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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2017-000963

Ralph C. Williams, Sr., and Linda Williams, ... Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care – Orangeburg, LLC ..... Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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APR 09 2018
SC Court of Appeals

Case No. 2012-CP-38-0845

Ralph C. Williams, Sr., and Linda Williams, ... Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC ..... Respondents.

RECORD ON APPEAL - VOLUME 1

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-38-845

Ralph Williams, et al

PLAINTIFF(S)

UniHealth, et al

DEFENDANT(S)

Submitted by: Robert P. Foster, Esq.	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED FOR RECORD
WINNIE KINON CLERK
2014 MAR 17 P 2:03

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)
		$
		$
		$

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.

Circuit Court Judge

2112
Judge Code

1/6/2014
Date

ATTEST: CLERK OF COURT
ORANGEBURG COUNTY, S.C.

For Clerk of Court Office Use Only

SCRCP Form 4C (03/2013)

Page 1

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:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

UniHealth's Motion For Summary Judgment is denied. Triable issues of fact exist for resolution by a jury as to whether the rebuttable presumption of good faith under the Omnibus Adult Protection Act has been overcome.

Triable issues of fact exist for resolution by a jury as to whether Defendants Johnson and Peppers acted outside their scope of employment with UniHealth.

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **VERDICT FORM**

We, the jury, by unanimous consent, find:

1. Patricia Johnson acted in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

_____ YES

_____ NO

2. Josette Davis acted in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

_____ YES

_____ NO

If your answers to Question Nos. 1 and 2 are YES, STOP, DO NOT DELIBERATE FURTHER, AND DO NOT ANSWER ANY ADDITIONAL QUESTIONS. GO TO THE END AND SIGN THE VERDICT FORM.

If your answer to Question Nos. 1 or 2 is NO, PROCEED TO QUESTIONS 3-6.

3. If your answer to Question No. 1 is NO, then answer the following question: Do you find that Patricia Johnson acted outside the scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

✓ YES

_____ NO

4. If your answer to Question No. 2 is NO, then answer the following question: Do you find that Josette Davis acted outside the scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

✓ YES

_____ NO

5. Please state the total amount of actual damages, if any, sustained by Plaintiff Ralph Williams, Sr.

$ ~~750,000~~ $102,500

6. Please state the total amount of actual damages, if any, sustained by Plaintiff Linda Williams.

$ ~~250,000~~ $0

7. If you entered an amount in response to Question Number 5 and/or 6, do you find by clear and convincing evidence that any harm done to the Plaintiff was the result of the willful, wanton, or reckless conduct of:

a. Patricia Johnson:	✓ YES	_____ NO
b. Josette Davis:	✓ YES	_____ NO
c. Unihealth Post-Acute Care – Orangeburg, LLC	✓ YES	_____ NO

8. If you responded YES to question 7a, 7b, or 7c, enter the amount of punitive damages, if any, that should be imposed to punish one ore more of the defendants.

a. Patricia Johnson: $200,000

b. Josette Davis: $97,500

c. Unihealth Post-Acute Care – Orangeburg, LLC $600,000

FOREPERSON

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS,	)	
	)	
Plaintiffs,	)	**ORDER**
	)	
v.	)	
	)	
PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC,	)	
	)	
Defendants.	)	

FILED FOR RECORD
WINNIFA B. CLARK
2016 JAN 22 A 10:11
CLERK OF COURT
ORANGEBURG, SC

This matter is before the Court on the Parties' Post-Trial Motions, to include the following: Defendants' Motion for Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial; Defendant UniHealth Post-Acute Care – Orangeburg, LLC's Motion for Judgment Consistent with Special Interrogatory Answers, Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial Absolute; Defendants' Motion to Reduce Punitive Damages; and Plaintiffs' Post-Trial Motions. Plaintiffs filed a single document on September 18, 2014 entitled "Plaintiffs' Post-Trial Motions" that included: a Motion Judgment Notwithstanding the Verdict; a Motion to Conform the Evidence to the Proof Present at Trial; a Motion in the Alternative for a New Trial Against UniHealth Post-Acute Care – Orangeburg, LLC Only; and, a Motion to Set Aside Verdict Form Questions No. 3 and 4, and for Judgment Notwithstanding the Jury Verdict on the Scope of Employment Issue.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC ("UniHealth") in June 2010.[1] Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs' allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.' Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's supply cart sitting outside of Room 39 in the facility.[2] When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.[3] The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed.[4] Johnson confronted Ralph Williams by stating, "What are you doing!?"[5] Ralph Williams responded, "Will you please shut the door."[6] Johnson left the door open,[7] and she ran

[1] (See Pls.' Am. Compl.)
[2] (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)
[3] (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)
[4] (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)
[5] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)
[6] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)
[7] (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

2/7/16

to get another nurse, Davis.[8] The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.[9] Thereafter, Ralph Williams was escorted out of the room without objection,[10] and Davis went to alert the facility's Director of Nursing and the local authorities.[11] The Orangeburg County police arrived at the facility and investigated the incident.[12] The police determined that there was sufficient cause to arrest Ralph Williams.[13]

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed $102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling $897,500.00 ($200,000 against Johnson; $97,500 against Davis; and $600,000 against UniHealth).

II. LEGAL AUTHORITY AND ANALYSIS

A. Standard of Review

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial

---

[8] (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)
[9] (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)
[10] (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)
[11] (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)
[12] (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)
[13] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

> This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); *see also Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall* report the incident in accordance with this section." S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, "in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately." S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has "reason to believe" or who "suspect[s]" sexual assault has no discretion in the matter—she "must" report the incident and notify law enforcement "immediately." "A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial

proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

From the testimony of the witnesses and the evidence presented at trial, the Court exercises its discretion as the thirteenth juror and grants a new trial.[14] The Court finds that the evidence did not justify the verdict. Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed. The recitation of facts and evidence herein are not intended to be and are not exhaustive, as there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict. The facts of the case and the interests of justice persuade the Court that a new trial is warranted.

[14] Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforces the Court's view that a new trial is warranted.

-5/10/6

III. CONCLUSION

For the reasons set forth above, the Court hereby exercises its authority under the thirteenth juror doctrine and **GRANTS** Defendants' Motion for a New Trial and **DISMISSES AS MOOT** the remaining Post-Trial Motions of Defendants and Plaintiffs. The Court further **ORDERS** the entire jury verdict from the initial trial be discarded and the case be set for re-trial. Given that the jury verdict no longer stands, the Parties shall be permitted to file any appropriate pretrial motions, regardless if they were previously ruled upon.

This 14th day of ~~December~~ January, 2016.

~~Honorable~~ Edgar W. Dickson
Circuit Court Judge, First Judicial Circuit

6/1/16

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Ralph C. Williams Sr., and Linda Williams, Plaintiffs, vs. Patricia Johnson, Josette Peppers, and Unihealth Post-Acute Care-Orangeburg, LLC, Defendants.	)	**ORDER DENYING PLAINTIFFS' MOTIONS TO RECONSIDER AND TO ALTER OR AMEND THE JUDGMENT**

This matter came before the court on Plaintiffs' Motions to Reconsider and to Amend or Alter the Judgment of this court, acting as the thirteenth juror, ordering that the entire verdict from the initial trial be discarded and the case be retried.

The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts of the case. Graham v. Whitaker, 282 S.C. 393, 401 (1984). Under the thirteenth juror doctrine, the trial court may grant a new trial if it finds that the verdict is unsupported by the evidence. Folkens v. Hunt, 300 S.C. 251, 254 (1990). "This ruling has also been termed granting a new trial upon the facts[,]" and, basically, the court, "as the thirteenth juror[,] 'hangs' the jury." Id. The court is not required to give reasons for this outcome and, similarly, "because the result of the 'thirteenth juror' vote by the [court] is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial [court] to make factual findings." Id. When acting as the thirteenth juror, the trial court "possess[es] veto power to the Nth degree" and is presumed to appreciate and exercise its discretion with fairness and impartiality. Worrell v. S.C. Power Co., 186 S.C. 306, 31314 (1938).

1/2

After due deliberation and review of the case law and motions of counsel, this court finds that there is nothing warranting reconsideration, and, therefore, Plaintiffs' motions are denied. Upon further reflection of the trial and the evidence presented to the jury, the court finds that the evidence did not justify the verdict. This court is concerned that the jury improperly handled the issue of the Defendant nurse's immunity under South Carolina's Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43–35–25(A) & (G). The facts of the case and the interests of justice persuade the court, sitting as the thirteenth juror, that a new trial is warranted.

THEREFORE, for the reasons stated above, Plaintiffs' Motions to Reconsider and to Amend or Alter the Judgment of this court should be, and hereby are, DENIED.

AND IT IS SO ORDERED.

Edgar W. Dickson
Presiding Judge, First Judicial Circuit

March ~~February~~ 10, 2017
Orangeburg, South Carolina

2/2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	**DEFENDANT UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant UniHealth Post-Acute Care – Orangeburg, LLC (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

RECEIVED
DATE 8/6/12
BY

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.

11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were

bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of

the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Pracital Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Particia Johnson's unit, and thus, Defendant Particia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Particia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegatiosn contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegatiosn contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Particia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.

187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.

188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.

189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.

190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.

191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.

192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.

193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.

195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.

196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.

197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.

200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.

201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.

202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Particia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.

204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.

205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.

206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.

207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.

208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.

209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.

210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.

211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.

212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.

213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.

214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.

217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.

218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.

219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.

221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.

222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.

223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.

224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.

225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.

226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.

227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.

228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.

229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.

230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.

231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.

234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.

235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.

236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.

237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.

239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.

240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.

243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.

244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.

245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.

246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.

247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.

248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.

249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.

250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.

251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.

271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.

272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.

273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.

274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.

275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.

276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.

277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because Defendant is not liable for the intentional acts of employees that fall outside the scope of the employee's employment.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because Defendant is not liable for the actions of employees that are not in furtherance of Defendant's business.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TWELEFTH DEFENSE

287. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A SIXTEENTH DEFENSE

291. Plaintiffs' claims for punitive damages are barred to the extent that they violate

Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A SEVENTEENTH DEFENSE

292. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR AN EIGHTEENTH DEFENSE

293. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.

Jason E. Bring
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Attorney for Defendant Unihealth Post-Acute Care – Orangeburg, LLC

Atlanta, Georgia
August 2, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v.	)	**DEFENDANT PATRICIA A. JOHNSON'S ANSWER TO PLAINTIFFS' COMPLAINT**
PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	

Defendant Patricia A. Johnson (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.

11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Pracital Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Particia Johnson's unit, and thus, Defendant Particia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Particia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegatiosn contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegatiosn contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Particia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.

187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.

188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.

189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.

190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.

191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.

192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.

193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.

195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.

196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.

197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.

200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.

201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.

202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Particia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.

204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.

205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.

206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.

207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.

208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.

209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.

210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.

211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.

212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.

213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.

214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.

217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.

218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.

219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.

221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.

222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.

223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.

224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.

225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.

226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.

227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.

228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.

229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.

230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.

231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.

234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.

235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.

236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.

237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.

239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.

240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.

243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.

244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.

245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.

246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.

247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.

248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.

249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.

250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.

251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.

271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.

272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.

273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.

274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.

275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.

276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.

277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A TWELFTH DEFENSE

287. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs' claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.

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Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	**DEFENDANT JOSETTER PEPPERS' ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Josette Peppers (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.

11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Pracital Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Particia Johnson's unit, and thus, Defendant Particia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Particia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegatiosn contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegatiosn contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Particia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.

187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.

188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.

189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.

190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.

191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.

192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.

193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.

195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.

196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.

197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.

200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.

201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.

202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Particia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.

204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.

205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.

206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.

207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.

208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.

209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.

210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.

211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.

212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.

213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.

214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.

217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.

218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.

219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.

221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.

222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.

223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.

224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.

225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.

226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.

227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.

228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.

229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.

230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.

231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.

234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.

235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.

236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.

237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.

239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.

240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.

243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.

244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.

245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.

246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.

247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.

248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.

249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.

250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.

251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.

271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.

272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.

273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.

274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.

275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.

276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.

277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A TWELFTH DEFENSE

287. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs' claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.

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Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	**DEFENDANT UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC'S MEMORADMUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Unihealth Post-Acute Care – Orangeburg, LLC ("UPAC-Orangeburg") hereby submits its Memorandum of Law in Support of its Motion for Summary Judgment, showing the Court as follows:

I. INTRODUCTION

Plaintiffs' Complaint alleges that UPAC-Orangeburg is vicariously liable for the acts of two nurse employees, Ms. Patricia Johnson and Ms. Josette Peppers ("Johnson and Peppers"), who Plaintiffs claim intentionally made false written and oral reports that Plaintiff Ralph Williams, Sr. attempted to sexually assault a resident at a nursing home. South Carolina's Omnibus Adult Protection Act provides immunity for nurses who, in good faith, report sexual abuse, and there is a rebuttable presumption that reporting nurses act in good faith. S.C. Code Ann. § 43-35-75(A). Plaintiffs must therefore overcome the good faith presumption by showing that Johnson and Peppers intentionally and in bad faith made false reports regarding Plaintiff Ralph Williams, Sr. Even if there is sufficient evidence to rebut this statutory presumption, Plaintiffs' claims still fail because under South Carolina law, employers are not liable for the

intentional acts of their employees which fall outside the scope of employment. As shown herein, malicious and bad faith reports of sexual assault clearly fall outside the scope of employment for a nurse at a nursing home. Accordingly, UPAC-Orangeburg cannot be held liable for the alleged intentional acts of Johnson and Peppers and is entitled to judgment as a matter of law in this case.

II. FACTUAL AND PROCEDURAL BACKGROUND

The undisputed facts in this case provide that Plaintiff Ralph C. Williams, Sr. ("Williams"), Defendant Patricia A. Johnson, and Defendant Josette Peppers were all employees at UPAC-Orangeburg, a skilled nursing facility in Orangeburg, South Carolina on June 21, 2010. Williams was employed as a Certified Nursing Assistant ("CNA"), and Johnson and Peppers were both employed as Licensed Practical Nurses. All three employees were working at the facility on June 21, 2010.

