services,
19 including therapy on a seven-day basis, up to three
20 hours of therapy a day, individualized programs,
21 around-the-clock access to physicians, nurses, and
22 therapists. These are all things that -- again, can
23 you tell us whether these are things you would not
24 be able to afford -- when I say afford, I mean
25 offer -- your mother in her home?

1 A. Correct.

2 Q. Again, did you take comfort, based on these
3 representations, that your mother was in a place
4 that could meet her needs?

5 A. Yes, I did. We all did.

6 Q. Now let's talk about the day that your mother
7 was admitted to the nursing home. Tell us what time
8 that was, approximately.

9 A. Around 4:00 PM.

10 Q. And were you present with her at the time of
11 admission?

12 A. Yes, I was.

13 Q. Can you tell us whether anybody else from your
14 family or friends were also present?

15 A. Me and my two other sisters.

16 Q. Okay. And that's --

17 A. Debbie Schumpert and Jennifer Hartley.

18 Q. Okay. So all three of y'all were present along
19 with your mother?

20 A. Right.

21 Q. And tell us about her course.

22 A. We admitted her. She was a little confused and
23 upset. She wanted to go home. We had to, you know,
24 do a lot of paperwork, get her settled in. We were
25 there -- we probably left around 7:30, 8:00 that

1 night.

2 Q. Okay. So approximately for about four hours?

3 A. Yes.

4 Q. Now, your mom had just broken her hip from a
5 fall; right?

6 A. Uh-huh.

7 Q. And I understand she had undergone surgery and
8 had some complications associated with that; right?

9 A. Right.

10 Q. And were those things that the nursing home
11 would have been aware of?

12 A. Right.

13 Q. She was medicated?

14 A. Correct.

15 Q. You indicated she was confused.

16 A. She was.

17 Q. And upset to be in an unfamiliar place
18 surrounded by strangers?

19 A. Right.

20 Q. Now, at the time of your mother's admission,
21 did she require -- experience care by healthcare
22 professionals?

23 A. I'm sorry. Will you repeat that?

24 Q. Sure. And I'm sorry. At the time that she was
25 admitted, can you tell us whether her condition

1 required careful management by an experienced
2 professional?

3 A. Yes, sir. I couldn't hear you. Sorry.

4 Q. Can you tell us whether you expected that she
5 would receive careful management?

6 A. Yes, sir, I absolutely did.

7 Q. And that's what had been represented to you?

8 A. Correct.

9 Q. And when you left your mom that first night in
10 West Columbia, can you tell us whether you and your
11 family relied on Agape to provide your mother a safe
12 environment?

13 A. We did. I mean, that was the only thing taking
14 me out of that parking lot.

15 Q. And would that include protecting her from
16 falls?

17 A. Right.

18 Q. The exact condition that necessitated her
19 admission?

20 A. Right.

21 Q. Now, tell us about that evening. Was there a
22 point that you had to come back?

23 A. Yes.

24 Q. Tell us what you recall about that.

25 A. I got home probably about 8:00, 8:30, maybe a

1 little bit later than that. I'm not sure. Anyway,
2 I had a call back from Agape stating Mama was upset.
3 And I wasn't told that I needed to come back, but I
4 just did because I felt like maybe I could calm her
5 down. So me and my son went back over there.

6 As far as the time, approximately maybe about
7 9:30. And she was upset and we -- but she did know
8 who I was and she knew my son. She was talking some
9 in the past, you know, not too far back because she
10 don't -- I couldn't believe she was saying what she
11 was saying. But, anyway, we did get her settled
12 back down and explained to her again why she was
13 there, how long she'd have to be there so she could
14 come back home.

15 Q. Did that ultimately provide her some comfort?

16 A. It did. It seemed like it did enough for me to
17 be able to leave. I guess we left about 11:30.

18 Q. Okay. Now, it's my understanding that you also
19 visited your mother the next day, July 2nd of '14?

20 A. Right.

21 Q. Tell us about that.

22 A. Me and my daughter went this time. We probably
23 got there about 2:00 or 2:30 in the afternoon. She
24 was in the lobby, but she was very -- she was
25 agitated.

1 Q. Your mother was in the lobby?

2 A. Yes.

3 Q. When you say your mother was agitated, what
4 sorts of symptoms was she exhibiting?

5 A. I couldn't talk to her. She was just upset a
6 whole lot.

7 Q. So she was having difficulty expressing her
8 needs?

9 A. Right. And I did ask the nurse about it. They
10 did mention they had given her some Ativan. And I
11 questioned them about that because from my
12 understanding, in the hospital, she was discharged
13 from that medication. And they was -- we did make
14 them aware of that when we admitted her.

15 Q. So the night before, you had indicated to the
16 nursing home that she had had some complications
17 associated with Ativan?

18 A. Right. With the -- with the -- it was like an
19 adverse reaction with the anesthesia.

20 Q. Okay.

21 THE COURT: Go ahead and note your objection.

22 MR. BLAKE: Yeah. Again, if we can just avoid
23 some of the leading. Again, counsel is testifying,
24 correcting testimony, getting her to say yes, the
25 way he's wording the testimony rather than her

1 testifying.

2 THE COURT: Okay. Counsel, I know it's also --
3 I understand what you're doing and -- try to bring
4 her along with more of -- with different questions
5 instead of leading her.

6 MR. CONNOR: Understood, Your Honor.

7 BY MR. CONNOR:

8 Q. Did you see any -- can you tell us whether you
9 saw any -- where was your mother, as far as was she
10 standing, sitting? Tell us --

11 A. She was in a wheelchair in the lobby.

12 Q. And tell us about any other interventions that
13 you observed. For example, were any bed alarms or
14 chair alarms or anything like that in place?

15 A. No. And, actually, the day before, when we
16 admitted her, we requested those, a wheelchair
17 alarm, bed alarm, for her bed to be lowered, but
18 they said it was broke, so they were going to put in
19 a work order or whatever they had to do with
20 maintenance. We also requested floor mats around
21 her bed.

22 Q. And did you go in her room the second day?

23 A. The second day, no. We stayed out in the lobby
24 the entire time.

25 Q. Okay. But you had specifically requested fall

1 interventions?

2 A. Right. There was no alarm yet on the
3 wheelchair. There was -- like I said, I didn't go
4 in the bedroom that day.

5 Q. How long did you stay that day?

6 A. I think we left around 5:30 that afternoon, so
7 it was quite a few hours.

8 Q. What happened next?

9 A. We just -- I felt bad. I didn't want to leave
10 her. I tried to talk to her some. I did give her
11 something -- tried to get her something to drink and
12 a little snack. I winded up having to do it myself.
13 I did ask for assistance, but it was just totally
14 chaotic over there, really loud. But, I mean, I
15 just felt lost, I really did.

16 Q. And where was your mother when you left the
17 facility?

18 A. She was still in the lobby. I think they was
19 about to serve the supper. So I felt like they
20 would take her in there to eat and maybe that would
21 be a good time to leave.

22 Q. Now, at some point that evening, did you
23 receive a call from the facility?

24 A. I did.

25 Q. Tell us about that.

1 A. I received a call about 7:30 that evening that
2 she had fell and hit her head and that they were
3 taking her to the emergency room to be checked out.
4 So I immediately called my sisters and we went over
5 there to the hospital.

6 Q. And did you see your mom in the hospital?

7 A. Yes, I did.

8 Q. Tell us about that.

9 A. I was able to go back immediately and she was
10 in agonizing pain, hollering out. She was thirsty.
11 She was -- I could see the pain. She complained of
12 her leg hurting. So me and my oldest sister -- she
13 said she had to use the bathroom, so we tried. But,
14 like you said, her diaper was so full and wet with
15 urine, it was just unreal. But, anyway, it filled
16 up an entire bedpan.

17 And the doctor came in and -- excuse me. And
18 we told them she was complaining of her hip hurting,
19 so they took an X-ray and discovered it was broke.

20 Q. Okay.

21 A. And I think a lot of the -- of course she was
22 in a lot pain, but the moving from table to table
23 for the X-ray -- because they did X-ray her head and
24 all that too.

25 Q. So that was uncomfortable for your mother?

1 A. Right.

2 Q. Now, what time of the day was it when you
3 arrived at the hospital?

4 A. It was probably about 8:00.

5 Q. Where was your mother, what area of the
6 hospital, when you first saw her?

7 A. She was in a room in the emergency room
8 department.

9 Q. Is that where you saw her first?

10 A. Right.

11 Q. What happened next? They identified a
12 fracture.

13 A. Right. The doctors just stated to us that she
14 was going to have to have surgery again.

15 Q. Did that concern you?

16 A. Oh, yes, it did, because --

17 Q. Why?

18 A. They explained to us, you know, when she come
19 out of her first surgery, there was confusion and
20 all that. And they explained to us then that why,
21 because of the anesthesia and with her early
22 dementia. So with the second time, with them back
23 to back, being put to sleep again, that it may alter
24 it a little more this time.

25 Q. Is that what a healthcare professional --

1 A. Right. I believe it was Dr. Dedmond.

2 Q. And did that make you nervous?

3 A. Oh, yeah, it did.

4 Q. So did she have the surgery?

5 A. She did, the next day.

6 Q. Tell us about her course of treatment after
7 that.

8 A. After the surgery, it was like, where is my
9 mama? It was totally, totally different. I mean,
10 it -- she was just extremely agitated, I mean, just
11 very confused. She didn't know where she was. And
12 the doctors explained to us, like they did before,
13 that that was probably because, you know, being put
14 to sleep again so quickly, you know. It was only
15 two weeks -- between a two-week period. And after
16 that, she never called me my name again.

17 Q. Now, did your mother remain in the hospital?

18 A. She did.

19 Q. For how long?

20 A. For probably another week.

21 Q. Then what happened?

22 A. They did try to do some physical therapy on
23 her, not like before the first fall. I think they
24 did most of it while she was sitting in the recliner
25 in the chair, because she just didn't want to get

1 up. She was confused. She was very confused.

2 Q. And at some point was a decision made to
3 readmit her to another nursing home?

4 A. Correct.

5 Q. Tell us about that.

6 A. That she could, you know, get another round of
7 therapy for about the same four to six weeks.

8 Q. And was there any expectation then about
9 whether or not she'd be able to --

10 A. Oh, she wasn't going to return to Agape.

11 Q. How about return home?

12 A. Yes.

13 Q. Y'all had hoped that?

14 A. Yes.

15 Q. And was she ever able to?

16 A. No, she wasn't.

17 Q. Did you ever go back to Agape?

18 A. I did, that night. When she was sent to the
19 emergency room, I went back to Agape to gather all
20 her belongings because she wasn't going to go back
21 there.

22 Q. And did you have conversations with staff or
23 anything like that during that visit?

24 A. No. I mean, there was a nurse there. I don't
25 recall her name or anything. But I just told them

1 why I was there and did what I needed to do.

2 Q. And what did that involve?

3 A. I gathered all her clothes we had put in the
4 drawers. I wanted her eyeglasses, which were
5 nowhere to be found. And I did try to find them,
6 asked about them, and they didn't know anything
7 about them.

8 Q. So your mother's eyeglasses were missing?

9 A. Right.

10 Q. Was she admitted to the hospital with those, do
11 you know?

12 A. With her glasses? Yes.

13 Q. From the -- I'm sorry.

14 A. Oh, I'm sorry. You mean, after the second
15 fall?

16 Q. Yes, ma'am.

17 A. No. I don't recall her having her glasses.

18 Q. Now, your mother incurred several bills; is
19 that correct?

20 A. Correct.

21 Q. And that included bills from Agape where she
22 went for her skilled nursing facility; correct?

23 A. Right.

24 Q. As well as bills from Lexington County EMS, the
25 EMTs who transferred her, after she fell the second

1 time, back to the hospital; right?

2 A. Right.

3 Q. The Lexington Medical Center hospital bill;
4 correct?

5 A. Right.

6 Q. As well as the orthopedic bill associated with,
7 actually, the second pinning.

8 A. Right.

9 MR. CONNOR: And, Your Honor, I believe all of
10 those bills have been moved into evidence
11 previously, but I'd just like to display them for
12 the jury's benefit so that they know what they are.

13 THE COURT: Very well.

14 MR. BLAKE: No objection.

15 THE COURT: All right.

16 MR. CONNOR: Exhibit No. 5 is the Lexington EMS
17 bill. And y'all will have the benefit of this.
18 Exhibit 6 is the Lexington County Medical Center
19 hospital bill for her second hospital admission;
20 Exhibit 7 is the Lexington County Orthopedic bill
21 for the surgeons; and Exhibit 8 is the bill from
22 Agape. So those will all be in evidence for your
23 benefit.

24 BY MR. CONNOR:

25 Q.. One other question for you, Ms. Davis. It's my

1 understanding that you're bringing this claim in a
2 representative capacity on behalf of your mother.

3 Is that correct?

4 A. That is correct.

5 Q. You're not individually a plaintiff in this
6 case?

7 A. No, I'm not.

8 Q. You're bringing this claim as her personal
9 representative; correct?

10 A. Right.

11 MR. CONNOR: And, Your Honor, I believe it's
12 been stipulated to, but Joint Exhibit 9 is a copy of
13 that appointment paperwork issued by the probate
14 court naming Ms. Davis as her deceased mother's PR
15 with the capacity to bring this claim. And that's
16 been admitted.

17 I believe that's all the questions I have for
18 you. Thank you, ma'am.

19 THE COURT: Ladies and gentlemen, we're going
20 to take a short afternoon break. I'm going to ask
21 you to go back to your jury room, get refreshed.
22 Please don't discuss the case in any way, shape, or
23 form. We'll get you back out here as soon as
24 possible and we will continue. Thank you.

25 (The jury exits the courtroom at 3:23 PM.)

1 THE COURT: All right. Let's stand at ease for
2 five or ten minutes.

3 (Brief recess 3:24 PM - 3:34 PM.)

4 THE COURT: Mr. Blake, are you ready to go?

5 MR. BLAKE: Ready to go, Your Honor.

6 THE COURT: All right. Let's bring the jury
7 back in, please.

8 (The jury enters the courtroom at 3:35 PM.)

9 THE COURT: All right. Mr. Foreperson, ladies
10 and gentlemen of the jury, welcome back. We ended
11 with the plaintiff's direct being completed. We'll
12 now hear from the defendant on cross-examination.

13 Mr. Blake?

14 MR. BLAKE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BLAKE:

17 Q. Good afternoon, ma'am.

18 A. Hi.

19 Q. You testified earlier that your mother,
20 Ms. Shealy, she was living at home; correct?

21 A. Correct.

22 Q. And she needed a cane to ambulate; correct?

23 A. A what now?

24 Q. She used a cane to walk around?

25 A. Sometimes; not all the time.

1 Q. Okay. Well, were you a part of the family that
2 had a conversation with her orthopedist about how
3 the fact that she was using a cane, but she really
4 needed to be using a walker at home?

5 A. No.

6 Q. Okay. Do you know who in your family had that
7 conversation with Dr. Dedmond?

8 A. I sure do not.

9 Q. Okay. So were you present in the meetings that
10 happened with her with her ortho?

11 A. Are you talking about before she fell at home
12 or even at home?

13 Q. No. I'm talking about -- well, did she have an
14 ortho that she saw before she fell at home?

15 A. She did not have a walker.

16 Q. Ma'am, I'm sorry; we're talking past each
17 other. Was she treated by an orthopedist before
18 June 22nd, 2014?

19 A. No.

20 Q. Okay. Did someone prescribe her a cane, for
21 example?

22 A. No.

23 Q. Okay. So what I'm asking is, she was in the
24 hospital and the medical records that have been put
25 into evidence in the case show conversations between

1 family, it doesn't say who the family is, and the
2 ortho saying that she uses a cane at home, but she
3 probably really needs to be using a walker. Your
4 testimony --

5 MR. CONNOR: Objection to hearsay, Your Honor.

6 MR. BLAKE: They're in evidence.

7 THE COURT: Well, it's also --

8 MR. CONNOR: The records may be in evidence,
9 but the conversation -- there's been no testimony by
10 anyone about any conversations with an orthopedist
11 about the use of a cane or a walker.

12 THE COURT: Y'all approach, please.

13 (Sidebar conference.)

14 BY MR. BLAKE:

15 Q. So, ma'am, my question was, did you participate
16 in the conversations and meetings with the treating
17 ortho while she was in the hospital prior to July
18 1st, 2014?

19 A. Prior to July 1st? I mean, yes.

20 Q. Okay. And do you remember the name of her
21 ortho?

22 A. That did her surgery? Dr. Dedmond.

23 Q. Okay. And do you recall having conversations
24 with him about her ability to ambulate prior to her
25 falling in her yard on June 22nd?

1 A. No. I don't -- no.

2 Q. You don't recall being a party to any of those
3 conversations?

4 A. I -- I do remember him telling us the ins and
5 outs, okay, after she fell the first time and the
6 second time. But I don't remember any conversation
7 you're talking about now before her fall in the yard
8 or at Agape.

9 Q. That's okay. We can ask the other family
10 members whenever they testify.

11 A. Okay.

12 Q. I appreciate it. Thank you.

13 A. Thank you.

14 Q. Okay. So -- well, how about this: Did your
15 mother have any type of safety devices in her house
16 in case she were to be injured prior to the fall?

17 A. She would have handles maybe in the showers,
18 but she didn't really -- you know, they wouldn't
19 stay on the walls, so we didn't use them much.

20 Q. Did she have a cell phone?

21 A. Some. She didn't really use it either.

22 Q. Okay. Did she have any anti-slip or traction
23 devices in her home?

24 A. No.

25 Q. Okay. What about any, like, safety alarms?

1 Were there any safety alarms in her home?

2 A. No.

3 Q. Prior to going to Agape, do you know whether or

4 not your mother ever used a chair alarm like you

5 discussed with the staff?

6 A. You're talking about previously at home?

7 Q. Ever. Ever in her life.

8 A. A chair alarm, no.

9 Q. Okay. Have you ever heard a chair alarm

10 before?

11 A. Well, yeah, I mean, the wheelchairs.

12 Q. You heard those chair alarms?

13 A. Yes.

14 Q. In what setting?

15 A. They go off -- I mean, I've -- in the nursing

16 home.

17 Q. You've heard them in the nursing home?

18 A. Uh-huh.

19 Q. In your mother's nursing home?

20 A. Right.

21 Q. Are they loud?

22 A. Yes, like a --

23 Q. Are they startling?

24 A. -- some kind of -- you can hear an alarm going

25 off.

1 Q. Are they startling?

2 A. I'm sorry?

3 Q. Are they startling?

4 A. No, it's not that frightful.

5 Q. Okay. Did you have a prescription in your
6 possession from a doctor that you delivered or had
7 delivered to the nursing home ordering a chair alarm
8 whenever she was transferred to Agape on July 1st,
9 2014?

10 A. Did I have a prescription?

11 Q. An order from a doctor saying that she could be
12 utilizing either a chair belt or a chair alarm, some
13 type of noise device, on the wheelchair?

14 A. It was recommended by, you know, her
15 orthopedic, Dr. Dedmond, that she needed to be
16 watched closely. And, yes, wheelchair alarm.

17 Q. So how was it recommended? Did he give you a
18 written order?

19 A. I don't recall that.

20 Q. Well, how did he recommend it to you?

21 A. Verbally.

22 Q. Verbally. Who did you communicate that to at
23 the nursing home?

24 A. The -- I don't remember her name. The lady who
25 admitted us -- admitted Mother.

1 Q. You don't remember whose name that was?

2 A. I do not. I'm sorry.

3 Q. That's okay. When she fell, what were the
4 options of treatment for that fracture -- the first
5 fall, the one she had January 22nd, what were the
6 options that the ortho discussed with you about how
7 you could treat that break?

8 A. I don't recall. I must not have been in that
9 conversation either. I don't remember getting any
10 option. I just remember hearing him say we're going
11 to repair the break.

12 Q. Well, records that have been admitted in
13 evidence talk about nonsurgical options. Do you
14 recall discussing nonsurgical options with him?

15 A. No.

16 Q. Okay.

17 A. I didn't do that.

18 Q. Okay. Do you recall a meeting with another
19 doctor, a psychiatrist, on June 30th, 2014, prior to
20 the discharge at Lexington Medical Center?

21 A. You said June 30th?

22 Q. June 30th.

23 A. You mean, with a psychiatrist with the
24 hospital?

25 Q. Yes, ma'am.

1 A. I don't recall that.

2 Q. Okay. You don't recall having discussions with
3 him about Ativan and your mother?

4 A. Well, maybe it was relayed to me through my
5 sisters, but I don't remember having a one-on-one
6 with the psychiatrist.

7 Q. Okay. And I don't mean a one-on-one. I just
8 want to know if you participated in those
9 conversations with the psychiatrist or whether I
10 should talk to another one of your sisters about
11 that instead.

12 A. I mean, it was advised. I remember the
13 conversation. I don't know who -- I mean,
14 Dr. Dedmond explained to us that with -- I'm going
15 to be honest. I don't know if it was Dr. Dedmond.
16 It could have been the internist saying that the
17 Ativan would interact with having an adverse
18 reaction with the anesthesia.

19 Q. Okay. But the doctors did send your mother to
20 the nursing home with an order that she continue to
21 receive Ativan, didn't they?

22 A. I don't recall that. No.

23 Q. Okay.

24 A. I thought it had been discharged.

25 Q. Okay. Had your mother taken Ativan for

1 approximately 20 years?

2 A. Yes, she did.

3 Q. Okay. Was she used to taking Ativan?

4 A. Right. But this was a different situation.

5 Q. Okay. What was the situation that caused her
6 to take Ativan for the first 20 years?

7 A. She -- to calm her nerves so she could sleep at
8 night.

9 Q. Okay. But yet you told somebody in the nursing
10 home that Ativan wasn't something she needed to be
11 taking.

12 A. I didn't ever say that.

13 Q. Oh, okay. I --

14 A. I mean, I never said she had never taken it in
15 the past. Okay? But they had discharged it in the
16 hospital. I mean, there's other medications they
17 could have tried.

18 Q. Sure. Sure. But, again, you don't know what
19 doctors' orders came from the hospital to the
20 nursing home, do you?

21 A. I'm assuming Dr. Dedmond. I mean, that was the
22 one that repaired her hip.

23 Q. I'm sorry, ma'am. What I mean is, do you know
24 what prescriptions her doctor sent her from the
25 hospital to the --

1 A. No. I don't know every one of them.

2 Q. Okay. You don't dispute that Ativan was one of
3 those orders, do you?

4 A. I just assumed it was the discharged. It
5 wasn't on the list.

6 Q. Tell me about the conversation you had with
7 somebody at Agape Nursing & Rehabilitation Center
8 about Ativan.

9 A. I just -- it was a -- I guess a nurse had took
10 us in the little conference room where we had to
11 sign all the papers, you know, all that material.
12 We told them about her background, coming from the
13 hospital, and everything, you know, what
14 medications. We -- like I said, I assumed it was
15 discharged by the paperwork in the hospital and went
16 with her to Agape. I would assume it did.

17 Q. Okay. If the records show otherwise, do you
18 disagree with the records?

19 A. I'm sorry?

20 Q. If the hospital records show otherwise, do you
21 disagree with those records?

22 A. No.

23 Q. Okay. If the hospital records show that your
24 family was advised that she had nonoperative
25 treatment options for her surgery -- I mean, for her

1 break, do you disagree with those records?

2 A. I do, because I don't remember him saying that
3 to me.

4 Q. Okay. If the hospital records show that
5 someone in your family reports that Utricia Shealy
6 sometimes uses a cane but does not get around well
7 and probably should have been using a walker, do you
8 dispute those records?

9 A. I do, because I don't know who said them. I've
10 never -- I didn't.

11 Q. But you disagree with that?

12 A. Yes.

13 Q. Okay. After the fall, you said you never went
14 back into her room; correct?

15 A. Are you talking about the second fall?

16 Q. Yeah. I'm sorry. I'm jumping on you. The
17 July fall at Agape now, did you ever go back into
18 her bedroom after she fell?

19 A. After she fell the second time? Correct. I
20 went back that night to get her belongings.

21 Q. And the bed was at the lowest position at that
22 point, wasn't it?

23 A. I didn't look at no bed. I was just, I'm going
24 to be honest with you, angry, and I got her
25 belongings and left.

1 Q. Okay. Well, when she was in the hospital, did
2 she have floor mats beside her hospital bed?

3 A. No.

4 Q. Ever? Did you ever see floor mats at the
5 hospital whenever she was in the hospital?

6 A. No, not that I recall.

7 Q. Okay. Chair alarm. Did they use a wheelchair
8 alarm on her when she was in the hospital?

9 A. No, because she wasn't in a wheelchair that
10 long at the hospital.

11 Q. When you say not that long --

12 A. Well, just when physical therapy was working
13 with her.

14 Q. Okay. Now, you testified that after the second
15 surgery, your mom never used your name again; is
16 that right?

17 A. Correct. She wasn't aware of who I was
18 anymore. I could never carry on a conversation with
19 her, any of us couldn't.

20 Q. Okay. Did you have conversations with the
21 hospital staff at Lexington Medical Center where
22 they described her calling out for you by name after
23 the second surgery?

24 A. I thought that was at the -- what would be like
25 the first surgery.

1 Q. I'm referring to after the second surgery.

2 A. No.

3 Q. You don't recall those conversations?

4 A. No.

5 Q. Okay. You talked about when you saw your
6 mother in the hospital emergency room, she reported
7 pain. Is that right?

8 A. Right.

9 Q. Was the ER doctor in the room when she reported
10 that pain?

11 A. No, it was just me and my oldest sister.

12 Q. Okay. Were you present whenever the ER doctor
13 performed his evaluation of her?

14 A. They took her to the -- she was hollering out
15 in pain and had her hand on her right hip. I don't
16 think I was; I might have stepped out.

17 Q. Okay. Would you be surprised to learn that the
18 hospital records we put into evidence document the
19 fact that the ER doctor said she reported no pain
20 when she was in the emergency room?

21 A. I don't know that.

22 Q. Okay. But it is true that less than seven days
23 after her fall at Agape, she was walking 110 feet
24 with assistance, isn't it?

25 A. You mean in the hospital?

1 Q. I mean by July 8th, 2015, when she was still in
2 the hospital, she was able to walk 110 feet;
3 correct?

4 A. Not by herself.

5 Q. Yeah. But with assistance?

6 A. Right.

7 Q. Whenever she was discharged to Agape, she was
8 walking 60 feet with assistance; right?

9 A. I don't recall. I can't answer that.

10 Q. Okay. You would just defer to the medical
11 records on how she progressed following her -- after
12 her injuries?

13 A. I'm sorry. Repeat that.

14 Q. Would you defer to her medical records as to
15 how her health progressed after her injuries?

16 A. Yeah. You could.

17 Q. Okay. How long did your mother live after the
18 fall on July 1st, 2014 -- I'm sorry, July 2nd, 2014?

19 A. She died on June 17th, 2017.

20 Q. And I'm sorry for that loss. I know that's
21 hard. My wife just lost her mother this summer.
22 And I apologize for that for you.

23 A. That's all right.

24 Q. Thank you for your patience and your
25 cooperation in answering my questions today.

1 A. Thank you.

2 THE COURT: Redirect?

3 MR. CONNOR: Yes, Your Honor, just a few
4 questions.

5 REDIRECT EXAMINATION

6 BY MR. CONNOR:

7 Q. Ms. Davis, you're not a nurse, are you?

8 A. No, I'm not.

9 Q. You're not a physician?

10 A. No.

11 Q. And you haven't reviewed the medical records in
12 this case, have you?

13 A. No, I haven't.

14 Q. But, ma'am, you did see your mom; right?

15 A. Right.

16 Q. And for how many years did she survive this
17 injury?

18 A. Four -- four and a half years, four years.

19 Q. And at any point in time in those four and a
20 half years, was your mother ever in as good of a
21 condition as she was prior to her admission to Agape
22 on July --

23 A. No, she was not.

24 Q. -- 1st of --

25 A. She was not.

1 Q. And you were there for that?

2 A. Oh, yeah.

3 Q. That's all the questions I have for you, ma'am.

4 Thank you.

5 MR. BLAKE: Nothing further, Your Honor. Thank
6 you.

7 THE COURT: Ma'am, you may step down.

8 Next witness.

9 MR. MCALISTER: Plaintiff calls Helen Koon.

10 HELEN KOON

11 being first duly sworn, testified as follows:

12 THE CLERK: Have a seat and state your full
13 name, please, ma'am.

14 THE WITNESS: Helen Frye Koon.

15 DIRECT EXAMINATION

16 BY MR. MCALISTER:

17 Q. Ms. Koon, please tell the jury a little bit
18 about yourself.

19 A. I was born in Williamsport, Pennsylvania on
20 July 9th, 1951. I'm 67 years old. I was -- I'm
21 married to Larry Koon. I was married previously. I
22 have two children by that marriage. My first
23 husband passed away. I went to Kaiser High School
24 in Dayton, Ohio and graduated.

25 I went to the University of South Carolina and

1 have a bachelor's degree in business administration.
2 And I worked for Midlands Technical College, and I
3 retired from Midlands Technical College as a finance
4 director.

5 Q. And you mentioned your husband, Larry. How is
6 he related to Ms. Shealy?

7 A. He was -- he is her brother.

8 Q. Okay. And how long have you and Mr. Koon been
9 married?

10 A. For 29 years. Almost 30 years this next March.

11 Q. And how did y'all meet?

12 A. It was on a blind date.

13 Q. So 29 years after a blind date?

14 A. Yes.

15 Q. That's impressive.

16 Where do you presently reside?

17 A. 1654 Ridge Road which is the homeplace where he
18 grew up.

19 Q. And that's your husband, Larry?

20 A. Yes.

21 Q. And that's also where Ms. Shealy grew up?

22 A. Yes.

23 Q. And did Ms. Shealy live near you-all?

24 A. Yes. She lived right next door to us.

25 Q. And did your husband sell her a piece of

1 property that she built a home on?

2 A. Yes, he did.

3 Q. And that's all on the homeplace there off of
4 Ridge Road?

5 A. Yes.

6 Q. And that's a Leesville address?

7 A. Yes.

8 Q. Tell me a little bit about the homeplace. How
9 long has it been in the family?

10 A. It's been in there since the late 1800s. His
11 grandmammy and granddaddy came there and they farmed
12 the place during the depression. They had -- they
13 had most of Ridge Road, and during the depression,
14 they lost quite a number of acres and ended up with
15 about 60-some acres. And they struggled very hard
16 to keep it, so it means a lot to the family.

17 Q. And that's where Ms. Shealy and your husband
18 grew up?

19 A. Right.

20 Q. Okay. And we mentioned a moment ago that
21 Ms. Shealy built a home just down the street from
22 you-all. As neighbors, did you know each other
23 well?

24 A. Yes, we did.

25 Q. And were you close?

1 A. Yes, we were.

2 Q. Tell us about that relationship.

3 A. Between my husband and her or between she and
4 I?

5 Q. Well, were your husband and Ms. Shealy close?

6 A. Oh, yes, they were. They grew up together and
7 he -- she basically took care of him when he was
8 growing up and he took care of her when she needed
9 him as she grew older.

10 Q. And because of that relationship, you were also
11 close with her?

12 A. Yes. She was kind of like a sister to me.

13 Q. Tell us a little bit about that relationship,
14 you and her.

15 A. Well, we would go down there and I would do her
16 hair and take care of her, and we'd spend time
17 talking. And she'd come down to our house for --
18 that's the only time he would eat my cooking when I
19 would cook was when she'd come to our house and I
20 had the opportunity to cook for her. So I enjoyed
21 it when she came down to our house.

22 Q. So y'all had the opportunity to spend personal
23 time together and meals?

24 A. Yes.

25 Q. Let's change gears a bit. Did you have an

1 opportunity to visit Ms. Shealy after her first fall
2 when she was first admitted to the hospital,
3 Lexington Medical Center?

4 A. Yes.

5 Q. Did you also have the occasion to see her once
6 she was transferred to Agape?

7 A. Yes.

8 Q. And when did you go visit her at Agape?

9 A. It was the first -- it was after the first day
10 that she was admitted that night. We went to see
11 her the next day.

12 Q. What time did you arrive? Do you recall?

13 A. Yes. It was about 10:00 in the morning.

14 Q. So that would have been -- if she was admitted
15 on July 1st, 2014, that would be --

16 A. Yes.

17 Q. -- 10:00 AM on July 2nd?

18 A. Right.

19 Q. Okay. And who did you go with to see her at
20 Agape?

21 A. My husband, Larry.

22 Q. Where was Ms. Shealy when you arrived?

23 A. She was sitting in the hallway right beside the
24 nurses station.

25 Q. And what was she sitting in?

1 A. A wheelchair.

2 Q. And did you have an opportunity to visit with
3 her?

4 A. Yes. We spent a few minutes talking with her.
5 And then my husband left and went outside, and I
6 thought, well, we'll go down to her room and check
7 her room out. So I wheeled her down to her room and
8 she had to go to the bathroom. And I took her in
9 the bathroom and I went to put the locks on the
10 wheelchair and found that there were no locks on the
11 chair.

12 So I tried to get her up without the locks to
13 put her in -- you know, to put her on the commode,
14 and found out that I was not able to do that. So I
15 pulled the chain in the bathroom and waited for
16 somebody to come, and nobody came. So I felt
17 uncomfortable, you know.

18 I waited for a little while and she had to go,
19 so I felt uncomfortable to leave her there because
20 there weren't any restraints on the wheelchair
21 either, so I went down the hall real quick and
22 looked around. Nobody was anywhere to be seen,
23 nobody was there when we came either.

24 So I finally found somebody. I don't remember
25 where they were, but I finally found a nurses aide

1 and told her that I had to put Ms. Shealy on the
2 commode, and she said she'd be right there. So I
3 went back down to where she was. And it was a few
4 minutes and she came back down there and she put her
5 on the commode.

6 Q. So she didn't come help you immediately?

7 A. No. It was a few minutes.

8 Q. And after she helped her get her on the
9 commode, did you notify her of the broken
10 wheelchair?

11 A. I did.

12 Q. What was her reaction?

13 A. She showed little concern. She did say that
14 they would have to get one from physical therapy.

15 Q. Were you surprised by that reaction?

16 A. I was because, you know, they knew that
17 Ms. Shealy was prone to fall. So with no restraints
18 on the wheelchair, with no brakes on the wheelchair,
19 and her being prone to fall, you know, I thought
20 that they would be more proactive in trying to find
21 a wheelchair that would be more safe for her.