According to her voluntary written statement, Johnson went looking for Williams during the early morning hours of June 21, 2010 and found his CNA supply cart sitting outside of Room 39 in the facility. (See Voluntary Statement of Patricia Johnson, a copy of which is attached hereto as Exhibit 1.) When she opened the door to Room 39, Johnson saw Williams with his pants down and climbing on top of the resident lying in the bed closest to the door.[1] (See id.) Johnson immediately asked Williams what he was doing. (See id.) Williams responded, "Please shut the door." (See id.) Johnson then went to get another nurse, Peppers, and reported her observations. (See id.) Johnson and Peppers returned to Room 39 and found Williams still in

[1] The resident lying in the bed closest to the door was a 43-year-old female who lacked the mental capacity to consent to sex and was dependent upon others to care for her. She was "vulnerable adult" as defined under South Carolina's Omnibus Adult Protection Act. S.C. Code Ann. § 43-35-10

the room. (See id.; see also Voluntary Statement of Josette Peppers, a copy of which is attached hereto as Exhibit 2.)

A facility representative alerted Orangeburg Department of Public Safety (the "ODPS"), and shortly thereafter multiple representatives of law enforcement arrived at the facility. (See Affidavit of Latisha Walker, a copy of which is attached hereto as Exhibit 3.) At some point, both Johnson and Peppers were interviewed, and both provided voluntary written statements to the ODPS. (See id.) The investigating officer, Ms. Latisha Walker, believed that both Johnson and Peppers were acting in good faith when they made their reports. (See id.) After conducting an investigation, the ODPS arrested Williams, and upon review by a neutral and detached Municipal Judge of the voluntary written statements, charges were filed against Williams. (See id.)

On February 7-8, 2012, the Orangeburg County Solicitor attempted to prosecute Williams at trial for (1) Assault with Intent to Commit Third-Degree Criminal Sexual Conduct and (2) Abuse of a Vulnerable Adult. (See Affidavit of Donald N. Sorenson, a copy of which is attached hereto as Exhibit 4.) During the trial, both Johnson and Peppers testified, under oath, about their observations and voluntary statements to the ODPS. (See id.) The prosecuting attorney, Mr. Donald N. Sorenson, believed that both Johnson and Peppers were acting in good faith when they made their reports. (See id.) At the end of the trial, the jury returned a not guilty verdict as to both counts. (See id.)

On June 21, 2012, Plaintiffs Ralph C. Williams, Sr. and Linda Williams filed a Complaint against UPAC-Orangeburg, Patricia A. Johnson, and Josette Peppers alleging the defendants were liable for multiple claims of defamation, abuse of process, and loss of consortium. (See generally, Plaintiffs' Complaint.) These claims are based on Plaintiffs'

allegations that Johnson and Peppers acted "intentionally," "willfully," with "actual malice," and with an "ulterior purpose" when they made and published statements "which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident." (Pl.'s Complaint, ¶¶ 166, 169, 170-172, 188, 190, 205, 207, 222, 224, 235, 236, 245, 246, 257, 269.) Plaintiffs allege that UPAC-Orangeburg is liable based solely on "inform[ation] and belie[f] that [Johnson and Peppers] [were] acting within the course and scope of [their] employment with actual and/or apparent authority and in furtherance of [UPAC-Orangeburg's] business when [they made or wrote their statements]." (Pl.'s Complaint, ¶¶ 164, 181, 199, 216, 233, 242, 253, 267.)

III. STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. Brockbank v. Best Capital Corp., 341 S.C. 372(2000). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Quail Hill, L.L.C. v. County of Richland, 387 S.C. 223, 234 (2010) (citing Rule 56(c), SCRCP). It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. Evans v. Stewart, 370 S.C. 522, 526 (Ct. App. 2006).

IV. LEGAL AUTHORITY AND ARGUMENT

A. Pursuant to the Omnibus Adult Protection Act, Plaintiffs must prove that Johnson and Peppers acted intentionally and in bad faith.

In 1993, South Carolina's General Assembly enacted the Omnibus Adult Protection Act ("the Act") to protect vulnerable adults from abuse, neglect, and exploitation. 1993 Act No. 110, § 1, codified as S.C. Code Ann. §§ 43-35-5 to -595. The purpose of the Act was to address the continuing needs of vulnerable adults; define abuse, neglect, and exploitation in a uniform manner, without regard to setting; clarify reporting requirements; provide victims with emergency protective custody; define the court's role in adult protection; and provide civil and criminal penalties to perpetrators of the abuse, neglect, or exploitation of vulnerable adults. S.C. Code Ann. § 43-35-5. The Act defines a "vulnerable adult" as:

> [A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

S.C. Code Ann. § 43-35-10.[2]

The Act imposes a duty on certain individuals to report if they have "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited." S.C. Code Ann. § 43-35-25(A). Individuals designated as "mandated reporters" under the Act include physicians, nurses, dentists, optometrists, medical examiners, coroners, and other medical, mental health or allied health professionals, Christian Science practitioners, religious healers, school teachers, counselors, psychologists, mental health or mental retardation specialists, social

[2] Under the Act, a "facility" includes a nursing care, community residential care, or psychiatric facility, as well as any other "residential program operated or contracted for operation by the Department of Mental Health or [DDSN]." S.C. Code Ann. § 43-35-10(4).

or public assistance workers, caregivers, staff or volunteers of an adult day care center or facilities, and law enforcement officers. Id. The Act also requires reporting by "any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited." Id. Reporting the suspected conduct within twenty-four hours or the following working day is the mandated reporter's individual responsibility. S.C. Code Ann. § 43-35-25(C)-(D).

Provided the Act's mandatory reporting requirements are met, the reporter may also report suspected abuse, neglect, or exploitation directly to law enforcement; "and in cases of emergency, serious injury, or suspected sexual assault, law enforcement must be contacted immediately." S.C. Code Ann. § 43-35-25(G). The Act shields reporters from civil and criminal liability that could otherwise arise from the act of reporting.

> A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.

S.C. Code Ann. § 43-35-75(A). On the other hand, a "mandated reporter" who has actual knowledge that abuse, neglect, or exploitation of a vulnerable adult has occurred, and who knowingly and willfully fails to report this knowledge is guilty of a misdemeanor, and upon conviction, the person must be fined in an amount up to $2,500 or imprisoned up to one year. S.C. Code Ann. § 43-35-85(A). Furthermore, a mandated reporter with reason to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred, or is likely to occur, and who knowingly and willfully fails to report is subject to disciplinary action by the appropriate licensing board. Id.

In this case, it is undisputed that the alleged victim was a "vulnerable adult" under the Act because she was over eighteen years old, unable to provide for her own care or protection,

and a resident of a facility. It is also undisputed that Johnson and Peppers were "mandated reporters" under the Act and had a duty to report to proper authorities if they had "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited." S.C. Code Ann. § 43-35-25. Johnson and Peppers are therefore immune from civil liability as long as they were reporting in good faith, which is presumed under the law. S.C. Code Ann. § 43-35-75(A). In order to prevail on their claims, Plaintiffs must overcome the Act's good faith presumption by proving that Johnson and Peppers acted in bad faith and intentionally made false reports regarding Plaintiff Ralph Williams, Sr.

B. Under the Doctrine of *Respondeat Superior*, employers are not liable for an employee's intentional acts that fall outside the scope of employment.

In Jones v. Elbert, 211 S.C. 553 (1945), the South Carolina Supreme Court held:

> Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.

Id. at 559. More specifically, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment. Id. at 301. An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business. Id. at 305; Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006).

The act of a servant done to affect some independent purpose of his own and not with reference to the service in which he is employed is not within the scope of his employment so as to render the master liable therefor. Lane, 244 S.C. at 305; see also Crittenden v. Thompson-

Walker Co., Inc., 288 S.C. 112, 116 (Ct. App. 1986) (holding "if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.") Under these circumstances the servant alone is liable for the injuries inflicted. Lane, 244 S.C. at 305. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended. Id. at 306. Accordingly, actions during even a short detour from the master's business for the purpose of purely individual interests fall outside the scope of employment. Armstrong, 371 S.C. at 276.

South Carolina Appellate Courts have reviewed multiple cases wherein an employee, while on duty, abandons the employer's business for some purpose wholly disconnected with his employment. In Lane, the South Carolina Supreme Court held that an employer was not liable for injuries to a customer arising out of employee's horseplay, which involved use of a cage – approximately two feet long and a foot high, one-half of the top being covered with wire and the other half being solid, and on which was painted the words, "Snake Killer", "Danger", "Mongoose" – to play a practical joke on a customer. Lane, 244 S.C. at 303. Similarly, in Armstrong, the South Carolina Supreme Court upheld a directed verdict in favor of the employer in a case involving an assault with box cutters by two grocery store employees on a customer where "the only reasonable inference . . . was that [the employees] attacked [the customer] for their own personal reasons and not for any reason related to their employment." Id. at 276-77. In Kase v. Ebert, 392 S.C. 57, 62 (Ct. App. 2011), the Court of Appeals held that Ebert, an on-duty truck driver, was acting outside the course and scope of his employment when he assaulted Kase, a truck driver for a competitor, after Kase wrecked into Ebert's truck.[3] Finally, in

[3] Ebert even testified at his deposition that forceful action was necessary at times to protect

Hamilton v. J.D. Davis, 300 S.C. 411 (Ct. App. 1990), the Court of Appeals held that a rental property manager was not acting within the scope of his employment, even though present at the rental property to perform a job, when he engaged in a "dumb stunt" that "smeared" the renter along the side of a car. Id. at 417.

Three older South Carolina cases specifically examined the *respondeat superior* doctrine in the context of claims for defamation. Each of these cases held that the alleged defamation fell outside the scope of employment because the statements at issue were not made with any purpose to serve the employer, even though some were made during the work day while the employee was otherwise performing work. See Johnson v. Life Insurance Co. of Georgia, 227 S.C. 351 (1955) (finding insurance agent's comment to one insured about why another insured's claim was denied was made outside the scope of his employment); Bosdell v. Dixie Stores Co., 168 S.C. 520 (1933) (finding employee was not acting within the scope of his authority in making a defamatory statement); Courtney v. American Ry Express Co., 120 S.C. 511 (1922) (finding casual comment by one railroad employee to another about why an employee was "let go" fell outside the scope of employment because the employee was not "engaged in the discharge of any duty committed to him" by the employer when the allegedly defamatory comment was made).

C. Intentional false reports of sexual assault made in bad faith do not serve a business purpose and are not within the scope of employment for a nurse in a nursing facility.

Plaintiffs' claims against UPAC-Orangeburg are based entirely upon a *respondeat superior* theory that the employer is liable for the actions of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

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company property. Kase, 392 S.C. at 62.

However, as explained above, Johnson and Peppers are presumed to have acted in good faith and have civil immunity from all of Plaintiffs' claims. This immunity is defeated only if Plaintiffs allege and then prove that Johnson and Peppers acted intentionally and in bad faith. Plaintiffs recognize and concede as much in each one of their causes of action in the Complaint.

- In the First Cause of Action (*Defamation (Nursing Notes) against Johnson and UPAC-Orangeburg*), Plaintiffs allege that Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they were ***not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 169 and 172 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 170 (emphasis added).)
- In the Second Cause of Action (*Defamation (Slander-Verbal Statement) against Johnson and UPAC-Orangeburg*),[4] Plaintiffs allege that Johnson's oral statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 187 and 190 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident and/or abuse upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 188 (emphasis added).)

[4] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 179.)

- In the Third Cause of Action (*Defamation (Voluntary Statement) against Johnson and UPAC-Orangeburg*),[5] Plaintiffs allege Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 204 and 207 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 205 (emphasis added).)
- In the Fourth Cause of Action (*Defamation (Voluntary Statement) against Peppers and UPAC-Orangeburg*),[6] Plaintiffs allege Peppers' written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 221 and 224 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge the Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident and/or abuse upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 222 (emphasis added).)
- In the Fifth Cause of Action (*Defamation (Abuse of Process) against Johnson and UPAC-Orangeburg*),[7] Plaintiffs allege Johnson's written statements that Ralph

[5] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 197.)
[6] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 214.)
[7] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim

Williams were actions "primarily ***taken for an ulterior purpose to injure Plaintiff Ralph Williams*** and to ensure the dismissal of Plaintiff Ralph Williams from his employment with Defendant [UPAC-Orangeburg]." (Complaint, ¶ 236 (emphasis added).) Plaintiffs allege Johnson was "***willful***" in making her statements that "***caused the initiation of criminal proceedings against Plaintiff Ralph Williams*** on the charges of third degree criminal sexual conduct and abuse of a vulnerable adult." (Complaint, ¶ 235 (emphasis added).)

In the Sixth Cause of Action (*Abuse of Process against Pepper and UPAC-Orangeburg*),[8] Plaintiffs allege Peppers' statements that Ralph Williams were "***willful***" actions "with an ***ulterior purpose***" and were "***improperly aimed at the primary illegitimate or collateral effort of securing the dismissal of Plaintiff Ralph Williams*** from his employment with Defendant [UPAC-Orangeburg]." (Complaint, ¶¶ 245-247 (emphasis added).)

In the Seventh[9] Cause of Action (*Loss of Consortium against Johnson and UPAC-Orangeburg*),[10] Plaintiff alleges Johnson "***intentionally and tortuously violated*** Plaintiff Linda Williams' right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct." (Complaint, ¶ 257 (emphasis added).)

herein." (Complaint, ¶ 231.)

[8] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 240.)

[9] Plaintiffs label this claim as Plaintiff Linda Williams' First Cause of Action.

[10] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 251.)

- In the Eighth[11] Cause of Action (*Loss of Consortium against Peppers and UPAC-Orangeburg*),[12] Plaintiff alleges Peppers "***intentionally and tortuously violated*** Plaintiff Linda Williams' right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct." (Complaint, ¶ 269 (emphasis added).)