22 Q. Okay. And after the assistant helped get her
23 to the restroom, what did you do?

24 A. We hung around her room, and it wasn't long,
25 and then some doctors came in.

1 Q. Okay. And did you have the occasion to come
2 back towards the dayroom?

3 A. Yeah. Shortly after that, we went down the
4 hall and my husband came in and we sat in the
5 dayroom for a little while.

6 Q. And how long did you remain at the facility?

7 A. It must have been a little while because we
8 were there when -- we were getting ready to leave
9 when Amy came.

10 Q. And while you were there, did you ever see them
11 provide Ms. Shealy another wheelchair?

12 A. No.

13 Q. And what time did you leave?

14 A. Well, like I said, it must have been a little
15 while because -- I don't recall the exact time, but
16 it must have been a little while because Amy was
17 coming in when we were leaving.

18 Q. Okay. Changing gears one more time, do you
19 recall being notified later that evening about the
20 subsequent fall at Agape?

21 A. Yes.

22 Q. Okay. And how did you find out?

23 A. I think Amy called. One of the girls called
24 us.

25 Q. Okay. And Larry spoke with her?

1 A. Yes.

2 Q. Okay. And did you go to visit her at the
3 hospital that night?

4 A. No.

5 Q. Did you go visit her after the fact?

6 A. Yes.

7 Q. Do you recall whether it was after this second
8 hip surgery?

9 A. It was the next day. Yes.

10 Q. Please describe her condition as you perceived
11 it at that time.

12 A. She was babbling. I mean, it was a total -- it
13 was like night and day. You couldn't understand
14 anything she said and she was agitated. And when I
15 say babbling, I mean, it was like babble, you
16 couldn't understand her.

17 Q. Did you have the occasion to see her after she
18 was discharged from Lexington Medical Center?

19 A. Yes.

20 Q. And did her condition progress -- or how did
21 her condition progress?

22 A. She got somewhat better because I would -- you
23 know, you could understand a little bit about what
24 she said, but not -- she never got to the point to
25 where she was before -- before her second surgery,

1 and certainly not before her fall, her initial fall.

2 Q. And she continued to have that downhill
3 trajectory?

4 A. Pretty much, yeah.

5 Q. Did she ever return back to her home?

6 A. No.

7 Q. Okay. Thank you. No further questions.

8 THE COURT: Cross-examination?

9

10 CROSS-EXAMINATION

11 BY MR. BLAKE:

12 Q. Hello, Ms. Koon. I shall be brief.

13 You testified -- I want to make sure I
14 understand your testimony. How about this: Were
15 there no brakes on the wheelchair or were there --

16 A. No brakes.

17 Q. -- broken brakes on the wheelchair?

18 A. They were -- I think they were broken because
19 they didn't stop the wheelchair. They did not hold
20 the wheelchair.

21 Q. Okay. You could see that there were brakes on
22 the wheelchair?

23 A. You know, I don't remember. All I remember is
24 they did not stop the wheelchair, they did not hold
25 the wheelchair.

1 Q. Okay. That's what I'm asking. You say they.
2 Are you referring to the actual brakes that were on
3 the wheelchair?

4 A. The brakes. In other words, the brakes or
5 whatever would keep the wheelchair in place, were
6 not sufficient. They were not sufficient to hold
7 the wheelchair. So what normally would keep the
8 wheelchair safe and from moving were not there.

9 Q. Okay. How did you determine they were not
10 there. What did you step on? What did you pull?
11 Describe to us how you tried to operate a stopping
12 mechanism on this wheelchair.

13 A. When you put your foot on the brake of a
14 wheelchair, on the little lever that you put your
15 foot on on a wheelchair to make it stop --

16 Q. Yes, ma'am.

17 A. -- they didn't stop. They didn't stop.

18 Q. Okay. So it did have the lever on the back of
19 it?

20 A. You know, I don't remember. But what I do
21 remember is when I put my foot on whatever was back
22 there, it didn't stop.

23 Q. Okay. And --

24 A. Okay. So --

25 Q. And who did you discuss that with?

1 A. Pardon me?

2 Q. Who is the human that you discussed that with?

3 A. I'm sorry?

4 Q. Who is the individual that you discussed that
5 with?

6 A. It was the nurses aide that came in. And I
7 didn't get her name. I'm sorry. The nurses aide
8 that came in to help Ms. Shealy go to the bathroom.

9 Q. Okay. And she told you that she had to acquire
10 that from physical therapy?

11 A. Yes.

12 Q. And then what time of day was that
13 conversation?

14 A. Well, we got there at 10:00. And so it must
15 have been around 10:30, 11:00ish, somewhere in that
16 neighborhood.

17 Q. Okay. So you saw somebody, a CNA, help
18 Ms. Shealy go to the bathroom at 11:30ish on July
19 2nd; is that correct?

20 A. I said -- and I'm guessing, because I didn't
21 look at my watch. But we got there at 10:00 and the
22 chain of events were that we kind of milled around a
23 little bit and I went down to the room and, you
24 know, we looked at the room. So I'm saying it must
25 have been 10:30, 11:00ish, somewhere in that

1 neighborhood. So I can't tell you the exact time.

2 Q. Okay. But sometime between 10:00 and 12:00
3 sounds correct?

4 A. I'd say yeah.

5 Q. Yes, ma'am. Thank you.

6 And tell me what time -- well, how about this,
7 because I know you don't know the precise time you
8 left: How much longer after that toileting incident
9 did you stay at the nursing home?

10 A. And, there again, I can't tell you to be exact.
11 But I can tell you we saw our niece Amy come. So
12 she testified, I think, that she came around 2:00 or
13 2:30. So it was somewhere about that time.

14 Q. That time is consistent with your recollection
15 of that event?

16 A. Yeah.

17 Q. Thank you, ma'am.

18 Okay. Did you have a chance to see her any
19 time on July 1st after she was admitted to Agape?

20 A. No, sir.

21 Q. Did you have a chance to talk to her on the
22 phone or anything like that?

23 A. Who? Ms. Shealy?

24 Q. Yeah, Ms. Utricia. Yes, ma'am.

25 A. No.

1 Q. Okay. And how many times did you visit her in
2 the hospital after her first fall and before she
3 went to Agape?

4 A. After her first fall and before she went to
5 Agape, how many times?

6 Q. Yes, ma'am.

7 A. You know, we didn't go over there every day,
8 but probably one time maybe.

9 Q. One time maybe?

10 A. Uh-huh.

11 Q. Okay. And what was her disposition like on
12 that day?

13 A. You know, she was probably a little upset,
14 maybe; I would say maybe agitated, you know, but
15 probably what somebody would be after they came out
16 of surgery and confused, you know.

17 Q. I think that's right. Do you know how long
18 she'd been out of surgery when you saw her --

19 A. No.

20 Q. -- after that first time?

21 A. No.

22 Q. Had it been more than a day?

23 A. It was probably shortly after she came out of
24 surgery. I don't think it was a whole day.

25 Q. Okay.

1 A. Are you talking about when I saw her at Agape?

2 Q. No, ma'am. I'm talking about when you saw her
3 at the hospital.

4 A. Oh. No, it wasn't a whole day. It was
5 probably shortly after she came out of surgery.

6 Q. Okay. Now I want to jump ahead to after the
7 second surgery. How long was it after her second
8 surgery when you saw her? You described earlier her
9 condition and the babbling. How long after her
10 second surgery was it that you saw her?

11 A. It was probably shortly after her second
12 surgery.

13 Q. Okay. Did you have any conversations with her
14 doctor about the effect that that anesthesia would
15 have on her?

16 A. No. I'm not in the habit -- I mean, you know,
17 I'm not in the habit of talking to her doctor. That
18 was her daughters' job, you know. We were there for
19 support.

20 Q. Excellent. Then I don't have to ask you
21 questions about those conversations then. I
22 appreciate your patience and you answering my
23 questions today, ma'am.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 BY MR. MCALISTER:

2 Q. One more question: In the time after this
3 second fall, until her death, did her cognition ever
4 return?

5 A. No.

6 Q. No further questions. Thank you.

7 THE COURT: You may step down, ma'am. Thank
8 you.

9 All right. Next witness.

10 MR. CONNOR: Your Honor, Plaintiff calls Scott
11 Middleton for the purposes of cross-examination, and
12 we're going to be playing his deposition by way of
13 videotape as an owner and operator of the
14 facility -- owner and officer. I'm sorry.

15 THE COURT: Okay.

16 SCOTT MIDDLETON

17 having been previously sworn, testified as follows:

18 MR. CONNOR: We're not calling him live, Your
19 Honor.

20 THE COURT: Okay. Now I'm with you.

21 MR. BLAKE: We may need to take a break to deal
22 with objection issues.

23 THE COURT: Y'all come up here real quick,
24 please.

25 (Sidebar conference.)

1 THE COURT: Ladies and gentlemen, we're going
2 to take a very short break while I discuss some
3 things with the attorneys. We're going to limit
4 this break as much as possible. I ask you to go
5 back to your jury room. Please don't discuss the
6 case in any way. Thank you.

7 (The jury exits the courtroom at 4:13 PM.)

8 THE COURT: I'm not going to tell you how to do
9 it, but is there any other live witness you want to
10 call that would facilitate us moving on?

11 MR. CONNOR: Our next two witnesses are
12 actually video.

13 THE COURT: Okay. So in that case, let's go
14 ahead and talk about all of the depositions.

15 MR. BLAKE: That's great. Do you think you're
16 going to get to any of the live -- I've got two live
17 nurses here that are --

18 MR. CONNOR: Probably not before the end of the
19 day. I don't know how many objections you have that
20 we need to take up.

21 THE COURT: Well, if we're going to do three,
22 take a look at the transcript. Let's take a few
23 minutes. But if you feel like we're going to have a
24 long discussion about objections, and I'll have to
25 review the depositions as well, then --

1 MR. CONNOR: Sure. I -- I do not anticipate
2 that we will get to any additional live witnesses
3 today given that we've got two videos back to back.

4 THE COURT: All right. Y'all stand at ease.
5 Take a look at the transcripts. I'll need a
6 transcript as well.

7 (Brief pause in the proceedings.)

8 (The jury enters the courtroom at 4:18 PM.)

9 THE COURT: Mr. Foreman, as I told you at the
10 beginning of the trial, there will be some times
11 where I have to take up some matters with the
12 attorneys outside of your presence. And that's
13 normal and that's okay. But we also want to be as
14 efficient as possible with your time and not make
15 you wait any longer than is absolutely necessary, so
16 I'm going to go ahead and dismiss you for the day so
17 I can take these matters up with the lawyers.

18 I'd like you to be in your jury room tomorrow
19 morning at 9:00 AM in the morning so we can start by
20 9:15. While you go home tonight, please don't
21 discuss this case with your family members; please
22 don't do any research on this case; please don't do
23 any social media research on this case; please don't
24 research it in any way, shape, or form.

25 If anybody wants to ask you questions about the

1 case, just tell them that the Judge is a real pushy
2 fellow and he won't let me talk about it. Y'all can
3 tell whoever wants to talk about the case, that. We
4 appreciate your time today and we'll see you bright
5 and early tomorrow morning at 9:00 AM. Thank you.

6 (The jury exits the courtroom at 4:20 PM.)

7 THE COURT: Ideally, we can get these figured
8 out pretty soon, but when y'all are ready, let's go
9 meet me in chambers, that way we don't have to have
10 everyone.

11 MR. CONNOR: Can we excuse the plaintiff?

12 THE COURT: Sure. The witnesses are done for
13 the day. See you in the morning.

14 (The following proceedings were held October
15 23, 2018.)

16 THE COURT: We, obviously, had some meetings
17 into the evening yesterday. Y'all want to put the
18 objections on the record now as to the deposition
19 designations?

20 MR. CONNOR: Sure, Your Honor. I've prepared
21 the designations based upon your ruling that we're
22 prepared to file, and also a copy for you as well.

23 THE COURT: Okay.

24 MR. CONNOR: What is not included on your
25 original copy is the counter-designations that we've

1 agreed to, but those are included on this.

2 THE COURT: Okay.

3 MR. CONNOR: So may I approach the --

4 THE COURT: You may, sir.

5 MR. CONNOR: The only objection Plaintiffs have
6 as to your rulings, Your Honor, that we'd like noted
7 for the record is for the Gregory A. Middleton
8 transcript, the exclusion of the lease amounts,
9 which is found on both pages 41, lines 2 through 7,
10 as well as page 40, lines 18 through 21.

11 THE COURT: So noted.

12 Mr. Blake?

13 MR. BLAKE: Good morning, Your Honor. Thanks
14 again for your patience with us last night. I
15 think -- I've gone back through our notes, and I
16 think I walked out with five objections just to note
17 on the record regarding the Gregory Scott Middleton
18 deposition designations.

19 The first objection related to the portion of
20 the testimony that was related to the sale of the
21 nursing home entity or building that was sold here
22 and the other nonparty nursing homes that were sold
23 as a part of that same transaction, the assisted
24 living facilities that were a part of the
25 transaction, and that included a reference to the

1 sales price that was allocable to the three
2 buildings that were skilled nursing facilities that
3 were sold at the end of 2015.

4 We objected on the grounds that it didn't
5 really have any bearing on the issue on a fall case
6 in July 2014. There's been no proffered expert
7 testimony that there is any type of underfunding or
8 understaffing or lack of resources of any kind
9 whatsoever. So flashing sale-related information,
10 talking about the sales of other facilities, talking
11 about the \$20 million price tag puts numbers and
12 assets and valuations in the mind of the jury that
13 are more prejudicial than they are probative on any
14 issue.

15 So those pages that were objected to in
16 particular were pages 29, line 9, to page 30, line
17 10, and then picking up at page 31, line 20,
18 carrying over to page 32, line 3. So that was the
19 first one.

20 The second objection, Your Honor, as you'll
21 recall, is we objected to the identification of
22 nonparty clients, Agape Management Services, Inc.
23 There's just a series of questions beginning on page
24 33, line 17, to page 34, line 15 that identifies
25 companies that the management company had

1 contractual relationships that Mr. Middleton
2 personally also owned some interest in.

3 And, again, that issue, we don't believe, has
4 any probative value on this case. Those are
5 nonparty entities. We have not objected to any
6 discussion about the relationship between the two
7 defendants, and we haven't objected to the testimony
8 about the relationship between the operating
9 company, for example, and a company with which it
10 was leasing. But these nonparty clients and the
11 management only are going to confuse the jury and
12 don't serve any probative value.

13 The third objection was the series of questions
14 posed to Mr. Middleton regarding the Medicare cost
15 reporting. And, you know, we had several objections
16 on the testimony ranging from page 53, line 21,
17 through page 58. And that testimony, Your Honor, we
18 found lacked in a couple regards: First, that the
19 foundation is lacking. He began the line of
20 questioning with Mr. Middleton confirming that he
21 didn't have actual knowledge of what was in that
22 cost report that was being shown to him.

23 Mr. Middleton did not sign that cost report; it
24 was another person inside the management company.
25 So a series of questions where Mr. Middleton is

1 asked about a document that he's not a party through
2 which it can be offered is -- lacks foundation.
3 And, again, the cost report is not in evidence.
4 We've objected and will object, at the time it tries
5 to come into evidence, to the cost report coming in
6 because there has been no expert identified in this
7 case to explain the cost report.

8 The Medicare handbook on cost reporting, I
9 looked it up again last night, it's about 350 pages
10 long just on the subpart that deals with that form,
11 that nursing home cost report form. It has 110
12 pages of recommended forms that are included and
13 it's had hundreds of pages of technical guidance
14 issues between 2010 when that was adopted and the
15 date of this fall.

16 There's no expert here to explain to the jury
17 all of the complicated CMS regulations that are
18 required to reach those -- that must be understood
19 to understand what those numbers even represent,
20 where they come from, what those numbers mean. And
21 so a delve into a cost report in and of itself is
22 just going to confuse the jury.

23 And we believe it's only being offered, again,
24 to show big-dollar figures that have no context for
25 the jury to understand. It doesn't show the jury

1 anything to say that X-amount of dollars was paid
2 for pharmacy services when the jury doesn't
3 understand what fair market value for pharmacy
4 services are, what services were rendered in
5 exchange for that dollar amount.

6 Without some type of forensic accounting MDS
7 expert, somebody to go through and say the cost
8 report shows siphoning or the cost report shows
9 improper payments, the cost report in and of itself
10 is just a way to place asset numbers and revenue
11 numbers in front of the jury which are confusing and
12 run us straight into a Ford vs. Branham problem.
13 And so we've objected to that testimony on that
14 grounds.

15 The fourth are where we have objection was the
16 testimony elicited from Mr. Middleton regarding
17 dividends that appear on page 89 and 90 of his
18 transcript. And, again, we did not object to the
19 employment questions; we did not object to his
20 salary questions. But whether or not a shareholder
21 in a corporation is entitled to receive
22 distributions from a defendant or another defendant
23 is not probative to any issue in a fall case.
24 That's rudimentary business facts that owners get
25 distributions, but talking about the distributions

1 in this case serves no probative value in the jury
2 of determining liability.

3 Again, it's just to send a message of wealth or
4 the prospect of wealth or the siphoning of wealth,
5 none of which has any probative value given the fact
6 that there's been no connection to a failure to
7 spend and any injury claimed by the plaintiff.

8 Again, this case is a punitive bifurcated case.
9 So to the extent that the argument is that it has
10 something to do with punitive damages, we're not in
11 that phase of the trial yet. Letting the jury see
12 evidence that is solely probative to punitive
13 damages isn't appropriate in a bifurcated trial.

14 And the last area where we have an objection,
15 Your Honor, briefly, is there was discussion in the
16 record about the employment that Mr. Middleton's
17 wife and daughter had within the company. And,
18 again, we're not sure what value that has to any
19 issue in this case. There's no allegation that the
20 wife or daughter have done anything to cause any
21 harm in this case.

22 The only possible inference the jury could draw
23 from that is that somehow the wife and daughter were
24 improperly siphoning money out of the company, which
25 is an assertion that has no bearing on this case

1 because, again, there's been no causal connection
2 made by any expert that's been offered or by any
3 witness that's going to testify that there's some
4 lack of funding or lack of resource or lack of
5 staffing in the building. It's just putting
6 inflammatory things out to try to get the jury
7 impassioned. And, therefore, it's more prejudicial
8 than it's probative. And that testimony, Your
9 Honor, is the -- on pages 90 and 91.

10 And those were all of the objections that I saw
11 coming out of our meeting. Thank you for bearing
12 with me.

13 THE COURT: Thank you.

14 MR. CONNOR: Your Honor, if I may, just for the
15 record's sake. I would like to remind this Court
16 and let the record reflect that despite the
17 defendants' assertions in his objections, one that
18 we had healthy discussions about in chambers, and I
19 just want to remind everyone of the allegations that
20 have been made in the plaintiff's complaint here,
21 particularly beginning with paragraph 27, that at
22 all times relevant to the action, the defendants
23 were fully aware that the delivery of care and
24 custodial services to residents including in the
25 facility, including Ms. Shealy, required the

1 provision of adequate and appropriate staffing in
2 the facility and appropriate census levels and
3 census mixes within the facility.

4 Paragraph 28: Despite this knowledge, the
5 defendants made operational, budgetary, and
6 administrative decisions that were determined more
7 by the financial needs and goals of the defendant
8 than by the custodial, medical, and nursing needs of
9 the facility, including Ms. Shealy.

10 29: That the defendants entered into a
11 continuing course of negligent conduct creating,
12 implementing, and enforcing dangerous operational
13 budgets, practices, and policies at the facility
14 which deprived residents, including Ms. Shealy, of
15 safe, adequate, and essential care and resources to
16 meet their needs, including, but not limited to,
17 appropriate plans of care, assessment, and continued
18 monitoring of her condition, appropriate medication
19 administration, assistance with activities of daily
20 living, and nutrients and fluids.

21 Notwithstanding the -- this is 30:
22 Notwithstanding the defendants' decisional,
23 directive, and practices which resulted in an
24 inadequate and inappropriate staffing of the
25 facility, Defendants sought to market and recruit

1 and admit higher-acuity, heavier-care, higher-paying
2 residents to the facility even though the needs of
3 the resident population, including the needs of
4 Ms. Shealy, exceeded the capacity of the staff.

5 And at all material times -- paragraph 31 --
6 the defendant had a duty to allocate resources and
7 exercise fiscal policies with reasonable care so as
8 to prevent infliction of harm on residents of the
9 facility, including Ms. Shealy. Paragraph 32: That
10 the defendants breached their duty by failing to
11 allocate sufficient financial and operational
12 resources to the facility, thereby causing harm to
13 the residents, including Ms. Shealy.

14 We've pled the corporate malfeasances of this
15 defendant, and to suggest that we have not, I
16 believe, is a mischaracterization of the claims that
17 have been brought in this case.

18 THE COURT: Okay. So noted.

19 Are we ready for the jury? How long are the
20 depositions going to last, both of them?

21 MR. CONNOR: This one is 24 minutes and the
22 other one is even shorter.

23 THE COURT: Okay. So we'll go straight from
24 there into your next live witness?

25 MR. CONNOR: Yes, Your Honor.

1 MR. MANN: Your Honor, if I may, just very
2 briefly, just to renew our objection on the record,
3 we have the same objection regarding Gregory
4 Middleton that we addressed yesterday -- Gregory A.
5 Middleton, that you ruled on back in chambers. Just
6 to put on the record, incorporating the same
7 arguments that Mr. Blake made -- I'll be ten seconds
8 here.

9 Incorporating those same arguments, we don't
10 believe that the lease itself is probative of any
11 issue in this case. We believe it's more
12 prejudicial than probative incorporating the Ford v.
13 Branham case and the argument as well that this is
14 something that should solely be looked at in the
15 bifurcated punitive stage of the trial.

16 THE COURT: Okay. All right. Let's go ahead
17 and bring the jury in, please.

18 (The jury enters the courtroom at 9:23 AM.)

19 THE COURT: Good morning, Mr. Foreperson,
20 ladies and gentlemen of the jury. I hope you had a
21 nice evening. I appreciate you being on time here
22 and for your patience yesterday. We're going to get
23 started with the trial now and continue with the
24 plaintiff's case in chief.

25 Counsel?

1 MR. CONNOR: Yes, Your Honor. Plaintiff calls,
2 for the purposes of cross-examination, Gregory Scott
3 Middleton.

4 THE COURT: Ladies and gentlemen, the testimony
5 is now going to be presented to you by a video
6 deposition. A video deposition contains sworn
7 testimony given by a witness outside of court in the
8 presence of lawyers for each party who may ask
9 questions of the witness. The testimony is entitled
10 to the same consideration and is to be judged as to
11 credibility and weighed by you in the same way as if
12 the witness were present and giving their testimony
13 right here in the witness stand. It's then for you,
14 the jury, to determine the effect, value, weight,
15 and truth of the testimony given in this deposition.

16 (Video deposition of Gregory Scott Middleton
17 played for his Honor and the Jury.)

18 MR. CONNOR: Your Honor, at this time,
19 Plaintiff would move into evidence or seek to move
20 into evidence the lease agreement referenced by
21 Mr. Middleton which was attached to his deposition,
22 as well as the Medicare cost report. Both of these
23 we contend are business records kept in the ordinary
24 course of business that have been produced by the
25 defendants in this case. And we think they're

1 admissible for these purposes.

2 THE COURT: Actually -- well, go ahead.

3 MR. BLAKE: I mean, how much do we need to put
4 on the record about the cost report that I --

5 THE COURT: Y'all approach real quick.

6 (Sidebar conference.)

7 THE COURT: Very briefly, ladies and gentlemen,
8 I have some matters I need to hear from the
9 attorneys. I'll get you back in here as soon as
10 possible. Go ahead and go back to your jury room.
11 Please don't discuss the case in any way. Thank
12 you.

13 (The jury exits the courtroom at 9:51 AM.)

14 THE COURT: Okay.

15 MR. BLAKE: We're pulling up the electronic
16 copy of the cost report, Your Honor.

17 THE COURT: Which exhibit --

18 MR. BLAKE: Which one of your Plaintiff's
19 exhibits is it?

20 MR. CONNOR: The lease is 31. And a copy of
21 the lease has already been admitted as a copy to
22 the -- one of the leases has already been admitted
23 as an attachment to their license application, which
24 is required to be submitted to the State. But, just
25 for ease of access, I'd like to make it a separate

1 exhibit.

2 THE COURT: Which exhibit is it in the joint --

3 MR. CONNOR: It's part of -- yes, sir, 17 as
4 well as 19. Since both of those are actually in,
5 I'll withdraw the request to admit it as a separate
6 exhibit. But I would like to make -- at least
7 identify to the jury where they can find those
8 leases.

9 THE COURT: I may as well look at it while
10 we're here. I see the lease agreement. Okay.
11 They're both in?

12 MR. CONNOR: Yes, Your Honor.

13 (Off-the-record discussion.)

14 MR. BLAKE: Then no objection to that one, Your
15 Honor.

16 THE COURT: All right. So they're both already
17 in, the documents you were just talking about?

18 MR. CONNOR: I would like to just identify that
19 it's part of that joint exhibit.

20 THE COURT: All right. Is there anything else
21 we need to discuss before we bring the jury back in?

22 MR. BLAKE: Just the Medicare cost report
23 issue, Your Honor.

24 THE COURT: Okay. You got that document pulled
25 up?

1 MR. BLAKE: That's what we were trying to pull
2 up.

3 THE COURT: Do you have a copy?

4 MR. CONNOR: An extra copy, Your Honor? I
5 don't have an extra hard copy, but it's on that
6 disc, Your Honor. I'm happy to -- if you want to
7 look at it while --

8 THE COURT: And the cost report is already in
9 too?

10 MR. CONNOR: No, this is not. That's the
11 original.

12 THE COURT: But it's on the CD you gave me;
13 right?

14 MR. BLAKE: Yes, Your Honor. I've got it
15 pulled up now. Okay. Your Honor, briefly, because
16 you've heard me on this once in your office and once
17 on the record already this morning about Medicare
18 cost reports, I just want to renew the same
19 objection I had earlier about the prejudicial effect
20 of this document coming in without anything to tie
21 it in to explain it to the jury for them to
22 understand what they're looking at.

23 Just to incorporate my earlier argument, Your
24 Honor, the jury is going to get this 47-page
25 document covered with big seven-figures numbers.

1 It's no different than sticking in front of the jury
2 balance sheets or profit and loss statements with
3 big numbers trading back and forth without the jury
4 having any context for it.

5 The Court of Appeals and Supreme Court have
6 already found that's inappropriate, that it's
7 prejudicial, that it needs to be -- stuff that deals
8 with the wealth of the company needs to be closely
9 held. And I believe the current standard is net
10 worth is admissible, but, otherwise, there needs to
11 be some probative value outside of the punitive
12 damages phase of the case for these type of numbers
13 to be stuck in front of the jury. They change the
14 jury's expectations; they inflame their passions.
15 And there's no one here to testify about the fair
16 market value of these numbers and how they relate to
17 anything or even how they're generated.

18 Like I said, if the guidelines for this are
19 hundreds and hundreds of pages long on how this
20 document is created -- Mr. Middleton is not the one
21 who created it, he cannot lay the foundation for it.
22 For it to come in through him -- he didn't even have
23 it in front of him. As you saw from the testimony,
24 he keeps asking the attorney, I guess you know
25 because you have it.

1 I'm not sure why it's even being moved in
2 through him at all. We don't contest that it's an
3 authentic copy, we don't contest that it's a
4 business record, because we've identified the
5 gentleman who signed it and he did used to work for
6 the management company. So we don't dispute that.
7 But I do think that this document coming in is very
8 prejudicial, don't see how it furthers any issue in
9 this case.

10 THE COURT: Your main objection is 403?

11 MR. BLAKE: It's 403 and it's Ford v. Branham
12 because, again, this is no different than sticking
13 assets and liabilities in front of the jury. There
14 has to be some probative value before you do that
15 because of the extremely prejudicial effect the
16 supreme court has recognized in sticking documents
17 like this in front of the jury.

18 THE COURT: Okay.

19 MR. CONNOR: If I may, Your Honor?

20 THE COURT: Sure.

21 MR. CONNOR: This is a business record, as they
22 acknowledge. This is a public record that we can
23 ask you to take judicial notice of as well. These
24 are things that they are required to file under
25 penalty of perjury with the State to operate a

1 nursing home in this state and to accept Medicare
2 and Medicaid funds.

3 The fact that it has numbers on it is of no
4 consequence. The numbers themselves actually
5 reflect operating at this facility is operating at a
6 loss. So to suggest that we're putting millions --
7 you know, that this is some millions of dollars is
8 going to, you know, sway the jury of their senses, I
9 think, is incorrect.

10 This is no different than the defense
11 attempting to put in medical records. It doesn't --
12 it's evidence that, yes, it may -- someone with
13 certain backgrounds on the jury may be able to
14 interpret it better than others. The same is true
15 of any healthcare professional. We're not seeking
16 to exclude medical records in this case because
17 there's no expert by them here to explain those.

18 I mean, lots of documents are admitted into
19 cases that are not just -- that require, you know,
20 some thought and contemplation to be able to
21 interpret. But that's the role of the jury, and
22 they, collectively, should be able to look at this
23 and determine whether it has any bearing on the case
24 or not.

25 It's a business record of the defendants; it's

1 a public record required to be filed by the State.
2 The defendant is a corporate officer who attested to
3 the fact that the information contained in that
4 report should be accurate. The fact that he can't
5 explain one line item is irrelevant. He cannot
6 claim ignorance as to a document that he's required
7 to file and then that somehow exclude it from
8 admissibility in the case. We think it is relevant;
9 we think it is probative. We think the jury is keen
10 enough to figure out --

11 THE COURT: And you refer to it says it
12 operates on a loss. That's because it -- the --

13 MR. CONNOR: Because they're paying --

14 THE COURT: -- the expenses outweigh the
15 revenue.

16 MR. CONNOR: That's right. In 2014, it
17 operated at a negative \$7,882 loss. The next year,
18 a negative \$2 million loss. We've not sought to put
19 that into evidence at this point.

20 THE COURT: Yeah. Let me ask y'all a quick
21 question real quick.

22 (Sidebar conference.)

23 THE COURT: All right. I just had a bench
24 conference with the lawyers regarding the cost
25 report being offered into evidence. The cost report

1 will be admitted, subject to some limitations. The
2 revenue operating expenses will be redacted so the
3 jury can't get any specific numbers on company
4 revenue at this time, at least at this stage of the
5 case, but will be allowed to show the dealings
6 between the multiple entities involved that have
7 been mentioned in other testimony.

8 MR. BLAKE: Thank you, Your Honor.

9 THE COURT: Did you hear that?

10 MR. CONNOR: Yes, sir.

11 THE COURT: All right. So looking ahead --

12 MR. CONNOR: So can we move it in just for the
13 purposes of informing the jury where it is, but then
14 we'll certainly, before it goes back --

15 THE COURT: Yes.

16 MR. CONNOR: -- make sure we agree on a
17 redacted copy?

18 THE COURT: Yes. All right. I'll bring the
19 jury back and admit it in, subject to objections.

20 (Plaintiff's Exhibit No. 3 marked for
21 identification.)

22 (The jury enters the courtroom at 10:05 AM.)

23 THE COURT: Okay. Ladies and gentlemen, thank
24 you. I appreciate your patience so I could hear a
25 few things out of your presence. We'll get back

1 started with the case.

2 MR. CONNOR: Yes, Your Honor. At this time the
3 plaintiff would like to make reference to the lease
4 agreements referenced in Mr. Middleton's depositions
5 are found in Joint Exhibits 10 and 12 for 2014 and
6 '15. And then at this time we'd also like to move
7 in a redacted copy of the cost report and mark it as
8 Plaintiff's 3.

9 THE COURT: Admitted, subject to objection by
10 the defense.

11 MR. BLAKE: Thank you, Your Honor.

12 MR. CONNOR: At this time, Plaintiff calls
13 Gregory A. Middleton.

14 THE COURT: Ladies and gentlemen, you've just
15 seen video deposition testimony. You're going to
16 see another one here. Same rules apply. This is a
17 deposition given just like it were in the courtroom.
18 They're still under oath. And you can --
19 however you -- whatever weight you give to this
20 testimony is entirely up to you.

21 MR. CONNOR: And, again, Your Honor, this is
22 for the purposes of cross-examination.

23 (Video deposition of Gregory A. Middleton
24 played for his Honor and the jury.)

25 THE COURT: All right. We'll take our morning

1 break. We'll take ten minutes. Go back to your
2 jury room, don't discuss the case, and we'll
3 continue with the trial after that.

4 (The jury exits the courtroom at 10:43 AM.)

5 THE COURT: Are we ready to proceed?

6 MR. CONNOR: Yes, Your Honor. I do have one
7 matter of procedure that I'd like to clarify or get
8 approval from you before I do so. My intention is
9 to, as I mentioned, begin to publish some of the
10 exhibits that have been stipulated to in this case.
11 I would like to highlight portions of that exhibit
12 as I review them with the jury, but I don't know if
13 there's any objection to that or not.

14 THE COURT: They're already in?

15 MR. BLAKE: Yeah. Highlight them as you work
16 through the --

17 MR. CONNOR: Correct.

18 MR. BLAKE: No objection, Your Honor.

19 MR. CONNOR: Just wanted to be clear.

20 THE COURT: All right. Let's go ahead and
21 continue on. Thank you.

22 (The jury enters the courtroom at 11:01 AM.)

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen of the jury, welcome back.

25 Counsel, you may proceed.

1 MR. CONNOR: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes, sir.

4 MR. CONNOR: Your Honor, at this time,
5 Plaintiff seeks to publish excerpts from Joint
6 Exhibit 25, the Agape Senior Code of Conduct
7 Compliance Program Handbook.

8 THE COURT: Without objection.

9 MR. CONNOR: And this is, again, Exhibit 25.

10 This code applies to all Agape Senior entities
11 and any entity managed by Agape. This code has been
12 approved and adopted by senior management and
13 represents a reaffirmation of Agape's long-term
14 commitment to compliance and quality of service to
15 our patients and the communities in which we
16 operate.

17 Each and every employee, including management,
18 is obligated to conduct himself or herself in a
19 manner that ensures adherence to and maintenance of
20 these standards. All Agape employees must be
21 cognizant of all federal and state laws and
22 regulations that apply to and affect Agape's
23 operations.

24 Each and every employee has an obligation to
25 familiarize himself or herself with all such laws

1 and regulations and to adhere at all times to the
2 requirements thereof.

3 The code is designed to ensure that all
4 employees share in their responsibility for keeping
5 Agape in full compliance with all applicable laws,
6 regulations, standards of care and all policies and
7 procedures, communicate and emphasize the commitment
8 of Agape's management to compliance with laws,
9 regulations, standards of care, and ethical business
10 practices, and to familiarize all employees with the
11 basic legal principles and standards of behavior
12 expected while working for Agape.

13 Failure to observe the provisions of the code
14 can result in serious consequences to the employee,
15 such as dismissal and criminal charges and to Agape
16 Senior, such as criminal prosecution, substantial
17 monetary fines and penalties, and substantial damage
18 to its reputation.

19 The following statement constitutes Agape's
20 code of ethics and integral part of the code: It
21 requires all employees conduct their duties and
22 business operations in accordance with all laws,
23 regulations, standards of care, and the highest
24 level of ethics. All employees are expected to
25 conduct themselves in compliance with all laws and

1 regulations that govern the operation of Agape.

2 Furthermore, all employees are expected to
3 maintain an understanding of such laws and
4 regulations through a continued learning process
5 that is offered by Agape University.

6 In addition to the code of ethics, Agape has
7 developed the following standards of conduct which
8 govern the actions of all employees. Employees
9 shall conduct themselves with these standards:
10 Employees will treat all patients, residents with
11 dignity and respect and in a manner that is in the
12 best interest of the patient, resident, including
13 state and federal laws and regulations regarding
14 patients' and residents' rights.

15 Employees are expected to maintain records and
16 charts regarding patients and reimbursement that are
17 accurate and are expected to retain such employee
18 records in accordance with applicable policies on
19 record retention and recordkeeping.

20 Fraud and abuse. Agape is committed to
21 complying with all laws and regulations relating to
22 its operations and is committed to preventing
23 healthcare fraud and abuse and has adopted a
24 zero-tolerance policy relating to any breach or
25 violation of such laws and regulations.

1 And, Your Honor, at the end of this code of
2 compliance document, there's an acknowledgement form
3 that each employee is required to sign that states:
4 I hereby acknowledge the receipt of this code of
5 conduct and compliance program handbook. I also
6 acknowledge my understanding of this code of conduct
7 and compliance program handbook as outlined in this
8 handbook. I further understand that if I engage in
9 any prohibited conduct under this code of conduct
10 and compliance program handbook or its related
11 policies and procedures, I will be subject to
12 disciplinary action, up to and including
13 termination.

14 That ends Plaintiff's publication of Joint 25.
15 And, Your Honor, at this time, the plaintiff would
16 like to invoke the rule of sequestration.

17 THE COURT: Any objection?

18 MR. BLAKE: May we approach?

19 THE COURT: Sure.

20 (Sidebar conference.)

21 MR. CONNOR: And it will apply equally to any
22 fact witnesses we have remaining.

23 THE COURT: Fair enough. We had a bench
24 conference on this, and the motion to sequester was
25 granted.

1 MR. CONNOR: Your Honor, at this time, the
2 plaintiff calls, for purposes of cross-examination,
3 Dee Dee Henderson.

4 DANIELLE HENDERSON

5 being first duly sworn, testified as follows:

6 THE WITNESS: I do.

7 THE CLERK: Have a seat, please, ma'am, and
8 state your full name.

9 THE WITNESS: Good morning. My name is
10 Danielle Brawly Henderson. Everyone calls me Dee
11 Dee.

12 CROSS-EXAMINATION

13 BY MR. CONNOR:

14 Q. Thank you, Ms. Henderson. Where are you
15 currently employed?

16 A. I'm employed at Agape Hospice of the
17 Lowcountry, Incorporated.

18 Q. And what is your position with Agape Hospice?

19 A. I'm CEO.

20 Q. And what is it that Agape Hospice does?

21 A. We provide end-of-life care services for
22 patients that have terminal care.

23 Q. Is that in an in-home setting or skilled
24 nursing facility? What sorts of environments do you
25 provide care?

- 1 A. All of them.
- 2 Q. Okay. Now, Ms. Henderson, you're a social
3 worker; correct?
- 4 A. That's correct.
- 5 Q. And you're also a registered nurse; correct?
- 6 A. Yes, sir.
- 7 Q. And it's my understanding that you're also
8 licensed as a nursing home administrator as well.
- 9 A. Yes, sir.
- 10 Q. Okay. And you've worked for Agape in one
11 capacity or another since 1999; right?
- 12 A. Yes, sir.
- 13 Q. And you've been an executive within the network
14 of Agape-related companies since 2006; correct?
- 15 A. Yes, sir.
- 16 Q. For example, you've been a DON at one of
17 Agape's skilled nursing facilities; is that correct?
- 18 A. Yes, sir.
- 19 Q. And where was that facility located?
- 20 A. In Rock Hill, South Carolina.
- 21 Q. Now, as DON, you would have been the chief
22 clinical officer at the nursing home; correct?
- 23 A. Yes, sir.
- 24 Q. That means you're in charge of all the clinical
25 oversight of all the clinical care occurring within

1 the facility by the registered nurses and other
2 LPNs, CNAs, et cetera?

3 A. That's correct.

4 Q. Now, you've also been a nursing home
5 administrator; right?

6 A. Yes.

7 Q. And where have you had that title?

8 A. In Rock Hill.

9 Q. Same facility?

10 A. Yes, sir.

11 Q. And, again, that was an Agape facility?

12 A. Yes.

13 Q. And as administrator, no longer are you over
14 the clinical care; you're over the administrative
15 oversight of the facility; correct?

16 A. Correct.

17 Q. Including the financial viability of the
18 facility?

19 A. Yes.

20 Q. And the utilization of the resources to ensure
21 that the needs of your residents are met; correct?

22 A. Correct.

23 Q. All right. Now, ma'am, in 2009, you were named
24 as director of operations for Agape Hospice Rock
25 Hill; correct? 2011, I'm sorry.

1 A. I honestly don't recall the year.

2 Q. All right. Well, would a copy of your bio help
3 refresh your recollection?

4 A. Yes.

5 Q. Okay. All right. Let me -- let me -- we'll
6 mark this. I've got a copy here, ma'am, of both
7 your bio as well as a press release related to Agape
8 Hospice.

9 A. Okay.

10 Q. And hopefully there's some information in here
11 that will help you. And if we can, we'll mark
12 these, for identification purposes, as Plaintiff's
13 4.

14 THE COURT: Plaintiff's 4 marked for
15 identification only.

16 (Plaintiff's Exhibit No. 4 marked for
17 identification.)

18 BY MR. CONNOR:

19 Q. And this is a two-page document.

20 A. Thank you. Do you mind repeating the question?

21 Q. Sure. It's my understanding, based off that
22 information in the public domain about your
23 involvement with Agape Hospice, that it was in 2011
24 that you were named as the director of operations
25 for Agape Hospice Rock Hill.

1 A. Yes.

2 Q. And is that accurate?

3 A. Yes, sir.

4 Q. Okay. A year later, it looks like, based upon
5 that information in the public domain, that you were
6 named as president overseeing for Agape Senior,
7 overseeing Agape's integrated network of various
8 healthcare service providers. Is that correct?

9 A. Yes, sir.

10 Q. Now, reviewing your company bio, there are
11 several references to Agape Senior and Agape's
12 integrated network which was in existence prior to
13 2015; correct?

14 A. Yes, sir.

15 Q. And you just heard me read the code of
16 compliance for Agape Senior. Is that a document
17 you're familiar with?

18 A. Yes, sir.

19 Q. And is that something that you would have had
20 to comply with?

21 A. Yes, sir.

22 Q. And is that something you expected all of your
23 employees, over which you were ultimately
24 responsible for, that they, too, would be familiar
25 and compliant?

1 A. Yes, sir.

2 Q. Now, if you could, just explain to the jury

3 your understanding of what Agape Senior was.

4 A. What do you mean?

5 Q. Well, I'd just like to know, generally, when

6 you reference Agape Senior in that bio, what that's

7 referring to.

8 A. Agape Senior?

9 Q. Yes, ma'am.

10 A. When I reference it in this bio?

11 Q. Yes, ma'am.

12 A. Okay. Let me read the bio and see where I

13 referenced it.

14 Q. Okay. And I can help direct you.

15 A. Okay.

16 Q. If you find it before me, let me know.

17 Have you found it yet, ma'am?

18 A. I have not. Would you direct me?

19 Q. Yes, ma'am. If you look at the news release --

20 A. Uh-huh.

21 Q. -- it says that you were the regional president

22 for the Upstate region for Agape Senior, and I just

23 would like to know what that means. Not your

24 position, but that reference to that corporation.

25 A. Okay. That's Agape Management Services,

1 Incorporated.

2 Q. Sure. Thank you. Okay.

3 Now, again, there's this reference to your
4 position as president of the Piedmont Upstate region
5 for overseeing this integrated network of services,
6 including assisted living facilities, physician
7 services, therapy services, and skilled nursing
8 services.

9 Are those all different corporations under the
10 ambit of Agape Senior, also known as or doing
11 business as Agape Management Services, Inc.?

12 A. Can you ask the question again?

13 Q. Sure. What sorts of different services did you
14 understand Agape Senior oversaw?

15 A. Agape Management Services was the management
16 company.

17 Q. Sure. Of what types of companies?

18 A. That is referring to the assisted living, the
19 skilled nursing facility, and the therapy company.

20 Q. Okay. Now, according to your bio in 2015,
21 Agape spun off divisions of the company into
22 different entities. Do you recall that happening?

23 A. Yes.

24 Q. Okay. Tell us about that.

25 A. In 2015, we transitioned ownership of our

1 skilled facility and assisted living facilities.

2 Q. Okay. And were you involved in the decision to
3 divest of the skilled nursing facilities like Agape
4 West Columbia?

5 A. No, sir.

6 Q. Now, as a result of that transition and the
7 spinoff of those different companies, you were named
8 as the executive director of Agape Hospice; correct?

9 A. Yes, sir.

10 Q. Then later, in May of 2017, it looks like you
11 were named chief operating officer for Agape
12 Hospice; is that accurate?

13 A. Yes, sir.

14 Q. And is that your present position?

15 A. No, sir.

16 Q. Okay. So at what point did you then become in
17 your present role over Agape Lowcountry?

18 A. I don't remember. I don't remember the exact
19 date.

20 Q. But sometime since 2017?

21 A. Yes, sir.

22 Q. Okay. And you're presently serving in that
23 role; correct?

24 A. Chief executive officer, yes, sir --

25 Q. And who --

1 A. -- for Agape Hospice of the Lowcountry.

2 Q. Okay. And who do you presently report to?

3 A. Theresa Eunice.

4 Q. Okay. And where is Ms. Eunice?

5 A. Where is she?

6 Q. Uh-huh. Where does she work? I'm sorry.

7 A. She works for LTC Management Services.

8 Q. Which is the successive corporation to what
9 formally did business as Agape Senior?

10 A. Agape Management Services. Yes.

11 Q. Right. Okay. Great.

12 Now I'd like to focus on 2013 and '14. What
13 was your position during those years?

14 A. President of Piedmont Upstate region.

15 Q. And who were you employed by?

16 A. Agape Management Services --

17 Q. Okay.

18 A. -- Incorporated.

19 Q. And what were your job responsibilities as a
20 regional president for Agape Senior?

21 A. I provided resources to ensure that the
22 leadership were successful, just ensuring that they
23 had all the tools necessary to ensure that their
24 operations were successful.

25 Q. And when you say provide resources to

1 leadership, who do you mean?

2 A. The administrators in those buildings or
3 entities.

4 Q. Okay. And when you say were successful, what
5 do you mean?

6 A. I mean that they were successful, they ensured
7 that their staff were providing quality care, that
8 they were successful, their patients were happy,
9 their staff were happy, engaged, that they had all
10 the tools and resources that they need.

11 Q. Okay. And who did you report to in that role?

12 A. Theresa Eunice.

13 Q. Same person?

14 A. Yes, sir.

15 Q. And what's Ms. Eunice's title -- or was her
16 title?

17 A. At the time?

18 Q. Yes, ma'am.

19 A. In 2013, I don't remember.

20 Q. Okay. How about '14?

21 A. I believe she was COO at that time.

22 Q. Of?

23 A. Agape Management Services.

24 Q. Okay. Great.

25 And did anyone report directly to you?

1 A. Did anyone -- yes. The leadership in the
2 different entities.

3 Q. Right. So the different administrators would
4 report in to their regional president --

5 A. Yes.

6 Q. -- at the management company?

7 A. Yes, sir.

8 Q. All right. And tell us what all facilities
9 were under your immediate influence.

10 A. The facilities in the Piedmont Upstate region.

11 Q. Okay. And how would that have been?

12 A. Give me just a minute because it's back in
13 2013. I'm guessing at this point, so I'll say I
14 don't remember.

15 Q. Okay. Well, would it be more than ten?

16 A. No.

17 Q. Would it be more than five?

18 A. Yes.

19 Q. Okay. So somewhere between five and ten
20 different entities?

21 A. Yeah.

22 Q. Okay. Now, was there a counterpart for you in
23 other regions? Were there other regions?

24 A. Yes.

25 Q. And what were those, apart from Piedmont?

1 A. Outside of Piedmont, Midlands and Lowcountry.

2 Q. Who would have been the regional president over
3 the Midlands?

4 A. I don't remember back in 2013.

5 Q. Was there one?

6 A. I'm sure there was one.

7 Q. How about in 2014?

8 A. I don't remember.

9 Q. All right. Now, in 2013, you would travel to
10 Agape facilities like the one in West Columbia and
11 conduct safety meetings with the faculty
12 administrator as well as different department heads
13 and members of clinical staff; correct?

14 A. Not routinely.

15 Q. Sure. And that wasn't my question. My
16 question was you would, on occasion, do that; right?

17 A. Yes.

18 Q. For example, on Friday, November 8th, 2013, you
19 conducted a safety meeting with Matt Faris who was
20 the facility administrator at Agape West Columbia;
21 correct?

22 A. I don't remember if I actually conducted that
23 meeting. I don't remember if I did. I don't
24 remember that meeting.

25 Q. Okay. Well, let me give you some information

1 that may help refresh your recollection about that.

2 A. Okay.

3 MR. CONNOR: We can mark this as our next
4 exhibit for identification purposes.

5 THE COURT: Plaintiff's 5 marked for
6 identification purposes only.

7 (Plaintiff's Exhibit No. 5 marked for
8 identification.)

9 BY MR. CONNOR:

10 Q. If you could please take a moment to review
11 that information, please, ma'am. And when you're
12 finished, you can just look up, ma'am.

13 A. Okay.

14 Q. And if I'm not looking up, just holler at me.
15 Okay?

16 Having reviewed that, does that refresh your
17 recollection of at least whether or not a meeting
18 was scheduled to occur with Matt Faris at Agape
19 Health & Rehab West Columbia on Friday, November
20 8th, 2013?

21 A. So seeing the e-mail, I definitely sent the
22 e-mail.

23 Q. Sure.

24 A. But I don't remember the meeting. But, yes.

25 Q. But you can confirm that this is an e-mail that

1 you've sent previously?

2 A. Yeah.

3 Q. All right.

4 MR. CONNOR: With that being said, Your Honor,
5 I'd like to move this e-mail and its attachments
6 into evidence.

7 MR. MANN: Your Honor, same objection we've
8 voiced throughout the trial. If we may approach, I
9 can discuss this issue.

10 THE COURT: Sure.

11 (Sidebar conference.)

12 MR. CONNOR: Your Honor, so we'd like to move
13 that into evidence as Plaintiff's 5.

14 THE COURT: Plaintiff's Exhibit 5 is admitted,
15 subject to Defendants' objection.

16 (Plaintiff's Exhibit No. 5 admitted into
17 evidence.)

18 BY MR. CONNOR:

19 Q. Now, ma'am, I'd like to ask you about some of
20 the information contained in this correspondence
21 that you provided to Matt Faris. First, explain to
22 the jury who Matt Faris is.

23 A. Who Matt Faris is now?

24 Q. Who he was, I'm sorry, at the time that you
25 were corresponding with him.

1 A. Okay. Quite honestly, I don't know Matt Faris'
2 position, what it was, back in 2013.

3 Q. Well, if it's been represented through
4 Defendants' discovery in this case that he was the
5 administrator at the facility, do you have any
6 reason to believe that's incorrect?

7 A. No.

8 Q. All right. And, at least based off your
9 communication, it indicates, does it not, that,
10 hey -- hi, Matt -- this is sent from you on the 7th,
11 correct, at 1:22. It says: Hi, Matt. I know this
12 e-mail is kind of jam-packed. Read over everything
13 and let me know if you have any questions.
14 Charletta is going to come with me tomorrow to help
15 move the meeting along. She will bring a copy of
16 Rock Hill's safety books to see if this is something
17 you guys want to adopt. If not, we'll work around.
18 See ya in the morning. Thanks, D2.

19 Is that how you normally would sign your name?

20 A. It is.

21 Q. Does this at least suggest that there's going
22 to be a meeting happening the next day?

23 A. Yes, sir.

24 Q. And that in anticipation of that meeting,
25 you're providing some resources that you forwarded

1 on for Matt's consideration?

2 A. Yes.

3 Q. And then if you look, it appears, does it not,
4 that there are attachments to this e-mail, including
5 a fall prevention policy, a restraint assessment
6 doc, a fall intervention doc, a root cause and
7 analysis for falls step-by-step doc, a safety
8 committee attendance sheet doc, safety committee
9 minutes doc, and new resident safety committee
10 assessment document?

11 A. Yes, sir.

12 Q. All right. Now, if you look at the e-mail, at
13 least your prior e-mail that is being forwarded on
14 that you've instructed Matt to review in
15 anticipation of your meeting with him the next
16 day -- first, who is Charletta?

17 A. Who is she now or who was she then?

18 Q. Who was she then?

19 A. Honestly, in 2013, I don't remember what
20 Charletta's role was then either.

21 Q. Okay. Where did she work?

22 A. She worked at Agape Rehabilitation of Rock
23 Hill, Incorporated.

24 Q. Okay. And sounds like she was planning to
25 attend with you?

1 A. According to the e-mail, it does.

2 Q. Does she still work with any sort of
3 Agape-related entity presently?

4 A. Not with an Agape entity.

5 Q. Okay. Looking at your prior e-mail that was
6 forwarded on, it indicates the purpose of at least
7 the meeting that you'd asked them to consider was to
8 address several issues, including falls within the
9 facility; correct?

10 A. Correct.

11 Q. All right. And the meeting also dealt with,
12 did it not or do you recall, a survey from October
13 2nd, 2013? Let me ask you this: Do you recall
14 whether or not one of the purposes of that meeting
15 was to address issues within the facility that had
16 been identified in a recent survey that they had had
17 at Agape West Columbia on October 2nd, 2013?

18 A. I do not recall that.

19 Q. Well, let me ask you to assume that the
20 facility in that survey was cited for a host of
21 regulatory violations including for a lack of fall
22 interventions related to two residents at risk for
23 falls. I want you to assume that fact; okay?

24 A. Okay.

25 Q. Now, for fall prevention -- and for fall

1 prevention measures not being implemented as
2 ordered, as well as allowing residents to have
3 repeated falls with and without injury. So those
4 were the fall-specific violations in that recent
5 survey that I want you to assume, as far as context,
6 before this meeting occurred. Okay?

7 A. Okay.

8 Q. Now, is it fair that you don't have any
9 specific recollection of the meeting and the
10 discussion that occurred during that meeting?

11 A. I do not have any recollection of it.

12 Q. Okay. Based off a previous meeting that you
13 used as the basis for the explanation for them to
14 review, what did you identify as the purpose for
15 your meeting that you forwarded the exemplar from
16 it? You can look at the second page of that e-mail.

17 A. Okay. Ask the question one more time.

18 Q. Sure. I asked what the purpose of the meeting
19 was. What's the first sentence indicate was the
20 purpose of that safety meeting?

21 A. The sentence reads: The purpose of the safety
22 meeting is to get a true baseline of the needs of
23 our residents, assess current interventions are in
24 place, ensure that the least restrictive devices are
25 in use, and to be proactive about keeping our

1 residents safe. That's what the sentence reads in
2 the e-mail.

3 Q. Sure. And would you have written that if you
4 didn't intend that to be the purpose of the meeting?

5 A. Would I have written that if I didn't intend
6 that was the purpose of the meeting?

7 Q. Right. I mean, so you've instructed your staff
8 in anticipation of a meeting that you're hosting:
9 Here's what we're going to talk about. Would you
10 assume that those are the purposes that you
11 identified in this e-mail consistent with your
12 intent?

13 A. Well, I wrote that that's the purpose of the
14 safety meeting.

15 Q. Sure. That's all I'm asking.

16 A. Yeah.

17 Q. Now, again, it appears that the documents were
18 attached to this e-mail and forwarded to Matt Faris;
19 correct?

20 A. Yes.

21 Q. And you have the benefit of those as well in
22 front of you; right?

23 A. Yes, sir.

24 Q. And included within them, and if you look at
25 your corresponding description, there appears to be

1 a sample fall-prevention policy which you had used
2 to guide your implementation of the fall prevention
3 program at Agape; correct?

4 A. Yes, according to this e-mail. Yes.

5 Q. Sure. And there's also a restraint assessment
6 form to be used for residents with restraints or
7 those being considered for restraints; correct?

8 A. Correct.

9 Q. Now, residents can be restrained; correct?

10 A. Yes.

11 Q. There's no law that prohibits that, if a
12 doctor's order is in place; correct?

13 A. Correct.

14 Q. And to get a doctor's order, staff often has to
15 bring the -- to the attention of the physician, the
16 need for consideration of restraints; correct?

17 MR. MANN: Objection, Your Honor.

18 THE COURT: What's your objection?

19 MR. MANN: It's a leading question. He's
20 basically testifying.

21 MR. CONNOR: She's an adverse witness on
22 cross-examination. I'm entitled to cross her all
23 day long, if I'd like.

24 THE COURT: Witness was called as an adverse
25 witness. Leading questions are appropriate.

1 THE WITNESS: Can you ask the question again?

2 MR. CONNOR: Madam Court Reporter, are you able
3 to read that back? I'm sorry.

4 (Question read back by the court reporter.)

5 THE WITNESS: So to get a restraint, you have
6 to get a physician order. Is that the question?

7 BY MR. CONNOR:

8 Q. My question is -- you've already answered that
9 question, I believe; correct?

10 A. Yes. To use a restraint, you have to have a
11 physician order.

12 Q. Right.

13 A. Yes.

14 Q. And in order to obtain a restraint, it's often
15 the nurse's obligation to bring that need to the
16 attention of the physician; correct?

17 A. That's one of the ways.

18 Q. Sure. Yeah. I mean, doctors aren't in these
19 facilities every day, are they?

20 A. Some facilities.

21 Q. Well, in your experience, typically is there a
22 doctor in the facility every day?

23 A. In some facilities.

24 Q. Okay. Well, they're not seeing every patient
25 every day, are they?

1 A. In some facilities.

2 Q. Okay. Well, ma'am, have you ever heard the
3 adage that the nurse is the eyes and ears of the
4 physician?

5 A. Have I ever heard that statement?

6 Q. Right.

7 A. I've heard that statement.

8 Q. Sure. And do you understand that physicians
9 often require nursing staff to bring to their
10 attention issues going on with patients?

11 A. Yes, sir.

12 Q. And that's because they have their hands on the
13 patient much more often than the physician, correct,
14 in most instances?

15 A. In most instances.

16 Q. Now, as it relates to the restraint assessment
17 form, you also indicate that included in that
18 document was a restraint alternative reference list
19 which was useful when updating the resident care
20 plan and searching for interventions to implement
21 for frequent fallers; correct?

22 A. That's what the e-mail states. Yes, sir.

23 Q. And that's what the document includes; correct?

24 A. Yes.

25 Q. And there's also a fall prevention and

1 intervention guide that was attached to be used when
2 searching for methods to keep residents safe; right?

3 A. There is a fall prevention and intervention
4 list that is good for that, yes.

5 Q. Okay. And you indicate that that guide is to
6 be used daily when nursing home staff were reviewing
7 incidents and accident reports in their AM meetings;
8 correct?

9 A. It can be used. Yes.

10 Q. And then there's a root cause analysis for fall
11 prevention guide offering step-by-step instruction
12 on how to investigate the true reasons residents
13 were falling; correct?

14 A. Correct.

15 Q. As well as a new resident safety committee
16 assessment which identified the fact that most falls
17 were occurring at Agape 72 hours -- within 72 hours
18 of admission; correct?

19 A. That's what the e-mail states. Yes.

20 Q. Okay. Well, do you have any reason to believe
21 that that fact that you've relayed in conveying this
22 information is incorrect?

23 A. No.

24 Q. Okay.

25 A. Not based on this e-mail. No.

1 Q. All right. So in forwarding this information
2 to Mr. Faris and indicating that he should have
3 reviewed it in anticipation of your meeting, you
4 explained -- sorry -- strike that.

5 Focusing on this new resident safety committee
6 assessment, you've explained to the facility
7 administrator how to create a system wherein
8 department heads had to meet with the resident
9 within 48 hours to perform a separate safety
10 assessment in addition to the standard fall
11 assessment done upon admission; correct?

12 A. Correct.

13 Q. And the assessment was to be discussed in the
14 AM report and spark discussion between department
15 heads on how to create individualized interventions
16 to keep your residents safe; right?

17 A. Correct.

18 Q. Now, ma'am, from a review of this e-mail, does
19 it at least appear that Matt forwarded this on to
20 different members of his department head and other
21 facility staff in anticipation of your arrival?

22 A. Based on this e-mail, it does appear that way.

23 Q. Sure. It states specifically: Hey, please
24 read below. Dee Dee is coming tomorrow morning to
25 do a safety meeting which will cover most of the

1 stuff we're working on for the plan of correction.
2 I'm going to need help from everyone to get through
3 this, so thank you in advance for your help. It
4 should happen right after morning report and
5 hopefully will be a meeting that will help us in the
6 future.

7 Do you see that?

8 A. Yes, sir.

9 Q. Have I read that appropriately?

10 A. Yes, sir.

11 Q. Now, when you forwarded these documents to
12 Mr. Faris, they were provided with the expectation
13 that they'd be reviewed; correct?

14 A. Yes, sir.

15 Q. Sure. I mean, that's what you tell them to do;
16 right?

17 A. Uh-huh.

18 Q. Now we're here today on account of a
19 debilitating fall involving a Ms. Utricia Shealy.
20 Okay? I want you to assume that.

21 A. Okay.

22 Q. And like the majority of falls that you noted
23 were happening within the first few days after a new
24 admission, I want you to assume that Ms. Shealy
25 experienced her debilitating fall on day two at

1 Agape West Columbia. Okay? I want you to assume
2 that that's the facts in evidence thus far.

3 A. Okay.

4 Q. Now, preventing these types of falls
5 experienced by Ms. Shealy, that was one of the goals
6 of your safety meeting; correct?

7 A. Correct.

8 Q. And the resources that we talked about that
9 were provided with the expectation that they'd be
10 reviewed, those weren't provided as just mere
11 meaningless paperwork; correct?

12 A. Could you restate that?

13 Q. Sure. You're not providing those just as mere
14 meaningless paperwork; you're providing them with
15 the expectation and hope that they're reviewed,
16 implemented, and that they have a positive outcome
17 on the care that is being provided at the facility
18 you're about to hold a meeting at; correct?

19 A. We're giving resources.

20 Q. Sure. You're giving resources with the goal
21 that they improve care; right?

22 A. Sure.

23 Q. And that's one of the things that you said was
24 your job duty as a regional president; correct?

25 A. Yes.

1 Q. Now, if you could, explain to the jury what CMS
2 is. What is that?

3 A. CMS is an over -- a governing body for
4 regulatory matters for skilled facilities.

5 Q. And what is Nursing Home Compare? What is
6 that?

7 A. Nursing Home Compare is a website that you can
8 find information out about nursing homes.

9 Q. Sure. And that website is actually, in fact,
10 made available by the U.S. government; correct?

11 A. Yes, sir.

12 Q. This is not just some online Google rating or
13 something like that; right?

14 A. Correct.

15 Q. It's an official site that informs patients,
16 residents, families about nursing homes and how they
17 compare with one another; right?

18 A. Yes, sir.

19 Q. In fact, CMS created the five-star quality
20 rating system to help consumers, families, and
21 caregivers compare nursing homes, assigning an
22 overall five-star rating as well as ratings in the
23 areas of health inspections, staffing, and quality
24 measures; right?

25 A. Yes.

1 Q. So your facility gets an overall rating and
2 then three separate ratings on those different
3 categories; right?

4 A. Yes.

5 Q. And, I'm assuming, both as an administrator, as
6 a DON, as a regional president responsible for the
7 oversight of care at multiple facilities, that that
8 is a resource that you would have looked at
9 periodically in your role as president; right?

10 A. During that time, yes.

11 Q. Sure. And that would have included the time of
12 2013, 2014, and 2015; right?

13 A. Yes.

14 Q. And is a facility's five-star rating something
15 you'd expect an administrator and a DON, the
16 leadership, to also be aware of?

17 A. Yes.

18 Q. Sure. Now, explain to the jury -- well, let me
19 ask you this: As a regional president for Agape
20 Senior, who would have been aware of what facilities
21 were under your leadership, would you be aware if
22 they get adverse findings such as a negative survey?

23 A. Yes.

24 Q. Right. And were you involved in actually
25 creating the facility's response, the plan of

1 correction?

2 A. At times.

3 Q. Sure. And as mentioned in this e-mail from
4 Mr. Faris, clearly they were in the process of
5 putting together a plan of correction for their
6 adverse survey findings; correct?

7 A. Per this e-mail, they were. Uh-huh.

8 Q. Sure. Now I'd like to talk about the survey
9 process just generally. And I'm not sure we'll find
10 a more qualified witness other than you to do that,
11 given you're a DON, an administrator, a regional
12 president at a corporate level, as well as a social
13 worker. Okay? Explain to the jury what this
14 document or this resource is.

15 A. You'll have to bring it a little closer.

16 Sorry. I'm farsighted.

17 Q. Okay.

18 A. It's an American Health Care Association
19 long-term care books, survey books, and it's got the
20 regulations in it.

21 Q. Okay. And what else does it have in it?

22 A. It has guidance to the surveyors in it.

23 Q. Right. And it informs them on how to conduct a
24 survey in a particular facility; correct?

25 A. Yes, sir.

1 Q. Now, this is a resource on how to conduct a
2 survey in a particular survey; correct?

3 A. Yes, sir.

4 Q. Now, this is a resource that you've seen
5 before; correct?

6 A. Yes.

7 Q. And does it have a nickname?

8 A. I don't recall it.

9 Q. Have you ever heard it referred to as the
10 watermelon book?

11 A. I've heard that before.

12 Q. Okay. Now, this is a resource available to
13 nursing home administrators; correct?

14 A. Yes.

15 Q. This is a resource available to management
16 companies; correct?

17 A. Yes.

18 Q. And this is a helpful, useful resource;
19 correct?

20 A. Yes.

21 Q. Now, generally, there are two types of surveys;
22 right?

23 A. I'm sorry?

24 Q. Generally, there's two types of surveys that
25 are conducted.

1 A. Yes.

2 Q. Tell the jury what the two general types are.

3 A. Certification and licensure surveys.

4 Q. All right. How about annual and complaint?

5 What are those?

6 A. Yeah. You have annual surveys that are
7 required annually and then you can get a complaint
8 survey if someone calls in a complaint on a
9 facility.

10 Q. Okay. And whether in response to a complaint
11 or because it's time for annual survey, the purpose
12 of those surveys is the same; right?

13 A. Restate that again.

14 Q. Well, would you agree that the goal of the
15 survey is, in effect, to assure that the residents
16 are receiving good care?

17 A. Yes.

18 Q. And a survey is an evaluation of whether the
19 nursing home is complying with the applicable
20 federal regulations, or state, if the state
21 surveyors are there, to ensure the quality of life
22 and quality of care of the residents; right?

23 A. Correct.

24 Q. And when the government finds that there's been
25 a violation, they notify you via what's called a

1 Form 2567; correct?

2 A. Yes, sir.

3 Q. And those are documents in the public domain;
4 right?

5 A. Yes.

6 Q. They're published and available as part of that
7 nursing home compare site; right?

8 A. Yes.

9 Q. You can actually go back and look at a
10 facility's survey history. The government makes
11 those available for us all; right?

12 A. Yes.

13 Q. And to the extent that you're notified of a
14 violation, the facility and its management team must
15 develop what's called a plan of correction; correct?

16 A. Correct.

17 Q. And what that means is, you prepare a document
18 representing to the government, the federal
19 government, under penalty of perjury that you're
20 going to be taking steps to correct the problems
21 that they've identified; correct?

22 A. Correct.

23 Q. And you've been involved in that both as a DON;
24 fair?

25 A. Yes.

1 Q. As well as an administrator; fair?

2 A. Yes.

3 Q. And as well as a regional president of Agape;
4 right?

5 A. At times.

6 Q. Now, the whole purpose of the process, the
7 survey process, the plan of correction, et cetera,
8 is to prevent the deficiency from reoccurring;
9 correct?

10 A. Correct.

11 Q. Now, at Agape, who all was involved in
12 preparing responses to surveys?

13 A. It depends.

14 Q. Okay. Who all, generally, would it entail?
15 What positions?

16 A. It depends.

17 Q. Okay. Well, give me some examples of some
18 people that you would expect to be involved,
19 positions.

20 A. It depends on what type survey it is; it
21 depends on what type of deficiency is received.

22 Q. Okay. How about a quality of care deficiency?

23 A. Then, typically, the director of nursing would
24 be involved.

25 Q. And who else?

1 A. Nursing, you know.

2 Q. Okay. How about your administrator?

3 A. Potentially.

4 Q. And your corporate compliance folks?

5 A. Possibly.

6 Q. Okay. All right. Let me ask you this: Is
7 there any sort of education or training provided to
8 staff within facilities about survey preparedness?