Plaintiffs' efforts to circumvent the civil immunity provided under the Act necessitate these allegations and will also require proof that Johnson and Peppers were in fact acting intentionally and with malice. Assuming *arguendo* that all of Plaintiffs' factual allegations are true,[13] the facts show Johnson and Peppers clearly abandoned UPAC-Orangeburg's business purpose and interests to pursue strictly individual interests when they made reports that Ralph Williams attempted to sexually assault a resident. (See Id., ¶ 170 ("intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act"), ¶ 188 (same), ¶ 205 (same), ¶ 222 (same), ¶ 235 ("cause[] the initiation of criminal proceedings against Plaintiff Ralph Williams"), ¶ 245 ("ulterior purpose"), ¶ 247 ("aimed at the primary illegitimate or collateral objective"), ¶ 257 ("intentionally and tortiously"), ¶ 269 (same).) Such false reports of sexual abuse and malicious efforts to have criminal charges filed are not in furtherance of UPAC-Orangeburg's business purpose and interests and are wholly disconnected from employment as a nurse at a nursing facility. Moreover, the alleged defamatory statements which Johnson and Peppers allegedly made fall outside the scope of employment under South Carolina law. See

[11] Plaintiffs label this claim as Plaintiff Linda Williams' Second Cause of Action.
[12] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 264.)
[13] This assumption obviously excludes Plaintiffs' legal conclusion that UPAC-Orangeburg is vicariously liable for the acts of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

supra Johnson; Bosdell; Courtney. Accordingly, Johnson and Peppers' intentional acts fall outside the scope of their employment with UPAC-Orangeburg.

V. CONCLUSION

For the reasons set forth above, UPAC-Orangeburg is entitled to judgment as a matter of law because it cannot be held liable for the alleged intentional acts of Johnson and Peppers. Accordingly, the Court should grant UPAC-Orangeburg's Motion for Summary Judgment.

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August 21st, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR. and LINDA WILLIAMS,	)	
	)	**MEMORANDUM OF LAW IN OPPOSITON TO DEFENDANT UNIHEALTH POST-ACUTE CARE LLC'S MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
	)	
v.	)	
	)	
PATRICIA A. JOHNSON, JOSETTE PEPPERS and UNIHEALTH POST-ACUTE CARE-ORANGEBURG, LLC,	)	
	)	
Defendants	)	

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The Plaintiffs, Ralph Williams and Linda Williams, by and through counsel, respectfully submit this Memorandum of Law in Opposition to Defendant UniHealth Post-Acute Care LLC's Motion for Summary Judgment.

INTRODUCTION

Plaintiffs Ralph Williams, Sr. (*hereinafter* Mr. Williams) and Linda Williams' (*hereinafter* Mrs. Williams) Complaint alleges six counts of Defamation, Abuse of Process and Loss of Consortium against Defendants Josette Peppers (*hereinafter Peppers*), Patricia Johnson (*hereinafter Johnson*), and UniHealth (*hereinafter UniHealth*). The Abuse of Process claim only, has or will be dismissed by motion and amendment of the complaint. Plaintiffs' claims are based on written and oral defamatory statements that Plaintiff Ralph Williams attempted to sexually assault a resident at UniHealth's nursing home facility. The Plaintiffs contend that the statements were made with a reckless indifference to the Plaintiffs' rights. The Defendants are all represented by the same attorney. However, UniHealth brings its motion for summary judgment based on defenses in direct conflict with the interests of Defendants Johnson and Peppers. Specifically, UniHealth asserts that the South Carolina Omnibus Adult Protection Act codified at 43-35-5, et. seq. provides a basis for immunity in that statements were made in good faith. In the alternative, UniHealth asserts interests in conflict with the individual Defendants in asserting that those Defendants acted intentionally and allegedly were outside the scope of their employment such that UniHealth should be excluded from vicarious liability. Plaintiffs assert that the Omnibus statute relied upon by Defendants expressly states the good faith presumption is rebuttable. Accordingly, Plaintiffs offer criminal trial transcript, document evidence and deposition testimony on raising the inference of malice intended to rebut said presumption. Plaintiffs also assert that the individual Defendants were acting squarely within the course and scope of their employment because they were acting furtherance of the employer's interests pursuant to company policies and the defamatory statements complained of touch

the subject matter of the employment. All parties were employees: workers and/or supervisors. Plaintiff offers documentary evidence to this effect.

I. FACTUAL & PROCEDURAL BACKGROUND

The facts established through discovery in this case provide that Mr. Williams was a Certified Nursing Assistant who was employed at UniHealth's Orangeburg facility from February of 2010 until June of 2010. **(R. Williams Aff.)**(attached at tab 4). Mr. Williams has been married to his wife Linda Williams for over 20 years. **(R. Williams Aff.)**(attached at tab 4). Mr. Williams and his wife attend State Holy Temple, a local church in Orangeburg, South Carolina, for over twenty years. **(R. Williams Aff.)**(attached at tab 4). Mr. Williams also catered and was sought out as a caterer by churches, local social clubs and for family and class reunions. **(R. Williams Aff.)**(attached at tab 4). Mr. Williams passed the state exam to receive his Certified Nursing Assistant license on November 10, 2009. **(Complaint ¶ 28; Peppers, UniHealth and Johnson Answers ¶ 28)**. Mr. Williams was hired as a CNA by UniHealth on or about February 9, 2010. **(Peppers, Johnson, and UniHealth Answer ¶ 30)**. Mr. Williams worked the 11 p.m. to 7:00 a.m. shift in the UniHealth facility. **(Complaint ¶ 31; Peppers, Johnson, UniHealth Answers ¶ 32)**. UniHealth assigned Mr. Williams to care for both male and female residents. **(Complaint ¶ 35; Peppers, Johnson, UniHealth Answers ¶ 36)** Mr. Williams' Job Description included duties of changing resident diapers which contain urine and feces. On June 20, 2010, Mr. Williams was assigned to care for Ms. Henrietta Mays (hereinafter referred to as "Resident Number 39A"). **(Complaint ¶ 92; Peppers, Johnson, UniHealth Answers ¶ 93)**. . There were two residents in Room 39 on the night of the incident. **(Complaint ¶ 93; Johnson, Peppers, UniHealth Answers ¶ 94.)** Johnson was assigned to work as Mr. Williams' supervisor the night of June 20, 2010. **(Complaint ¶ 91; Peppers, Johnson, UniHealth Answers ¶ 92)**. Peppers was assigned to work as an LPN (Licensed Practical Nurse) in another part of the UniHealth facility the night of June 21, 2010. Johnson's and Peppers' duties as stated in their UniHealth job description included reporting conduct deemed injurious to the residents. **(UPAC-Orangeburg at 00008.)**(attached at tab 6). There was no lock on resident's room doors **(Complaint ¶ 45; Peppers, Johnson, UniHealth Answers)** There is a

button right beside the resident's bed that activates an audible alarm that sounds throughout the building and that activates a flashing emergency light outside that resident's door. **(Complaint ¶ 46, R. Williams Deposition Trans. at 198; Crim. Trial Trans. J. Peppers cross at 108 lines 1-24)**(attached at tab 5)

In the early morning hours of June 21, 2010, Defendants Johnson and Peppers published defamatory statements to various third parties verbally and in writing alleging that Mr. Williams had sexually assaulted and/or abused Resident 39A. As a direct consequence, Mr. Williams was arrested on June 21, 2010 and charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult. Mr. Williams' criminal case went to trial on February 7, 2012. The solicitor nol prossed the charge of assault with intent to commit third degree criminal sexual conduct before the case went to the jury, after which a unanimous jury rendered a verdict of not guilty on the charge of abuse of a vulnerable adult. (Case Nos. 2010-GS-38-1389 and 2010-GS-1390). **(Complaint ¶ 148; Unihealth Answer ¶ 149; Crim, Discovery Docs at R. Williams 00018**(attached at tab 6)**; R. Williams Crim. Trial Trans.- P. Johnson at 224 lines 24-25; and P. Johnson direct at 225 lines 1-13, p. 324)**(attached at tab 5)

STANDARD OF REVIEW

"Under Rule 56(c) the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Boone v. Sunbelt Newspapers, Inc., 556 S.E.2d 732, 736, 347 S.C. 571, 579 (Ct. App. 2001). A "motion for summary judgment shall [only] be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law." Bruce v. Durney, 341 S.C. 563, 566, 534 S.E.2d 720,722 (Ct. App. 2000). "In general, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented." Murray v. Holnam, Inc., 542 S.E.2d 743, 747, 344 S.C. 129, 138 (2001). "In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the

nonmoving party." Id. at 747. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." Id. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Id.

LEGAL AUTHORITY AND ARGUMENT

A. The Omnibus Adult Protection Act provides a Qualified Privilege to the Tort of Defamation that can be overcome by evidence of Actual Malice and/or Abuse of the Privilege.

Enacted in 1993 by the South Carolina General Assembly to protect vulnerable adults from abuse, neglect, and exploitation, Mandated Reporters, which include " nurses, caregivers, staff or volunteers of an adult day care center or facilities," must "report suspected conduct within twenty-four hours or the following work day." **S.C. Code Ann. §43-35-10 *et seq*.**(attached at tab 1) The Omnibus Act further provides that persons making such reports in good faith are immune from criminal or civil prosecution. However, the statute expressly provides that this presumption of good faith is rebuttable. S.C. Code Ann. §43-35-75(A) (attached at tab 1)

The terms "good faith" and "rebuttable presumption" are not defined by the statute. A comprehensive search of South Carolina case law only revealed one case construing the statute. Williams v. Watkins, 665 S.E.2d 243, 379 S.C. 530 (S.C. Ct. App. 2008). Unfortunately, this case does not explain what is needed to rebut the presumption of good faith. Similarly, there is no guidance offered on the breadth of protection afforded by the state. Plaintiffs contend that this statute only provides a qualified privilege as evidenced by the language of the statute.

B. The Privilege in §43-35-75(A) is a Qualified One

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d. 203 (Ct. App 2002) citing State v. Baucom, 340 S.C. 339, 351 S.E.2d 922 (2000). The legislature's intent should be ascertained primarily from the plain language of the statue. Morgan, *supra*. Words must be given their plain and ordinary

meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. When faced with an undefined statutory term, the term must be interpreted with its usual and customary meaning. Id. In interpreting the statute, the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law should be considered. Whitner v. State 328 S.C. 1, 492 S.E.2d. 777 (1997). "If legislative intent is clear as reflected in the statutory language, any public policy as promulgated by this Court must give way." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d. 296, 301 (2012). With due notice of the absence of direct statutory or direct case law guidance on the Omnibus Act immunity provision, Plaintiffs direct the Court's attention to Hainer v. American Medical International, Inc, 328 S.C. 128, 492 S.E.2d 103 (1997). Like the Omnibus Act, Hainer involved a statutorily mandated duty to report abandoning a patient. The Court noted that S.C. Code Ann. §40-33-970 (attached at tab 1) required employers of nurses to report any instances of misconduct. Consequently, further provisions provided that such a communication made in the course of an investigation into a nursing licensee's conduct was privileged except upon proof that such communication was made with actual malice, Id. p. 134. In addressing the duty to report, the Court in Hainer indicated "we are unpersuaded by Hospital's claim that, because it had a statutory duty to report misconduct, malice is precluded". Id. The Court, citing Adkins v. Varn, 312 S.C. 188, 439 S.E. 2nd 822 (1933) stated "[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning." The Court in Hainer indicated that it "cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope."citing Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993); see also Estate of Guide v. Spooner, 318 S.C. 335, 457 S.E.2d 623 (Ct. App. 1995) (if legislature had intended certain result in statute, it would have said so).

As a final point, the Hainer court stated that "[p]rivileged communications are either absolute or qualified. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published . . . [w]hen qualified however, the plaintiff may recover if he shows the communication was actuated by malice." Hainer at 133-134. In consideration of

the foregoing, the Hainer court concluded that "[n]othing in §40-33-936(attached at tab 1) evinces a Legislative intent to exempt truthful communications from a finding of malice. If the fact of the duty negated malice, the Legislature would have granted an absolute privilege." Id. at 134.

With Hainer and related statutes in view, the Omnibus Adult Protection Act with its inclusion of a provision for a rebuttable presumption of good faith, evinces a clear legislative intent to provide for a qualified privilege defense to communications reported under the Omnibus Act. Otherwise, these words have no meaning. If the privilege was absolute the legislature would have said so. Good Faith

Significantly, in Watkins *supra*, the South Carolina Supreme Court looked to the guidance of the Minnesota Court of Appeals in In re Kleven, 736 N.W.2d 707 (Minn. Ct. App. 2007), which construed a similar statute under Minnesota law, the Vulnerable Adults Act (attached at tab 2), to determine the "perspective from which a mandated reporter should view the vulnerable adult's allegations." While the issue of the vulnerable adult's perspective is not at issue in this case, other cases interpreting this same Minnesota Vulnerable Adults Act statute are instructive. For example, in J.E.B.v. Danks, 785 N.W.2d 741, 749 (Minn. 2010)(attached at tab 3), the Minnesota Supreme Court considered the meaning of the term "good faith" under the Minnesota statute in the absence of a statutory definition. In that case, the Court determined that "although there may not be a statutory definition setting forth exactly what a reporter must show to establish his or her good faith, it is clear that, at the very least, **filing a report that is knowingly or recklessly false will defeat a showing of good faith.**" (Emphasis added) Id. at 749. Recall that the gravamen of Plaintiffs' claim is that Defendants made statement with a reckless indifference to the Plaintiffs' rights. Consequently, in Danks the court found a material issue of fact existed as to whether a reporter made a statement in good faith when there was evidence presented by the Plaintiff to suggest that the reporter used "exaggerated language, stating that 'ABUSE OCCURRED,' despite the fact that [the reporter] had no personal knowledge of the abuse." Id. at 750-51.In this case, the Defendant Unihealth states in its brief: "[i]n order to prevail on their claims Plaintiffs must overcome the Act's good faith presumption by proving that Johnson and Peppers acted in bad faith and intentionally

made false reports regarding Plaintiff Ralph Williams, Sr." (**see Defendant UniHealth's brief at page 4**).

The Defendant UniHealth adds "intentional" and "bad" faith language not found in the statute. Moreover, Defendant UniHealth fails to cite to any statute or case law as a basis for the terms it uses to interpret the statute. As previously stated "[t]he legislature's intent should be ascertained primarily from the plain language of the statue. Morgan, *supra*. The terms "intentional" or "bad faith" are not mentioned in the Omnibus Act. The Defendant UniHealth inserts these terms to force the construction of the statute for its own purposes and intent contrary to the well settled law of this state.