9 A. Yes.

10 Q. And that's something that you've been through
11 yourself; correct?

12 A. Yes.

13 Q. That's something you've -- that you know your
14 staff members at the facilities back when you were a
15 regional president would also have participated in;
16 correct?

17 A. Yes.

18 Q. And as both a facility DON and administrator --
19 I'm sorry. I think you answered that. You went
20 through those training sessions in all of those
21 roles; correct?

22 A. Correct.

23 Q. Let me ask you this: We heard a little bit and
24 you were here for the reading of the code of
25 compliance, but explain to the jury what Agape

1 University is.

2 A. Agape University is our internal education
3 portal.

4 Q. And is that something that was provided by
5 Agape Management Services, Inc.?

6 A. Yes.

7 Q. And that would have been available and provided
8 to all the staff members at the various skilled
9 nursing facilities including Agape West Columbia;
10 correct?

11 A. Yes.

12 Q. Do you recall who Dana Altman was?

13 A. Her name is familiar, but I can't place her
14 specifically right now.

15 Q. But you do recall participating and going
16 through Agape's survey preparedness training;
17 correct?

18 A. I don't recall it specifically.

19 Q. Right. But you do recall having gone through
20 it? I know you may not know each slide, but I think
21 you've testified that you went through it in each of
22 those positions that you held.

23 A. I thought you meant in general have I gone
24 through survey preparedness.

25 Q. Yeah. At Agape.

1 A. Yes.

2 Q. Okay. Now, ma'am, as a former administrator
3 and DON, as well as a regional president for Agape
4 Senior, would you agree that the whole purpose of
5 the survey process is intended to obtain a realistic
6 picture of what's going on within the facility?
7 Correct?

8 A. That's one of the purposes of the survey, yes.

9 Q. Right. I mean, they need to know what's going
10 on. You're not supposed to put on a show for them
11 when they show up to investigate the circumstances
12 that they're there to investigate; right?

13 A. Yes, sir.

14 Q. And, again, the goal of that is to ensure
15 compliance with applicable regulations and
16 preserving the health and safety and well-being of
17 your vulnerable residents; correct?

18 A. Yes.

19 Q. Now, ma'am, reviewing the Agape University
20 training module that's been produced in this case, I
21 do want to ask you a couple questions about that.
22 And these are Joint Exhibit No. 22. And we've added
23 the flag just for the jury's ease of use that just
24 says surveys so that they can find them.

25 So, ma'am, I want to ask you about some of the

1 information contained in this document. So, ma'am,
2 on the second page of the PowerPoint that's been
3 produced in this case as being the survey, training,
4 and effect during the period of Ms. Shealy's
5 residency for staff at Agape West Columbia, I want
6 to ask you about this statement here. It says:
7 General tips. Do you see that?

8 A. Yes, sir.

9 Q. And there's a note here that says don't seat
10 them where they have unattended or direct access to
11 charts or regulatory notebooks. Do you see that?

12 A. Yes, sir.

13 Q. Why would that be?

14 A. I don't know. You'll have to ask Ms. Altman.

15 Q. Okay. How about this one: As soon as
16 possible, an e-mail should be sent to your
17 leadership support team to notify them of a survey
18 arrival. And that would have included, of course,
19 yourself; right?

20 A. Yes.

21 Q. As well as the executive director? Is that
22 what the ED stands for?

23 A. Yes, sir.

24 Q. That's your administrator?

25 A. Uh-huh.

1 Q. Who is the PCC?

2 A. That stands for patient care coordinator.

3 Q. And what is that?

4 A. That's the -- that's kind of like a director of
5 nursing.

6 Q. Okay. And then the QAPI, who is that?

7 A. QAPI is Quality Assurance Performance
8 Improvement.

9 Q. And where does that person work?

10 A. The QAPI person? That person could be in
11 hospice.

12 Q. Hospice?

13 A. Could be. Uh-huh.

14 Q. Okay. But, certainly, when a survey comes in,
15 the staff is being informed to notify the corporate
16 office. That's the number one person on the list;
17 right?

18 A. It doesn't say corporate office; it says
19 regional president.

20 Q. Well, who does that person work for?

21 A. Agape Management Services.

22 Q. Right. Okay. I'm sorry. Inform the
23 management company; right?

24 A. Inform regional president is what it says on
25 the slide.

1 Q. Who is employed by the management company?

2 A. Yes, sir.

3 Q. Okay. Now let me ask you this: The next
4 couple slides deal with surveyor tasks. Task 1 is
5 offsite preparation. So it says: Offsite
6 preparation by the surveyors. They call -- or it
7 says -- next page: Hang and keep your patient
8 assignment books [sic] out of view where you will
9 seat the surveyors. What does that mean?

10 A. Hang and keep your patient assignment boards
11 out of view where you will seat the surveyors. What
12 do you mean what does it mean?

13 Q. Well, we don't work in a nursing home. Just
14 explain what those different elements are. What is
15 a patient assignment board?

16 A. I would assume a patient assignment board may
17 be a board where patients are assigned.

18 Q. Okay. And why is it that you would want to
19 keep those out of the view of your surveyors?

20 A. Well, my first thought would be for privacy of
21 patient information and maybe HIPAA.

22 Q. Well, ma'am, isn't it true that these surveyors
23 have unfettered access to patient records?

24 A. Well, I guess I would think privacy of
25 information until it's asked or requested.

1 Q. Okay. How about this one under task 3,
2 information gathering: Take this opportunity to
3 quickly and quietly notify your staff that are in
4 the field that surveyors are in the office. What
5 does that mean?

6 A. It means to quickly and quietly notify the
7 staff that surveyors are present.

8 Q. And how many of your facilities have underlying
9 field offices, these outlying offices referenced?
10 Is that normal for a nursing home?

11 A. Say that one more time.

12 Q. This all staff need to understand the urgency
13 even in outlying offices, what does that mean?

14 A. All staff need to understand the urgency even
15 at outlying offices. Ask your question again, sir.

16 Q. I'm just wondering what that means in a skilled
17 nursing facility where -- what would that entail,
18 outlying offices?

19 A. This may not be for the skilled nursing
20 facility.

21 Q. That particular point?

22 A. Right.

23 Q. Because this has been produced as the survey
24 training at the facility. So you think that might
25 be for some other type of Agape facility?

1 A. I'm not certain. I didn't -- yeah, I'm not
2 certain.

3 Q. What is this: Do not give anything to surveyor
4 until your QAPI has reviewed it. What does that
5 mean?

6 A. It means do not give anything to a surveyor
7 until QAPI has reviewed it.

8 Q. And why is that?

9 A. Because QAPI will look at it and then provide
10 it to the surveyor.

11 Q. And then do what? They shouldn't be modifying
12 records; right?

13 A. Right.

14 Q. That would be unlawful; correct?

15 A. Correct.

16 Q. So why then -- why must this review occur? And
17 it looks like, on the information-gathering stage,
18 that the facility is instructed to keep a copy for
19 the office, is that right, of whatever is provided
20 to these surveyors?

21 A. Yes. Also to ensure that we're providing the
22 thing that the surveyor is asking us to provide.
23 You know, sometimes if a surveyor asks a layperson
24 that's not familiar with records to provide
25 something, they may have picked up the wrong thing

1 to provide, so that's why you have designated people
2 to provide records.

3 Q. Because you don't want to give away -- you
4 don't want to show them more than they've asked for;
5 right? You don't want to give the whole cow if all
6 they ask for is the hoof; right?

7 A. You want to give them exactly what they're
8 asking for.

9 Q. Let me ask you this: What does this mean? Is
10 this y'all's -- is this how you feel about the
11 survey process, less is best?

12 A. I didn't do this PowerPoint.

13 Q. How about this one: Not only when it comes to
14 who they see and who they hear, you don't want some
15 of those folks that might have problems with how the
16 facility is run, those CNAs or those, you know,
17 people who don't know what's going on in front of
18 your surveyors; right?

19 A. Is there a question?

20 Q. Well, it says: Not only when it comes to who
21 they see -- who they see and hear. Less is best,
22 not only when it comes to who they see and hear.

23 That doesn't sound like full disclosure, does
24 it?

25 A. (Nonverbal response).

1 Q. Don't ever -- do not ever give them the whole
2 cow if all they seek to ask for is the hoof. Is
3 that how Agape did business with surveyors, in your
4 experience?

5 A. No, sir. In my experience, whatever surveyors
6 asked for, we gave them.

7 Q. That certainly conflicts, though, with this
8 presentation; correct?

9 A. I don't believe that that presentation is
10 saying don't give surveyors what they ask for.

11 Q. Okay. How about this one: Any staff member
12 who will come in contact with a surveyor must be
13 coached. What does that mean?

14 A. That means that they need to be coached to --
15 to say professionally -- to be professional.

16 Q. Does being professional mean complimenting them
17 on being a surveyor and what a difficult job it is?

18 A. I don't know if it's that. But I've worked in
19 a facility for a long time, and survey is a
20 difficult time. And a lot of times CNAs, nurses,
21 even administrative people, come a lot of times and
22 they're very nervous about talking to surveyors.
23 And one of the things that surveyors do is they want
24 to talk to direct staff.

25 And direct staff are always like, I'm so

1 nervous. And we always tell them, be yourself, be
2 honest, answer them, you know your job, you're fine,
3 you can do this, you got this, be honest, you got
4 this. So we always build them up: You're a good
5 employee, do your job, do well, you got them. So...

6 Q. This says you're complimenting the surveyor.

7 A. We're -- yeah. We're complimenting our
8 employees. And, again, I'm sorry, I didn't do the
9 PowerPoint. But we are a coaching company and we do
10 coach our employees to do well and be professional,
11 you have this; you do a good job, do your job, be
12 honest, be transparent, answer their questions, you
13 know, you'll be fine.

14 Q. Be honest, be transparent, answer their
15 questions, but skip the details and only speak in
16 bullet points. That's what the training says;
17 right?

18 A. That's what the PowerPoint says.

19 Q. The PowerPoint in effect during Ms. Shealy's
20 residency.

21 Now, ma'am, how about this one: You said be
22 honest and give them the details. But this says
23 they prefer stories over facts. Do you see that?

24 A. (Nonverbal response).

25 Q. How about this one: If they're on your side,

1 if they understand your perspective, they will often
2 bring the whole survey team to your side. Is that
3 something you try to do is sway these folks to your
4 side when a complaint has been made by a resident
5 who has been wronged?

6 A. No, sir, that's not something I do, if that's
7 the question that you're asking.

8 Q. It's not something that you do personally, but
9 it is something that Agape University instructs its
10 staff to do; correct?

11 A. (Nonverbal answer).

12 Q. Now, ma'am, do you know whether or not Agape
13 West Columbia has had several negative surveys in
14 the last months leading up to Ms. Shealy's residency
15 in July of 2014?

16 A. Can you put that last slide back up when you
17 said about persuading? Do you mind putting that
18 back up, because I do want to answer that.

19 Q. About their knowledge or their --

20 A. No. You said that, you know, that's something
21 that the company persuades. I did just want to
22 address that because --

23 Q. Well, I showed you Agape University, ma'am.

24 A. Yeah. So those last few slides were on DiSC.
25 And DiSC is actually personality profiling. So just

1 to answer that, those slides are about DiSC
2 training.

3 Q. Right.

4 A. And so DiSC training is something that if you
5 go out on the Internet and you look up DiSC, it's
6 actually a good teaching tool. And so those slides
7 were about personality profiling. So if you go out
8 and look at that, that's something that, you know, a
9 lot of companies use and it's about recognizing who
10 is in front of you, not to broad-stroke people, and
11 to really look at people for who they are.

12 It's a tool that's used often for many
13 companies --

14 Q. Right.

15 A. -- and it's about recognizing who is in front
16 of you, how to motivate people, how to use -- you
17 know, use things that will help people guide them.
18 And we use that for our employees to get the most
19 out of them when we're training or we're
20 instructing. And so we use that effectively.

21 And so even with surveyors, whoever is in front
22 of you, when it's a family member, when it's a
23 patient, and so when we're looking at that, even
24 with surveyor training, when we're talking to them,
25 we're using that as well, so not with just one group

1 of persons, you know, with just surveyors. We're
2 saying use it effectively with patients, with
3 anyone.

4 Q. Okay. So the company has realized effective
5 means of persuasion?

6 A. Of communication.

7 Q. Of communication. And attempted to use it to
8 persuade the surveyors to their side?

9 A. Not to persuade; to communicate.

10 Q. I think the jury will have the opportunity to
11 review that and come to the conclusion themselves
12 about what was being communicated. Thank you.

13 A. You're welcome.

14 Q. Now, the next thing I'd like to do, ma'am,
15 again, is talk about Agape West Columbia's survey
16 history. For example, in May of 2013, Agape West
17 Columbia received numerous citations for patient
18 care after several complaints were lodged about
19 quality of care. For example, on May 1st of '13,
20 state regulators issued a 24-page report finding
21 multiple violations of law including an F-tag 22
22 where they were cited for failing to conduct
23 thorough investigations and report multiple
24 allegations of abuse and neglect or delays in
25 toileting and changing residents.

1 Now, ma'am, again, I want you to assume that
2 the facts in this case will reflect that this
3 patient had not been changed by a CNA for five and a
4 half hours before her fall. Okay? I want you to
5 assume that that's what the evidence is going to
6 show. Okay?

7 Now, in that survey, the facility, Agape West
8 Columbia, was cited after a resident told the family
9 that she'd been sitting in urine and feces since
10 1:00 PM, for over five hours. And another instance
11 in that same survey --

12 MR. MANN: Your Honor, I'm going to object
13 here. He's not laid a foundation that this witness
14 is even knowledgeable of the surveys that he's
15 discussing.

16 MR. CONNOR: Your Honor, I'm happy to show her
17 the survey. They're public record. You can take
18 judicial notice of them. I'm happy to provide them
19 to her if she'd like to follow along.

20 THE COURT: That will be fine. Give her a copy
21 of the survey.

22 MR. CONNOR: Okay.

23 THE COURT: Y'all can approach, if you need to.
24 (Sidebar conference.)

25 THE COURT: Ladies and gentlemen, it's 12:15,

1 12:20. We'll go ahead and break until -- be back in
2 your jury room at 1:30. Okay? Is there
3 something you want to -- okay. I can deal with
4 that. Please don't discuss the case while you're at
5 lunch. I appreciate you being back in your jury
6 room at 1:30. Thank you.

7 (The jury exits the courtroom at 12:17 PM.)

8 THE COURT: This gives us an opportunity to
9 kind of talk about this freely. So you've got the
10 DHEC or -- which surveys? Are these CMS?

11 MR. CONNOR: They're -- well, the Department of
12 Community Health is actually who the federal
13 government --

14 THE COURT: Okay.

15 MR. CONNOR: -- employs to act as their
16 regulatory agent. So they're DHEC surveys related
17 to federal guidelines.

18 THE COURT: May I have a copy or see a copy?

19 MR. CONNOR: Yes, sir, Your Honor. This is our
20 exhibit copy. It's on the disc as well.

21 THE COURT: You're seeking to have her read,
22 essentially, but not admit it?

23 MR. CONNOR: I don't think we can do that.
24 It's very long. I'm just seeking to elicit
25 testimony --

1 THE COURT: Well, specific findings.

2 MR. CONNOR: -- about some of the relevant
3 findings that are applicable to this similar fact
4 pattern.

5 THE COURT: Are the ones tabbed the ones you're
6 going to go to?

7 MR. CONNOR: That's not even all of them. I
8 mean, there's fewer than what's tabbed. But, yes,
9 those are some examples.

10 THE COURT: Do you have an extra copy so you
11 can kind of go through it with me instead of reading
12 it line by line?

13 MR. CONNOR: So, Your Honor, the couple at
14 issue -- the first is from the May 1st, 2013 survey.

15 MR. BLAKE: What's the Bates label?

16 MR. CONNOR: I don't know what it is.

17 MR. BLAKE: It's not on the bottom of the
18 document you're looking at?

19 MR. CONNOR: It's cut off on this copy. I'm
20 sorry. They have page numbers on them. It's like 9
21 of 24. You can -- we can navigate it pretty easily
22 that way.

23 So the first areas that I wanted to inquire
24 about, Your Honor, are three instances, beginning on
25 page 20 -- 12 and 13, that relate to leaving a

1 resident for extended periods of time without ADL
2 care, specifically the use of the restroom, which is
3 exactly what Plaintiff contends here.

4 And the times are even very similar to the
5 times asserted. Here, there's a five-hour delay in
6 toileting that resident. Number -- on page 15,
7 there is another delay in toileting the resident.
8 I'm sorry. Let me -- yeah. So it goes into the
9 second page. So it starts on page 14 and -- or 12
10 and 13 -- so it starts on 12 and goes through the
11 top of 13 about the five-hour delay in toileting
12 that patient. Then there's an instance --

13 THE COURT: When you say 12, you mean the Bates
14 stamp 12?

15 MR. CONNOR: No. Down at the bottom, you see
16 12 of 24?

17 THE COURT: Okay.

18 MR. CONNOR: I'm sorry. It talks about how on
19 Easter Sunday the family brought the resident an
20 outfit to wear at 8:00 AM. They left. When they
21 came back, she was found at the entrance with her
22 breasts exposed and that the resident told the
23 family she'd been sitting in her urine and feces
24 since 1:00 PM, for five hours. And they confirmed
25 that that was a violation of -- a dignity violation.

1 THE COURT: So this is a report of --

2 MR. CONNOR: So complaints have been lodged.

3 If you look at the front --

4 THE COURT: It's not something noticed by
5 surveyor specifically, just --

6 MR. BLAKE: This one is describing a statement
7 made by a resident to her family who then reported
8 that hearsay again to a surveyor who then embedded
9 it in the document.

10 MR. CONNOR: Who concluded that there'd been a
11 violation of the --

12 MR. BLAKE: There's no -- where's --

13 MR. CONNOR: You have -- there's an F-tag
14 violation. If you read at the beginning, Your
15 Honor -- how this works -- let me just explain how
16 this works because, clearly, these defendants don't
17 understand.

18 If you look, there's an F-tag; that's the
19 violation. That is -- for example, on the first
20 page of the document, the surveyor has found F-153.
21 That's a violation. Every time they get a tag, it's
22 a violation. The -- it identifies the regulation
23 that's at issue, it identifies the regulation, and
24 then it says how it was not met as per the following
25 findings, and it gives you the factual basis for

1 their -- each of the violations that occurred.

2 Now, some of these F-tags deal with quality of
3 care. Some of these F-tags deal with other matters
4 that certainly are not relevant, like housekeeping
5 or fire marshal, fire code violations, that sort of
6 thing.

7 My intention is simply to elicit the testimony
8 of those that are relevant that this facility was on
9 notice about prior to this resident's admission.
10 And I'm not going to go through all of these. That
11 would be very time-consuming. I just want to
12 elicit, in summary, that they were found for similar
13 violations before this patient's residence.

14 THE COURT: So you're offering it for notice,
15 not for the truth of the matter asserted.

16 MR. CONNOR: That's correct.

17 THE COURT: You know, I've never looked at one
18 of these forms prior to today, but, I mean, in
19 essence, this is a government report based upon
20 statements or allegations provided about an event
21 that allegedly occurred.

22 MR. CONNOR: And confirmed findings of
23 violations.

24 THE COURT: Confirmed --

25 MR. CONNOR: The State has confirmed that there

1 was a violation and cited them. And they are then
2 required, as has already been testified to, provided
3 plan of correction to explain -- these are
4 admissions on the -- the right-hand column is all
5 the admissions of the facility on how they say they
6 plan on dealing with these.

7 THE COURT: Okay. So, I mean, it's almost like
8 an accident report.

9 MR. BLAKE: Accident reports, yeah, which don't
10 come in evidence; right?

11 THE COURT: They don't get admitted; that's
12 true. But, oftentimes, they are used to elicit
13 testimony.

14 MR. BLAKE: Sure. But she's just not the
15 witness, Your Honor. I mean, that's my point.

16 THE COURT: She's not the officer.

17 MR. BLAKE: She was not responsible for this
18 document or whatever happened at that facility. So
19 to go through a survey for -- simply for her to look
20 at for allegations that happened over a year ago --

21 MR. CONNOR: I'm happy to do it with Mitzi
22 Myers, Your Honor.

23 THE COURT: Well, we're still going to come
24 back -- since she's the one who actually --

25 MR. CONNOR: They're signed by the

1 administrator. I mean, it doesn't matter -- Mitzi
2 Myers should dang better know what her survey
3 history is before she took over. I mean, this is
4 right before she took over. It's signed -- the
5 first page is signed by the --

6 THE COURT: Okay.

7 MR. CONNOR: So if he wants me to take it up
8 with her --

9 THE COURT: She's saying she received.
10 Obviously Mitzi Myers received the documents because
11 she signed them.

12 MR. CONNOR: If she did not, that's a basis for
13 our negligence, Your Honor. If she doesn't know
14 what's going on with this facility while she's
15 operating it when our patient is there just months
16 before --

17 THE COURT: My question is, is that Mitzi
18 Myers' signature on page --

19 MR. CONNOR: No. That's Mr. Faris'. That's
20 the administrator at the time, Mr. Faris, who our
21 witness conducted a safety meeting about -- with,
22 which is why I intended on eliciting it from her.
23 But if --

24 MR. BLAKE: She never testified she attended
25 that safety meeting. She has no recollection of

1 doing it.

2 MR. CONNOR: Conveniently.

3 MR. BLAKE: And, again --

4 MR. CONNOR: The evidence shows that she did.

5 MR. BLAKE: Sure. And then we have a document
6 here that's subject to appeal. This is a part of
7 the actual government record on this. Every single
8 one of these F-tags can be appealed, adjudicated
9 further.

10 Instead, we're looking at a snapshot of a
11 report. The only purpose of this document is to
12 tell the jury stories about bad acts. It's the only
13 reason for it.

14 MR. CONNOR: Wrong. The reason for it is to
15 provide --

16 THE COURT: Proof of notice.

17 MR. CONNOR: That's right.

18 MR. BLAKE: Proof of notice of what?

19 MR. CONNOR: Proof of notice.

20 MR. BLAKE: Of what? That a year ago somebody
21 claimed to have sat in urine for five hours?

22 MR. CONNOR: Well, that's not the only --

23 MR. BLAKE: That's not probative to any issue
24 in this case that a year ago, someone claimed they
25 sat in urine for five hours.

1 MR. CONNOR: Your Honor, there's multiple
2 examples of this sort of neglect over and over and
3 over again.

4 THE COURT: Just a minute. Counsel, y'all want
5 to come up real quick?

6 (Sidebar conference.)

7 MR. CONNOR: Your Honor, I'd ask the witness be
8 excused. She should not be privy to these
9 conversations.

10 THE COURT: You can step out, ma'am. Do not
11 discuss your testimony with anyone. You can talk
12 about the weather or anything else, just not your
13 testimony.

14 (The witness exits the courtroom.)

15 THE COURT: We just had a bench conference
16 regarding -- Mr. Connor, you put it on the record
17 since you understand it better.

18 MR. CONNOR: Yes, sir. We've had a bench
19 conference. And it's my understanding, Your Honor,
20 that we've agreed to limit my examination to only
21 the survey of 10/12 of '13 and that my examination
22 will be limited to identification of the F-tags that
23 were violated that were -- that I contend are
24 relevant, which is a limited number, as well as the
25 specifics of the findings of the State that relate

1 to falls. Beyond that, I will not inquire of any
2 other instances or violations.

3 THE COURT: All right. Does that make sense,
4 subject to your objections, of course, Mr. Blake?

5 MR. BLAKE: Yes, sir. Subject to the
6 objections regarding prejudicial effect and prior
7 bad acts and prior adjudication, we're on the same
8 page.

9 THE COURT: All right, folks. We got a
10 whopping 40 minutes. Do the best you can. We'll
11 start a few minutes later if we need to.

12 MR. CONNOR: Yes, Your Honor. We did
13 anticipate this being an issue that was going to
14 require some of your time, so I don't want you to
15 think that --

16 THE COURT: I'm glad y'all anticipated that.

17 (Luncheon recess 12:47 PM - 1:42 PM.)

18 THE COURT: Is the witness ready to come back
19 to the stand? Ms. Henderson, excuse me.

20 THE WITNESS: Yes.

21 THE COURT: We put our issues on before we
22 broke for lunch, so we're ready to go now; right?

23 MR. CONNOR: Yes, Your Honor.

24 THE COURT: All right. Let's bring them in.

25 (The jury enters the courtroom at 1:43 PM.)

1 THE COURT: Okay. Mr. Foreperson, ladies and
2 gentlemen of the jury, welcome back. I hope you had
3 a nice lunch. We'll pick back up where we left off
4 with the plaintiff's case.

5 MR. CONNOR: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. CONNOR:

9 Q. Ma'am, before we broke, we talked about the
10 survey process. And just to give some context to my
11 next set of questions, I want to recap what I
12 believe you have already testified to.

13 First, would you agree, ma'am, that the survey
14 process puts the facility on notice of problems and
15 dangerous conditions that the surveyors find?

16 Correct?

17 A. Yes.

18 Q. Okay. And they are set forth in what's called
19 a notice of deficiencies or a form -- or with --
20 common within the industry called a Form 2567;
21 correct?

22 A. Yes.

23 Q. Now, that form is signed by the administrator,
24 correct, of the facility?

25 A. Yes.

1 Q. That acknowledges that they're on notice of the
2 issues that are brought to their attention by the
3 government; right?

4 A. Yes.

5 Q. And, in fact, the response, the facility, if
6 they want to continue to participate in the Medicare
7 and Medicaid programs, they have an obligation to
8 submit a plan of correction; right?

9 A. Yes.

10 Q. Now I want to ask you about a particular plan
11 of correction that is referenced in the e-mail that
12 we've already looked at and that has been admitted
13 as an exhibit. Okay?

14 A. Okay.

15 MR. CONNOR: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. CONNOR:

18 Q. And I've turned to the specific survey that I'm
19 going to ask you about.

20 A. Okay.

21 Q. You've seen facility surveys before; right?

22 A. Yes.

23 Q. In your various capacities, both as DON
24 administrator as well as a DON -- I mean, as well as
25 a regional president; correct?

1 A. Yes.

2 Q. And in this particular survey, again, that's
3 made reference to -- there's a plan of correction
4 included in this document; correct?

5 A. Yes.

6 Q. And I just want it to identify, for the jury's
7 benefit, the types or the nature of violations that
8 were found in this case. Now, let me ask you this,
9 ma'am: Can you explain just generally what a tag
10 is? What does that mean when a surveyor finds a
11 tag?

12 A. It is a condition of participation that is not
13 in compliance at the time of the survey.

14 Q. And the tags actually have numbers; correct?

15 A. Correct.

16 Q. As well as letters; right?

17 A. Correct.

18 Q. And they correlate to a particular federal
19 regulation that the government has found was not met
20 in this -- in the survey; correct?

21 A. Correct.

22 Q. So using, for example, the long-term care
23 surveyors guide, the facility can identify the tag
24 that they've been cited for and review the
25 regulation; right?

1 A. Correct.

2 Q. So in this particular case, with respect to
3 those that we contend are relevant here in
4 Ms. Shealy's case, you would agree, would you not,
5 that in the 10/12/2013 survey, this facility was
6 found to have been cited with an F-309 tag; correct?
7 And that starts, I believe, on page 2 of the survey,
8 about halfway down. You see that?

9 A. Yes.

10 Q. And that violation is found and correlates with
11 CFR 42 483.25 [sic] which requires that the facility
12 provide care and services for the highest well-being
13 of the residents; correct?

14 A. Yes.

15 Q. Now, the next tag that we contend is relevant,
16 if you flip to page 8 of the document, is a tag at
17 the very bottom for F-323. Do you see that? It's
18 page 8 of 44, I believe.

19 A. Yes. Yes.

20 Q. Okay. And that, again, corresponds to a
21 specific federal regulation, 42 CFR 483.25(h) that
22 requires that facilities provide an environment free
23 of accidents and hazards, appropriate supervision,
24 and devices. You see that?

25 A. Yes.

1 Q. All right. In addition, ma'am, if you flip
2 over to page 21, would you agree that this facility
3 was on notice of violations related to F-329? And,
4 again, that starts up on page 21.

5 A. Yes.

6 Q. And that deals with the provision of -- or a
7 violation of 483.25(i) which requires that a drug
8 regimen be free from unnecessary drugs; correct?

9 A. Correct.

10 Q. And then the last one I want to ask you about,
11 ma'am, that we contend the facility was on notice
12 prior to our resident's admission is found on page
13 32 of the survey. And it deals with citations
14 related to -- I'm sorry. It's actually at the very
15 bottom of 31 -- F-514, which corresponds with the
16 corresponding federal regulation 42 CFR 483.75(i)(1)
17 which deals with ensuring that records are complete,
18 accurate, and accessible. You see that?

19 A. Yes, sir.

20 Q. Now, ma'am, looking specifically at some of the
21 allegations that the facility was on notice of
22 occurred -- the violations that the facility was on
23 notice of that had occurred as a basis for their
24 citations, looking at page 3 of 44 -- and this is
25 specific to the F-tag 309 -- this facility was found

1 to have failed to provide treatment orders to a
2 patient postfall. Do you see that?

3 A. What page is it again?

4 Q. Page 3 of 44 where it begins to identify the
5 bases for the findings.

6 A. Yes, sir.

7 Q. Now, in response to that finding, the company,
8 through their plan of correction, put forth what
9 they were going to do, and that included ensuring
10 corporate -- that the corporate compliance team
11 would audit treatment records via computer for
12 missed tasks. Do you see that?

13 A. Yes, sir.

14 Q. Is that something that you would help oversee
15 in your role as president for the Agape Senior
16 regional president?

17 A. No, sir.

18 Q. Okay. Who would have been part of that
19 corporate compliance team?

20 A. There were members designated on the corporate
21 compliance team.

22 Q. And what sorts of positions, typically, would
23 that entail?

24 A. There were -- it was actually a team.

25 Q. Okay. So Agape Senior management had a team

1 that was available and there with the roles
2 specifically of ensuring that its facilities were
3 complying with applicable regulations; right?

4 A. Could you say that again?

5 Q. Sure. I want to -- you can tell me. What was
6 the role of this corporate compliance team?

7 A. Well, I'm going off of what this says here.
8 And it says: Corporate compliance team will audit
9 treatment records. So that would be a team, a
10 corporate compliance team, based on what this says.

11 Q. Right. And I want to know your personal
12 experience as a regional vice president in dealing
13 with the corporate compliance teams, what sorts of
14 things would you rely upon them to do, and that sort
15 of thing.

16 A. If they were providing support?

17 Q. Yes, ma'am.

18 A. Yeah. It would be whatever -- if they would
19 provide compliance support. So in this situation,
20 if they were designated to do here, they would do
21 exactly what it said here.

22 Q. Okay. So there was an expectation, especially
23 if this was being represented to the government,
24 that this would be what would happen, that those
25 things would continue and occur; right?

1 A. Yes, sir.

2 Q. All right. So flipping over again to page 8,
3 which deals specifically with the F-tag 323 -- tell
4 me when you're there. Are you there?

5 A. Page 8?

6 Q. At the very bottom, do you see the F-tag?

7 A. Yes.

8 Q. Okay. And then on the next page it provides
9 the explanation; right?

10 A. Yes.

11 Q. And in this instance, on October 12th of 2013,
12 the facility was found noncompliant specifically for
13 issues related to falls; correct?

14 A. Yeah -- hold on one second. I'm going to have
15 to read -- the tag is on accident and hazards, so I
16 need to read what the deficiency was. Give me just
17 one second. Yes.

18 Q. Okay. There, the State found that the
19 requirement under that F-tag corresponding to 40
20 483.25(h) was not met, in that the facility failed
21 to provide fall-prevention interventions
22 post-hospitalization resulting in a resident
23 sustaining a second hip fracture. Do you see that?

24 A. Yes.

25 Q. Okay. And they also found violations

1 associated with fall intervention measures, such as
2 pads and alarms not functioning. Do you see that?

3 A. Yes.

4 Q. Now, ma'am, in response to that violation,
5 again, this facility has prepared a response about
6 how they're going to correct that deficiency;
7 correct?

8 A. Yes.

9 Q. And that response indicates, among other
10 things, that audits of fall risk assessments will be
11 conducted by the safety team to ensure proper
12 interventions are in place; correct?

13 A. Yes.

14 Q. They also indicate that an inservice on fall
15 prevention would be completed for staff, which means
16 they were going to be training staff about how to
17 prevent falls; correct?

18 A. Yes.

19 Q. They also indicate that for all new admissions,
20 that they will be assessed during the clinical
21 meeting to ensure proper interventions are in place,
22 utilizing the 24-hour chart audit form. Do you see
23 that?

24 A. Yes.

25 Q. And, ma'am, isn't that exactly one of the tools

1 that you had forwarded to this facility for their
2 safety meeting?

3 A. I'm going to have to refer back to my e-mail,
4 if you don't mind.

5 Q. Sure.

6 A. I don't see the 24-hour -- are you referring to
7 the 24-hour chart audit form?

8 Q. Just the fact -- really what I'm referring to
9 is that you had provided these folks, in
10 anticipation of preparing this plan of correction,
11 tools that included new resident audit forms;
12 correct?

13 A. The e-mail does refer to resources, but I don't
14 see in this plan of correction where they're
15 referring to a specific form.

16 Q. Sure. No. I understand that. I'm just saying
17 the -- what you asked to occur appears to have been
18 implemented here. They've indicated to the State
19 that they're going to be assessing new admins during
20 the clinical meeting -- that's the morning meeting,
21 right -- to ensure that appropriate interventions
22 are in place using a tool, what they call a 24-hour
23 chart audit, which assumes that within 24 hours,
24 they're going to be auditing this patient's
25 condition.

1 A. I don't -- I don't want to say -- I don't want
2 to go off an assumption, because it doesn't say
3 something that's directly in here.

4 Q. Okay. And my point is -- and I'm not asking
5 you to do that, ma'am. My point is, simply, you
6 provided a tool that specifically directed them on
7 how to audit new admissions different than just the
8 generic fall assessment; correct?