C. Further Evidence of Malice

In cases of defamation, the presumption of immunity created by a common law qualified privilege can be rebutted upon proof of "actual malice or that the scope of the privilege has been exceeded." Swinton Creek Nursery v. Edisto Farm Credit ACA, 334 S.C. 469,484, 514 S.E.2d 126, 134 (1999). See also McBride v Greenville County School District, 2013-UP- 430, Nov. 20, 2013 (S.C. App). A speaker may exceed the scope of the qualified privilege by making a communication that "goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff." Murray v. Holnam, 344 S.C. 129, 1401, 542 S.E.2d 743, 749 (Ct. App. 2001). Actual Malice can be established upon a showing of ill will, **recklessness, or a "conscious disregard of the Plaintiff's rights.**" (emphasis added) Constant v. Spartanburg Steel Products, 316 S.C. 86, 447 S.E.2d 194 (1994); *See also* Hainer, supra., (*quoting* Jones v. Garner, 250 S.C. 479, 488,158 S.E.2d 909 (1968)).

Our courts have also made it clear that the truth of the statements do not negate malice as a matter of law. Hainer, at p.106. It is not necessary to show ill will to prove that a speaker acted with actual malice: "That the appellant believed the charges to be true did not justify it in publishing them in an improper and unjustified manner or with improper and unjustified motives. Proof that they were published in such manner and with such motives would constitute sufficient proof of malice, or malice in fact. It is not necessary that evidence must be offered of malignity or ill-will, nor that those facts should be found. The time, place, and other circumstances of the preparation and publication of defamatory

charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice." Fulton v. Atlantic Coast Line R. Co., 220 S.C. 287, 296, 67 S.E.2d 425, 429 (1951).

Malice may be proved by direct or circumstantial evidence. Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584 (1940) "Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury." Murray v. Holnam, 344 S.C. 129, 140, 144, 542 S.E.2d 743, 751 (Ct. App. 2001). The question of whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. Swinton Creek, at 485. "However, the question of whether the privilege has been abused is one for the jury." Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused." Holnam, at 140, (*quoting* Swinton Creek, at 485). Furthermore, "[w]hether malice is the incentive for a publication is ordinarily for the jury to decide." Holnam at, 144.

In Holnam, Murray worked at a cement plant (Holnam, Inc.) and was the acting supervisor when his supervisor was not present. Murray was accused of stealing fuel from the company by a supervisor. Id. Approximately one year prior to Murray's termination for stealing, he accused a fellow employee (Barnes) of absenteeism for six hours. Id. Subsequent to Murray's allegations against Barnes, Barnes accused Murray of stealing fuel from the company. Id. During the course of the next year Barnes and Murray had several altercations where Barnes accused Murray of theft. Id. at 134-35. The evidence presented in Holnam revealed conflicting testimony from employees who provided testimony about the alleged theft that contradicted their previous written statements. Id. at 135-36. Murray was falsely informed that the Orangeburg County Sheriff's Department was investigating him for theft and statements accusing him of theft were published to other employees. Murray was subsequently terminated. Id.

The Court in Holnam held that a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment, and that there were genuine issues of material fact on

the issue of whether the qualified privileged had been exceeded, and on the issue of common law actual malice. Id. at 141,145.

D. Defendants' assertions of privilege should be evaluated by a jury

Turning to the facts in this case, Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to sexually assault the patient in 39A, nor did she inform him of any emergency situation involving him or Resident No. 39A on the night in question. **(Complaint ¶ 111; R. Williams Aff. ¶ 34 R. Williams Deposition at 179 line 25, at 180 lines 1-10, at 201 lines 5-25, at 202 lines 1-25 , at 203 lines 1-25, and at 204 lines 1-125)**(attached at tab 5) Johnson did not yell or scream for help when she allegedly became aware that Resident 39 A, who was physically and mentally incompetent, had a naked man on top of her (**R. Williams Aff.**(attached at tab 4) **¶ 34, R. Williams Crim. Trial Trans – P. Johnson Direct at 70 lines 15-2; at 71 lines 1-18; at 71 lines 21-25; at 78 lines 17-25; at 80 lines 1-14)**(attached at tab 5) Johnson left the room and did not push an audible alarm located in Room 39 **(Complaint ¶ 114; Peppers, Johnson, UniHealth Answers ¶ 115)** Johnson did not push the alarm that would activate an light that flashes outside the door at the Defendant's skilled nursing facility. **(Complaint ¶ 115; Johnson, Peppers, UniHealth Answers ¶ 116)** Clearly, a competent medical professional would have done these things required by facility policy, as well as common sense, if what she saw was actually occurring. In her criminal trial testimony Defendant Johnson further added for the first time that Plaintiff Ralph Williams was naked and on top of Resident No. 39A. **(R. Williams Crim. Trial Trans. P. Johnson direct at 78 lines 24-25, at 79 lines 22-25 and at 88 lines 1-25)**(attached at tab 5) Johnson stated in her nursing notes and incident report that she saw the Plaintiff with his pants down and climbing on top of Resident 39A (UPAC Orangeburg at 249, 261)(attached at tab 6). In her subsequent criminal trial testimony she stated he was "completely naked" and was on top of the alleged victim. **(Crim. Trial Trans. at 78, 88; UPAC Orangeburg at 249-251)**(attached at tab 5). Defendant Johnson also communicated this statement to UPAC Orangeburg as evidenced by the accident report, 24 hour and five day and incident reports (UPAC Orangeburg at 251-253)(attached at tab 6). Johnson also indicated the same on her voluntary statement to the Orangeburg Department of Public Safety but added

that "there is no doubt in my mind that if I had not walked in room he would have had sex with 1 (UPAC Orangeburg at 249)(attached at tab 6). Defendant Johnson uses exaggerated language in that as stated earlier, Defendant Johnson left a helpless patient in the room, did not scream or yell for help, and did not press any emergency audible or visual alarm. **(Crim. Trial Trans.- P. Johnson cross at 79 line 2; at 97 lines 24-25; and at 88 line 4**)(attached at tab 5). In fact, instead of getting help from the closest staff member, she passed by other staff who were in close proximity to the patient's room **(Crim. Discovery Docs at R. Williams Supplemental 562**(attached at tab 6); **R Williams Dep. p. 201**)(attached at tab 5), said nothing, and went to find Defendant Peppers at a snack machine near the break room. **(Crim Trial Trans P. Johnson at p.79, 97 and 88; Crim. Trial Trans. J. Peppers at p. 109)**.(attached at tab 5)

Moreover, for the first time in Defendant Johnson's criminal trial testimony she testified that Resident 39A's breasts were exposed. **(Crim. Trial Trans. P. Johnson cross at 87 lines 14-23; lines 21-22 and lines 23-25**)(attached at tab 5) Defendant Johnson also added for the first time in her criminal trial testimony that the Plaintiff Ralph Williams had told her "get out of the room" rather than merely to shut the door. **(Crim. Trial Trans.- P. Johnson cross at 79 line 2; at 97 lines 24-25; and at 88 line 4)**.(attached at tab 5)

The evidence collected evidence in room, included but not limited to, Resident 39A's gown, blanket, sheet, cover, fitted sheet, as well as Plaintiff's scrubs tops, bottoms, and a red shirt that was found on Resident 39A's bed **(Crim. Discovery Docs. at R. Williams Supplemental 000354-357**(attached at tab 6); **and 437-439 (search warrant**)(attached at tab 6); **Crim. Trial Trans. Robert Warrington direct at 118 lines 1-25; at 120 lines 14-25; at 121 lines 1-25**(attached at tab 5); **at Linda Small cross 189 lines 10-16**)(attached at tab 5). There was no DNA evidence on any of these items, even though Defendant Johnson gave conflicting testimony indicating Resident 39A may have had feces or urine on her. **(Crim. Trial Trans. P. Johnson direct at 85 lines 1-8**(attached at tab 5); **and at P. Johnson cross 88 lines 10-17**)(attached at tab 5). While Resident 39A was at the hospital, doctors and nurses conducted rape kit test, which were negative. **(Criminal Trial Trans. J. Smoak direct at 139**

lines 10-13(attached at tab 5); **and at L. Smalls cross at 189 lines 10-16**(attached at tab 5); **Crim. Discovery Docs at R. Williams Supplemental 423, 424, 427, and 428**(attached at tab 6) . Members of the Orangeburg Department of Public Safety also tested vaginal swabs from Resident 39A. No DNA evidence from Ralph Williams was positively identified. (**Crim. Trial Trans. at 89**)(attached at tab 5). Moreover, there were no fingernail scrapings under the victim's nails, or pubic hair. (Crim. Trial Trans. at 164,165,188)(attached at tab 5). Defendant Johnson has stated that she had no prior problems with Plaintiff (**Crim. Trial Trans. at P. Johnson direct at 88 lines 220-224**)(attached at tab 5). However, Plaintiff Ralph Williams has consistently asserted that there were prior incidents between them. (**R. Williams Aff. ¶ ¶ 22, 24, 27**(attached at tab 4); **Crim. Trial Trans. R. Williams direct at 220-224**(attached at tab 5); **R. Williams deposition at 212-221**(attached at tab 5); **and at L. Williams deposition at 60 lines 1-25**)(attached at tab 5).

Defendant Peppers' testiified she was at or near the snack machine near the break-room during the alleged assault. (**Crim. Trial Trans. J. Peppers direct at 109 lines 5, 8**)(attached at tab 5) Other nursing staff were on duty closer to Room 39A but were never notified (**Crim. Discovery docs. at R Williams Supplemental 00562**)(attached at tab 6); **R. Williams Deposition Trans. at 201 lines 7-25; at 202 lines 1-25**)(attached at tab 5). Plaintiff was in the middle of changing Resident 39A, who had urine and feces on her. (**R. Williams Aff.** ¶ 32(attached at tab 4); **Crim. Trial Trans. R. Williams direct at 215**(attached at tab 5); **R. Williams Deposition Trans. at 180 at lines 11-16**)(attached at tab 5). Johnson gave contradictory statements as to when she finished changing Resident 39A. She initially stated that she finished changing her and "got all that mess off her" and later stated that did not change her brief prior to the police coming (**Crim. Trial Trans. P. Johnson direct at 85 lines 1-7**(attached at tab 5); **P. Johnson cross at 88 lines 10-14; 16-18**(attached at tab 5); **at R. Williams direct at 225 lines 1-13**). (attached at tab 5). Based on Defendant Johnson's trial testimony, there is a fact issue here in that if the patient had not been changed, one would expect Plaintiff Ralph Williams would have had feces or urine on his scrubs. He did not.

Defendant Peppers stated that she did not actually see the Plaintiff in an undressed state or in contact with Resident 39A. **(Crim. Trial Trans. J. Peppers cross at 110 lines 23-24)** (attached at tab 5) However, Defendant Peppers proclaimed that Ralph (Plaintiff) was going to have sex with the resident if he did not get caught in her voluntary statement to the Orangeburg Department of Public Safety **(UPAC Orangeburg at 250)**(attached at tab 6). She further admitted that the basis of her knowledge was that Johnson merely told her secondhand that Ralph (Plaintiff) was having sex and that she only saw him adjusting his pants **(Crim. Trial Trans. J. Peppers cross at 110 and at 118)**. Defendant Peppers made an improper inference based on seeing Plaintiff Ralph Williams adjust his scrubs. **(see Peppers Voluntary Statement and Criminal Trial Transcript UPAC-Orangeburg 000250**(attached at tab 6); **Crim. Trial Trans. J. Peppers cross at 110-111**(attached at tab 5); **J. Peppers direct at 96 lines 1-25 and at 98 lines 1-4)**(attached at tab 5). After approximately one (1) hour of deliberations, a unanimous jury rendered a verdict of not guilty April 9 2012 on the charge of abuse of a vulnerable adult. The solicitor nol prossed the charge of assault with intent to commit third degree criminal sexual conduct before the case was submitted to the jury in the matter of State of South Carolina v. Ralph C. Williams, Sr. **(Case Nos. 2010-GS-38-1389 and 2010-GS-1390). (Complaint ¶ 148; UniHealth Answer ¶ 149; Crim. Trial Transcript p.323, 324**(attached at tab 5); **R Williams p. 018)**(attached at tab 5).

On two separate occasions in the months leading up to June 20, 2010, the Plaintiff presented evidence that Defendant Johnson refused to assist him with residents in emergency situations at the facility. **(R. Williams Aff.**(attached at tab 4); **R. Williams Deposition Trans. at 212-221**(attached at tab 5); **Crim. Trial Trans. at.233-237)**(attached at tab 5) Additionally, on another occasion, Plaintiff also produces evidence that Defendant Johnson telephoned the Plaintiff's wife from the facility at 2:30 a.m. to cause dissension in his marriage. **(R. Williams Deposition Trans. at 221, 222**(attached at tab 5); **Crim. Trial Trans. R. Williams direct at 220; at 221 at 222-224)**(attached at tab 5). Johnson has also testified that she had no prior incidents with Mr. Williams. **(Crim. Trial Trans.- P. Johnson direct at 88 lines 21-25)**.(attached at tab 5).

"Recklessness implies the doing of a negligent act knowingly"; it is a conscious failure to exercise due care. If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning – the conscious failure to exercise due care...the test by which a tort is to be characterized as reckless...is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights." Berberich v. Jack,392 S.C. 278, 709 S.E.2d 697 (S.C. 2011)(internal cites omitted). In light of the forgoing recited facts of this case, the Defendants' credibility, actions, and conduct are clearly issues for the jury.

Opposing counsel's arguments merely assume, without case law or statutory basis, that *only* evidence of "bad faith" and an intention to publish false statements must be established to rebut the presumption of good faith. (*See* **Defendant's Summary Judgment Brief p. 1, 5-7**). As set out above, case law holds that the truthfulness of the statements is not dispositive of this issue. Furthermore, opposing counsel does not explain the basis for its premise why the rebuttable presumption can only be overcome by counsel's "requirements", or explain what either of these terms mean in the context of defamation. **Nor does Defendant cite to *any* supporting case law in Section IV A of its brief on this point.** Its argument is merely that because a statutory duty to report misconduct existed, actual malice is negated; a proposition soundly rejected by the Hainer Court.