9 A. Yeah. Per my e-mail, I had given them
10 resources.

11 Q. That's right.

12 A. Yep.

13 Q. Right. And if you look at the date, if you'll
14 flip back to page 1, this plan of correction was
15 submitted by Mr. Faris, the individual who you had
16 forwarded this information, on what date?

17 A. From page 1?

18 Q. Yes, ma'am.

19 A. Matt Faris signed this on June 3rd, 2013.

20 Q. No, ma'am. The 10 -- the October 12th, 2013.
21 I think you looked at the very first page.

22 A. Oh, okay.

23 Q. That was another survey.

24 A. What page? I'm sorry.

25 Q. It's okay. It's 1 of 44 for the 10/12/2013

1 survey. I think I have flagged the starting page.

2 A. I hope I'm reading from the right one now. Is
3 it 12/9/13?

4 Q. I think it's 12/19/13.

5 A. 12/19/13.

6 Q. Yes, ma'am. So in December, about a month
7 after your meeting, the plan of correction was
8 submitted; correct?

9 A. Yes. A month after this e-mail, yes.

10 Q. All right. Now, looking in that same
11 violation, the F-323, if you'll flip over a couple
12 pages, there's other indications, is there not, that
13 this facility was being specifically cited for fall
14 issues? Do you see that, beginning on page 10 at
15 the bottom?

16 A. Yes.

17 Q. There, a particular resident had falls after
18 being identified as having risk factors including a
19 history of falls, confusion and disorientation, and
20 incontinence. Do you see that?

21 A. Yes, sir.

22 Q. And as part of the State's findings of
23 deficiencies, they contended that the interventions
24 that the facility put in place, although noted as in
25 place, were not in use at the time of the fall, nor

1 did they identify which specific -- or, I'm sorry,
2 they didn't identify the specific interventions that
3 were to be in use at the time of the fall; correct?

4 A. Correct.

5 Q. And there's a gap of time for four days, in
6 fact, when the treatment records reflect that there
7 were no fall interventions in place whatsoever;
8 correct?

9 A. Can you repeat that again?

10 Q. Yes, ma'am. Towards the bottom of that
11 description, there was a finding that a review of
12 the medication and treatment administration records
13 found that there were no fall prevention measures in
14 place, despite their assessment of this patient, in
15 use for a multi-day period up to the date of the
16 fall.

17 A. Yes.

18 Q. Now, ma'am, if you'll flip over a few more
19 pages, still under that same violation, flip to page
20 13 for me. In this particular instance, there was
21 another resident with cognitive deficits who was
22 allowed to have eight falls since their admission,
23 including one recently being on 10/7/13. Do you see
24 that?

25 A. Yes.

1 Q. And the facility found that a review of the
2 treatment records for that particular patient again
3 found that fall-prevention measures were not
4 implemented as ordered, including the use of a pad
5 alarm. We flip over to the next page.

6 A. Yes.

7 Q. All right. Now, ma'am, from a review of the
8 CMS data available in the public domain about this
9 particular facility, specifically that medicare.gov
10 site, it appears that this facility not only
11 received significant deficiencies, but that it was
12 also fined, that it had to pay a monetary penalty.

13 Was that a common occurrence within the
14 facilities that Agape Senior had responsibility for
15 managing?

16 A. I don't have knowledge of all of the facilities
17 that Agape managed. I only have knowledge of the
18 facilities that I was responsible for.

19 Q. Okay. Well, what about those, though, that you
20 would, on occasion, like in this instance, either
21 provide resources or even conduct safety meetings?

22 A. I don't have knowledge of that information for
23 those facilities because I was not responsible for
24 those facilities. So I don't have detailed
25 information about those facilities.

1 Q. I understand you may not have detailed
2 information. My question is, simply, would it be a
3 common occurrence that Agape skilled nursing
4 facilities would receive hefty fines from the
5 federal government for noncompliance with the
6 federal regulations?

7 MR. MANN: Your Honor, may I approach?

8 THE COURT: Sure.

9 (Sidebar conference.)

10 MR. CONNOR: For the record's sake, Your Honor,
11 I think we need to mark the exhibit that she's
12 reviewing for identification purposes. I think I
13 forgot to do that. That's all the questions I have
14 about that specific document.

15 THE COURT: For identification purposes only?

16 MR. CONNOR: Right. That's correct.

17 THE COURT: What is that, 6?

18 MR. CONNOR: Plaintiff's 6, I believe.

19 (Plaintiff's Exhibit No. 6 marked for
20 identification.)

21 THE COURT: Mr. Blake?

22 Mr. Connor, did you say you were finished?

23 MR. CONNOR: No, Your Honor.

24 THE COURT: I thought you said those were all
25 the questions you had for this witness.

1 MR. CONNOR: About that specific document.

2 THE COURT: Oh, okay.

3 MR. CONNOR: I'd like to mark another exhibit,
4 is my point for identification.

5 THE COURT: All right.

6 MR. CONNOR: Your Honor, I'd like to mark this
7 next exhibit for identification purposes only and
8 then ask the witness some questions about it. It's
9 the medicare.gov five-star rating for this
10 particular facility.

11 THE COURT: For identification purposes only.

12 MR. CONNOR: Thank you. May I approach?

13 THE COURT: Yes, sir.

14 (Plaintiff's Exhibit No. 7 marked for
15 identification.)

16 BY MR. CONNOR:

17 Q. Ma'am, I've handed you a document. If you
18 could, just explain what that is.

19 A. This looks like a printout from the
20 medicare.gov nursing home compare site. It says
21 Agape Nursing & Rehab Center.

22 Q. Sure. And I think you've already previously
23 testified, ma'am, that on numerous occasions you'd
24 access this site to see how your facilities were
25 performing as rated by CMS; correct?

1 A. I don't think I said numerous occasions. But I
2 did say -- I explained what the site was. Yes.

3 Q. Sure. And I think you also testified that you
4 would expect that leadership within the facility
5 also to have knowledge of where their facility falls
6 and how they're performing pursuant to that site.
7 Correct?

8 A. Yes, sir.

9 Q. Now, ma'am, I asked you about that five-star
10 rating and the fact that facilities are rated
11 overall with a star and then rated in three
12 different categories; correct? Do you recall that
13 discussion?

14 A. Yes, sir.

15 Q. All right. And in addition, there's other
16 information available through that site, including,
17 for example, the surveys like the one we just talked
18 about that you reviewed for identification purposes;
19 correct?

20 A. Correct.

21 Q. Now, in addition to those surveys, there's also
22 information like whether or not a facility is fined
23 as a result of deficiencies that arise out of that
24 survey; correct?

25 A. Say that one more time.

1 Q. Sure. In addition to providing the survey
2 information, there's information about the penalties
3 that a facility incurs as a consequence of adverse
4 findings.

5 A. Okay.

6 Q. Right?

7 A. On the site?

8 Q. Yes, ma'am.

9 A. Okay.

10 Q. And if you'll flip, for example, to page 24,
11 can you tell us whether in this case for the
12 specific survey that we just reviewed, whether this
13 facility was fined?

14 MR. BLAKE: May I approach?

15 THE COURT: You want to approach now?

16 MR. BLAKE: He didn't -- after this question.

17 THE COURT: Okay.

18 A. I just want to make sure. Did we just review
19 the survey dated for 10/12/2013?

20 Q. Yes, ma'am.

21 A. Okay. And you want me to read the amount
22 or you want --

23 Q. Tell me whether they've been fined.

24 A. Yes.

25 Q. Okay.

1 A. It appears to be. Yes.

2 Q. And what was that amount?

3 MR. BLAKE: Objection.

4 (Sidebar conference.)

5 MR. CONNOR: I'll withdraw my question, Your
6 Honor.

7 BY MR. CONNOR:

8 Q. Now, ma'am, what was Agape Nursing &
9 Rehabilitation Center's rating for -- their overall
10 rating?

11 A. This printout is dated 8/6/2015. And on this
12 printout that's in front of me, it says one out of
13 five stars.

14 Q. For their overall rating; correct?

15 A. Yes.

16 Q. And that's defined as much below average;
17 correct?

18 A. Yes.

19 Q. And what's their overall rating for quality
20 measures?

21 A. One out of five stars.

22 Q. And, again, that's much below average; correct?

23 A. That's what's stated here.

24 Q. Now, as a former DON, an administrator, and a
25 regional president, explain to the jury what quality

1 measures are.

2 A. Quality measures are -- actually, there are a
3 number of quality measures in a skilled nursing
4 facility.

5 Q. Sixteen; right?

6 A. Yeah. And I'll be honest with you, I'm a
7 little rusty. I've been out of skill care directly,
8 so I can't state them for you.

9 Q. Well, can you agree that they include things
10 like falls?

11 A. Yeah.

12 Q. As well as medication errors?

13 A. Yes.

14 Q. Wounds?

15 A. Yes.

16 Q. Psychotic medication usage?

17 A. Yes.

18 Q. And the rating reflects how the facility cares
19 for their residents in comparison to what's expected
20 and as compared to what other facilities across both
21 South Carolina as well as the country are -- what
22 they're doing; right?

23 A. Say that one more time.

24 Q. Sure. The rating reflects how the facility
25 cares for its residents in comparison to what's

1 expected, meaning there's expected thresholds, and
2 shows how they're performing in comparison to
3 national averages as well as state averages;
4 correct?

5 A. The rating attempts to give a condensed opinion
6 on nursing homes that's easy for the public to pick
7 a facility.

8 Q. Right. And as part of that, for example, when
9 you look at quality ratings, you can see how, for
10 example, if you flip over to page 21 of that report,
11 how this facility is performing as compared to the
12 South Carolina average, as compared to the national
13 average; correct?

14 A. Yes.

15 Q. So you can see if incidences, for example, of
16 falls, are greater in your facility as compared to
17 your colleagues in the state and nationally; right?

18 A. Yes.

19 Q. And that's a tool that helps the facility
20 identify where they have problems and make
21 corrections; right?

22 A. The five-star rating --

23 Q. Right.

24 A. -- is a tool?

25 Q. Isn't it a tool that you can use to see where

1 you may have challenges and make improvements?

2 A. The five-star rating?

3 Q. Yes, ma'am.

4 A. I don't think the five-star rating is a tool.

5 Q. Okay. Then what is it?

6 A. I think that it's a measure that's supposed to
7 easily help the public make the choice.

8 Q. Okay. You don't think there's any benefit for
9 the operators or for the administrator or for the
10 DON to see how they're performing?

11 A. I don't think it's a tool for them.

12 Q. Okay. But it's informative; it puts them on
13 notice of what issues they may have?

14 A. The five-star rating?

15 Q. Yes, ma'am.

16 A. That it puts them on notice on what they may --
17 say that again.

18 Q. Yeah. It puts them on notice of what issues
19 may be going on within the facility.

20 A. The five-star rating?

21 Q. Yes, ma'am.

22 A. No, sir. I don't think so.

23 Q. Just so I understand your testimony, the fact
24 that a facility is scored a certain way and you can
25 see specific quality indicators and compare them to

1 how you're doing versus your colleagues in your
2 state and nationally, that's not a useful tool?

3 A. Well, I think you can get that from other
4 sources.

5 Q. Sure. Like surveys?

6 A. Yes.

7 Q. Okay. All right. Now back to the plan of
8 correction at issue in this case. As I mentioned
9 and as we looked at, there's a notation by the
10 administrator, signed by him, that the corporate
11 compliance team would, in fact, audit treatment
12 records via computer for certain tasks. Do you
13 remember us talking about that?

14 A. What page was that on?

15 Q. I believe one of the many references to that
16 sort of compliance offering is on page 3 of 44 for
17 the 10/12/2013 survey. And I'll represent there are
18 multiple references to that sort of support
19 allegedly offered by the corporate compliance team.
20 For example, if you look at page 6 of 46, there's
21 another reference. You see what I'm talking about?
22 You recall us talking about that? And it should be
23 just past the flag --

24 A. I got it.

25 Q. So you remember that?

1 A. Yes, sir.

2 Q. All right. Now, do you know whether these
3 sorts of audits were occurring in July of 2010?

4 A. No, I do not know for this facility.

5 Q. Are you aware, though, of anything that would
6 have prevented the corporate compliance team from
7 doing those sorts of audits?

8 A. No, sir.

9 Q. That's all the questions I have for you, ma'am.
10 Thank you.

11 THE COURT: Mr. Blake?

12 MR. CONNOR: I'm sorry, Your Honor. I do -- at
13 this time, would like to move into evidence the
14 five-star printout from medicare.gov before I
15 release the witness.

16 MR. BLAKE: No objection.

17 THE COURT: That would be Plaintiff's Exhibit
18 7?

19 MR. CONNOR: I think it was --

20 THE COURT: Or are we at 8?

21 MR. CONNOR: It's 7, Your Honor.

22 THE COURT: Plaintiff's Exhibit 7 admitted into
23 evidence without objection.

24 (Plaintiff's Exhibit No. 7 admitted into
25 evidence.)

1 MR. BLAKE: And, Your Honor, we'll reserve
2 examination of this witness for our case in chief.

3 THE COURT: All right. So she may step down.

4 MR. BLAKE: Yes, Your Honor.

5 MR. CONNOR: Your Honor, at this time -- if
6 you're ready.

7 THE COURT: You can proceed.

8 MR. CONNOR: Your Honor, at this time,
9 Plaintiff would like to move to publish into
10 evidence the fall -- or the attachments to the
11 Henderson e-mail that has been admitted into
12 evidence.

13 THE COURT: Okay.

14 MR. BLAKE: No objection.

15 THE COURT: Plaintiff's Exhibit 8.

16 MR. CONNOR: I believe it's --

17 THE COURT: Do you have them all as one exhibit
18 or separate?

19 MR. CONNOR: I believe it's Plaintiff's Exhibit
20 5, the attachments to 5.

21 THE COURT: Okay. Are all the attachments one
22 exhibit?

23 MR. CONNOR: Yes, Your Honor. I'm just going
24 to make it all one. I'm just going to staple it all
25 together.

1 THE COURT: Plaintiff's exhibit 5 is --

2 MR. CONNOR: It's the e-mail and accompanying
3 attachments. So, Your Honor, just to familiarize
4 the jury with what these are, the first is the fall
5 prevention sample policy that was provided by
6 Ms. Henderson to the administrator; the second is a
7 resident assessment -- restraint assessment form
8 that indicates multiple factors or symptoms to which
9 restraint should be considered. That includes
10 attempts to get up unassisted in dementia, weakness,
11 unsteady gait or balance deficits, deformities,
12 visual defects, recent fractures, acute illnesses,
13 behaviors, falls, and delirium.

14 Under that are multiple restraints identified
15 that can be utilized including bed alarms, chair
16 alarms, geri chairs, busy aprons, toileting every
17 two hours, a reacher, ink visualization, diversional
18 activities, a self-releasing belt, a pommel, a
19 dropped wheelchair seat, Dycem to chair, and others.

20 There's also a fall prevention and intervention
21 chart that identifies, specifically, problems where
22 the resident may have had a fall and how to deal
23 with that or interventions appropriate to that.
24 Also attached was the root-cause analysis form that
25 is supposed to be conducted or can be conducted in

1 the face of a fall to determine why the fall
2 occurred. These are questions that are supposed to
3 be asked and interventions in the face of the
4 questions that can be implemented by the facility
5 specifically.

6 Next is the Agape Senior new resident safety
7 committee assessment form, the Agape Senior safety
8 committee sign-in sheet, and the safety committee
9 minutes that were attached. Those are all of the
10 attachments to that e-mail, Your Honor.

11 MR. MCALISTER: Your Honor, at this time,
12 Plaintiff would request to publish to the jury Joint
13 Stipulated Exhibit No. 18, which is the agreement to
14 provide management services.

15 THE COURT: Very well.

16 MR. MCALISTER: I'll highlight it as I go. It
17 says: Agreement to provide management services.
18 This agreement is made and entered into this 1st day
19 of January, 2014, by and between Agape Nursing &
20 Rehabilitation, Inc., hereinafter referred to as
21 Company, and Agape Management Services, Inc.,
22 hereinafter referred to as Provider.

23 Whereas, Company desires the services of a
24 management services provider to assist with the
25 financial, legal, and technological services

1 required to operate the business of the company and
2 whereas Provider has such expertise.

3 Provider and Company agree as follows.

4 Services: Provider will provide management support
5 services to Company in the following areas:

6 Finances, human resources, information technology,
7 and legal as follows:

8 Financial services: Provider shall provide
9 support for financial operations of Company,
10 including but not limited to the following:
11 Assistance with cash flow management including
12 credit card reconciliation, bill payment, bank
13 statement reconciliation, debt service management,
14 assistance with payroll, assistance with operational
15 budgets, preparation of monthly financial
16 statements.

17 Two, human resources: Provider shall provide
18 human resources support for Company, including but
19 not limited to the following: Assistance with
20 employee recruitment including placement of
21 advertisements, employment qualifications,
22 background checks, all potential employees; auditing
23 of personnel files to ensure compliance with
24 appropriate regulations, inservice training for
25 company staff, assistance with development and

1 preparation of employee policies and procedures,
2 assistance with implementation of benefits programs,
3 management and analysis of human resource
4 statistics.

5 Number 3 is information technology. Provider
6 shall provide information technology support for
7 Company, including but not limited to the following:
8 Computer network setup and administration,
9 evaluation and purchase of appropriate hardware and
10 software, including computers, printers, copiers,
11 fax machines, end user support for desktop and
12 mobile users, telephone system installation.

13 Legal: Provider shall provide legal support
14 for Company through its office and general counsel,
15 including but not limited to the following:
16 Contract review and preparation, counsel and advice,
17 corporate compliance.

18 Fees: Company agrees to pay Provider a
19 management fee of five percent of revenue per month
20 in exchange for above-listed services. Said fee is
21 subject to increase with 30 days' notice of
22 Provider.

23 In witness hereof, the parties have executed
24 this agreement on the dates shown by each party's
25 signature. Provider, January 1, 2014, Gregory A.

1 Middleton, vice president; Company, January 1, 2014,
2 Gregory A. Middleton, vice president, and then the
3 two signatures.

4 Thank you, Your Honor.

5 MR. CONNOR: Your Honor, Plaintiff calls, for
6 the purposes of cross-examination, Scott Smith. He
7 may be outside.

8 THE COURT: Ladies and gentlemen of the jury,
9 feel free to stand up and stretch your legs. And
10 I'll do the same.

11 SCOTT SMITH

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Have a seat and state your full
15 name, please.

16 THE WITNESS: Scott Ryan Smith.

17 CROSS-EXAMINATION

18 BY MR. CONNOR:

19 Q. Mr. Smith, you're a registered nurse; correct?

20 A. Yes, sir.

21 Q. And in the past, during Ms. Shealy's residency
22 at Agape West Columbia, you were employed as the
23 facility's director of nursing; correct?

24 A. Yes.

25 Q. That means, as director of nursing, that you

1 were the chief clinical officer in the building;
2 correct?

3 A. Yes, sir.

4 Q. You called the shots regarding the provision of
5 care to residents in the nursing home; correct?

6 A. Yes, sir.

7 Q. You were the one ultimately responsible for
8 ensuring that the care complied with company
9 policies; correct?

10 A. Yes, sir.

11 Q. As well as with the standard of care; correct?

12 A. Yes, sir.

13 Q. As well as with applicable state and federal
14 regulations; right?

15 A. Yes, sir.

16 Q. Now, prior to being hired on to oversee the
17 provision of care of residents at Agape West
18 Columbia, sir, you'd never been a DON of a skilled
19 nursing facility; correct?

20 A. Correct.

21 Q. And other than your short six months at Agape,
22 that is from March of 2014 to October of 2014,
23 you've never been a DON of a skilled nursing
24 facility again; correct?

25 A. Correct.

1 Q. Now, when we last spoke, during your
2 deposition, you told me that one of your job
3 responsibilities was to educate staff members about
4 what was expected of them in their role as part of
5 the facility's nursing staff. Do you recall that?

6 A. Yes, sir.

7 Q. And was that one of your responsibilities?

8 A. Yes, sir.

9 Q. Staff at the facility should have known that
10 they had an obligation to follow the company's
11 policies; correct?

12 A. Absolutely.

13 Q. That's something that you instructed them on
14 over and over again; correct?

15 A. Yep.

16 Q. That included that -- that's something that
17 actually was included in their job descriptions;
18 correct?

19 A. I don't have a job description in front of me
20 of theirs, but --

21 Q. Okay. Would you expect that it be included
22 in --

23 A. I would expect it to be included, yes, sir.

24 Q. Okay. Would you like to look at one to confirm
25 that or --

1 A. I'm -- I'm comfortable with that.

2 Q. Okay. All right. It's also something that's
3 included in Agape's employee handbook; correct?

4 A. I would assume so.

5 Q. Well, let's look at that, sir. Prior to today,
6 you've had an opportunity to review the Agape Post
7 Acute Care employee handbook; right?

8 A. I haven't reviewed it. No.

9 Q. Not ever?

10 A. Yes. I have reviewed it in the past.

11 Q. Sure. That's what I'm asking.

12 A. Yes.

13 Q. You've seen this document in the past; right?

14 A. I have. I have. Yes, sir.

15 Q. And this has been marked as Joint Exhibit 23.

16 I just want to ask you a couple questions about it.

17 For example, on page 10 -- I'm sorry. On page 11,
18 sir, there's a notation, is there not -- I'm sorry.

19 Agape Bates 10, page 11 of the document, excuse
20 me, there's a notation, is there not, that Agape
21 expects employees to follow rules of conduct that
22 protect the interest and safety of all employees,
23 Agape residents, and the organization. Would you
24 agree with that statement?

25 A. Yes, sir.

1 Q. And that's something you indicated in your
2 deposition was talked about in inservice training as
3 well as orientation; correct?

4 A. Correct.

5 Q. Now, you talked about -- or we talked about job
6 descriptions. And I'd like to look at one of those
7 examples, for example, the job description for the
8 director of nursing, which would be your position,
9 at Agape Senior. Do you see that?

10 A. Yes, sir.

11 Q. Okay. And I'll represent that for every
12 position that we've been provided a job description,
13 there's a similar statement that indicates that I
14 have received, reviewed, and understand the
15 requirements of the job; that I accept the position
16 and agree to perform in accordance with the
17 established policies and procedures in all
18 applicable federal, state, and local laws,
19 regulations, codes, and accepted professional
20 standards and principles that apply.

21 Now, I believe you testified that you would
22 have signed a similar statement. Correct?

23 A. Yes, sir.

24 Q. And if I represent that at least for all those
25 positions that have been provided to us, that

1 there's a similar statement at the bottom of each
2 job description.

3 A. Yes, sir.

4 Q. Now, when we last spoke you agreed that the
5 policies at Agape are, in part, developed with the
6 safety and well-being of the residents in mind. Is
7 that still true?

8 A. Yes, sir.

9 Q. And the same is true, is it not, for the
10 applicable laws and regulations, that those are in
11 place for the safety and protection of the patients?

12 A. Yes.

13 Q. Now, the policies and procedures, as well as
14 the applicable laws, those set the minimum standards
15 for the caregiver staff; correct?

16 A. Will you repeat that?

17 Q. Sure. The policies and procedures, as well as
18 the applicable laws, regulations, and codes, those
19 set the minimum standards for caregiver staff;
20 correct?

21 A. Yes, sir.

22 Q. For example, when employees fail to follow the
23 policies of the facility, you had occasion to either
24 discipline or terminate them; correct?

25 A. Correct.

1 Q. And you also understand, having been a director
2 of nursing for a skilled nursing facility, that
3 there are consequences when the laws that apply are
4 also not followed; correct?

5 A. Correct.

6 Q. And depending on the nature of infraction, you
7 can be fined; right?

8 A. Depending on the severity, yes.

9 Q. If it's serious, a fine?

10 A. Yes, sir.

11 Q. You can incur payment denials; correct?

12 A. Yes, sir.

13 Q. And you can lose the facility's license. That
14 can be taken away as well, can't it?

15 A. Depending on the severity, yes, sir.

16 Q. And you've also agreed in your deposition that
17 in instances when there's regulations violated, that
18 you can be subject to civil action; for example,
19 someone can sue the facility.

20 A. Yes, sir.

21 Q. Now, as a DON, you're aware that residents have
22 certain rights; correct?

23 A. Yes, sir.

24 Q. And those rights include treating residents
25 with dignity and respect; correct?

1 A. Correct.

2 Q. As well as to be free from physical and mental
3 abuse, as well as neglect; correct?

4 A. Correct.

5 Q. They have the right to be treated adequately
6 and in conformity to the rules and regulations and
7 appropriate professional standards; correct?

8 A. Yes, sir.

9 Q. And those rights, your staff know about; right?

10 A. Yes, sir.

11 Q. Now, you've testified previously that while at
12 Agape, the nurses and aides that you supervised
13 should have understood the importance of protecting
14 residents from falls; correct?

15 A. Yes, sir.

16 Q. And that's because falls can be very dangerous,
17 particularly in the elderly; correct?

18 A. They can be.

19 Q. They also can be deadly; correct?

20 A. It has the potential.

21 Q. Sure. It has a serious potential; correct?

22 A. It has a potential.

23 Q. That means it can be.

24 A. I mean, falls can be deadly --

25 Q. Right.

1 A. -- yes. Falls can be nothing, but falls can
2 also be deadly. There's a wide range. You can get
3 a scrape or you can get a head bleed. I mean,
4 there's many different things it can be.

5 Q. And that's why we want to prevent them from
6 happening; correct?

7 A. Yes, sir.

8 Q. Because with every potential fall, there's that
9 potential of serious harm.

10 A. Correct.

11 Q. And that's something you expected the nurses
12 and aides who you oversaw to understand as well;
13 correct?

14 A. Yes, sir.

15 Q. Now, last time we talked about some training
16 materials that Agape University provided to
17 residents at -- I'm sorry, to patients -- excuse me,
18 to employees like those at Agape West Columbia. Do
19 you recall reviewing those?

20 A. I remember us discussing it at some point.

21 Q. Okay. I want to ask you about those. And,
22 again, this is Exhibit 22 -- Joint Exhibit 22. Does
23 this document look familiar?

24 A. Vaguely, yes, sir.

25 Q. Sure. Okay. This is a training material

1 that's been produced by the defendants in this case
2 representing the training offered to employees
3 during the period of Ms. Shealy's residency.

4 Now, this is a training tool provided to staff
5 at Agape pertaining to fall prevention that you've
6 seen before; right?

7 A. Yes, sir.

8 Q. And after the training, there's a quiz, if you
9 recall, that follows. Do you remember seeing that
10 and us kind of going through that?

11 A. Yes, sir.

12 Q. Now I'd just like to review some of these
13 facts. Per Agape's own training materials, you
14 would agree that falls rank among the top five
15 causes of death in the United States; correct?

16 A. Yes, sir.

17 Q. It also indicates that falls are the leading
18 cause of death for people over the age of 65. Do
19 you see that?

20 A. Yes, sir.

21 Q. Now, per the training, the risk of falling
22 increases with age. Do you see that?

23 A. Yes, sir.

24 Q. And that's a common problem, is it not, for
25 residents -- for individuals over the age of 65.

1 Correct?

2 A. Yes, sir.

3 Q. One-third of Americans over the age of 65 will
4 fall at least once a year.

5 A. Yes, sir.

6 Q. Now, older adults who have fallen previously
7 are two to three times more likely to fall within
8 the next year. You see that?

9 A. Yes, sir.

10 Q. Is that something you can agree on based upon
11 your experience as a nurse?

12 A. Yes, sir.

13 Q. Fall-related death rates and hip fractures are
14 on the rise. Is that something you've also seen in
15 your tenure as a nurse?

16 A. Yes, sir.

17 Q. And the major injuries for a large proportion
18 of the fatal folks -- I'm sorry. The -- let me
19 restate that.

20 Falls are the cause of a large proportion of
21 those brain bleeds that you told us about; correct?

22 A. Correct.

23 Q. They're also responsible for 95 percent of hip
24 fractures among older adults. Per the training, hip
25 fractures often cause an elderly person to lose

1 functional ability and develop other health problems
2 and sometimes lead to death. Is that consistent
3 with your understanding of a fall in the patient
4 population that you were serving back in 2014?

5 A. Yes, sir.

6 Q. Now, in 2014, you would have expected your
7 staff to understand these facts; correct?

8 A. Correct.

9 Q. Those are facts that, had the training offered
10 been effective, they should know and understand;
11 correct?

12 A. If the training was offered? The training was
13 offered.

14 Q. Right. If the training was effective, your
15 staff members should understand these facts?

16 A. Yes, sir.

17 Q. Now reviewing the trivia that followed and the
18 training key --

19 MR. CONNOR: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. CONNOR:

22 Q. I'm going to hand you the key while I ask about
23 the questions.

24 A. Okay.

25 Q. Identify for us, sir, three -- I'd like you to

1 read them all -- characteristics or conditions that
2 make someone prone to fall.

3 A. You want me to read through this entire list?

4 Q. Just the list responsive to number 1, yes, sir.

5 A. Any of the three following: Male, white, or
6 Asian, age 65 or older --

7 Q. Doesn't it actually say female, sir?

8 A. Excuse me; female.

9 Q. Female, white or Asian.

10 A. Yes. Age 65 or older, thinness, family history
11 of falls, lower body weakness, balance problems,
12 foot problems, stroke, physical limitations, urinary
13 incontinence, Alzheimer's, lack of exercise,
14 psychotropic medications, vision problems, low blood
15 pressure, smoking, more than one chronic disease,
16 neuromuscular disease, drinks excessive alcohol, low
17 calcium intake, takes more -- takes four or more
18 medications.

19 Q. All right.

20 MR. CONNOR: Your Honor, may I approach?

21 THE COURT: Yes, sir.

22 BY MR. CONNOR:

23 Q. Sir, I'm going to hand you this highlighter.

24 And I'd like you to go through a few of these with
25 you. Now, we're here today, obviously, on behalf of

1 Utricia Shealy, who was a patient at Agape during
2 your tenure as DON. Correct?

3 A. Yes, sir.

4 Q. And I'd like for you, if you could, just to
5 highlight those conditions that Ms. Shealy had that
6 made her more at risk for falls. First, she was a
7 female; correct?

8 A. Correct.

9 Q. Go ahead and highlight that.

10 Next, she was white; correct?

11 A. Yes, sir.

12 Q. Go ahead and highlight that.

13 Next, she was age 65 or older; correct?

14 A. Yes, sir.

15 Q. Go ahead and highlight that.

16 She was also thin, wasn't she?

17 A. I don't recall.

18 Q. Okay. Well, have you been here for some of the
19 images that were displayed on the --

20 A. No, sir, I have not.

21 Q. Well, I'd like to represent to you that she was
22 a thin woman. You can take that assumption and go
23 ahead and highlight it for me, if you don't mind.

24 A. Okay.

25 Q. Now, do you know whether she had a history of

1 falls?

2 A. From reviewing different documents, yes.

3 Q. Sure. So highlight that.

4 And she was actually there recovering from a
5 fall that she had recently sustained where she
6 fractured her hip; correct?

7 A. Yes, sir.

8 Q. That would have meant at the time of her
9 admission, she would have had lower body weakness;
10 correct?

11 A. Yes, sir.

12 Q. Go ahead and highlight that.

13 We know she had balance problems; right?

14 A. Yes, sir.

15 Q. If you'll highlight that.

16 We know she had physical limitations; correct?

17 A. Yes, sir.

18 Q. If you'll go ahead and highlight that.

19 We know she had urinary incontinence; correct?

20 A. Going by the chart, yes, sir.

21 Q. Go ahead and highlight that.

22 We know she had dementia. Maybe not
23 Alzheimer's, but she had dementia; correct?

24 A. The chart says she had dementia. It did not
25 specify that I saw Alzheimer's anywhere.

1 Q. Right. But you would agree though that
2 dementia is a factor that increases a patient's risk
3 for falls?

4 A. Dementia does, yes.

5 Q. Sure. And it's not on this list, but I think
6 that's pretty common knowledge; fair?

7 A. Yes, sir.

8 Q. All right. She also had a lack of exercise
9 having been hospitalized for more than a week;
10 correct?

11 A. Yes, sir.

12 Q. She was on psychotropic medications or
13 antianxiety medications like Ativan which increase
14 the patient's risk for falls; correct?

15 A. It can.

16 Q. It's on the Beers list; right?

17 A. I couldn't tell you. I haven't seen the Beers
18 list recently.

19 Q. Okay. Well, I'll represent that it is. But
20 certainly it would fall in that category of
21 medications that can increase a patient's risk for
22 falls; correct?

23 A. Yes, sir.

24 Q. She also had vision problems. She had to wear
25 reading glasses -- or not reading glasses, but

1 glasses; correct?

2 A. I'm not sure. I would have to defer to her
3 record.

4 Q. Well, I'll represent that she did --

5 A. Okay.

6 Q. -- and that those glasses, in fact, were lost
7 at the facility during her short residency. And she
8 took a multitude of medications having come from the
9 hospital post-hip fracture; correct?

10 A. Yes, sir.

11 Q. Go ahead and highlight that. That's -- if you
12 can, hold up the document. That's quite a bit of
13 yellow on that page; correct?

14 A. Yes, sir.

15 Q. That would suggest to you as a nurse that this
16 patient is a high risk for falls; correct?

17 A. Yes, sir.

18 Q. The doctor, if you recall, documented on the
19 morning of the 2nd that she was a huge risk for
20 falls. Do you recall that?

21 A. I don't remember his specific wording, but he
22 definitely documented a high fall risk.

23 Q. Sure. All right. Now, as to Question No. 2,
24 back to the key, you would agree that hip fractures
25 are one of the two major injuries that occur when

1 elderly persons fall; correct?

2 A. Yes, sir.

3 Q. As to number 3, when planning interventions to
4 prevent falls, it indicates that you should look at
5 the whole MESS. If you could, tell the jury what
6 the MESS stands for.

7 A. Medications, environment, senses, and strength.

8 Q. So those are all facets that nursing staff as
9 well as aides should be evaluating in determining
10 what potential risks that a patient who is at risk
11 for falls may come into contact with and take
12 appropriate interventions to try to mitigate that
13 risk of fall; correct?

14 A. Yes, sir.

15 Q. And it's a multifaceted approach; you have to
16 look at the whole picture?

17 A. I agree, yes, whole picture.

18 Q. Now, looking at number 7, again tell us what
19 the leading cause of death for -- death from
20 injuries is for people over the age of 65.

21 A. Falling.

22 Q. And skipping to number 15, tell us what
23 percentage you and the staff at Agape, responsible
24 for caring for these patients, knew or should have
25 known that falls are responsible for as far as a

1 percentage of hip fractures among older adults.

2 A. Ninety-five percent.

3 Q. And, finally, looking at this exhibit, tell me
4 why are people who just moved into a new place more
5 likely to fall?

6 A. Because they're not familiar with their
7 surroundings.

8 Q. And is that something that you would have
9 expected staff, if appropriately trained, would
10 understand?

11 A. Yes, sir.

12 Q. So the facility is on notice that for residents
13 new to the facility and at risk for falls, that they
14 should be especially vigilant in those initial days;
15 correct?

16 A. Yes, sir.

17 Q. I'll take that back from you, sir. Thank you.

18 A. Yes, sir.

19 MR. CONNOR: That's all the questions I have,
20 Your Honor.

21 THE COURT: Mr. Blake -- sorry.

22 REDIRECT EXAMINATION

23 BY MR. MANN:

24 Q. Thank you for being here today. Can you tell
25 me a little bit about your background in healthcare.

1 A. Yes, sir. I graduated high school when I was
2 16 years old. I started nursing school at 17. I
3 graduated nursing school whenever I was 19 years
4 old. So it's all I've ever done other than work at
5 a grocery store to get myself through school.

6 Q. Okay.

7 A. I started out as an LPN, and I did that for
8 about three or four years, working my way through
9 school to be an RN.

10 Q. So what do you mean, working your way through
11 school?

12 A. Having to pay for school, pay for bills, just
13 trying to get through.

14 Q. So you went and got your LPN --

15 A. I went and got my LPN and worked at a nursing
16 home for four years while I was in RN school.

17 Q. Okay. And what year did you get your LPN?

18 A. LPN was 2005.

19 Q. Tell the jury what an LPN stands for.

20 A. LPN is licensed practicing nurse.

21 Q. Okay. So that's a -- it's a level below a
22 registered nurse?

23 A. Correct. Yes, sir.

24 Q. So you went and you got that in order to be
25 able to pay your way to get to registered nurse?

1 A. Right.

2 Q. What year did you become a registered nurse?

3 A. Registered nurse in 2009.

4 Q. Okay. Where did you begin working in
5 healthcare?

6 A. I began at Bethea Baptist, which is a skilled
7 nursing facility in Darlington.

8 Q. What was your job with Bethea Baptist?

9 A. I started off as a floor nurse. I did various
10 jobs there from just being a staff nurse, passing
11 out medications, checking on patients, performing
12 wound care, to even working in the assisted living
13 at some points.

14 Q. Okay. Where did you go from Bethea?

15 A. From Bethea, I went into hospice, which was a
16 passion of mine for many years throughout my career.

17 Q. What year did you go to hospice?

18 A. I actually went to hospice somewhere around
19 2009, about the same time I got my RN degree. But I
20 worked -- I enjoyed my work at Bethea, which was a
21 nursing home, so I stayed there part time and worked
22 hospice Monday through Friday.

23 Q. What hospice did you go to?

24 A. Southern Care Hospice based out of Florence.

25 Q. What year, roughly?

- 1 A. Roughly 2009, 2010, somewhere in that range.
- 2 Q. What brought you into hospice care?
- 3 A. My grandfather died of a rare cancer, and he
- 4 was a very modest man. And it always bothered
- 5 him -- you know, this was early '90s, so there
- 6 weren't very many males in nursing at that time. So
- 7 it always bothered him that a female would be taking
- 8 care of him, because he was a very modest man. And
- 9 that kind of made me want to go into nursing --
- 10 Q. Okay. So --
- 11 A. -- and go into hospice, especially.
- 12 Q. So is it fair to say you went into hospice
- 13 because of compassion for care?
- 14 A. Yes.
- 15 Q. Eventually you moved on to Agape Hospice;
- 16 correct?
- 17 A. Yes.
- 18 Q. What year, approximately?
- 19 A. Approximately 2012, somewhere in that range.
- 20 Q. Okay. And you were there for approximately a
- 21 year and a half or so?
- 22 A. Yes, sir.
- 23 Q. How did you -- how did it come to pass that you
- 24 left Agape Hospice and went to work at Agape Nursing
- 25 & Rehab?

1 A. So I was working in hospice; I was responsible
2 for several offices. I had nurses working under me.
3 And I was approached by a member of the Agape
4 management team and asked if I would come to the
5 facility at West Columbia and be their director of
6 nursing.

7 It was -- they asked me to do it for roughly
8 six months, which is about, roughly, the length of
9 time I was there, because they knew I enjoyed
10 hospice; that's what I thoroughly loved doing. But
11 I wanted to really help in the facility as well.

12 Q. Okay. You don't have to be modest. Did they
13 come to you and tell you that you were a guy that
14 they tabbed for a reason?

15 A. Yes, sir. I had done a lot of work with
16 hospice and getting things the way it should be.

17 Q. Okay. And so when you're hired at Agape
18 Nursing & Rehab, what's your job title?

19 A. Director of nursing.

20 Q. Director of nursing. It means that you're in
21 charge of the nurses and the CNAs that work under
22 the nurses; correct?

23 A. Yes, sir.

24 Q. All of them report back to you?

25 A. Yes, sir.

1 Q. Where do you work now?

2 A. I work at McLeod Regional Medical Center, which
3 is a hospital in Florence, and I'm a cardiac ICU
4 nurse.

5 Q. So you're an intensive care nurse; is that fair
6 to say?

7 A. Yes, sir.

8 Q. And just to be clear for the jury and everyone
9 here, you don't work for Agape anymore; correct?

10 A. No, sir.

11 Q. No one is paying you to be here today; correct?

12 A. No, sir.

13 Q. Okay. So just for the jury, including your
14 years at Agape, how many years have you been
15 involved in healthcare with an emphasis on the
16 elderly?

17 A. My entire career.

18 Q. Okay.

19 A. Hospice or elderly patients, the intensive care
20 is not always elderly patients, but, I mean, you get
21 a lot of elderly patients in the intensive care as
22 well.

23 Q. Now, we've heard the plaintiff's attorney
24 talking about the falls and the statistics around
25 falls, that it's the top five cause of death in the

1 United States, it's the leading cause of death in
2 the elderly, that one-third of Americans over the
3 age of 65 will fall once per year. You've heard all
4 these things; right?

5 A. Yes.

6 Q. Is there such a fall that occurs even in a
7 skilled nursing facility, like the one you worked
8 in, Agape Nursing & Rehab, where it's unavoidable,
9 it's no one's fault?

10 A. Absolutely. Falls -- we do everything we can
11 to prevent falls, but we can't go around and strap
12 every patient to the bed all the time. I mean,
13 that's no quality of life for people.

14 Q. Well, one of the questions has come up that is
15 being bandied about a little bit is that there
16 wasn't 24-hour care at Agape Nursing & Rehab. Were
17 there nurses at the facility 24 hours a day?

18 A. Absolutely, always.

19 Q. And that maybe there weren't staffing ratios
20 high enough. You were in charge of making sure that
21 there were adequate numbers of nurses to comply with
22 the regulations; correct?

23 A. Absolutely, because I've put on scrubs and
24 worked all weekend long to ensure that staffing was
25 correct.

1 Q. Was staffing ever not correct when you were
2 there?

3 A. Never.

4 Q. Okay. And there's been some talk about a
5 budget, whether or not there were budgets and
6 whether these budgets were limitations on what you
7 could and couldn't do. You were the director of
8 nursing; correct?

9 A. Yes, sir.

10 Q. Were you ever told that there was a budget that
11 confined or constrained what you could do with
12 regard to patient care?

13 A. No, sir. I have no knowledge about a budget,
14 to begin with. My job entailed hiring nurses,
15 firing nurses, hiring aides, and handling the
16 clinical sides of things.

17 Q. And out of curiosity, you're an intensive care
18 nurse; correct?

19 A. Yes, sir.

20 Q. What's the staffing ratio in an intensive care
21 unit?

22 A. One nurse to two patients.

23 Q. One nurse to two patients. So in an intensive
24 care unit, it's not even one to one; correct?

25 A. Only if there's very specific issues, super

1 critically ill patient. But normally it's one to
2 two patients 90 percent of the time.

3 Q. People ever fall in an intensive care unit?

4 A. Yes, sir, it happens.

5 Q. I think that the plaintiff's attorney has asked
6 you previously about a fall score that was shown as
7 maybe a 15 and looks like it could have been
8 scratched through and now it's a 17. Let's talk
9 about that for a second.

10 At what level, at what fall score, do you deem
11 a patient a maximum fall risk?

12 A. Typically it's a 10. And at that point, it's a
13 fall risk, it's a high fall risk, period, the end.
14 They're a high fall risk.

15 Q. So it's a 10 -- if it's a 10, it's a fall risk,
16 it's a fall risk?

17 A. Right. They're on the -- I believe Agape's was
18 the Falling Star program that they had. If you're
19 on that program, everybody knows you're a high fall
20 risk. I mean, that's --

21 Q. Is it common in the facilities that you've
22 worked in for an assessment score of any type to
23 have scratches through it and markings on it?

24 A. Yes, sir, it happens. It's a living document.
25 It continues to change. Patients change, that

1 document changes.

2 Q. There's been some talk about timestamps on
3 these electronic medical records.

4 A. Yes, sir.

5 Q. Does a timestamp on an electronic medical
6 record in any way affect the care that was given in
7 this particular case to Ms. Shealy?

8 A. I don't see how it would. No, sir.

9 Q. The fact that a 7:30 fall or a 7:25 fall has
10 that -- the timestamp at 3:30, that didn't affect
11 the care that she got, did it?

12 A. Absolutely not.

13 Q. You've reviewed the records in this case prior
14 to today and prior to having your deposition taken
15 in this case; correct?

16 A. Yes.

17 Q. Again, you don't work for Agape; correct?

18 A. No, sir.

19 Q. Are you able to identify anything in those
20 records that say your team did wrong that led to
21 Ms. Shealy falling?

22 A. I have not seen anything. No, sir.

23 Q. How about anything your team didn't do that led
24 to Ms. Shealy falling?

25 A. The first thing we do as nurses is think to

1 ourself, was there something we missed? And I've
2 reviewed the record and I don't see where we missed
3 anything.

4 Q. Okay. That's all I've got for you.

5 MR. CONNOR: Just a few follow-ups.

6 RECROSS-EXAMINATION

7 BY MR. CONNOR:

8 Q. Sir, you work in the ICU now?

9 A. Yes, sir.

10 Q. Tell the jury about falls in hospitals. Aren't
11 they characterized as never events?

12 A. I'm sorry. Can you repeat that?

13 Q. Isn't a fall in a hospital characterized as a
14 never event?

15 A. What do you mean by never event?

16 Q. And that's what I want to understand, sir.
17 You're not aware that falls in hospital settings are
18 considered never events, as by -- per CMS
19 regulations?

20 A. I'm not familiar with the term you're using.
21 No, sir.

22 Q. Okay. Well, it means that they should never
23 occur within the exercise of reasonable care. I
24 want to make sure I understand your testimony.

25 You're not aware that a fall within a hospital has

1 been deemed by the federal government as a never
2 event, meaning it should never occur within the
3 exercise of reasonable care?

4 A. No. I'm not familiar with the terminology
5 you're using. No, sir.

6 Q. Okay. Do you know whether Medicare will pay
7 for treatment associated for falls within a hospital
8 setting?

9 A. No, sir. That would be something with billing
10 or -- I -- I am an ICU nurse; I take care of the
11 patient. I don't deal with the billing. I don't
12 care what insurance somebody has or whether
13 insurance pays, I take care of the patient.

14 Q. Do you care whether, sir, the government says
15 that if you have a fall in a hospital, that they
16 characterize that as a never event, meaning it
17 should never happen in the exercise of reasonable
18 care?

19 A. The only thing I can tell you is that falls do
20 happen in the hospital.

21 Q. They do. And when a fall happens, they don't
22 get paid, and when a fall happens, they're subject
23 to liability, just like this facility is; correct?

24 MR. MANN: Your Honor, objection.

25 THE COURT: Sustained.

1 BY MR. CONNOR:

2 Q. Now, sir, I want to make sure I understand your
3 testimony. Is it your testimony that you don't care
4 what your nurses do on their assessments so long as
5 they get the -- a number above a 10, it doesn't
6 really matter if they did the assessment
7 appropriately?

8 A. Sir, that is not what I said.

9 Q. And that's what I want to understand. So it
10 does matter that their assessments are done
11 correctly; right?

12 A. I would absolutely want every assessment done
13 perfectly. What I was saying was, once you're at a
14 score of 10 or above, the interventions are going to
15 be -- you know that that patient is a high fall risk
16 at that point, so you're going to give as many
17 interventions as you can to prevent that patient
18 from falling.

19 Q. And those interventions are supposed to be
20 individualized for the particular patient; correct?

21 A. Correct.

22 Q. To meet their specific needs, and that's why
23 it's so important that assessment be accurate;
24 correct?

25 A. Yes, sir.

1 Q. You were here for the video deposition of
2 Gregory Alan Middleton, the vice president of Agape
3 Nursing & Rehab when you worked there; correct? You
4 were here for that testimony; correct?

5 A. I was in here during the testimony --

6 Q. Right.

7 A. -- yes, sir -- or on the video, yes, sir.

8 Q. Right. That's testimony.

9 And what did he say about numbers?

10 A. I don't remember.

11 Q. Well, I want you to assume that he said if the
12 numbers aren't right, none of it matters. Do you
13 remember that now?

14 A. No, sir.

15 Q. Well, sir, do you agree with him that if the
16 numbers -- if the assessment isn't right, that it
17 doesn't matter, that it's wrong?

18 A. I don't understand the question.

19 MR. MANN: Objection, Your Honor. I don't
20 believe this is the testimony of that --

21 MR. CONNOR: I think the jurors can recall it
22 for themselves.

23 THE COURT: Well, the witness is also saying he
24 doesn't understand if that was the testimony. So
25 you can rephrase your question, if you like,

1 Counsel.

2 MR. CONNOR: Yes, sir.

3 BY MR. CONNOR:

4 Q. My question is simply, sir, it matters, doesn't
5 it? Those assessments need to be appropriate;
6 correct?

7 A. Yes, sir. It would be great if those
8 assessments are perfect every time. Yes, sir.

9 Q. And, sir, you indicated that documents are
10 living documents. When you make a change to a
11 document, there's a procedure that indicates how
12 that's supposed to be done; correct?

13 A. I'm sure there's a policy on it.

14 Q. Sure. And in your deposition, we looked at
15 that policy; correct?

16 A. Yes, sir.

17 Q. And you're supposed to date and time and
18 initial when that change is made; correct?

19 A. It is -- yes, sir. It would be great if
20 everything on a nursing documentation was done
21 perfectly. I agree.

22 Q. Well, that's not perfect, that's just what the
23 policy requires; right?

24 A. Yes, sir.

25 Q. And you said that was the minimum standards

1 that have to be met; correct?

2 A. Yes, sir.

3 Q. Not the five-star. That's the C-grade minimum.

4 So, sir, I just want to make sure I understand your
5 testimony. In your opinion, having reviewed what
6 limited information you have in this case, it's your
7 opinion that there were no areas where the care
8 could have been improved here; is that right?

9 A. The care for the patient or the documentation
10 about the patient?

11 Q. Either one.

12 A. You're referring to a strikeout on a fall
13 score. Is that what you're talking about?

14 Q. No. I'm referring, sir, to a patient who was
15 admitted into your facility, assessed improperly,
16 provided medications not documented, and assessed by
17 outside ancillary providers as being an extreme fall
18 risk who was left out of sight to sustain a fall
19 where she fractured her other hip within 27 hours of
20 the --

21 MR. MANN: Objection, Your Honor.

22 THE COURT: That's argumentative. I mean, if you
23 want to break it down, Counselor, let's have some
24 questions.

25 BY MR. CONNOR:

1 Q. Is it your opinion that nothing could have been
2 done to prevent this fall?

3 MR. MANN: Objection, Your Honor. That's --

4 THE COURT: Well, he -- go ahead.

5 THE WITNESS: I feel like we did everything
6 that we could to prevent Ms. Shealy from falling.

7 BY MR. CONNOR:

8 Q. Okay. And tell me the basis for that opinion,
9 please?

10 A. The basis for that opinion?

11 Q. Yes, sir.

12 A. She was in a high-traffic area. There were
13 many interventions in place to prevent her from
14 falling.

15 Q. Like what?

16 A. Well, the first one, I said, she's in a
17 high-traffic area.

18 Q. Okay. Well, wasn't her fall unwitnessed,
19 meaning no one saw it?

20 A. That is my understanding. Yes, sir.

21 Q. So wouldn't you agree one of the basic
22 interventions would be sure -- to be sure that this
23 resident is within a nurse's line of sight?

24 A. That is -- while she was put near the nurses
25 station, you want to try to keep an eye on the

1 patient. Absolutely.

2 Q. Right. But there wasn't an eye on her when she
3 fell; correct?

4 A. That is my understanding.

5 Q. Okay. So certainly that was an improvement
6 that could have happened that didn't in this case;
7 correct?

8 A. Correct.

9 Q. That's all the questions I have for you, sir.
10 Thank you.

11 THE COURT: You may step down, sir.

12 All right. Ladies and gentlemen, we're going
13 to take our short afternoon break here. It's 3:15.
14 We'll take a short break and then finish out the
15 afternoon. I'll ask that you go back to your jury
16 room. Please don't discuss the case, refresh
17 yourself, and we'll see you back here in a few
18 minutes.

19 (The jury exits the courtroom at 3:12 PM.)

20 THE COURT: Ready?

21 MR. CONNOR: Yes, sir, Your Honor.

22 THE COURT: Let's get the jury, please.

23 (The jury enters the courtroom at 3:28 PM.)

24 THE COURT: Mr. Foreman, ladies and gentlemen,
25 we're back from our afternoon break and we'll

1 continue with the case at this time.

2 MR. MCALISTER: Your Honor, the plaintiff
3 calls, for purposes of cross-examination, Javan
4 Vaughn.

5 JAVAN VAUGHN

6 being first duly sworn, testified as follows:

7 THE CLERK: Have a seat and state your full
8 name, please.

9 THE WITNESS: My name is Javan Bizzard Vaughn.

10 CROSS-EXAMINATION

11 BY MR. MCALISTER:

12 Q. Ms. Vaughn, I'm sorry I mispronounced your
13 first name. I apologize. And it's Javan Bizzard
14 Vaughn?

15 A. Yes, sir.

16 Q. And what's your maiden name?

17 A. Bizzard.

18 Q. Did you ever go by the name Abbey?

19 A. I did. I was married before --

20 Q. Okay.

21 A. -- and divorced.

22 Q. Okay. Now, Ms. Vaughn, it's my understanding
23 you're a registered nurse. Correct?

24 A. Yes, sir.

25 Q. And there was a time in the past when you were

1 employed by Agape Nursing & Rehab Center?

2 A. Yes, sir.

3 Q. And you were hired to Agape in November 2012;
4 correct?

5 A. Correct.

6 Q. And you were hired as MDS coordinator; correct?

7 A. Yes, sir.

8 Q. When you were hired as MDS coordinator, you'd
9 never worked in the long-term care field; right?

10 A. That's correct.

11 Q. Please tell the jury what MDS stands for.

12 A. It stands for minimum data set. It's basically
13 doing Medicare assessments that's transmitted to CMS
14 to Medicare. A patient is given a certain -- at the
15 end of the assessment, they're given a rough score,
16 and that usually determines the payment to the
17 facility.

18 Q. So the information that you're inputting as MDS
19 coordinator is submitted for reimbursement payment
20 from Medicare; is that --

21 A. Correct.

22 Q. And as MDS coordinator, your responsibilities
23 would include compiling charts for new patients; is
24 that right?

25 A. Going through the charts, looking at whenever

1 they were at the hospital, kind of like what their
2 discharge diagnoses were, what they were coming to
3 the facility for, if they were coming there for
4 rehab.

5 It would also involve care planning. If a
6 patient had been there or resident had been there
7 within, like, a three-week period, there would have
8 been a care plan meeting with the family to try and
9 come up with a full, complete care plan.

10 Q. And you'd also enter an assessment of a new
11 resident; correct?

12 A. Yes, sir.

13 Q. And this information would include cognitive
14 patterns?

15 A. The initial assessment -- all the initial
16 assessment was, was it was just basically an
17 assessment that you would send to Medicare just
18 letting Medicare know that they're at the facility.
19 All it included was just basically the patient name,
20 their race -- it was just like identifying
21 information.

22 You had to put in what the primary diagnosis
23 that they were coming to the facility for, and that
24 was it -- and their start -- well, the date they
25 came to the facility. It was just like an initial

1 just -- there wasn't a whole lot more information on
2 that initial assessment. You didn't get a rough
3 score at the end of that.

4 Q. But it's important that that information be
5 accurate, correct --

6 A. Correct.

7 Q. -- because it's being submitted to Medicare for
8 reimbursement?

9 A. Correct.

10 Q. So the information entered and the numbers
11 entered need to be right; correct?

12 A. Yes, sir.

13 Q. And as MDS coordinator, you know that nursing
14 homes like Agape are subject to state and federal
15 rules and regulations; correct?

16 A. Yes.

17 Q. And, in fact, having an MDS coordinator is a
18 function of those federal regulations; right?

19 A. Yes, sir.

20 Q. And when you came to Agape, you underwent
21 orientation; is that right?

22 A. Yes, sir.

23 Q. And that was held in the old Agape Hospice
24 building?

25 A. Yes, sir.

1 Q. And you also received on-the-job training from
2 Ms. Aga and Deanna Jones?

3 A. Yes. It's Marti Aga.

4 Q. Aga?

5 A. Uh-huh.

6 Q. And Ms. Jones, at that time, was an MDS
7 coordinator; correct?

8 A. Yes, sir.

9 Q. And she left not too long after that from Agape
10 and went to corporate; right?

11 A. Yes.

12 Q. And Ms. Jones managed the West Columbia,
13 Conway, and Rock Hill facilities?

14 A. Yes; in MDS.

15 Q. And through your orientation and on-the-job
16 training, you're exposed to and taught about
17 residents' rights; right?

18 A. Yes, sir.

19 Q. And that means the law -- by law, the residents
20 have the right to be free of mental and physical
21 abuse and neglect?

22 A. Correct.

23 Q. And you know that as a nurse as well; correct?

24 A. Correct.

25 Q. Now, prior to your hire at Agape, you were

1 working as a registered nurse at the Lexington
2 Medical Center?

3 A. Yes, sir.

4 Q. Okay. And you ultimately left Lexington
5 Medical Center; correct?

6 A. Yes, sir.

7 Q. And why did you leave Lexington Medical Center?

8 MR. BLAKE: Objection.

9 THE WITNESS: I left Lexington Medical Center
10 because --

11 THE COURT: Ma'am, there's been an objection.

12 Approach, Counsel.

13 (Sidebar conference.)

14 BY MR. MCALISTER:

15 Q. All right. Ms. Vaughn, back to your testimony.
16 In 2012, you were hired as MDS coordinator. And
17 through your training and experience as MDS
18 coordinator and a nurse, you know that falls can be
19 dangerous to the elderly; correct?

20 A. Yes, sir.

21 Q. And in order to prevent and reduce falls, steps
22 need to be taken; is that right?

23 A. Yes, sir.

24 Q. You have to be proactive to anticipate and plan
25 against falls; correct?

1 A. Correct.

2 Q. Now, preventing falls in the elderly is an
3 important priority; correct?

4 A. Yes, sir.

5 Q. And, in fact, there are sections of MDS
6 dedicated to evaluating a patient's risk for falls;
7 correct?

8 A. Correct.

9 Q. And in addition to MDS, there are other tools
10 and forms used to capture a patient's risk for
11 falls; correct?

12 A. Yes, sir.

13 Q. And this information is communicated by a
14 fall-risk score; right?

15 A. Yes, sir.

16 Q. And depending on that score, the need for a
17 fall prevention care is triggered; correct?

18 A. Yes, sir.

19 Q. And if a patient scored higher than 10, there's
20 a fall management program; is that right?

21 A. Yes, sir.

22 Q. And what is that program called at Agape?

23 A. It's called the Falling Star program.

24 Q. And this was a program where a star was placed
25 on the nameplate of a patient's room?

1 A. Yes, sir.

2 Q. And that just identified that that patient was
3 a high risk for falling; correct?

4 A. Correct.

5 Q. And you testified previously in your deposition
6 that apart from this identifier, you're not aware of
7 any other interventions associated with this
8 program; right?

9 A. Correct.

10 Q. And as a nurse, you're familiar with the adage
11 not documented, not done; correct?

12 A. Correct.

13 Q. And that's a well-known phrase in nursing?

14 A. Correct.

15 Q. Tell the jury what not documented, not done
16 means.

17 A. Basically, if you didn't document it in a
18 patient's record, then you didn't do it, even though
19 if you could have done it, it wasn't done.

20 Q. So those records need to be complete?

21 A. Yes, sir.

22 Q. And accurate?

23 A. Yes, sir.

24 Q. Now, we're here today on behalf of Utricia
25 Shealy against Agape for injuries she sustained as a

1 result of a fall on July 2nd, 2014. And you were
2 previously deposed in this case; correct?

3 A. Yes, sir.

4 Q. And that deposition was taken by my co-counsel,
5 Mr. Connor, back in 2017?

6 A. Yes, sir.

7 Q. And you testified at that time that you had no
8 independent recollection of Ms. Shealy; correct?

9 A. Yes, sir.

10 Q. And you'd never actually saw Ms. Shealy;
11 correct?

12 A. Correct.

13 Q. And you agree that your testimony was based
14 solely off of your review of the charting of
15 Ms. Shealy?

16 A. Yes, sir.

17 Q. And you were working at the facility on her
18 admission -- during her admission in July of 2014?

19 A. Yes, sir.

20 Q. And you testified previously that, based on
21 your review of those records, she had a prior
22 history of falls?

23 A. Yes, sir.

24 Q. Okay. I'm going to show you a few records and
25 let you walk me through them. This is Joint Exhibit

1 No. 4. Ms. Vaughn, this is Joint Exhibit No. 4.
2 This is the nursing home chart from Agape for
3 Ms. Shealy. And you can see here at the bottom,
4 Agape Record No. 305 -- page 305. Okay?

5 And earlier you mentioned reviewing records in
6 your job as MDS coordinator including discharge
7 summaries and information from the prior treater;
8 correct?

9 A. Yes, sir.

10 Q. And would this document and this transfer
11 summary be a document that you would have reviewed
12 in anticipation of Ms. Shealy's admission?

13 A. Yes, sir.

14 Q. Who authored this document?

15 A. What was that?

16 Q. Who authored this document? Can you see that?

17 A. Who authored it or who altered it?

18 Q. Authored it. Who drafted it? It's in the top
19 left corner.

20 A. Jill La- -- I can't read it.

21 Q. Jill La Posta?

22 A. Yes, sir.

23 Q. And this was dated July 1st, 2014?

24 A. Yes, sir.

25 Q. And this is a transfer summary; correct?

1 A. Correct.

2 Q. And earlier you also talked about reviewing
3 diagnoses and that sort of thing; correct?

4 A. Yes.

5 Q. And, here, the diagnoses indicate a fractured
6 femoral neck, which is the fractured hip; correct?

7 A. Yes.

8 Q. And down here at the bottom, there's a
9 narrative. Can you read us the sentence that begins
10 with patient's Ativan.

11 A. Patient's Ativan has been decreased due to her
12 confusion as well as risk for falls on this to the
13 medication. She was started on Restoril for
14 confusion and agitation. She was evaluated by
15 psychiatry. She seems to be tolerating the Restoril
16 well. Keep her previously scheduled follow-up
17 appointment with her neurologist in July. Patient
18 also had a drug-induced rash. She was started on
19 prednisone that she will continue for three more
20 days as well as Pepcid to help with this. Continue
21 with Benadryl cream as...

22 Q. And I'll represent to you that that was a note
23 from Lexington Medical Center where she was treated
24 prior to coming to Agape.

25 A. Uh-huh.

1 Q. And that note by Jill La Posta indicates that
2 due to her confusion, her Ativan has been reduced;
3 she is a risk for falls; is that right?

4 A. Yes, sir.

5 Q. And that's the sort of document that you would
6 review in performing your assessment and putting
7 that information together?

8 A. Yes, sir. That, along with her discharge
9 medication list from the hospital.

10 Q. All right. We'll flip to page 121 of the same
11 exhibit, Joint Exhibit No. 4. Now, this document is
12 an admissions assessment; correct?

13 A. Yes, sir.

14 Q. And it would have been done on July 1st, 2014?

15 A. Yes, sir.

16 Q. And it says pages 1 through 14; correct?

17 A. Yes, sir.

18 Q. And this is a document the nurses would perform
19 when a patient is admitted to Agape; correct?

20 A. Right.

21 Q. And this document, along with those hospital
22 records and other records that we've discussed,
23 would be used to create a care plan for the patient;
24 correct?

25 A. Yes, sir.

1 Q. And that's all part of the admissions
2 assessment process; right?

3 A. Yes, sir.

4 Q. All right. And this 14-page document was not
5 actually completed by you, it was completed by
6 Ms. Donna Shafer; correct?

7 A. Yes, sir.

8 Q. But you would have reviewed that document;
9 correct?

10 A. Yes, sir.

11 Q. This is page 126 of that same document, page 6
12 of 14. And there's information here related to
13 pain. What box is checked there at the top?

14 A. No pain reported.

15 Q. And then just below that, it states a type of
16 pain. What is that?

17 A. Stabbing.

18 Q. And it says: Frequency?

19 A. Daily.

20 Q. And it says: How is pain relieved?

21 A. Rest and meds.

22 Q. Now, you previously testified that the
23 indication of type of pain, stabbing, and frequency,
24 daily, conflicts with no pain reported; correct?

25 A. Yes, sir.

1 Q. It also indicates pain was relieved by
2 medications; correct?

3 A. Yes, sir.

4 Q. Now, here we have page 10 of 14. And this is a
5 fall risk assessment completed on July 1st, 2014; is
6 that right?

7 A. Yes, sir.

8 Q. If we move down to the gait/balance section,
9 can you read that for me.

10 A. The part that's checked or --

11 Q. Yes, ma'am.

12 A. Gait/balance, normal.

13 Q. And this section has to do with assessment of a
14 resident's gait and balance, having them on both
15 feet without holding -- or holding anything, walking
16 straight forward, walk through a doorway and make a
17 turn; correct?

18 A. Yes, sir.

19 Q. And then just below that, it says:

20 Balance: Problem while standing. And that box
21 is checked as well; right?

22 A. Yes, sir.

23 Q. And then it says:

24 Balance: Problem while walking. And that's
25 checked?

1 A. Yes, sir.

2 Q. It also says: Decreased muscular coordination.
3 And that's checked; correct?

4 A. Yes, sir.

5 Q. And you would agree that those boxes conflict
6 with gait/balance, normal?

7 A. Yes, sir.

8 Q. Now, at the bottom of the page is the fall risk
9 score. And that's a calculation of all those
10 criteria; correct?

11 A. Yes, sir.

12 Q. In this particular instance, it was a 17?

13 A. Yes, sir.

14 Q. And this next page would be page 309 of the
15 record. And it's the interim assessment care plan;
16 correct?

17 A. Yes, sir.

18 Q. And this would be information that you
19 prepared; correct?

20 A. Yes, sir.

21 Q. And was this your handwriting at the top?

22 A. Yes, sir.

23 Q. And here in Section No. 8, it says:

24 Problem: Potential for or actual alteration in
25 psychosocial well-being. And then there's a note

1 down at -- that says check, other. What does that
2 say?

3 A. History of dementia with agitation; yells out
4 on occasion.

5 Q. Now, is that your initial beside that?

6 A. Yes, sir.

7 Q. And that's because you understand that when you
8 make a notation in the record like that, you're
9 supposed to initial it; correct?

10 A. Yes, sir.

11 Q. You also understand, based on that notation,
12 that she has a history of dementia; correct?

13 A. Yes, sir.

14 Q. Now, here is 315 of the record. And this would
15 be signed by you at the bottom; correct?

16 A. Yes, sir.

17 Q. And if we look at 22, this says: At risk for
18 falls. Is that right?

19 A. Yes, sir.

20 Q. And is that box checked for meds?

21 A. No, sir.

22 Q. And what do you have written over here on the
23 right-hand side?

24 A. 7/2, Falling Star program for safety.

25 Q. And that's also got your initials there; right?

1 A. Yes, sir.

2 Q. Now, that box that we've mentioned for meds,
3 based on your review of that prior record, that box
4 should have been checked; right?

5 A. Right.

6 Q. And the Falling Star program, earlier you
7 mentioned that a patient is entered into that if
8 they score higher than a 10; correct?

9 A. Yes, sir.

10 Q. And this one is dated 7/2, but she should have
11 been there from the beginning on 7/1; correct?

12 A. What we do -- what we would do is, the day
13 after they were admitted, we would have an
14 interdisciplinary team meeting in the mornings and
15 we would go through the new charts and decide, as an
16 interdisciplinary team that was -- that morning, to
17 place her on the Falling Star.

18 Q. Okay. But that's why you dated it and put your
19 initials there?

20 A. Yes, sir.

21 Q. And then here we have a fall risk score;
22 correct?

23 A. Yes, sir.

24 Q. And what does that say?

25 A. 17. It has a 15 with a 7 over the 5.

1 Q. And that is -- that 7 is changed; is that
2 correct?

3 A. Correct.

4 Q. And you testified back in 2017 that you
5 actually wrote a 15 there --

6 A. Yes, sir.

7 Q. -- didn't you?

8 And you said, I know I put a 15 there; correct?

9 A. Yes, sir.

10 Q. And you also testified that change from 15 to
11 17 was not made by you; correct?

12 A. Correct.

13 Q. And you know that because you didn't initial it
14 like you had done all your other changes?

15 A. Correct. And that's not my 7.

16 Q. And that's also not your 7; that was also your
17 testimony back in 2017.

18 Numbers matter; correct?

19 A. Yes, sir. But it wouldn't have mattered if she
20 was a 15 or a 17; she still would have been high
21 risk for falls.