As shown in this brief, Plaintiffs have documentary evidence, deposition testimony, criminal trial testimony and affidavits which under the cited applicable law are sufficient to establish that the Defendants are not entitled to claim the protection of qualified privilege and therefore also sufficient to establish an issue of material fact for the jury in this case as to whether the Act's presumption of good faith is rebutted.

E. The Affidavits attached to Defendant's Summary Judgment Brief should not be considered by the Court

Pursuant to S.C. Rule of Civil Procedure 56(e), "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Witnesses Donald Sorensen (solicitor prosecuting Williams) and Latisha Walker (investigating sergeant for Orangeburg Dept. of Public Safety) executed affidavits that Defendant UniHealth submitted in support of its Summary Judgment motion. Each of them stated in their affidavit that they reviewed both Johnson and Pepper's voluntary statements to police, interviewed them and listened to their trial testimony. Each of them then stated: "In my opinion, Patricia Johnson and Josette Peppers acted in good faith when they reported their observations and provided their voluntary statements to the ODPS." Their opinions were based entirely on hearsay rather that as to facts they had personal knowledge of. This court should not consider them in connection with the motion.

Neither witness was listed as an expert witness in responses to discovery. Neither has set forth any qualifications as expert in any area where "... scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence, or to determine a fact at issue..." Rule 702, SCRE. Yet, each give affidavit opinions about the state of mind of both Johnson and Peppers on the critical and ultimate jury issue of good faith in the case. Each will be a testifying lay witness in the case. They are not qualified as experts in any specialized area that might give them a basis to testify about their opinions of Johnson and Peppers' mental state of "good faith" in reporting the relevant events.

The opinions they seek to give do not fit the non-expert witness opinion exceptions in Rule 702 SCRE including those: a) rationally based on the perception of the witness, b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) which do not require special knowledge, skill, experience or training. Each of these witnesses seek to opine as to both reporter's "good faith" state of mind as they discharged their obligations to report. None of the exceptions to the general rule against lay opinions are met to allow this evidence.

The statements in the Affidavits that Johnson and Pepper's acted in good faith are also subjective statements as to a conclusion of an ultimate fact or matter of law. American Indemnity Company v.

Richland Oil Company, 273 F. Supp. 702, 707n.3 (D.S.C. 1967) (noting that "ordinarily a witness would not be allowed to testify as to his conclusion of ultimate fact or matters of law" and finding that since the affidavit submitted in this case was based on a subjective opinion as to who owned a tractor, the affidavit was not "conclusive as to the legal status of the tractor"). They are improper for consideration.

Both witnesses lack personal knowledge to the matters stated in the affidavits, (contrary to Rule 56(e) SRCP) which are based entirely on hearsay. Such conclusory affidavits based upon hearsay should not be considered by the court. Yarborough & Co. v. Schoolfield Furniture Industries, Inc., 268 S.E.2d 42, 275 S.C. 151 (1980) (holding that affidavits which were "conclusory in nature and based almost entirely on hearsay . . . . should have been excluded from the trial court's consideration").

F. Defamatory statements made by employees while in performance of duties of employment create employer liability for the statements when they touch and concern the subject matter of the slander

"It is established that corporations, as well as natural persons, are liable for the willful tort of an agent acting within the general scope of his employment without previous express authority or subsequent ratification." Hypes v. Southern R. Co., 82 S.C. 315, 64 S.E. 395, 396 (1909). *See also* Holnam, at 139 ("a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority."); Murphy v. Jefferson Pilot Communications Co., 613 S.E.2d 808 (Ct. App. 2005) "It is well settled in South Carolina that in order to hold a corporation liable for a slander spoken by one alleged to be its agent, it must appear that the alleged agent was acting within the scope of his employment and in the actual performance of the duties of the corporation touching the matter in question." Johnson v. Life Ins. Co. of Georgia, 227 S.C. 351, 88 S.E.2d 260 (1955). The phrase "touching the matter in question" means "concerning the subject-matter of the slander." Id. "If there is doubt as to whether the servant was acting within the scope of his employment, the doubt will be resolved against the master at least to the extent of requiring the question to go to the jury." Murphy v. Jefferson Pilot Communications Co., WCSC, 613 S.E.2d 808, 811, 364

S.C. 453, 462 (2005). Employees who make allegedly defamatory statements may in fact be acting within the course and scope of employment and in the furtherance of employer's business where the comments relate to duties that the employee performs on behalf of the employer. Eady v. Koon, No. 3:12cv1671CMC, 2013 WL 652722, at *5-6 (D.S.C. Feb. 21, 2013) (finding that statements made by a surgeon for the purpose of challenging the suspension of his surgical privileges and related investigations, statements related to malpractice claims, and statements relating to resident's rotations at his employer's hospital "b[ore] a sufficient connection to [his] responsibilities as Chief of the Orthopedic Service at Dorn VAMC to fall within the scope of his employment" even when the Court assumed that the doctor "went beyond what was strictly necessary (or subject to any applicable privilege)."

The cases that the Defendant UniHealth cites in Section IVB of its brief are all distinguishable either because they (1) do not involve the tort of defamation; (2) involve acts by employees which were clearly personal in nature; (3) do not involve defamatory statements made while an agent was in discharge of duties assigned by the corporate defendant; or (4) do not involve acts in furtherance of the master's business or interests.

Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E. 2nd 713 (1964) is distinguishable because this case involved an employee, whose only job duties were to repair, change records in, and remove coin boxes from piccolos, who caused injury to Plaintiff, who was a customer of a restaurant that used a piccolo machine, when he threw what appeared to be a mongoose in the direction of the Plaintiff. There the Court held that the employee used the mongoose devise for his own "personal or private amusement" and therefore was not acting within the scope of his employment when the Plaintiff was injured.

Armstrong v. Food Lion, Inc., 271 S.C. 271, 639 S.E. 2nd 50 (2006) is also distinguishable because it involves a case in which three grocery store employees who were stocking shelves stepped away from their job and attacked a grocery store customer with a box cutter.

Kase v. Ebert, 3707 S.E.2d 456, 457, 458, 92 S.C. 57, 59, 62 (Ct. App. 2011) is also distinguishable because it involves a case in which a trucking company employee physically assaulted a

third party, who was not employed by the trucking company, following a minor car accident and a perceived threat from the third party having nothing to do with the employer's business.

Hamilton v. J.D. Davis, 389 S.E.2d 297, 299-300, 300 S.C. 411, 412, 416-17 (Ct. App. 1990) is distinguishable because it involves a manager for a rental property who assaulted another employee as a result of mischief or horseplay. In that case, the court found that the "assault" upon the Plaintiff was "clearly of a personal nature, indulged in [by the Resident Manager] for his own personal amusement.

Bosdell v. Dixie Stores Co., 168 S.C. 520; 167 S.E.2nd 834 (1933), held that there was no publication of the statements at issue, and noted other cases holding a jury question as to whether the privilege was rebutted by malice.

Defendants actually mistakenly cite Johnson as authority for the proposition that the Court found "insurance agent's comment to one insured about why another insured's claim was denied was made outside the scope of his employment. (*See* Defendant's Summary Judgment Brief at 9.) Contrary to Defendant's citation, in **Johnson**, the South Carolina Supreme Court actually *reversed* the Order of the trial court setting aside a jury verdict in favor of the Corporate Defendant, which was based upon the trial court's erroneous finding that "there was no evidence from which the jury could have reasonably concluded that [the individual defendant, an insurance agent], in making the slanderous statement attributed to him, was acting within the scope of his employment.". Johnson at 369. In this case, an insurance agent, whose job duties included collecting insurance premiums and soliciting insurance, allegedly made a slanderous statement regarding the reason why Plaintiff's insurance claim had been denied to third party customers of the insurance company. Even though the insurance agent had no official job duties relating to the investigation of Plaintiff's claim, the South Carolina Supreme Court held that "whether or not [the individual defendant, who was an agent of the defendant life insurance company] in uttering the alleged slander was acting 'within the scope of his employment and in the actual performance of the duties thereof touching the matter in question' was, under the evidence, a jury question; and the jury having resolved it in favor of the plaintiff, the order of the trial court setting the verdict aside as to the corporate defendant must therefore be reversed." Id. 277 S.C. at 369.

The only case Defendants cite that involve a defamatory statement made by one employee against another employee is distinguishable because the individual defendant in that case was not engaged in discharge of any duty given to him when the statement was made. Courtney v. American Ry Express Co., 113 S.E. 332, 333, 120 S.C. 511 (1922). The Court there held that the Defendant's motion for a directed verdict should have been sustained because (1) at the time the statement was made, the former coworker was not "engaged in any business whatever for the company", instead "he was at the station waiting for a train, and struck up a casual conversation with another employee employed by the common master;" and (2) the former coworker was not "engaged in the discharge of any duty committed to him by the company" in connection with the Plaintiff's termination from the company and "it could not be said that the company had entrusted [sic] him with any duty in connection with it." Id.

By way of contrast, several South Carolina defamation cases hold that there was a sufficient issue of material fact for the jury to determine whether employees acted within the scope of employment under facts very similar to those of the present case. Foremost is Murray v. Holnam, Inc. 344 S.C. 129, 542 S. E. 2d 743 (Ct. App. 2001), (also cited herein with respect to the issue of qualified privilege) whereby the court held a jury question existed where one employee who allegedly made defamatory statements against another to other employees regarding his alleged criminal conduct while on duty at the defendant employer's facility may be held liable under those circumstances. Hypes v. Southern R. Co., 82 S.C. 315, 64 S.E. 395, 396 (1909) (denying Defendant's motion to dismiss plaintiff's complaint alleging slander against his former employer on grounds of respondeat superior where plaintiff was engaged as an employee for the company and meeting with his superintendent seeking payment for unpaid time worked when the superintendent called him a thief several times in the presence of his coworkers because "the complaint shows a contract relation between the corporation and the person slandered, and that the slander was in reference to a matter growing out of such relation, a dispute as to the correctness of plaintiff's claim for wages, a matter within the duty of the [superintendent] to adjust."). Mann v. Life & Casulty Ins. Co. of Tennessee, 129 S.E. 79, 132 S.C. 193 (1925) (holding that the trial court acted in error when it granted a defendant company's motion to set aside a verdict in favor of Plaintiff on his claim of

slander because the alleged slanderous statement regarding a former employee of the company, who was still in the process of settling his accounts with the company, was made by the superintendent of the company, whose job was to supervise the work of 17 or 18 agents, while he was conducting a meeting on behalf of the company attended by 12 agents who were employed by the company. *See also* Tucker v. Pure Oil Co. of the Carolinas, 191 S.C. 60, 3 S.E.2d 547 (1939).

Contrary to Unihealth's assertion, even employees' intentional acts such as assault have been held to give rise to vicarious liability of the corporation if committed in furtherance of the business of the master. Jamison v. Howard, 275 S.C. 344, 271 S.E.2nd 116 (1980)(Master's employee shot a debtor when he went to debtor's home to collect the company's debt. Whether act was in scope of employment a jury question). See also Crittenden v. Thompson Walker, 288 S.C. 112, 341 S.E.2nd 385 (1986)(company held liable for employee's assault of third person in collection of company debt). Even if the nurses acts are "intentional" UniHealth can still be liable, as those were in furtherance of the master's business.

In this case, all three individual parties involved were employees of Defendant UniHealth. (UniHealth Answer ¶¶ 51, 120, 164) Defendant UniHealth was a nursing home with a business purpose of caring for resident 39A (**Complaint ¶ 92; UniHealth Answer ¶ 93; UPAC Orangeburg at 197**). Mr. Williams, Johnson and Peppers were all on duty the night of June 20/21, 2010 when the alleged incident occurred. (**UniHealth Answer ¶¶ 91, 92, 120; UPAC Orangeburg at 202, 203**), Peppers and Johnson were Ralph Williams' supervisor, both were assigned to work and supervise Ralph Williams on June 20, 2010 (**Complaint ¶ 91; UniHealth Answer ¶ 92; UPAC Orangeburg at 202, 203**). Johnson's and Peppers' duties as stated in their UniHealth job description included reporting conduct deemed injurious to the residents. (**UPAC Orangeburg at 8**)(attached at tab 6). Plaintiff Ralph Williams was assigned to care for Resident 39A during the 11:00 p.m. to 7:00 a.m. shift on June 20, 2010. (**UPAC Orangeburg at.202, 203**)(attached at tab 6). One of Plaintiff Ralph Williams' job duties was to change resident diapers. (**Complaint ¶ 39; UPAC Orangeburg 2**)(attached at tab 6). Plaintiff Ralph Williams was changing Resident 39A's diaper in accordance with UniHealth Policies by drawing curtain around her bed

and closing the room's door. **(UPAC Orangeburg at 2, 347-350)**(attached at tab 6). Defendants Johnson and Peppers made statements alleging as to whether Plaintiff was changing Resident 39 A's diaper (Plaintiff's job duty) or instead abusing Resident 39A. Both Defendants made statements of resident abuse while on duty working 11:00 p.m. to 7:00 a.m. shift with Plaintiff. **(UPAC Orangeburg at 202, 203, 249, 250)**(attached at tab 6); Their employer had a legal obligation to comply with federal and state laws governing suspected abuse, including the Omnibus Act. Their Employer had policy that governed reporting alleged incidents of resident abuse. **(UPAC Orangeburg at 2, 8, 305, 306)**(attached to tab 6).

As in the cases cited favorable to Plaintiff's case, the Plaintiff and Defendant all worked for the same Defendant Employer, at the same facility, at the same time, dealing with same matter, the care of resident 39A, when the Defendants Johnson and Peppers made the defamatory statements against Plaintiff to other employees and third parties. It is not denied that the care of Resident 39A was in the furtherance of Defendant Employer's business or that all parties were its agents in this regard. From the forecast of evidence presented by the Plaintiff and analogous case law, it is clear that there is sufficient evidence that Defendants Johnson and Peppers were acting within the scope of their employment and in the actual performance of their duties of the corporation touching the matter in question (reporting suspected resident abuse) to raise an issue of material fact for the jury to decide this issue. Furthermore, applicable law requires any doubt of this issue to be resolved against the master (Defendant UniHealth) in this fashion.

G. Plaintiffs' Complaint Alleges Malice/Recklessness as Defined by the Law of Defamation

In Section IV C of its brief, Defendant UniHealth discusses Plaintiffs complaint and goes to great lengths to try to demonstrate that Plaintiffs' complaint alleges that Defendant Johnson and Peppers acted "intentionally" or in "bad faith" when they published the statements at issue. To the contrary, the allegations in the complaint go to show that Defendant Johnson and Peppers acted recklessly and/or in a manner that exceeded the scope of the qualified privilege afforded by the Omnibus Adult Protection Act.

Indeed, in the Complaint Plaintiffs allege several allegations of Johnson's reckless conduct (Complaint ¶ 104, 111-119) and Peppers reckless conduct (Complaint ¶ 104, 119, 138, 139). Moreover, the plaintiff's remind the Court that Defendant UniHealth is represented by the same counsel as the individual Defendant Johnson and Defendant Peppers (see signatures on back of Defendant's Answer to Plaintiff's Complaint) In light of this, despite Defendant Johnson and Defendant Peppers specifically denying any intentional conduct, same is now being asserted by the same counsel on behalf of counsel's corporate client UniHealth in an attempt to extract the corporation from responsibility of its employees discharging their job duties in this matter. (¶ 171 Defendant Johnson's Answer to Plaintiff's Complaint and ¶171 Defendant Pepper's Answer to Plaintiff's Complaint.)

Furthermore, in the Complaint Plaintiffs specifically allege that Johnson and Peppers "acted in a manner to rebut the presumption of good faith afforded by the Omnibus Adult Protection Act with numerous allegations that allege that each of the actionable statements "were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege." (Complaint ¶¶ 169, 172, 187, 190, 204, 207, 221, 224). Defendant's statements that Plaintiffs' claims allege that Johnson and Peppers acted with an "ulterior purpose" when published statements that asserted that R. Williams was in the process of committing a sexual act. Note that the only paragraphs that actually reference "willful" or "intentionally" are as follows: (Complaint ¶¶ 235, 246, 257, 269) which fall under the abuse of process and loss of consortium claims. The abuse of process claims have, or are being dismissed, leaving defamation and consortium claims for trial. Motion to remove the word "intentionally" from the consortium cause is pending.

With regard to Plaintiff's defamation and consortium causes of action, the Defendant UniHealth cites to the Plaintiff's complaint, specifically (Complaint, ¶¶ 169 and 172, 187, 190, 204, 207, 221, 224), indicating that the statements "were not subject to conditional or qualified privilege because they were not made in good faith," and "published . . . with actual malice." However, in quoting the Plaintiff's

complaint the Defendant UniHealth, inserts elliptical (. . .) in the place of Plaintiffs allegation in the same paragraph that Defendant Johnson acted with "reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege." The Defendant UniHealth does reference Plaintiffs' claim of "actual malice" in the (Complaint ¶172, 190, 207, 224), and as indicated earlier, and in other cases, "actual malice" is required to rebut a qualified privilege. Plaintiffs have sufficiently alleged the actual malice sufficient to deny the motion on these grounds. Again, however, Defendant cites to no case law or statutory authority in support of its argument in this section of its brief.

In construing a complaint or responsive pleading, the court must review the entire pleading, Doe ex rel. Legal Guardian v. Barnwell School District 45, 369 S.C. 659, 663, 633 S.E.2d 518, 520 (S.C.. App. 2006), with all allegations, not only those that Defendant emphasizes on "intentional" conduct, to the exclusion of allegations of "recklessness" elsewhere. To ensure substantial justice to the parties, the pleadings must be liberally construed. Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App 2000). In fact, party may plead alternative or inconsistent claims or defenses. Inman v. Imperial Chrysler, 303 S.C. 10,397 S.E.2nd 774 (SC App. 1990); Fogel v McDonald, 159 S.C. 506, 157 S.E. 830 (1931). The complaint must be read as a whole.

In construing the aforementioned cases, Defendant UniHealth erroneously takes paragraphs in Plaintiffs Complaint out of context 'quoting "Plaintiffs allege Johnson made statements "intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint ¶170, 188,205,222, emphasis added).

The Plaintiff Ralph Williams complaint (Complaint ¶170, 188, 205, 222), establishes and describes the act of Defendant Johnson filing a criminal report. However, the previous enumerated paragraphs in their entirety establish the manner in which Defendant Johnson exercised her duty to report as a reckless disregard for the rights of the Plaintiff Ralph Williams. Moreover, in Defendant UniHealth's brief, footnotes 4, 5 and 6, quotes (Complaint ¶ 162, 179, 197, 214) Plaintiff Ralph Williams' complaint stating: "Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein."" However as indicated above, Defendant UniHealth did not cite paragraphs in Plaintiff Ralph

Williams complaint verbatim. Instead, Defendant UniHealth '"added emphas" and used ellipticals (. . .) while omitting key allegations in the aforementioned paragraphs which is sufficient, if proven with evidence, to rebut the "good faith" presumption. The complaint as a whole is sufficient to state proper claims for relief which survive UniHealth's motion on the pleadings.

Plaintiff Linda William's First and Second Causes of Action are for loss of consortium. (Complaint ¶¶ 251-275). A loss of consortium claim is a separate and independent action, not derivative. Preer v. Mims, 323 S.C 516, 521, 476 S.E.2d 472, (1996). Similarly, as above, Johnson's and Peppers' tortious violation of Linda Williams' right to companionship, aid, society and services of her spouse by virtue of their defamatory statements were made within the course and scope the Johnson and Peppers employment. As above, Plaintiffs allegations in all prior paragraphs are incorporated into her consortium causes Complaint 251, 264), including the "reckless indifference" required to show actual malice and rebut the presumption. Defendant's motion relative to her pleadings should also fail against Plaintiff Linda Williams for the same reasons as for Ralph Williams set forth above in this brief.

CONCLUSION

Plaintiffs have forecast sufficient evidence of actual malice of Defendants as to "reckless indifference" to their rights, and the exaggeration of what they witnessed exceeding any qualified privilege. Therefore, a jury question exists as to whether the presumption has been rebutted and summary judgment should be denied. Peppers and Johnson were acting in the scope of their employment and in accordance with company policy in reporting what they saw. The defamation touched the subject matter of their jobs. UniHealth is therefore liable for their acts. Witnesses Sorenson and Walker are no better than the jurors as to Peppers and Johnsons' state of mind as to good faith. They are not experts and cannot give opinions. The affidavits should not be considered. Defendants cannot "cherry pick" words from the Plaintiffs' complaint to support their argument to the exclusion of words relevant to actual malice such as "recklessness" and "reckless disregard to Plaintiffs' rights". The complaint must be considered as a whole. Defendant UniHealth's motion should be denied.

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December 30, 2013
Greenville, South Carolina

SUMMARY JUDGEMENT EXHIBITS

1. South Carolina Statutes

S.C. Code Ann. §42-35-10 p. 5
S.C. Code Ann. §43-35-75(A) p. 5
S.C. Code Ann. §40-33-936 p. 6
S.C. Code Ann. §43-33-970 p. 5
S.C. Code Ann. §43-35-5 p. 5

2. Minnesota Vulnerable Adults Act

MINN. STAT. § 626.556 (2013)

3. Minnesota Supreme Court

J.E.B.v Danks, 785 N.W.2d 741, (2010)

4. Affidavits

Ralph Williams Affidavit
Linda Williams Affidavit

5. Transcript Excerpts

Ralph Williams Criminal Trial Transcript

Ralph Williams Deposition Transcript

Linda Williams Deposition Transcript

6. UniHealth Policies/Job Descriptions/Nursing Perenial Care

Bates Stamp Nos. UPAC-ORANGEBURG- (Job Description)-000002, 000008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	Civil Action No.: 2012-CP-38-0845
Ralph C. Williams, Sr., and	)	
Linda Williams,	)	**AMENDED COMPLAINT** *(Jury Trial Demanded)*
Plaintiffs,	)	
vs.	)	
Patricia A. Johnson,	)	
Josette Peppers, and	)	
UniHealth Post-Acute Care-Orangeburg, LLC	)	
Defendants.	)	

FILED FOR RECORD
IN THE CLERK OF COURT
ORANGEBURG, SC
2014 JAN 13 PM 1:11

Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams, complaining of Defendants Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care-Orangeburg, LLC named above would allege and show unto this Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ralph C. Williams, Sr. (hereinafter referred to as "Plaintiff Ralph Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

2. Plaintiff Linda Williams (hereinafter referred to as "Plaintiff Linda Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

3. Upon information and belief, Defendant Patricia A. Johnson (hereinafter referred to as "Defendant Johnson") is a citizen and resident of the State of South Carolina, County of Orangeburg.

4. Defendant Johnson was employed by Defendant UniHealth Post-Acute Care – Orangeburg, LLC as a Licensed Practical Nurse At all times relevant to this Action.

5. Upon information and belief, Defendant Josette Peppers (hereinafter referred to as "Defendant Peppers") is a citizen and resident of the State of South Carolina, County of Orangeburg.

6. Defendant Peppers was employed by Defendant UniHealth Post-Acute Care – Orangeburg, LLC as a Licensed Practical Nurse At all times relevant to this Action.

7. Upon information and belief, Defendant UniHealth Post-Acute Care – Orangeburg, LLC (hereinafter referred to as "Defendant UniHealth") is a domestic limited liability corporation with its principal place of business located at 755 Whitman Street Se Orangeburg, SC 29115 in the City and County of Orangeburg, South Carolina.

8. This proceeding concerns events which transpired in the County of Orangeburg, South Carolina and all parties are domiciled in the County of Orangeburg, South Carolina. Therefore, Plaintiffs are informed and believe that this Court has jurisdiction over the subject matter, over the parties, and that venue in the County of Orangeburg is proper pursuant to South Carolina Code Ann. § 15-7-30 (A)(3).

FACTUAL ALLEGATIONS

Background Facts regarding Plaintiff Ralph Williams and Plaintiff Linda Williams

9. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

10. Plaintiff Ralph Williams is a Certified Nursing Assistant who was employed at Defendant UniHealth's Orangeburg facility from February of 2010 until June of 2010.

11. Plaintiff Ralph Williams has been married to his wife Plaintiff Linda Williams for approximately twenty five (25) years.

12. Prior to June of 2010, Plaintiff Ralph Williams and Plaintiff Linda Williams had a loving relationship and had never been separated.

13. Plaintiff Ralph Williams and his wife Plaintiff Linda Williams attend a local church in Orangeburg, South Carolina, State Holy Temple for twenty five (25) years.

14. Plaintiff Ralph Williams regularly volunteers at his local church cooking meals for the Pastor's Anniversary and Baptisms at State Holy Temple, and ushers during funerals.

15. Plaintiff Ralph Williams and Plaintiff Linda Williams have three children and four grand children.

Additional Background Facts about Plaintiff Ralph Williams

16. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

17. Plaintiff Ralph Williams graduated from high school.

18. Upon graduation from high school, Plaintiff Ralph Williams honorably served in the United States Navy for two years upon graduation of high school and was honorably discharged on April 22, 1977.

19. After his honorable discharge from the U.S. Navy, Plaintiff Ralph Williams worked for many years as a Chef in St. Louis Missouri and in Orangeburg, South Carolina.

20. Plaintiff Ralph Williams was a very well liked and regarded Chef in the city of Orangeburg.

21. Plaintiff Ralph Williams was featured in a Local Orangeburg Newspaper for helping welcome foreign students by cooking their cultural dishes.

22. Plaintiff cooked for the President of South Carolina University, his wife, and other professors and teachers at The Walnut Room.

23. Plaintiff Ralph Williams also organized a fundraiser to help pay the medical bills of a co-worker's daughter who suffered from bone marrow cancer. The Plaintiff Ralph Williams was able to raise over five thousand ($5,000.00) by selling barbeque plates.

24. Plaintiff Ralph Williams had a side catering business and was sought out as a caterer by churches, local social clubs and for family and class reunions.

25. Significantly, a majority of Plaintiff Ralph Williams catering clients were elderly people.

26. In addition to his side catering business, Plaintiff Ralph Williams decided to study to become a Certified Nursing Assistant ("CNA") so that he could provide a better financial future for his family by working as a CNA at night and doing catering jobs during the day.

27. Plaintiff Ralph Williams received a certificate of completion from Orangeburg Calhoun Technical College for the Nurse Aide Training program on September 18, 2009.

28. Plaintiff Ralph Williams passed the state exam to receive his Certified Nursing Assistant license on November 10, 2009.

Plaintiff Ralph Williams' Employment with Defendant UniHealth

29. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

30. Plaintiff Ralph Williams was hired as a CNA by Defendant UniHealth on or about February of 2010.

31. At all times relevant to this Action, Plaintiff Ralph Williams was assigned to work in the Rehabilitation Section from 11:00 p.m. until 7:00 a.m.

32. As a CNA, for UniHealth, Plaintiff Ralph Williams' duties were to assist the Registered Nurses and Licensed Practical Nurses with resident care by taking vital signs, providing residents with water, bathing residents, and changing resident briefs or pampers.

33. At all times relevant to this Action, Plaintiff Ralph Williams was supervised by Licensed Practical Nurses (hereinafter referred to as "LPNs").

34. A significant number of the residents that Plaintiff Ralph Williams cared for were bedridden. Thus, one of Plaintiff Ralph Williams primary duties as a CNA was to change resident briefs or pampers.

35. UniHealth assigned Plaintiff Ralph Williams to care for both male and female residents.

36. Upon information and belief, UniHealth instructed Plaintiff Ralph Williams to knock on the door before he entered a resident's room and to inform the resident that he was the CNA assigned to care for him or her that night.

37. At all times relevant to this Action, Plaintiff Ralph Williams followed and complied with UniHealth's policies and procedures with regard to the care of residents, including policies and procedures regarding the bathing and changing of briefs for residents.