22 Q. But if a change in the record is made, Agape
23 has a policy and procedure that requires it to be
24 dated, initialed, and you have to tell why; correct?

25 A. Correct.

1 Q. But that didn't occur here.

2 A. No. And I didn't do that.

3 Q. Right. But we don't know who did either, do
4 we?

5 A. No, sir.

6 Q. And you testified earlier that accuracy
7 matters; right?

8 A. Yes, sir.

9 Q. I'm going to show you -- this is page 19 of
10 that record and this is the assessment
11 administration Section Z. Let's walk through this.
12 As MDS coordinator, you entered information related
13 to Ms. Shealy's MDS; correct?

14 A. Correct.

15 Q. All right.

16 A. The initial assessment. I did not do her --
17 there would have been a five-day discharge
18 assessment that would have contained a lot more
19 material. That assessment was just the initial
20 identifying information.

21 Q. Right. And you entered information on Sections
22 A, X, and Z; right?

23 A. Yes, sir.

24 Q. Now let's go through this document. This first
25 sentence, it says: I certify that the accompanying

1 information accurately reflects resident assessment
2 information for this resident and that I collected
3 and coordinated collection of this information on
4 the dates specified. Have I read that correctly?

5 A. Yes.

6 Q. It also indicates that you certify that the
7 information that was collected is in accordance with
8 applicable Medicare and Medicaid requirements;
9 right?

10 A. Yes, sir.

11 Q. And it says: I understand this information is
12 used as a basis for ensuring that residents receive
13 appropriate and quality care and, in turn, that
14 means a basis for payment from federal funds. Is
15 that correct?

16 A. Yes, sir.

17 Q. And I further understand that payment of such
18 federal funds and continued participation in
19 government-funded healthcare programs is conditioned
20 on the accuracy and truthfulness of this
21 information. Is that right?

22 A. Yes, sir.

23 Q. And it says: I may be personally subject or
24 may subject my organization to substantial criminal,
25 civil, and/or administrative penalties for

1 submitting false information. Is that right?

2 A. Yes, sir.

3 Q. And then you certify that by your signature;
4 correct?

5 A. Yes, sir.

6 Q. And that's under penalty of perjury. And you
7 did that on July 2nd, 2014?

8 A. Yes, sir.

9 Q. So accuracy and numbers do matter; correct?

10 A. Yes, sir.

11 MR. MCALISTER: No further questions at this
12 time, Your Honor.

13 THE COURT: Mr. Blake?

14 REDIRECT EXAMINATION

15 BY MR. BLAKE:

16 Q. Good afternoon, Ms. Vaughn. I appreciate you
17 being here with us. I'll be very brief. I know
18 you're ready to get home.

19 You were shown a couple documents during the
20 course of your examination, and I'd like to ask you
21 just a couple follow-ups about them. One of those
22 documents was page 130. You recall discussing this
23 page 10 of 14 in the assessment?

24 A. Yes, sir.

25 Q. And you talked about this gait and balance

1 problem, the inconsistency there with all four boxes
2 checked?

3 A. Correct.

4 Q. Do you know how all four boxes got checked?

5 A. I do not.

6 Q. Is this an electronic form?

7 A. Yes, sir.

8 Q. Did you complete it?

9 A. No, sir.

10 Q. Okay. If you received this, though, and used
11 it in your care planning, what would you have done
12 with that information?

13 A. I would have used the -- I would have used it
14 towards the care plan itself just looking at her
15 gait and balance, but then I would have taken those
16 numbers off to the side and calculated those for a
17 fall risk score.

18 Q. These numbers over here, these three?

19 A. Yes, sir.

20 Q. Thank you, ma'am.

21 A. Whenever the nurse would do the admission
22 assessment, you would have the numbers on the side
23 like that. Until the nurse actually closed that
24 assessment, the numbers wouldn't calculate, so I had
25 calculated the numbers incorrectly.

1 Q. Was that just a quirk of that electronic
2 records system?

3 A. Yes.

4 Q. Thank you, ma'am.

5 Now, this section got glazed over whenever
6 Plaintiff's counsel was discussing it with you. But
7 I noticed part of the assessment, in fact, dealt
8 with medications; correct?

9 A. Yes, sir.

10 Q. And it was pointed out that there was a
11 medications box not checked on the form earlier.
12 Was this resident, Ms. Shealy, assessed for
13 medications as a part of her fall risk assessment on
14 July 1st, 2014?

15 A. Yes, sir.

16 Q. And what were the points that would have been
17 allocated due to this selection here that says that
18 she takes three or four of the class of medications
19 which may contribute to falls?

20 A. Yes, sir.

21 Q. How many points were assigned to that?

22 A. Four.

23 Q. Okay. Ultimately, whether her fall risk was 15
24 or 17, I suppose what really matters is, what
25 interventions would have been emitted by an error

1 like the one here with gait/balance being checked or
2 medical administration concerns appearing on one
3 form but maybe not another?

4 You were shown interventions on page 309 of
5 this record, but you didn't get a chance to comment
6 on them. I want to make sure I got this zoomed in
7 on the right spot here. Let's start with number 1,
8 cognitive loss. Can cognitive loss and dementia
9 contribute to a fall?

10 A. Yes, sir.

11 Q. And are interventions in place to deal with
12 Ms. Shealy's cognitive loss?

13 A. Yes, sir.

14 Q. And they're all identified here on the side; is
15 that right?

16 A. Yes.

17 Q. What about visual function alteration? Can
18 that contribute?

19 A. Yes, sir.

20 Q. And are interventions selected to help guard
21 against difficulties including a fall that she may
22 suffer?

23 A. Correct. Yes, sir.

24 Q. And what about alteration and elimination, the
25 incontinences issue? Essentially, are concerns over

1 incontinence addressed in this care plan?

2 A. Yes, sir.

3 Q. Do you know what a therapeutic diet is? That's
4 not a term that I'm sure the jury is familiar with.

5 A. It's just basically a -- a therapeutic diet
6 per, like, dietary, it would be like a therapeutic
7 diet for her. It was like a heart-healthy diet, a
8 soft mechanical, but a therapeutic diet per dietary.

9 Q. Okay. And then a nutritional assessment was
10 requested for her?

11 A. Honestly, I'm not -- the reason that that was
12 checked is because our dietician would assess the
13 patients within a few days of them being there. So
14 I knew that the nutritional assessment would be
15 done.

16 Q. Okay. That's great. Thank you for clarifying
17 that for me.

18 Okay. I'm going to switch to Agape 311. We
19 talked about this history of dementia and agitation.
20 You agree that those could contribute to falling;
21 correct?

22 A. Yes, sir.

23 Q. Were interventions put in place in the care to
24 deal with those concerns?

25 A. Yes, sir.

1 Q. Use of medications. Now, again, we talked
2 about maybe there was a box somewhere that wasn't
3 checked that maybe should have been checked. But
4 are there interventions put in place to deal with
5 the medication concerns?

6 A. Yes, sir.

7 Q. Those included antianxiety medicines; correct?

8 A. Yes, sir.

9 Q. And do you recall seeing that order of
10 Lexington Medical Center's doctor on discharge
11 regarding her use of Ativan?

12 A. I don't recall it.

13 Q. That's okay. We have it.

14 I'm going to show you page 253 of this record.
15 Forgive me; I've got this all turned around. I've
16 pulled this from the Agape facility records here.
17 And this is a -- how about you identify this for us?

18 A. It's a copy of a hard copy prescription for
19 Restoril and Ativan.

20 Q. Okay. And who issued this?

21 A. Melanie Lobel, M.D.

22 Q. And what's the date on that?

23 A. 7/1/2014.

24 Q. And what does it say Ativan is being prescribed
25 for?

1 A. It says: Ativan 0.5 milligrams, a total of 30,
2 one every PM at 5:00 PM, PRN only, for anxiety.

3 Q. Okay. And, again, looking back at Agape 311 --
4 nope. It was the last one. But Agape 310, as we
5 just discussed, shows that there are interventions
6 in place for her anxiety medication?

7 A. Yes, sir.

8 Q. Ms. Vaughn, are you able to identify for us any
9 interventions, regardless of what numbers may differ
10 on one form from another, any interventions that
11 were, in fact, called for under this standard of
12 care for this care plan but were not implemented for
13 Ms. Shealy when she was at Agape?

14 A. I can't -- I don't know, like, so much
15 specifics of things. So I don't -- I don't know --
16 I know a lot of the interventions that we would use
17 if someone had fallen.

18 A lot of times we would put socks on the
19 patients that had, like, the grippers or, like, a
20 rubber sole. A lot of times you would place
21 patients out in the day area or up closer to the
22 nurses station. There were a lot interventions that
23 required a doctor's order that nurses couldn't just
24 implement.

25 Q. Is a restraint one of those types?

1 A. Yes, sir.

2 Q. How about a chair alarm?

3 A. Yes, sir.

4 Q. In fact, CMS guidance talks about chair alarms
5 being risky for patients, doesn't it?

6 A. Correct.

7 Q. Why is that?

8 A. Because they're at risk for hurting themselves
9 even further. A lot of times it would -- especially
10 in somebody with dementia, it would make them even
11 more agitated. If they were in the bed and they had
12 restraints, they could be trying to get out of the
13 bed and they could end up strangling themselves. So
14 Agape had -- they were a restraint-free facility. I
15 don't know if it was, per se, they were restraint
16 free, but they did not endorse restraints.

17 Q. Understood. You don't work for Agape anymore,
18 do you?

19 A. No, sir.

20 Q. Has Agape paid you for your testimony here
21 today?

22 A. No, sir.

23 Q. Well, I certainly appreciate your time and your
24 patience with us. Thank you, ma'am.

25 A. Thank you.

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RECROSS-EXAMINATION

BY MR. MCALISTER:

Q. Ms. Vaughn, to clarify, there was a discussion about whether or not it's important whether a box for medications is checked. And staff relies on the boxes to develop a care plan; correct?

A. Correct.

Q. So it is important that documents are accurately charted and boxes are checked; correct?

A. Correct.

Q. And that's not your testimony that's not important?

A. No. It is important. But also, too, on that interim care plan, anybody could have written on a care plan, it wasn't just MDS as well. I mean, it could have been nursing, it could have been the DON. It was just -- it was a working -- it was a working form.

Q. But they would have -- they should have actually initialed any changes made to it; correct?

A. Correct.

Q. And not initialing is a violation of the policy and procedure at Agape; correct?

1 A. Correct.

2 Q. Now, they showed you a few items here about
3 interventions. And you checked all these boxes;
4 correct?

5 A. Yes, sir.

6 Q. Now, you didn't actually see the patient or
7 work with the patient; right?

8 A. No, sir.

9 Q. So you don't know whether or not any of these
10 interventions were actually implemented; correct?

11 A. No, sir.

12 Q. But you would expect staff to implement every
13 single one of those because that box is checked;
14 correct?

15 A. Correct.

16 Q. Now, there was also some questions about
17 restraints. We haven't seen a restraint assessment;
18 correct?

19 A. Correct. She wouldn't have had -- she would
20 have had a restraint assessment by, like, day 21.

21 Q. We'll go back to some of these interventions
22 again. Now, here, there's a box checked that says:
23 Bed in low position. Do you know whether or not her
24 bed was in a low position?

25 A. I'm not certain.

1 Q. Do you know whether or not her bed was broken?

2 A. I'm not certain.

3 Q. Okay. It also says: Notify doctor and
4 available contacts as listed on face sheets of any
5 falls. Do you know whether or not any of that was
6 done?

7 A. I'm not certain.

8 Q. And the goal here is to keep the resident from
9 having an injury; right?

10 A. Yes, sir.

11 Q. Do you know whether or not a call bell was in
12 reach and answered promptly?

13 A. I'm not certain.

14 Q. Okay. Do you know whether or not an assess
15 resident risk for falls upon admit and PRN?

16 A. She was assessed by the nursing -- the
17 admission nursing assessment.

18 Q. Okay. And there's PRN orders?

19 A. Well, and as needed. It wasn't an order; it
20 would be she would be assessed for falls as needed.

21 Q. Do you know whether or not she was monitored
22 for risk behavior and compliance with education and
23 interventions?

24 A. I'm not certain.

25 Q. Do you know whether or not she was provided

1 medications as ordered?

2 A. I'm not certain.

3 Q. How about fall preventions as ordered?

4 A. I'm not certain.

5 Q. Neuro checks to be done with falls as
6 indicated?

7 A. I don't know.

8 Q. That's because you didn't see this patient at
9 all; right?

10 A. Correct.

11 Q. And the goal here is the resident will not have
12 a fall with injury; correct?

13 A. Correct.

14 Q. But we know that's not the case; correct?

15 A. Correct.

16 MR. MCALISTER: No further questions, Your
17 Honor.

18 THE COURT: You may step down.

19 (Sidebar conference.)

20 MR. MCALISTER: Your Honor, at this time I'd
21 like to publish for the jury an additional record
22 from Joint Exhibit 4, page 326.

23 THE COURT: Very well.

24 MR. MCALISTER: This is an encounter summary;
25 the provider is Gal Margalit. It says: Per nurse,

1 patient is confused and agitated. Patient is a huge
2 fall risk. And this was July 2nd, 2014, at 8:45 AM.

3 Your Honor, we'd also like to publish Joint
4 Exhibit No. 26, occupational therapy note.

5 THE COURT: Very well.

6 MR. MCALISTER: It says:

7 Initial treatment plan for rehabilitation:
8 Agape Nursing & Rehabilitation Center.

9 Occupational therapy. It says: For falls --
10 for precautions and contraindications: Falls.
11 Cognitive status: Hallucinations during eval. Says
12 she was seeing children outside of the window.
13 Unable to state full name. Unintelligible speech.
14 Difficult to follow patient's speech. Unable to
15 follow directions. Very tearful during eval.

16 Plaintiff also requests to publish for the jury
17 Joint Exhibit No. 27. And this is initial treatment
18 plan for rehabilitation, physical therapy.

19 THE COURT: Very well.

20 MR. MCALISTER: This was 7/2/2014. Under
21 precautions and contraindications: Severe dementia
22 with hallucinations. Combativeness. Extremely
23 prone to fall. No safety awareness.

24 Safety awareness: None. Needs constant
25 supervision.

1 Nothing further from the plaintiff at this
2 time.

3 MR. CONNOR: Your Honor, at this time the
4 plaintiff would like to call their next witness
5 Ebonie McDaniel, for the purposes of
6 cross-examination.

7 EBONIE MCDANIEL

8 being first duly sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Have a seat and state your full
11 name for the record.

12 THE WITNESS: My name is Ebonie McDaniel.

13 CROSS-EXAMINATION

14 BY MR. CONNOR:

15 Q. Ms. McDaniel, how are you?

16 A. Good. How are you?

17 Q. Good. Good to see you again. We've had an
18 opportunity to speak before, haven't we?

19 A. Yes, sir.

20 Q. I'm here to ask you a few questions. First, if
21 you could, tell the jury what your present
22 occupation is.

23 A. Registered nurse.

24 Q. Okay. And there was a time in the past, wasn't
25 there, when you were employed at Agape Nursing &

1 Rehabilitation Center; correct?

2 A. Correct.

3 Q. And this was your first nursing job out of
4 school; correct?

5 A. Correct.

6 Q. And you had worked there just under a year
7 during -- or by the time of Ms. Shealy's admission;
8 correct?

9 A. Correct.

10 Q. From May 2014 -- I'm sorry. From May of 2013
11 until April of 2014; is that right?

12 A. No.

13 Q. Okay. Tell me when you worked there. I'm
14 sorry.

15 A. I don't know the exact months, but it was 2014
16 to 2015.

17 Q. Okay. And I think I misspoke, ma'am. You
18 actually had just started your first nursing job in
19 May of 2014; correct?

20 A. Yes.

21 Q. So that would have been just two months before
22 Ms. Shealy's admission at the beginning of July?

23 A. Correct.

24 Q. And that was your first nursing job, so you
25 were relatively still new on the job; right?

- 1 A. Correct.
- 2 Q. Now, you worked the day shift, which is 7:00 AM
3 to 7:00 PM; correct?
- 4 A. Correct.
- 5 Q. And that's when you were working in July of
6 2014 when Ms. Shealy came to the nursing home;
7 correct?
- 8 A. Correct.
- 9 Q. And as an RN at this nursing home, you would
10 have reported to the director of nursing; right?
- 11 A. Right.
- 12 Q. And the first director of nursing that you
13 reported to was Scott Smith; right?
- 14 A. Right.
- 15 Q. And then subsequently to a new director of
16 nursing, Erin Waters; right?
- 17 A. Right.
- 18 Q. Now, you and Scott Smith, I don't know if you
19 recognize this, were both new to the facility;
20 correct?
- 21 A. I wasn't aware that he was new. But I was new,
22 yeah.
- 23 Q. Well, he testified that he started in March of
24 '14, so just a few months before you.
- 25 A. Okay.

1 Q. Now, when we talked last, you told me about
2 some of your job duties and responsibilities. Do
3 you remember that?

4 A. Yes.

5 Q. And we walked through a job description for RNs
6 at Agape?

7 A. Correct.

8 Q. And having reviewed that job description, some
9 of the tasks that you had responsibilities for
10 included medication administration; right?

11 A. Right.

12 Q. As well as coordinating care plans?

13 A. Correct.

14 Q. And reporting and assessing changes in
15 condition with your residents; correct?

16 A. Correct.

17 Q. And when there was a change in the condition of
18 a resident, what were you supposed to do?

19 A. Notify the DON or the nurse practitioner or a
20 doctor.

21 Q. Right. And the family members; right?

22 A. And the family members, correct.

23 Q. And that would include changes in cognitive
24 status; right?

25 A. Right.

1 Q. Or changes in behavior or cognition?

2 A. Uh-huh.

3 Q. Or changes in their health status. For
4 example, if there was an incident or an accident
5 that involved the resident; right?

6 A. Correct.

7 Q. Now, those are the types of responsibilities
8 that you and the other nurses at Agape had; right?

9 A. Right.

10 Q. You also had responsibilities for charting on
11 patients; correct?

12 A. Correct.

13 Q. And documenting the care provided?

14 A. Correct.

15 Q. And that includes charting and documenting any
16 incidents or accidents that involve the patient;
17 correct?

18 A. Correct.

19 Q. As well as filling out any incident and
20 accident reports that are required in the face of
21 one of those events; right?

22 A. Right.

23 Q. Now, concerning charting, as an RN, you can
24 agree that accurate recording of patient information
25 is important; right?

1 A. Right.

2 Q. And the reason why that is, is because
3 healthcare decisions are made off of the information
4 contained in the chart; correct?

5 A. Correct.

6 Q. And you know, too, don't you, ma'am, that
7 complete and accurate documentation is important
8 because it's a critical communication tool across
9 providers over time; right?

10 A. Correct.

11 Q. So if information is not included in the chart
12 on your shift and you don't get a chance to convey
13 to the oncoming nurse what may have been going on
14 with that patient, they may be left in the dark
15 about what's been happening with that patient;
16 right?

17 A. Correct.

18 Q. So it's important that you document what's
19 going on so that subsequent providers can understand
20 what the history of that patient has been?

21 A. Correct.

22 Q. Now, ma'am, you understand that inaccurate or
23 incomplete documentation can result in harm to
24 patients; correct?

25 A. Correct.

1 Q. And you also know and you have testified
2 previously that healthcare decisions that are made
3 off bad or incorrect information can be catastrophic
4 to patients and, in some instances, deadly; right?

5 A. Correct.

6 Q. Now, as a nurse, there are right ways and wrong
7 ways to do things; correct?

8 A. Correct.

9 Q. And in your job description, as well as in some
10 other documents that you and I looked at previously,
11 those are often referred to as standards of practice
12 which nurses are expected to follow; correct?

13 A. Correct.

14 Q. And when you became employed at Agape and
15 signed your job description, you indicated that you
16 would practice in conformity with those practice
17 standards; right?

18 A. Correct.

19 Q. Now, nursing homes, like Agape West Columbia,
20 have responsibility for caring for patients that are
21 frail and vulnerable; correct?

22 A. Correct.

23 Q. Due to their impairments, whether it be mental,
24 physical, or both, these residents are susceptible
25 to abuse, neglect, and exploitation; correct?

1 A. Correct.

2 Q. And as a consequence of that, the provision of
3 care in nursing homes is highly regulated; right?

4 A. Correct.

5 Q. There are laws that nursing homes have to abide
6 by, including code sections as well as regulations;
7 right?

8 A. Right.

9 Q. And you know that those laws are there in part
10 to ensure the protection of these frail and
11 vulnerable adults; correct?

12 A. Correct.

13 Q. And, in addition, there are policies and
14 procedures that the facility has; correct?

15 A. Correct.

16 Q. And you understand that those policies were
17 minimum standards that needed to be followed;
18 correct?

19 A. Correct.

20 Q. And you understood that if those were not, that
21 there could be consequences to you, including being
22 written up or terminated; correct?

23 A. Correct.

24 Q. There are also consequences to the patient,
25 including potential harm; correct?

- 1 A. Correct.
- 2 Q. Now, ma'am, those policies included policies on
- 3 assessments; right?
- 4 A. Right.
- 5 Q. Care planning?
- 6 A. Uh-huh.
- 7 Q. Medication administration?
- 8 A. Correct.
- 9 Q. PRN orders?
- 10 A. Correct.
- 11 Q. Answering call lights and assisting residents
- 12 to use the restroom?
- 13 A. Correct.
- 14 Q. Documentation?
- 15 A. Correct.
- 16 Q. Behavioral assessments and monitoring?
- 17 A. Yes.
- 18 Q. And fall prevention and fall risk assessment;
- 19 right?
- 20 A. Correct.
- 21 Q. Now, like the codes and regulations, you
- 22 understand, don't you, that those policies were
- 23 there in place in part to ensure the protection of
- 24 the residents under the nursing home's care?
- 25 A. Right.

1 Q. Now, you understand, don't you, that residents
2 are entitled to certain rights; correct?

3 A. Right.

4 Q. And they're frequently referred to as
5 residents' rights?

6 A. Uh-huh.

7 Q. They have the right to receive care necessary
8 to keep them safe; correct?

9 A. Correct.

10 Q. They have the right to receive care in
11 conformity with the laws of the state; correct?

12 A. Correct.

13 Q. They have the right to receive care and
14 services necessary to maintain their health status;
15 correct?

16 A. Correct.

17 Q. And they have the right to be treated with
18 dignity and respect?

19 A. Correct.

20 Q. As well as free from mental and physical abuse;
21 correct?

22 A. Correct.

23 Q. Now, ma'am, falls are something you hear a lot
24 about in the nursing home context; correct?

25 A. Correct.

1 Q. And that's because, based off your training and
2 education and experience, you know that fall events
3 in elderly patients can be harmful; correct?

4 A. Correct.

5 Q. They can be deadly as well; correct?

6 A. Correct.

7 Q. Now, as a nurse, you know that in order to
8 prevent and reduce fall events, that steps need to
9 be taken along each step of the nursing process;
10 correct?

11 A. Correct.

12 Q. And that's a process that you're familiar with
13 that include steps of assessment, planning,
14 intervening, and evaluating the effectiveness of
15 each of those steps; correct?

16 A. Correct.

17 Q. And to have a proper plan in place, it's
18 important that the assessment be accurate; right?

19 A. Correct.

20 Q. It's also important that appropriate fall
21 interventions are in place; correct?

22 A. Correct.

23 Q. If you don't have the right interventions with
24 a patient who is at risk for falls, the opportunity
25 or the likelihood of their fall -- falling

1 increases; correct?

2 A. Correct.

3 Q. Now, in addition, you're supposed to
4 re-evaluate those plans and interventions any time
5 there's a change in the resident's condition;
6 correct?

7 A. Yes.

8 Q. And you're supposed to adjust the interventions
9 that the facility is putting into place to protect
10 that patient as their condition changes; correct?

11 A. Correct.

12 Q. Now, with a new admission or a new admin at the
13 facility, you know that there's a higher risk of a
14 fall episode; correct?

15 A. Correct.

16 Q. And that's because, with new residents, they're
17 not as familiar with the facility; right?

18 A. Right.

19 Q. They're not as familiar with the routine of the
20 nursing home; correct?

21 A. Correct.

22 Q. They may not even know where things are,
23 particularly if they have some sort of cognitive
24 deficits; correct?

25 A. Correct.

1 Q. And if they have cognition difficulties, like
2 dementia or some other thing that impacts their
3 ability to process what's going on and appreciate
4 their surroundings, then you've got to be especially
5 vigilant to protect those residents from falls;
6 right?

7 A. Correct.

8 Q. That's because with those patients, their
9 safety awareness is limited, if at all present;
10 correct?

11 A. Correct.

12 Q. That means they can't appreciate the things
13 that normal people, like us in this courtroom, can
14 as a potential fall risk; right?

15 A. Right.

16 Q. Now, when caring for these residents, you want
17 to keep in mind the time of day as well; correct?

18 A. Correct.

19 Q. And that's because with many dementia patients,
20 they become more agitated in the evening; fair?

21 A. Yes.

22 Q. And that's a process that you're familiar with
23 called -- frequently called, in the nursing home
24 setting, as sundowning; right?

25 A. Uh-huh.

1 Q. Now, we're here today on behalf of Utricia
2 Shealy, a lawsuit brought on her behalf against
3 Agape West Columbia and its management company for
4 injuries that she sustained as a result of a fall on
5 July 2nd of 2014. Okay?

6 A. Okay.

7 Q. And you know that; right?

8 A. Correct.

9 Q. Now, when we last talked, you didn't recall
10 much, if anything, about this episode; correct?

11 A. Correct.

12 Q. You had no independent recollection of
13 Ms. Shealy, did you?

14 A. No.

15 Q. You couldn't tell me, at the time of your
16 deposition, any physical characteristics that the
17 patient had; right?

18 A. Correct.

19 Q. You couldn't tell me anything about her
20 personality; right?

21 A. No.

22 Q. And you couldn't even tell me whether or not
23 the patient was African-American or white; correct?

24 A. Right.

25 Q. Now, if you recall, based off the information

1 that we talked about and your testimony, and
2 reviewing your notes about this patient, Ms. Shealy
3 was in residence at the facility July 1st and 2nd;
4 correct?

5 A. Correct.

6 Q. And you were working at the facility during
7 that time as well?

8 A. Correct.

9 Q. And though you don't recall, based off your
10 charting, we know that you had occasion to see
11 Ms. Shealy; correct?

12 A. Say that one more time.

13 Q. Sure. And that was a complicated question.

14 Though I know you don't recall treating
15 Ms. Shealy, based off having reviewed your charting,
16 you understand that you were a nurse assigned to
17 her; correct?

18 A. Correct.

19 Q. Now, prior to today, you've had an opportunity
20 to review that charting; right?

21 A. Yes.

22 Q. And much like your deposition, what I'd like to
23 do is kind of walk through that again. All right?

24 A. Okay.

25 Q. So, first, before we turn to your actual

1 charting, please explain to the jury what PRN means.

2 A. PRN is as needed.

3 Q. Sure.

4 A. So a physician may write an order for a patient
5 to get a certain medication as needed.

6 Q. And whether it's one time or four times a day,
7 it doesn't matter how many times a day it is, you're
8 only supposed to give it if it's as needed; right?

9 A. Depending on how they write it. If it's as
10 needed one day -- once a day, it would say Q day; or
11 if it's two times a day, it would say BID. So
12 there's specifics to --

13 Q. Sure. But if it's PRN, whether it's you can
14 give it four times a day or one time a day, you
15 don't have to do it at all unless it's needed;
16 correct?

17 A. Correct.

18 Q. All right. Now, in dealing with patients with
19 dementia, you would agree, ma'am, that PRN
20 medication means that it's being given at the
21 nurse's discretion; correct?

22 A. Depending on the medication.

23 Q. Well, for example, in this case, Ativan --

24 A. Uh-huh.

25 Q. -- based on the particular signs and symptoms

1 of the patient, because this patient has dementia,
2 you're making the decision whether she needs the
3 medications or not; correct?

4 A. Correct.

5 Q. It's not something that you would rely on the
6 patient to tell you, who is demented, I think I need
7 this; correct?

8 A. Correct.

9 Q. You have to use your nursing judgment to
10 determine, based off the symptoms that you see, that
11 it's appropriate to give that medication; right?

12 A. Correct.

13 Q. Now, before a PRN medication is given, you've
14 agreed, in your deposition, that the symptoms or
15 condition for which that medication is being
16 provided must be documented; correct?

17 A. Correct.

18 Q. And that means that before giving the
19 medication, we should see that the symptoms for
20 which it's being given are documented in the
21 patient's chart; right?

22 A. Correct.

23 Q. Yeah. And that's what the facility policy
24 requires as well; correct?

25 A. Correct.

1 Q. And you and I have had an opportunity to look
2 at that, and I'll ask you about it again in a
3 moment.

4 But having reviewed Agape's policy on PRN
5 medications before, you know that PRN medications
6 are supposed to be given as little as possible;
7 correct?

8 A. Correct.

9 Q. Further, when PRN orders are implemented, Agape
10 nursing staff are required to monitor the use of
11 such medications; correct?

12 A. Correct.

13 Q. That means you should be documenting the result
14 or the impact or the reaction that the patient is
15 having in response to having provided them that
16 medication; correct?

17 A. Correct.

18 Q. And that's something that should also be
19 documented; fair?

20 A. Correct.

21 Q. Now, before we get to Ms. Shealy's fall, as
22 part of your review of Ms. Shealy's chart, do you
23 recall that we looked at the medication
24 administration record?

25 A. Yes.

1 Q. And explain to the jury just what that is.

2 A. The medication administration record is just
3 the -- basically the record of all of their
4 medications, when they've been given, and the time
5 that they've been given.

6 Q. And it also includes --

7 A. It's an electronic record.

8 Q. And also includes who gave the medication as
9 well; right?

10 A. Correct.

11 Q. So we can see when a medication was given, by
12 whom, and at what time -- or when, what, and at what
13 time; right?

14 A. Right.

15 Q. And you know that that's a record that
16 subsequent healthcare providers rely on to see, hey,
17 has this patient gotten any medication before today,
18 especially if it's PRN?

19 A. Correct.

20 Q. Okay. Because you don't want to give
21 medications more than once if that could result in a
22 problem; correct?

23 A. Correct.

24 Q. Now, ma'am, you previously testified that their
25 policy, Agape's policy, regarding medication

1 administration requires that any time you give a
2 medication, that it should be documented in the MAR;
3 do you recall that?

4 A. Yes.

5 Q. And I appreciated your honesty in acknowledging
6 that. You acknowledged that that was what the
7 standard of care, as well as the policy, require;
8 correct?

9 A. Yes.

10 Q. And you also acknowledged that in this
11 particular instance with Ms. Shealy, that there was
12 a -- there's a question about whether an Ativan was
13 given on the 2nd of July, because there's no
14 notation in the MAR that that medication was
15 documented -- or provided; correct?

16 A. Correct.

17 Q. And you acknowledged that that was a breach in
18 the standard of care not to document that, as well
19 as breach of company policy; right?

20 A. Correct.

21 Q. Now, do you remember going through the
22 electronic MAR as well? There was both the MAR --

23 A. I do.

24 Q. All right. And neither document reflected the
25 administration of that medication; correct?

1 A. Correct.

2 Q. Now, I'd just like to show that for the jury's
3 benefit. If we can, pull up page 147. That's the
4 MAR, 359.

5 So, ma'am, this is the administration record
6 and this is the one page attached to your
7 deposition. And this has been admitted as Joint
8 Exhibit 4 as well. But this is a page from that
9 record, correct, and it's got Bates page 147 for the
10 jury, ultimately, to find it. Okay? So this is an
11 example of the medication administration record;
12 correct?

13 A. Correct.

14 Q. And do you recall what the name or the -- the
15 formal name of Ativan is?

16 A. Lorazepam.

17 Q. And we looked at the MAR. And for that
18 particular drug, Lorazepam, there's only one entry
19 by any nurse to suggest that this medication was
20 given during Ms. Shealy's residency; correct?

21 A. Correct.

22 Q. And that was in a pill at 7:48 on the 1st;
23 correct?

24 A. Correct.

25 Q. All right. And that was not you; right?

1 A. No.

2 Q. But certainly on the 2nd, there's no indication
3 that that medication was ever provided to this
4 patient in the MAR; correct?

5 A. No.

6 Q. And, again, you agree that if it was given and
7 it wasn't documented, that that was a violation of
8 the standard of care?

9 A. Correct.

10 Q. Now, ma'am, switching gears, do you recall what
11 Ms. Shealy's doctor documented about Ms. Shealy's
12 risk for falls on the morning of the 2nd?

13 A. I do not.

14 Q. Well, I'll represent that in his note, he
15 indicated that per nursing, she was a huge fall
16 risk. Is that something you expect -- you would
17 have known at the time you treated her?

18 A. Right.

19 Q. Right. And that's also something that would
20 have been available for you to review that progress
21 note to inform you about what may be going on with
22 this patient; correct?

23 A. Correct.

24 Q. Now, you can't recall, can you, whether or not
25 you ever saw that note; right?

1 A. No.

2 Q. And you don't remember this event anyway, so I
3 certainly can't imagine you'd remember having
4 reviewed a doctor's progress note about her if you
5 can't remember her; is that fair?

6 A. Correct.

7 Q. Now, it doesn't surprise you that if the
8 doctor's progress notes indicates that she's a huge
9 fall risk, that the occupational and physical
10 therapist who'd spent, per the documentation, three
11 hours assessing her that same day, that they, too,
12 documented that she was extremely at risk for falls.
13 Would that surprise you?

14 A. No.

15 Q. And during your deposition -- well, let me ask
16 you this: Would those therapy notes have been also
17 available to you like the progress notes, if you
18 know?

19 A. I don't remember.

20 Q. All right. Now I'd like to walk you through
21 your nurse's notes relating to this patient. And
22 the first note that I want to look at is Agape 139.
23 We'll do it in the joint exhibit. It's page 139 of
24 Exhibit 4. Ma'am, this is the nurse's note;
25 correct?

1 A. Correct.

2 Q. And it's called a narrative note; right?

3 A. Right.

4 Q. Which means you write free text --

5 A. Correct.

6 Q. -- meaning you're entering in type of your
7 findings in addition -- rather than just checking
8 boxes, you're actually making a notation of this
9 patient into the record. And this page includes a
10 vital assessment; correct?