38. Plaintiff Ralph Williams was regularly assigned to work in the Rehabilitation Section of the UniHealth facility.

39. One of Plaintiff Ralph Williams' primary duties was to keep residents clean and dry by checking resident briefs to determine if they needed to be changed and changing resident briefs when they became soiled with urine and/or feces.

40. Upon information and belief, many of the UniHealth residents wore briefs under their gowns because they were bedridden and unable to use the toilet on their own.

41. Upon information and belief, the UniHealth residents wore gowns that were opaque or not transparent.

42. Consequently, to carry out his assigned duty of checking and changing resident briefs, Plaintiff Ralph Williams was required to lift the gown of each resident to which he was assigned to determine whether the soil indicator on the brief was white or blue.

43. Upon information and belief, if the indicator was white then Plaintiff Ralph Williams was trained by UniHealth to know that the patient's brief was clean and dry.

44. Upon information and belief, if the indicator was blue, however, then Plaintiff Ralph Williams was trained by UniHealth to know that the brief was soiled with either urine and/or feces and needed to be changed.

45. Upon information and belief, there is no lock on resident's doors.

46. Upon information and belief, there is one button right beside the resident's bed that is an audible alarm that sounds throughout the building and that activates an emergency light outside each resident's room that flashes.

47. When that alarm is activated every available staff member is required to respond to the emergency.

48. Upon information and belief, UniHealth staff members are instructed to activate alarms in event of an emergency involving a resident.

Prior Relations between Plaintiff Ralph Williams and Defendant Johnson

49. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

50. As a CNA employed by Defendant UniHealth, Plaintiff Ralph Williams reported to Defendant Johnson, a LPN employed by Defendant UniHealth.

51. Upon information and belief Defendant Johnson and Defendant Peppers, another LPN employed by Defendant UniHealth, went to school together and therefore knew each other outside of their employment at Defendant UniHealth.

52. Upon information and belief, Defendant Johnson harbored malignity towards Plaintiff Ralph Williams as evidenced by three altercations between Defendant Johnson and Plaintiff Ralph Williams.

I. First Altercation Between Plaintiff Ralph Williams and Defendant Johnson

53. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

54. A short period of time prior to June 21, 2010, Plaintiff Williams was checking the vital signs of a female resident and determined that the resident's blood pressure was abnormally high.

55. Plaintiff then went to Defendant Johnson, who was his Supervisor, and informed Defendant Johnson that the resident had an abnormal blood pressure and asked Defendant Johnson to come with him to check on the resident.

56. Defendant Johnson refused to go to check on the resident and instead told Plaintiff Ralph Williams to go and check the resident's vital signs again.

57. When Plaintiff Ralph Williams went back to check the resident's blood pressure again, he discovered that the resident's lips and tongue were turning blue, so Plaintiff Ralph

Williams ran back to ask Defendant Johnson if Defendant Johnson would come and help him care for the resident.

58. Defendant Johnson again refused to assist Plaintiff Ralph Williams with the resident's care.

59. Since Defendant Johnson was unwilling to assist him with the resident's care, Plaintiff Ralph Williams went to find Ms. Irons, another LPN employed by Defendant UniHealth and asked her to assist him with the resident.

60. Ms. Irons helped Plaintiff Ralph Williams get the resident stabilized and the resident was later taken to a local hospital.

61. After the incident, Plaintiff Ralph Williams told Defendant Johnson that she should be written up and fired because she was negligent in doing her job.

62. Defendant Johnson responded to Plaintiff Ralph Williams with a malignant look.

63. Upon information and belief, Defendant Johnson had ill will towards Plaintiff Ralph Williams, whom she viewed as a subordinate CNA, for telling her what to do.

2. Second Altercation between Plaintiff Ralph Williams and Defendant Johnson

64. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

65. Following the incident identified in Paragraph No. 49 and prior to June 21, 2010, Plaintiff Ralph Williams had an argument with his wife Plaintiff Linda Williams prior to going to work.

66. That same night at approximately 2:30 a.m., Plaintiff Ralph Williams asked for permission to call his Plaintiff Linda Williams wife using the work phone while on his break so that he could apologize and make up with his wife Plaintiff Linda Williams.

67. Upon information and belief, Defendant Johnson saw Plaintiff Ralph Williams on the phone and heard him tell his wife that he was sorry that he loved her and that he would see her when he got home.

68. Upon information and belief, Defendant Johnson waited for Plaintiff Ralph Williams to hang up the phone and walk away.

69. Then, upon information and belief, Defendant Johnson proceeded to redial the number Plaintiff Ralph Williams had just dialed.

70. When Plaintiff Linda Williams answered the phone, Defendant Johnson breathed in the phone without saying anything and then abruptly hung up the phone.

71. Wondering why someone had just dialed her phone number and then abruptly hung up the phone, Plaintiff Linda Williams used caller ID and redialed the UniHealth telephone number.

72. When Defendant Johnson picked up the phone, Plaintiff Linda Williams asked who had just called her telephone number and hung up the phone.

73. Defendant Johnson then said "my name is Patricia Johnson" and again abruptly hung up the phone.

74. Defendant Johnson's actions caused dissension in the marriage of Plaintiff Ralph Williams and Plaintiff Linda Williams. Plaintiff Linda Williams wanted to know why another woman was calling her home and acting in such an unusual manner at 2:30 a.m. in the morning.

3. Third Altercation between Plaintiff Ralph Williams and Defendant Johnson

75. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

76. Approximately one week prior to June 21, 2010, Plaintiff Ralph Williams was giving a male resident, who weighed approximately over 300 pounds, a bath.

77. Since Plaintiff was only 5 ft. 6 inches only weighted approximately 160 lbs., Plaintiff normally used a hydraulic lift to lift the resident when he gave him a bath.

78. That particular morning, however, the hydraulic lift was not available, so Plaintiff Ralph Williams had to use a sliding board to lift the patient.

79. While Plaintiff Ralph Williams was using the sliding board to lift the resident, the resident lost his footing and was leaning the full force of his approximately 300 pound weight on Plaintiff Ralph Williams.

80. Unable to support the resident without assistance, Plaintiff Ralph Williams screamed for help.

81. Upon information and belief, Defendant Johnson was in the hallway outside the resident's room within close proximity of the resident's door.

82. Upon information and belief, Defendant Johnson heard Plaintiff Ralph Williams scream for help, but refused to go into the resident's room to assist Plaintiff Ralph Williams.

83. Another CNA and a member of the janitorial staff heard Plaintiff Ralph Williams' pleas for assistance and came to his aid.

84. While Plaintiff Ralph Williams and his aforementioned co-workers struggled to get the 300 lb resident back in his wheel chair, Defendant Johnson stood in the door way of the resident's room and looked at them without offering any form of assistance.

85. Plaintiff Ralph Williams looked at Defendant Johnson and said "Why didn't you help me dammit."

86. Defendant Johnson just looked at Plaintiff Ralph Williams again with a malignant look.

87. With the assistance of another CNA and a member of the janitorial staff, Plaintiff Ralph Williams was able to stabilize the resident and to get the resident back to his wheel chair.

88. On numerous previous occasions when Plaintiff Ralph Williams asked Defendant Johnson for assistance, she told him "I have been a CNA before. I don't change dirty diapers anymore."

Incident that was the Subject of Defendants' Defamatory Statements

89. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

90. On or about June 21, 2010, Plaintiff Ralph Williams reported to work at Defendant's UniHealth's Orangeburg facility for work in the Rehabilitation Section.

91. Upon information and belief, on or about June 21, 2010, Defendant Johnson was assigned to serve as Plaintiff Ralph Williams supervisor.

92. On or about June 21, 2010, Plaintiff Ralph Williams was assigned to care for a female resident in 39A, who was the alleged victim of the crimes of third degree criminal sexual conduct and abuse of a vulnerable adult in the matter of the *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390) (hereinafter referred to as "Resident No. 39A").

93. There were two (2) residents in 39A on June 21, 2010.

94. On or about June 21, 2010 at approximately 2:00 a.m., Plaintiff Ralph Williams pushed his cart to Room No. 39A and left it right outside the door.

95. Upon information and belief, Room No. 39A was within close proximity of the one and only nursing station on the Rehabilitation Wing of Defendant UniHealth's Orangeburg facility.

96. On or about June 21, 2010 at approximately 2:00 a.m., Plaintiff Ralph Williams knocked on the door of 39A and informed Resident No. 39A that he was the CNA on duty to care for her.

97. Upon information and belief, Resident No. 39A was incompetent and largely immobile.

98. Upon information and belief, Resident No. 39A weighed approximately one hundred and ninety pounds (190 lb).

99. Upon entering 39A at some time after 2:00 a.m., Plaintiff Ralph Williams turned on the light over the bed rather than the room light so as not to disturb the other resident in 39A.

100. Resident No. 39A was lying in the bed with covers over her and was wearing a gown and a brief.

101. In accordance with the Nursing Assistant's Handbook, Plaintiff Ralph Williams attempted to maintain the resident's right to privacy while he changed Resident No. 39A brief by closing the door behind him and pulling the curtain around Resident No. 39A bed.

102. Plaintiff Ralph Williams pulled back the covers on Resident No. 39A bed and pulled up her gown to check the indicator on the brief.

103. Upon discovering that the indicator on Resident No. 39A's brief was blue, Plaintiff Ralph Williams went to his cart to get a brief, towel, wipes, gloves, and a pad so that he could change Resident No. 39A's brief.

104. Resident No. 39A's brief was soiled with urine and feces.

105. In accordance with the Nursing Assistant's Handbook, Plaintiff Ralph Williams placed a clean protective pad under Resident No. 39A's buttocks to keep Resident No. 39A's bed linen.

106. Then, Plaintiff Ralph Williams proceeded to change the brief of Resident No. 39A in accordance with The Nursing Assistant's Handbook and Defendant UniHealth's policies and procedures.

107. While Plaintiff Ralph Williams was in the process of changing Resident No. 39A's diaper, Defendant Johnson came in to 39A without knocking.

108. Defendant Johnson asked Plaintiff Ralph Williams what he was doing.

109. Plaintiff Ralph Williams asked Defendant Johnson to "Please Shut the Door" since he was in the middle of changing Resident No. 39A brief and wanted to ensure her privacy.

110. In response, Defendant Johnson gave Plaintiff Ralph Williams a malignant stare and walked out the door.

111. Defendant Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to rape Resident No. 39A nor did she inform him of any emergency situation involving him or Resident No. 39A.

112. Plaintiff Ralph Williams was fully dressed when Defendant Johnson came in 39A.

113. Upon entering 39A, Defendant Johnson did not yell or scream for help.

114. Upon entering 39A, Defendant Johnson did not push the audible alarm located in 39A to alert others of resident emergencies.

115. Upon entering 39A, Defendant Johnson did not push the alarm that would activate a light that flashes.

116. Upon entering 39A, Defendant Johnson did not immediately call the police.

117. In fact, Defendant Johnson did not call the police.

118. There were two other employees, a female LPN and a male CNA, in the Rehabilitation Wing of the building at the time of the alleged incident.

119. Rather than contact one of the other employees in the Rehabilitation Wing of Defendant's UniHealth Orangeburg facility, Defendant Johnson walked to the Residential Wing on another side of the Defendant's UniHealth Orangeburg facility into a break room to get a friend of hers, Defendant Josette Peppers.

120. Defendant Johnson and Defendant Peppers called the police at approximately 3:25 a.m., approximately thirty minutes after the alleged incident occurred.

Defendant Johnson's Defamatory Statements

121. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

122. On or about June 21, 2010 at approximately 2:50 a.m., Defendant Johnson published the following statements in her Nurses Notes:

> This Nurse was making rounds and was looking for (CNA) Ralph C. Williams to check on another Res. I checked all the rooms on the back hall, and couldn't find him. This Nurse then started checking the rooms on the middle hall. When I walked into Henrietta Mays room I observed CNA Ralph Williams w/ his pants down climbing on top of Res. I stated, "What are you doing?" CNA Ralph C. Williams, Sr. stated "Please shut the door." At this point I went to get the other Nurse Josette Pepper to witness. When we walked back in the room, he was fixing up his clothes. The room was dark and cover was messed up on bed. At 3:00 A management notified. 3:25A police dept. notified. @ 4:00 A Rp Bertha Tyler (sister) notified. "stated she will be in facility this a.m. @ 4:30 a.m. Dr. Smoak notified. "stated send to TRMC for evaluation.

123. Upon information and belief, Defendant Johnson published this statement to other persons employed by Defendant UniHealth.

124. On or about June 21, 2010, Defendant Johnson published the following statements in her Voluntary Statement to the Orangeburg, South Carolina Department of Public Safety which she made while she was not under arrest and without being accused of or questioned about any criminal offenses regarding the facts and voluntarily made the following statements on her own free will:

> This Nurse was making rounds, and was looking for CNA Ralph Williams to check on another Res. I checked all the rooms on the back hall and couldn't find him. This Nurse then started checking the rooms on the middle Hall. When I walked in Henrietta Mays room, I observed CNA Ralph William w/ his pants down climbing on top of Res. I stated "What are you doing?"CNA Ralph C. Williams, Sr. stated, "Please shut the door." At this point I went to go get another Nurse Josette Pepper to witness. When we walked back in the room, he was fixing up his clothes. The room was dark and covers was messed up on Bed. There is no doubt in my mind If I had not walk in room he would have had sex with Res. Nothing else follows

125. Defendant Johnson's Voluntary Statement was not notarized.

126. Defendant Johnson did not make her June 21, 2010 Voluntary Statement under penalty of perjury.

127. Upon information and belief, Defendant Johnson verbally told Bertha Tyler that she saw Plaintiff Ralph Williams "w/ his pants down climbing on top of Res."

128. Upon information and belief, Defendant Johnson verbally told Defendant Peppers she saw Plaintiff Ralph Williams "w/ his pants down."

129. Upon information and belief, Defendant Johnson verbally told an officer with the Orangeburg Department of Public Safety that she saw Plaintiff Ralph Williams "w/ his pants down" and that if she "hadnot [sic] walk in room [Plaintiff Ralph Williams] would have had sex with Res."