11 A. Correct.

12 Q. And then there's a notation. The date of this
13 record is what?

14 A. July 2nd, 2014.

15 Q. And, if you could, just read into the record
16 your note.

17 A. Patient is alert and oriented times one.
18 Patient is a new admit who has dementia,
19 hypertension, anemia, TIA, chronic pain, anxiety,
20 and hypercholesterolemia. Patient has had no
21 complaints today. Patient has been out of bed to
22 the dining hall today and physical therapy. Patient
23 is incontinent of bowel and bladder. Patient has an
24 order for Ativan 0.5 milligrams every four hours
25 PRN. Patient has shown no signs or symptoms of

1 distress. Patient has been oriented to the call
2 light. Will continue to monitor and follow up as
3 needed.

4 Q. All right. And this is signed by you; correct?

5 A. Correct.

6 Q. And it's for Ms. Shealy; correct?

7 A. Yes.

8 Q. All right. So reviewing this note, you'd
9 agree, it appears this patient is doing pretty well;
10 right?

11 A. Correct.

12 Q. She's got no complaints today; right?

13 A. Correct.

14 Q. She's out of bed and in the dining hall and
15 participating in physical therapy; correct?

16 A. Correct.

17 Q. She's got no signs or symptoms of distress;
18 right?

19 A. Correct.

20 Q. And you've indicated that you're going to
21 continue to monitor her; right?

22 A. Correct.

23 Q. Is there anything about this note that suggests
24 there's an issue with this patient?

25 A. No.

1 Q. And, ma'am, what is the date -- I'm sorry.

2 What is the time that this note was entered?

3 A. 8:07 PM.

4 Q. That would be in the evening; right?

5 A. Right.

6 Q. Now, your second note is an ER note found at
7 Agape 141. And it's a two-page note, and it's
8 called ER note. Explain to the jury what that is.

9 A. We have to complete an ER note on any patient
10 that has to be transferred out to the ER.

11 Q. Okay. So again we have her vitals being taken;
12 correct?

13 A. Correct.

14 Q. And then there's a question: What prompted the
15 ER transfer? If you could, just walk us through
16 those slowly, please.

17 A. Okay. At 7:25, Ms. Shealy fell to the floor in
18 the hallway by the PT room. Myself and another
19 nurse assessed the patient and got her signs. Those
20 were her vital signs.

21 Q. Uh-huh.

22 A. The patient had complaints of right hip pain,
23 right shoulder pain, and head pain that stings.

24 Q. Okay.

25 A. At 7:28, the M.D. was notified of her fall and

1 the findings of the resident assessment. M.D.
2 ordered to send the resident to the ER for
3 evaluation.

4 Q. Okay.

5 A. At 7:30, 911 was called and notified for the
6 emergent transfer. At 7:35, family was notified,
7 Ms. Amy Davis. At 7:42, EMS arrived. The transfer
8 summary and medication list was sent and patient was
9 transported to Lexington Medical Center ER for
10 further evaluation.

11 Q. Okay. Read us the next paragraph.

12 A. Before incident, patient had increased
13 agitation and was combative. Patient's family was
14 present with the patient all afternoon while she was
15 exhibiting these signs. Patient's family was
16 notified of signs and symptoms of dementia and why
17 the patient was having increased confusion and
18 agitation. Patient was given Ativan 0.5 milligrams
19 at 5:30 PM. Patient remains agitated, confused, and
20 combative. Patient was moved to the nurses station
21 for close monitoring but did not want to remain in
22 that area.

23 Q. Okay. Let me ask you a couple questions about
24 that. You'd agree, ma'am, that's a very different
25 notation than what we looked at earlier; correct?

1 A. Correct.

2 Q. Here, you documented that this patient, at
3 7:25, has fallen to the floor in the hallway;
4 correct?

5 A. Correct.

6 Q. Now, do you still not remember who the other
7 nurse was that would have assisted you in assessing
8 this patient?

9 A. I do.

10 Q. You don't remember or you know who it is?

11 A. I know who it is.

12 Q. Okay. When did you since learn that?

13 A. During the deposition where I saw her transfer
14 to the ER note.

15 Q. Okay. And who was that?

16 A. Fran Alexander.

17 Q. And have you talked with Ms. Alexander about
18 this case at all?

19 A. No.

20 Q. Okay. All right. Now, patient had complaints
21 of right hip, shoulder, and head pain; correct?

22 A. Correct.

23 Q. So we've got a new condition. She's had a
24 fall, obviously, and she's complaining of pain in
25 various areas; right?

1 A. Correct.

2 Q. You notified 911 and the physician. Do you
3 recall who would have made those calls?

4 A. I do not.

5 Q. Okay. And you can't say with any certainty
6 whether it was you or Fran or some other person?

7 A. I cannot.

8 Q. And then at 7:42, the ambulance arrived and
9 transported her to the hospital; correct?

10 A. Correct.

11 Q. Now, would you have been the nurse who reported
12 to the EMTs the history of that incident?

13 A. I do not remember.

14 Q. But certainly some nursing staff member would
15 have communicated that in that exchange with those
16 EMTs; correct?

17 A. Correct.

18 Q. And would you have expected that it would have
19 been you or the other nurse assigned?

20 A. Correct.

21 Q. And you both assessed this patient, so the
22 information you'd be telling them should be
23 accurate; right?

24 A. Correct.

25 Q. Now, before the incident, we've got increased

1 agitation; right?

2 A. Correct.

3 Q. Now, you would agree, ma'am, looking at your
4 prior note, that there's no notation of any
5 increased agitation; fair?

6 A. Correct.

7 Q. We've also got a new symptom of combativeness;
8 correct?

9 A. Correct.

10 Q. And, again, looking at your prior note, there's
11 no indication whatsoever that over the course of
12 that entire day, up until 8:07 PM, that there was
13 any combativeness; fair?

14 A. Fair.

15 Q. Also, there's a notation about this increased
16 agitation -- do you see that -- as well as
17 confusion. Do you see that?

18 A. Yes.

19 Q. And, again, those are new symptoms, again, not
20 anywhere documented in your prior note; correct?

21 A. Correct.

22 Q. And there's this notation about the Ativan that
23 you have indicated in your narrative note here that
24 was provided but have acknowledged that was not
25 documented in the MAR; fair?

1 A. Fair.

2 Q. And we've had an opportunity to look at that
3 MAR that shows no provision of that, medication;
4 correct?

5 A. Correct.

6 Q. Now, it notes that despite the provision of
7 that medication, her confusion, agitation, and
8 combativeness remain; correct?

9 A. Correct.

10 Q. And there's no indication that the physician
11 was ever made aware of that; correct?

12 A. Correct.

13 Q. And this has remained for at least two and a
14 half hours before the fall; correct?

15 A. Correct.

16 Q. Now, it also indicates that the patient was
17 moved to the nurses station for closer monitoring,
18 but that she did not want to remain in that area.
19 Do you see that?

20 A. Yes.

21 Q. All right. Explain -- is it fair to assume
22 that you have no independent recollection of her not
23 wanting to remain in that area?

24 A. No. Other than the chart, no.

25 Q. Okay. Right. You don't remember any of this

1 but for the chart; correct?

2 A. Right.

3 Q. And, again, there's no reference to any of this
4 in your previous note; fair?

5 A. Fair.

6 Q. And that's true even though your previous note
7 was made 8:07 PM, 40 minutes after her fall;
8 correct?

9 A. Correct.

10 Q. And, again, you found that very perplexing in
11 your deposition; correct?

12 A. Right.

13 Q. And it concerned you, that inconsistency;
14 correct?

15 A. Correct.

16 Q. And it also concerned you, did it not, that
17 when you look at this note, this ER note, which is a
18 legal medical record, it's part of the patient's
19 chart, what was the time that was documented that
20 this note was completed?

21 A. 3:22 PM.

22 Q. That would be four hours before the fall
23 actually occurred; correct?

24 A. Correct.

25 Q. And, again, you have no explanations as to how

1 that discrepancy exists; fair?

2 A. Correct.

3 Q. And you're very concerned about that, aren't
4 you?

5 A. Yes.

6 Q. Now, ma'am, have you ever gotten an answer as
7 to how those records are so inconsistent?

8 A. No.

9 Q. And, ma'am, you can't tell us, can you, based
10 off this note how long these symptoms of confusion
11 and agitation and combativeness persisted; correct?

12 A. Correct.

13 Q. We don't know that. We also don't know how
14 long she was at the nurses station before she did
15 not want to remain in that area; correct?

16 A. Correct.

17 Q. And, ma'am, it's fair that because you can't
18 recall this incident, that you don't have any
19 recollection of how long or when she was moved to
20 the nurses station; correct?

21 A. Correct.

22 Q. Now, there's one more note prepared by you
23 dated 7/3 that I want to ask you about. It's Agape
24 145. And again, ma'am, this is a free-text note
25 similar to the first one that we saw; correct?

1 A. Yes.

2 Q. And it, again, has vital signs; correct?

3 A. Correct.

4 Q. And if you could, just read into the record the
5 reason for the note.

6 A. Patient found on the floor with complaints of
7 right hip pain, right shoulder pain, and head pain
8 that stings. Patient was sent to ER via EMS.

9 Please read ER note regarding patient's emergent
10 transfer.

11 Q. So patient found on the floor; correct?

12 A. Correct.

13 Q. That means this was an unwitnessed fall; right?

14 A. Correct.

15 Q. That means her fall was not witnessed by any
16 nursing staff, but, instead, staff came upon her on
17 the floor in the condition that she was, complaining
18 of hip pain, shoulder pain, and head pain; correct?

19 A. Correct.

20 Q. And you don't know, do you, how long she was on
21 the floor before being discovered by staff at the
22 nursing home, do you?

23 A. I do not.

24 Q. Now, one other question: Do you have any idea
25 why this information is being entered into the

1 record a day later?

2 A. No.

3 Q. And is that normal that you would input this
4 sort of data the whole next day after an episode
5 like this?

6 A. Sometimes it's oversighted and you need to go
7 back to add something into the record. It's normal.

8 Q. Okay.

9 A. It happens.

10 Q. All right. But in this particular instance,
11 you don't have any memory as to why you would have
12 input this a day later; is that fair?

13 A. Huh-uh.

14 Q. And the next document I'd like to ask you about
15 is the resident incident report, which is a joint
16 exhibit. It's Joint Exhibit 14, for the jury's
17 benefit.

18 And if you could, ma'am, just tell us what a
19 resident incident report is and then I'm going to
20 ask you some questions about it.

21 A. It's a report that the nursing staff has to do
22 if a patient has sustained any type of injury or if
23 anything has happened.

24 Q. Okay. So this is a form that's required to be
25 filled out by company policy; correct?

1 A. Correct.

2 Q. And in this particular instance, you're the
3 party who prepared the report; correct?

4 A. Correct.

5 Q. It indicates that somewhere on here.

6 A. It's right above the narrative on the
7 right-hand side.

8 Q. Oh, okay.

9 A. Incident reported by.

10 Q. Thank you. There we go. Sorry.

11 All right. So the incident was both reported
12 by you; right?

13 A. Right.

14 Q. And then it -- also, you are the one who
15 completed this form; right?

16 A. Yes.

17 Q. All right. So in this particular event -- or
18 report of the event, again, we've already identified
19 the fact that this was a nonwitnessed fall; correct?

20 A. Correct.

21 Q. And, again, that means no staff member actually
22 observed the patient fall, but, instead, she was
23 discovered on the floor, as we previously saw;
24 correct?

25 A. That means that I did not witness it.

1 Q. Well, are you aware of anyone else who
2 witnessed it?

3 A. No. Not right now, no.

4 Q. Okay. Have --

5 A. I don't recall.

6 Q. All right. And you haven't seen any
7 documentation in this patient's chart that suggests
8 otherwise, have you?

9 A. Correct.

10 Q. Okay. All right. Now, if you could, read for
11 me into the record the actual narrative that you've
12 documented here, and I want to ask you a couple
13 questions about it.

14 A. Okay. Resident tried to pull self up from
15 wheelchair on crown molding in hallway and fell to
16 the floor on the right side. Upon assessment,
17 resident complained of pain in the right hip, right
18 shoulder, and head that stings. M.D. notified;
19 ordered a transfer to ED for evaluation. Family
20 notified and resident transferred via EMS. No
21 obvious injuries, but pain noted to right hip, right
22 shoulder, and head.

23 Q. Okay. So in this instance, we've got new
24 information; correct?

25 A. Correct.

1 Q. Here it says that the resident tried to pull
2 self up from wheelchair on crown molding in hallway
3 and fell to the floor on right side.

4 Would you agree, ma'am, that that is new
5 information that we've not seen documented anywhere
6 in the other records that we've looked at?

7 A. Correct.

8 Q. Do you have any recollection about how it is
9 that you came to learn the mechanism for which she
10 attempted to get out of her chair by using the chair
11 rail on the wall?

12 A. I don't have any recollection, no.

13 Q. All right. We've already talked about the fact
14 that she was in pain, that you notified the
15 physician and family and transferred via EMS;
16 correct?

17 A. Correct.

18 Q. Now, ma'am, have you been -- other than this
19 instance, are you aware -- have you been in
20 circumstances where EMS has been called to respond
21 to situations like this in nursing homes?

22 A. Yes.

23 Q. And have you had occasion to communicate with
24 those EMTs about the circumstances leading to the
25 incident in question?

1 A. Correct.

2 Q. I'd like to ask you about the EMT report that
3 was generated in this case. This is Joint Exhibit
4 1, for the jury's benefit. And I'll represent to
5 you that this has been admitted into evidence. This
6 is the Lexington County EMS run report for Utricia
7 Shealy on her fall on the 2nd. Do you see that?

8 A. Yes.

9 Q. And there's a paramedic one and two, a driver
10 and a primary caregiver, who completed this chart.
11 Do you see that?

12 A. Yes.

13 Q. And the time of arrival at the scene was 19:43,
14 which would have been at 7:43 in the evening, about
15 20 minutes after you found the patient on the floor;
16 correct?

17 A. Correct.

18 Q. Okay. So reviewing this document, if you
19 could, like your nurse's notes that afford the
20 caregiver an opportunity to put a narrative into the
21 report, just read for me, if possible, and I'll try
22 to blow it up if you can't see it, the notation
23 documented by the EMTs who are not employees of this
24 facility.

25 A. Okay. Arrived on scene to find 76-year-old

1 patient sitting in the wheelchair at nurses station
2 at nursing care facility. Per staff, patient was
3 found on the floor in room. Staff relays that the
4 patient has a history of dementia and they are
5 unable to determine if the patient is injured due to
6 patient's dementia.

7 Patient is able to relay that she is in pain;
8 however, when asked where she is hurting, she gives
9 multiple answers that are not consistent. Per
10 staff, this is patient's normal mentation. Lifted
11 patient to -- I don't even know -- FW and secured.
12 PW wheeled to unit and secured. Notified LMC ER of
13 ten-minute ETA. Report given to staff with patient
14 to ER room 23. Patient transported without
15 incident.

16 Q. All right. Ma'am, you would again -- or you
17 would acknowledge, would you not, again, that this
18 is a little bit different narrative than what we saw
19 before; correct?

20 A. Correct.

21 Q. Here, the caregivers, the EMTs, indicate that
22 this patient was found on the floor in room. Do you
23 see that?

24 A. I do.

25 Q. And you would agree -- and it says that that

1 was relayed to them by staff; correct?

2 A. Correct.

3 Q. Now, that's a different location than a hall;
4 correct?

5 A. Correct.

6 Q. And, again, you don't have any independent
7 recollection of where this patient was found;
8 correct?

9 A. No.

10 Q. You just know that there are records that exist
11 with your name on them; right?

12 A. Correct.

13 Q. And those records have a lot of problems,
14 particularly related to the timing of them; correct?

15 A. Correct.

16 Q. All right. Now, ma'am, last time we were
17 together, you had an opportunity to review the audit
18 trail that was generated relating to this record by
19 the nursing home. Do you recall that?

20 A. No.

21 Q. Ma'am?

22 A. No.

23 Q. Okay. There --

24 MR. BLAKE: I have an issue to take up, Your
25 Honor.

1 (Sidebar conference.)

2 BY MR. CONNOR:

3 Q. Ma'am, you've not reviewed that document;
4 correct?

5 A. Correct.

6 Q. And you didn't, nor do you today, have any
7 explanation for why there are modifications being
8 made to this patient's record for days --

9 MR. BLAKE: Objection. That's what we just
10 talked about.

11 THE COURT: Ask -- come close, please.

12 (Sidebar conference.)

13 BY MR. CONNOR:

14 Q. Are you aware of anyone from Agape modifying
15 your records?

16 A. No.

17 Q. Now, during your deposition, these inconsistent
18 things that we've looked at, the timing, the
19 location of the fall, the symptoms that were being
20 experienced with this patient, and the other
21 discrepancies, you've previously told us that those
22 concern you; correct?

23 A. Yes.

24 Q. There's one final document that I'd like to ask
25 you about, ma'am, and it's a document relating to

1 the care provided to Ms. Shealy during your shift.
2 And that document is a record of the care provided
3 by Agape CNAs to this patient. Okay?

4 A. Okay.

5 MR. CONNOR: Your Honor, and for the jury's
6 benefit, this is Joint Exhibit 16.

7 BY MR. CONNOR:

8 Q. And, ma'am, I'll represent that this is a
9 document of the ADL care being completed on this
10 patient. And you've had an opportunity to review
11 this before; correct?

12 A. Correct.

13 Q. All right. And, if you could, just explain to
14 the jury what a CNA is.

15 A. Certified nursing assistant. They provide ADL
16 support and assistance to the patients as needed.

17 Q. And what is ADL support? What does that mean?

18 A. Activities of daily living. So dressing,
19 showering, bathing, toileting, feeding.

20 Q. They're your primary hands-on caregivers for
21 your patients; correct?

22 A. Correct.

23 Q. Now, according to this document, who were the
24 CNAs documented as providing care to this resident
25 on your shift, which was 7/2 on the dayshift?

- 1 A. I can't read it. I can't see it.
- 2 Q. So 7/2, dayshift, and the caregivers are here.
- 3 A. Ashley Holland.
- 4 Q. Uh-huh. And who is the other?
- 5 A. I can't read that.
- 6 Q. Shander Murray?
- 7 A. Yeah, Shander Murray.
- 8 Q. Okay. And it's my understanding that you know
- 9 neither of those ladies. Is that correct?
- 10 A. Correct.
- 11 Q. And we've reviewed this document before. But
- 12 if you can recall, what is the last documented time
- 13 that this patient received any ADL care by an aide
- 14 at this facility?
- 15 A. The last documented time was 2:20 PM.
- 16 Q. And that would have been five hours before her
- 17 fall; correct?
- 18 A. Correct.
- 19 Q. And, I believe, last time we talked, you
- 20 indicated that that was a long time to go without
- 21 having been offered a drink or taken to the
- 22 restroom; correct?
- 23 A. Well, that doesn't mean she wasn't offered;
- 24 that just means it wasn't documented.
- 25 Q. Okay. But you know documentation is important;

1 right?

2 A. But you don't have to document every time you
3 offer a patient a drink or toilet them.

4 Q. Okay. So is it your testimony, ma'am, that
5 even though over and over in the short time period
6 that this resident was admitted, that one day, that
7 these levels of assistance offered, as well as the
8 tasks performed, is not required to be done?

9 A. If I toilet the patient or if I offer the
10 patient a drink, I'm not going to chart it in the
11 CNA's charting because I don't have access to their
12 charting.

13 Q. Right.

14 A. So just -- it could have been offered --

15 Q. By a nurse?

16 A. By a nurse, by another CNA --

17 Q. Well, ma'am --

18 A. -- anyone in the facility.

19 Q. -- if a CNA provides a service to a resident,
20 you'd agree that they have an obligation to document
21 that; correct?

22 A. Depending on the service. If you're offering
23 the patient a drink, it doesn't have to be
24 documented that you offered her a drink. Every time
25 you offer a patient a drink, you don't have to

1 document that.

2 Q. Okay. Well, how about taking them to the
3 restroom?

4 A. That doesn't have to be documented. Every
5 single time that you take a patient to the restroom,
6 it doesn't have to be documented.

7 Q. And have you reviewed the ADL policy on what's
8 required to be documented and how?

9 A. I have not.

10 Q. So what's the basis for that opinion?

11 A. If I -- if I take a patient to the restroom,
12 I'm not going to document it into the CNAs'
13 charting. I don't have access to a CNA's charting,
14 so I'm not going to document that. So if a nurse
15 could have taken her to the restroom, it might not
16 be documented because nurses don't have access to
17 the CNAs' charting.

18 Q. Right. But CNAs are supposed to document the
19 care that they provide; right?

20 A. Correct.

21 Q. And the last documented care of any sort by any
22 CNA at this facility is July 2nd at 2:20 PM;
23 correct?

24 A. Correct.

25 Q. And you're not aware of having taken this

1 patient to the restroom; correct?

2 A. I'm not aware.

3 Q. And certainly in your nurse's notes, no
4 notation is made, even though you were this
5 patient's nurse from 7:00 A in the morning to
6 7:00 P? There's no notation that you ever took this
7 patient to the restroom in your notations; correct?

8 A. There's no notation of that, no.

9 Q. Okay. So from what we know, the last time an
10 aide cared for this patient was 2:20 in the
11 afternoon; correct?

12 A. Per the documentation, yes.

13 Q. All right. Thank you, ma'am. That's all the
14 questions I have.

15 THE COURT: Mr. Blake.

16 REDIRECT EXAMINATION

17 BY MR. BLAKE:

18 Q. Good afternoon, Ms. McDaniel.

19 A. Hi.

20 Q. Can you give -- where did you go to college?

21 A. North Carolina A&T.

22 Q. And what did you study?

23 A. Nursing.

24 Q. And what degree did you get?

25 A. A bachelor in science and nursing.

1 Q. Okay. Then you got your first nursing job at
2 Agape; is that right?

3 A. Correct.

4 Q. And how long did you work at Agape?

5 A. Less than a year.

6 Q. Where did you go after that?

7 A. The Dorn VA Medical Center.

8 Q. The Dorn --

9 A. Dorn VA.

10 Q. Is that the one locally in Columbia?

11 A. Yes.

12 Q. Okay. And tell us about your employment there.

13 A. I've been employed there for three years. I
14 work sometimes on their med surge floor and then
15 sometimes in the community living center.

16 Q. Okay. And have you had any further education
17 since you've gotten out of college?

18 A. Yes.

19 Q. Tell us about that, please.

20 A. I'm currently getting my master's in nurse
21 practitioner at Walden University.

22 Q. Okay. And how are those things coming along?

23 A. Very good.

24 Q. Are you working with -- tell us about the
25 population at the VA that you work with.

1 A. I see patients, mostly men, anywhere from 20 to
2 in their 90s with multiple comorbidities, multiple
3 health problems. That's about it.

4 Q. And what's your title? Are you a charge nurse?

5 A. Yes.

6 Q. Have you ever worked in the geriatric unit?

7 A. Yes.

8 Q. Okay. When was that?

9 A. I currently work with geriatrics at this time.

10 Q. Okay. And is it fair to say that you've had a
11 good deal of training in the standard of care for
12 nursing?

13 A. Yes..

14 Q. You were asked questions about a CNA document a
15 moment ago.

16 A. Correct.

17 Q. Have you ever learned that it's within the
18 standard of care that if someone is offered a drink
19 that it needs to be documented in the medical
20 record?

21 A. No.

22 MR. CONNOR: Objection, Your Honor; no
23 foundation. We're talking about CNA care. He's
24 asking her questions about the standard of care for
25 CNAs.

1 BY MR. BLAKE:

2 Q. Is there a difference in the documentation
3 requirements between CNAs and nurses as it relates
4 to documenting the offering of water?

5 A. No.

6 THE COURT: Well -- okay.

7 MR. CONNOR: Your Honor, she testified she'd
8 not even reviewed the ADL documentation required
9 policy..

10 MR. BLAKE: I'll lay the foundation.

11 THE COURT: All right.

12 BY MR. BLAKE:

13 Q. Ma'am, how long have you worked with CNAs?

14 A. Five years.

15 Q. Okay. Do you supervise CNAs?

16 A. Yes.

17 Q. You're a charge nurse?

18 A. Correct.

19 Q. And CNAs are under your charge?

20 A. Yes.

21 Q. Are you responsible for any of their
22 documentation requirements?

23 A. Yes.

24 Q. Do you do any training for CNAs?

25 A. Yes.

1 Q. Do you train them on their documentation
2 requirements?

3 A. Yes.

4 Q. So are you familiar with any requirement that
5 CNAs document in a chart every time they offer a
6 patient or resident something to drink?

7 A. No.

8 Q. How about when they are toileted? Is that
9 something that's required to be charted?

10 A. Every time they're toileted?

11 Q. Yes, ma'am.

12 A. No.

13 Q. And let's just look at that document again. I
14 was looking at the times while Plaintiff's counsel
15 was going through this document with you. I
16 misplaced my highlighter. Ma'am, do you see a
17 pattern there?

18 A. Yes.

19 Q. What is it?

20 A. It's all done within two minutes..

21 Q. So do you think that the purpose of that timing
22 there is to state when the service was actually
23 provided?

24 A. Repeat the question.

25 Q. Is it possible to have performed all of those

1 services within the course of time that passed
2 between 4:21 and 4:22 AM?

3 A. No.

4 Q. Is it improper for a CNA to shift -- sorry, to
5 document DL activities like this once per shift?

6 A. No.

7 Q. Is that what it looks like to you is occurring
8 here?

9 A. Yes.

10 Q. Does that pattern repeat itself with the next
11 CNA that came in?

12 A. Yes.

13 Q. Again, do you think it's possible that all of
14 these ADLs were provided over the course of a
15 moment?

16 A. No.

17 Q. Do you know whether or not it's a violation of
18 the standard of care for CNAs to confirm that care
19 tasks were completed once per shift?

20 A. I'm not sure.

21 Q. Thank you. Now, you did not have the benefit
22 of being in the courtroom when Ms. Koon testified in
23 our case, but I'll represent to you that she
24 described visiting with Ms. Shealy on July 2nd and
25 that she spoke to a staff member somewhere, she

1 believes towards the later end of the morning, about
2 the need for Ms. Shealy to have assistance to
3 toilet. Now, what shift did you normally work?

4 A. 7:00 A to 7:00 P.

5 Q. So would you have been there between 10:30 and
6 noon on July 2nd?

7 A. Yes.

8 Q. Do you know whether or not she spoke to you
9 about toileting Ms. Shealy?

10 MR. CONNOR: Object- --

11 THE WITNESS: I don't recall.

12 MR. CONNOR: Objection, Your Honor. She's
13 already testified she has no recollection whatsoever
14 of this patient.

15 THE COURT: He asked the question. Overruled.

16 MR. BLAKE: Thank you, Your Honor.

17 BY MR. BLAKE:

18 Q. Ma'am, I didn't see in that chart anywhere
19 where her being toileted with Ms. Shealy's
20 sister-in-law was anywhere between 10:30 and noon,
21 did you?

22 A. No.

23 Q. Do you think that's a breach of the standard of
24 care?

25 A. No.

1 Q. What's most important is that the care is
2 actually provided; right?

3 A. Correct.

4 Q. And, though it may not be documented, we've
5 heard live testimony in this courtroom that that
6 occurred; right?

7 A. Correct.

8 MR. CONNOR: Your Honor, I'd ask for an
9 instruction to -- that it was testimony by the
10 defendant. There's been no testimony whatsoever
11 that any care has been provided by anyone --

12 THE COURT: Why don't you clarify what you
13 meant by that?

14 MR. BLAKE: I'll withdraw the question. I'm
15 sorry. I didn't mean to confuse anyone.

16 THE COURT: Okay. All right. Well, the
17 question is withdrawn, Counsel.

18 MR. BLAKE: Sorry. I don't want to get the
19 documents out of order again.

20 BY MR. BLAKE:

21 Q. You were shown this record earlier, what we
22 codified as the Agape Records 139. What does A and
23 O X1 mean?

24 A. Alert and oriented times one.

25 Q. Help us understand what alert and oriented

1 times one is.

2 A. Alert and oriented times one usually is alert
3 or oriented to a person, place, situation, or time.

4 Q. Okay. So by saying times one, she was only
5 oriented to one of those?

6 A. Right.

7 Q. And what does that mean about her ability to
8 understand or be cognitive of the other three?

9 A. She has a cognitive impairment.

10 Q. Okay. So Counsel asked you whether or not she
11 was doing good that morning. Is alert and oriented
12 times one a good cognitive function?

13 A. No.

14 MR. CONNOR: Your Honor, I believe she
15 testified that she was doing good this morning.

16 THE COURT: You can deal with that on your --

17 BY MR. BLAKE:

18 Q. What is a TIA?

19 A. Transient ischemia attack. It's like a mini
20 stroke.

21 Q. Mini stroke?

22 A. Uh-huh.

23 Q. So are you stating she has a history of mini
24 strokes when you put TIA in that note?

25 A. Yes.

1 Q. Chronic pain. Do you know where she had
2 chronic pain?

3 A. No.

4 Q. Patient has an order for Ativan every four
5 hours PRN. Did I read that right?

6 A. Yes.

7 Q. Do you know who made that order?

8 A. I do not.

9 Q. Who is Dr. Margalit?

10 A. Yes.

11 Q. Do you know who that is?

12 A. Yes.

13 Q. Who is that?

14 A. He's the physician for the rehab.

15 Q. All right. And can you tell us what that order
16 states?

17 A. Ativan 0.4 milligrams three to four hours PRN.

18 Q. You reviewed Dr. Margalit's note earlier with
19 Plaintiff's counsel. Did you notice the time on
20 that?

21 MR. CONNOR: Objection, Your Honor; we didn't
22 review that note.

23 MR. BLAKE: Okay. Well, I'll pull it out. I
24 thought you did.

25 BY MR. BLAKE:

1 Q. It has highlighting on it, so I assumed that
2 was you. I could be wrong. The part where it says
3 the patient is a huge fall risk is what I was
4 referencing. Did you not review this earlier in
5 your testimony?

6 A. No.

7 Q. Okay. I apologize. That must have been with
8 another witness.

9 In any event, do you see the appointment time
10 up there in the top right-hand corner?

11 A. Yes.

12 Q. And can you read that for me.

13 A. 08:45 AM.

14 Q. Was that during your shift?

15 A. Yes.

16 Q. Okay. And down here, can you read that.

17 A. Per nurse, patient is confused and agitated.

18 Q. Okay. Would there have been any other nurse
19 that could have provided that information to
20 Dr. Margalit on July 2nd, 2014?

21 A. Yes.

22 Q. Who?

23 A. Any other nurse that was there.

24 Q. Okay. Well, how about this: Were you
25 typically assigned residents throughout a shift?

1 A. Yes.

2 Q. Would it have been common for you to meet with
3 Dr. Margalit on someone else's resident?

4 A. No.

5 Q. Then do you believe that was you that would
6 have made that representation?

7 A. Yes.

8 Q. Okay. Confused and agitated, what does that
9 mean?

10 A. She was confused and agitated, had some
11 anxiety, had some cognitive impairment, doesn't want
12 to sit still.

13 Q. You were asked by Plaintiff's counsel earlier,
14 whenever you discussed that ER transfer note, about
15 whether or not that was something new to the record
16 that we hadn't seen before.

17 A. Uh-huh.

18 Q. Did that note I just showed you indicate to you
19 that it was at least discussed with Dr. Margalit
20 that morning?

21 A. Yes.

22 Q. Rather than pull them all out, I'm just going
23 to show you an example to help us move along. Do
24 you recall looking at this free-text nursing note,
25 139, that has this completion information box on it?

1 A. Right.

2 Q. All right. I want to talk to you about some
3 assumptions that were made and the questions that
4 were asked to you to see what your thoughts are on
5 that. Do you even know how that box gets generated
6 on a printed record once it's printed?

7 A. I do not.

8 Q. When you're actually entering data into the AHT
9 Healthcare system that was being used at the nursing
10 home in 2014, did you look at it in this format?

11 A. I don't remember.

12 Q. You don't remember it? Well, are you able to
13 explain what event triggers the placement of a
14 timestamp on a record once it's printed?

15 A. No.

16 Q. You don't have any idea about it?

17 A. No.

18 Q. Did you have any training on it?

19 A. No.

20 Q. Is it something that you have the ability to
21 give us any insight into at all today?

22 A. No.

23 Q. This is one assessment that you performed of
24 the patient on July 2nd; is that right?

25 A. Right.

1 Q. We looked at the one with Dr. Margalit earlier.

2 Was that another assessment that you performed?

3 A. Yes.

4 Q. You certainly assessed her in connection with
5 the fall, did you not?

6 A. Yes.

7 Q. And do you know whether or not it would have
8 been you that would have given her Ativan at 5:30?

9 A. I don't recall.

10 Q. Okay. Well, is moving a patient closer to the
11 nurses station an intervention to prevent a fall?

12 A. Yes.

13 Q. And does that appear to be written in a
14 timeline fashion to you, chronological order?

15 A. The ER note?

16 Q. Yes.

17 A. Yes.

18 Q. It's starting with before incident. Is it
19 proper for us to read this if this is something that
20 you wrote, which it indicates it is, are you writing
21 in a chronological fashion there?

22 A. Yes.

23 Q. So that's a sequence of events when we read
24 that paragraph; correct?

25 A. Correct.

1 Q. So assuming this document is accurate and the
2 patient was given Ativan at 5:30, was she assessed
3 after she was given Ativan?

4 A. She was brought to the nurses station after she
5 was given Ativan. Yes.

6 Q. Well, that was an intervention that was put in
7 place. The sentence earlier, it says: Patient
8 remained agitated, confused, and combative.

9 A. Yes.

10 Q. Was that an assessment that somebody performed?

11 A. Uh-huh.

12 Q. You just don't recall if it was you?

13 A. Correct.

14 Q. Are you aware of any other intervention that
15 should have been in place for her if she was given
16 Ativan like Lexington Medical Center and
17 Dr. Margalit ordered for that agitation that was
18 prescribed? Are you aware of any other intervention
19 that should have been put in place after 5:30 PM?

20 A. No.

21 Q. Assuming that these records that you reviewed
22 that have your name on them describe your conduct as
23 it relates to the actual care provided to
24 Ms. Shealy, do you believe you breached the standard
25 of care?