130. Defendant Johnson's statements asserted that Plaintiff Ralph Williams was in the act of committing a crime of moral turpitude, adultery, and asserted impropriety on the part of

Plaintiff Ralph Williams in the conduct of his occupation and profession. Defendant's Johnson's statements and assertions are patently false.

Defendant Peppers' Defamatory Statements

131. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

132. On or about June 21, 2010, Defendant Peppers published the following statements in her Voluntary Statement to the Orangeburg, South Carolina Department of Public Safety which she made while she was not under arrest and without being accused of or questioned about any criminal offenses regarding the facts and voluntarily made the following statements on her own free will:

> I was called to a resident room by another nurse Patricia Johnson. She stated that an employee, Ralph was in a room with his pants down. This nurse observed resident fixing up his clothes then he sat in a chair and started talking to her. Curtain was pulled around bed, covers was thrown sloppy on bed, and room was dark. Ralph was going to have sex with resident if he didn't got caught. Nothing else follows.

133. Defendant Peppers' Voluntary Statement was not notarized.

134. Defendant Pepper did not make her June 21, 2010 Voluntary Statement under penalty of perjury.

135. Upon information and belief, Defendant Johnson published this statement to other persons employed by Defendant UniHealth.

136. Upon information and belief, Defendant Peppers verbally told the Orangeburg Department of Public Safety that she saw Plaintiff Ralph Williams "was going to have sex with resident if he didn't get caught."

137. Defendant Peppers' statements asserted that Plaintiff Ralph Williams was going to commit a crime of moral turpitude, adultery, and asserted impropriety on the part of Plaintiff

Ralph Williams in the conduct of his occupation and profession. Defendant's Peppers' statements and assertions are patently false.

138. Defendant Peppers and Defendant Johnson wrote identical statements containing false assertions about what they alleged Plaintiff Ralph Williams was about to do to Resident No. 39A with malignant intent.

139. Defendant Peppers inferred a false fact that Plaintiff Ralph Williams was going to have sex with the Resident No. 39A even though she never personally observed him with his pants down.

The Consequences of Defendant Johnson and Defendant Peppers' Defamatory Statements

140. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

141. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff was arrested on June 22, 2010.

142. Based on Defendant Johnson and Defendant Peppers aforementioned defamatory statements, Plaintiff was charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult.

143. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Defendant UniHealth informed Plaintiff that he was suspended from his CNA position until the charges against him were resolved.

144. Resident No. 39A had a sexual assault examination performed on her at the Orangeburg Regional Medical Center and there was no evidence of trauma found.

145. Members of the Orangeburg Department of Public Safety also tested vaginal swabs taken from Resident No. 39A no DNA evidence from Plaintiff Ralph Williams.

146. The Orangeburg Department of Public Safety collected all of the evidence in Room 39A, including Resident No. 39A's gown, blanket, sheet, cover, fitted sheet as well as Plaintiff's scrubs, tops and bottoms, and a red shirt that was found under Resident No.39A.

147. The Orangeburg Department of Public Safety found no conclusive DNA evidence that would suggest that Plaintiff Ralph Williams sexually assaulted Resident No. 39A.

148. Defendant Johnson made several inconsistent statements during her testimony in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

149. Defendant Peppers made several inconsistent statements during her testimony in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

150. A unanimous Jury rendered a verdict of not guilty in less than one (1) hour on the charge of assault with intent to commit third degree criminal sexual conduct and the charge of abuse of a vulnerable adult in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

151. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams, his wife Plaintiff Linda Williams and their family were forced to endure two years of public criminal proceedings that were widely discussed in local Newspapers, News programs, and on the Internet.

152. Indeed when you google Ralph Williams on the Internet today it still shows that Plaintiff Ralph Williams was charged with third degree criminal sexual conduct and abuse of a vulnerable adult with no mention of the fact that Plaintiff Ralph Williams was acquitted of both charges.

153. Plaintiff Ralph Williams family members as far away as Chicago, Illinois read about the charges against Plaintiff Ralph Williams on the internet.

154. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams was placed on the S.C. Nurse Aide abuse registry for the South Carolina Department of Health and Environmental Control (hereinafter referred to as "SC DHEC"), which prohibits him from working as a Certified Nursing Assistant.

155. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams was unable to secure catering jobs.

156. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams and his wife Plaintiff Linda Williams were ostracized by members of the community.

157. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams experienced great difficulty finding employment.

158. When Plaintiff Ralph Williams did secure employment at the Crab Pit Seafood Restaurant, a co-worker printed an article about the charges of third degree criminal sexual conduct and abuse of a vulnerable adult and gave it to the owner of the restaurant.

159. When the owner of the restaurant read the aforementioned article, he told Plaintiff Ralph Williams that he did not want him working there around his female employees because he was accused of rape.

160. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, members of the Orangeburg community repeatedly asked Plaintiff Linda Williams why she stayed married to a rapist.

161. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Linda Williams witnessed a member of the community who had a relative that was a resident at Defendant UniHealth's Orangeburg facility tried to physically assault Plaintiff Ralph Williams.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(DEFAMATION (NURSING NOTES) AGAINST DEFENDANT JOHNSON AND DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

162. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

163. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

164. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Nursing Notes.

165. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

166. On or about June 21, 2010, Defendant Johnson wrote and published her Nursing Notes statements, individually and/or collectively, which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

167. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

168. Defendant Johnson published the defamatory statements in her Nursing Notes to other persons employed by Defendant UniHealth. Upon information and belief, the statements were read by Defendant UniHealth employees, including Defendant Peppers and Defendant Johnson's superiors at Defendant's UniHealth facility in Orangeburg.

169. Defendant Johnson's statements in the Nursing Notes were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

170. Defendant Johnson made the statements in the Nursing Notes, individually and/or collectively, intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff was a sexually deviant and dishonest person.

171. The defamatory statements made by Defendant Johnson in her Nursing Notes, individually and/or collectively, about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

172. Defendant Johnson published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

173. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Johnson's malice is implied.

174. Defendant Johnson's statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Johnson's Nursing Notes would certainly know that Defendant Johnson was alleging that Defendant Johnson was writing about Plaintiff Ralph Williams in that she used his first and last name and alleging that he committed a crime of moral turpitude, adultery, and unfitness in his profession.

175. As a direct and proximate result of Defendant Johnson's defamatory statements, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses, such as loss of catering business, loss of his job, and medical expenses as a result of Defendant Johnson's defamation.

176. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

177. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

178. Based on the foregoing, Plaintiff Ralph C. Williams, Sr. is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A SECOND CAUSE OF ACTION
(DEFAMATION (SLANDER-VERBAL STATEMENT) AGAINST DEFENDANT JOHNSON AND DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

179. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

180. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

181. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when on or about June 21, 2010 she verbally told Defendant Peppers that "Ralph was in a room with his pants down."

182. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

183. This statement was a false insinuation that Plaintiff Ralph Williams was in the process of committing a crime of moral turpitude, adultery, and unfitness in his trade or profession.

184. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

185. On or about June 21, 2010, Defendant Johnson verbally published the defamatory statement to Defendant Peppers.

186. Defendant Johnson's statements to Defendant Peppers were not subject to conditional or qualified privilege because Defendant Peppers was not a proper party.

187. Furthermore, Defendant Johnson's statements to Defendant Peppers were not subject to conditional or qualified privilege because the statements were not made in good faith, were not properly limited in scope, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights.

188. Defendant Johnson made the statements to Defendant Peppers intending to charge that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident and/or abuse upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

189. The defamatory statement made by Defendant Johnson to Defendant Peppers about Plaintiff Ralph Williams is absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

190. Defendant Johnson published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

191. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams.

192. Defendant Johnson's statements to Defendant Peppers concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams was identified by first name.

193. As a direct and proximate result of Defendant Johnson's defamatory statements to Defendant Peppers, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, medical expenses, and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Johnson's defamation.

194. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

195. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

196. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A THIRD CAUSE OF ACTION
(DEFAMATION (VOLUNTARY STATEMENT) AGAINST DEFENDANT JOHNSON AND DEFENDANT UNI HEALTH JOINTLY AND SEVERALLY)

197. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

198. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

199. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on or about June 21, 2010.

200. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

201. On or about June 21, 2010, Defendant Johnson wrote and published her Voluntary Statement which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

202. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

203. Upon information and belief, Defendant Johnson published the defamatory statements in her Voluntary Statement to the Defendant UniHealth employees and two persons listed as witnesses on her Voluntary Statement and to the Orangeburg Department of Public Safety. Upon information and belief, the statements were read by Defendant UniHealth employees.

204. Defendant Johnson's statements in her Voluntary Statement were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

205. Defendant Johnson made the statements in her Voluntary Statement intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

206. The defamatory statements made by Defendant Johnson in her Voluntary Statement, individually and/or collectively, about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

207. Defendant Johnson published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

208. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral

turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Johnson's malice is implied.

209. Defendant Johnson's statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Johnson's Nursing Notes would certainly know that Defendant Johnson was alleging that Defendant Johnson was writing about Plaintiff Ralph Williams and alleging that he committed a crime of moral turpitude, was unfit in his profession, and committed adultery.

210. As a direct and proximate result of Defendant Johnson's defamatory statements, ~~Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been~~ injured in his occupation or profession, and suffered Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, and medical expenses and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Johnson's defamation.

211. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

212. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

213. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A FOURTH CAUSE OF ACTION
(DEFAMATION (VOLUNTARY STATEMENT) AGAINST DEFENDANT JOSETTE PEPPERS AND DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

214. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

215. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

216. Plaintiff Ralph Williams is informed and believes that Defendant Peppers was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on or about June 21, 2010.

217. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Peppers as alleged in this Complaint

218. On or about June 21, 2010, Defendant Peppers wrote and published her Voluntary Statement which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

219. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

220. Upon information and belief, Defendant Peppers published the defamatory statements in her Voluntary Statement to the Defendant UniHealth employees and two persons listed as witnesses on her Voluntary Statement. Upon information and belief, the statements were read by Defendant UniHealth employees, including Defendant Johnson, Defendant Peppers' superiors, and the Orangeburg Department of Public Safety.

221. Defendant Peppers' statements in her Voluntary Statement were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

222. Defendant Peppers made the statements in her Voluntary Statement intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

223. The defamatory statements, individually and/or collectively, made by Defendant Peppers in her Voluntary Statement about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Peppers' conduct.

224. Defendant Peppers published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

225. Defendant Peppers' malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Peppers malice is implied.

226. Defendant Peppers' statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Peppers' Nursing Notes would certainly know that Defendant Peppers was writing about Plaintiff Ralph

Williams and alleging that he committed a crime of moral turpitude, was unfit in his profession, and committed adultery.

227. As a direct and proximate result of Defendant Peppers' defamatory statements, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, and medical expenses and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Peppers' defamation.

228. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

229. Defendant Peppers and Defendant UniHealth are jointly and severally liable.

230. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Peppers and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Peppers and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FIRST CAUSE OF ACTION
(LOSS OF CONSORTIUM AGAINST DEFENDANT JOHNSON AND DEFENDANT UNIHEALTH- JOINTLY AND SEVERALLY)

251. Plaintiff Linda Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

252. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

253. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Nursing Notes, Voluntary Statement, and made verbal defamatory statements to Defendant Peppers that are the subject of the cause of action specifically alleged in Paragraph Nos. 179-196.

254. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint.

255. At all times relevant hereto, Plaintiff Linda Williams and Plaintiff Ralph Williams were husband and wife and were legally married and living together.

256. Prior to June 21, 2010, Plaintiff Linda Williams and Plaintiff Ralph Williams had a marital relationship that included marital services, society, affection, companionship, and sexual relations among its aspects.

257. Defendant Johnson tortiously violated Plaintiff Linda Williams' right to the companionship, aid, society and services of her spouse by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.

258. Plaintiff Linda Williams was deprived of the aide of her husband earning an income and social status.

259. Defendant Johnson and Defendant UniHealth jointly and severally tortiously violated the societal status in the community of a twenty (20) year plus marriage in the Orangeburg community.

260. Defendant Johnson and Defendant UniHealth jointly and severally tortiously violated the companionship of a loving husband and wife who have been married over twenty (20) years.

261. As a direct and proximate result of Defendant Johnson's defamatory statements, Plaintiff Linda Williams suffered damages, including loss of companionship, aid, society and services of her spouse Plaintiff Ralph Williams.

262. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

263. Based on the foregoing, Plaintiff Linda Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

SECOND CAUSE OF ACTION
(LOSS OF CONSORTIUM AGAINST DEFENDANT PEPPERS AND DEFENDANT UNIHEALTH- JOINTLY AND SEVERALLY)

264. Plaintiff Linda Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

265. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

266. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

267. Plaintiff Ralph Williams is informed and believes that Defendant Peppers was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on or about June 21, 2010.

268. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Peppers as alleged in this Complaint

269. Defendant Peppers tortiously violated Plaintiff Linda Williams' right to the companionship, aid, society and services of her spouse by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.

270. Plaintiff Linda Williams was deprived of the aide of her husband earning an income and social status.

271. Defendant Peppers and Defendant UniHealth jointly and severally tortiously violated the societal status in the community of a twenty (20) year plus marriage in the Orangeburg community.

272. Defendant Peppers and Defendant UniHealth jointly and severally tortiously violated the companionship of a loving husband and wife who have been married over twenty (20) years.

273. As a direct and proximate result of Defendant Peppers defamatory statements, Plaintiff Linda Williams suffered damages, including loss of companionship, aid, society and services of her spouse Plaintiff Ralph Williams.

274. Defendant Peppers and Defendant UniHealth are jointly and severally liable.

275. Based on the foregoing, Plaintiff Linda Williams is entitled to judgment, jointly and severally, against Defendant Peppers and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Peppers and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams respectfully pray of this Court as follows:

That the Court enter a judgment in favor of Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams and against Defendant Patricia A. Johnson, Defendant Josette Peppers, and Defendant UniHealth Post-Acute Care-Orangeburg, LLC

A. In accordance with the above-stated causes of action, and award general and special damages in amounts to be proven at trial, including attorney fees and punitive damages;

B. And for such other and further relief as this Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Submitted this 8th day of ~~December, 2013.~~ January, 2014

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Ralph C. Williams, Sr., and Linda Williams,

Plaintiffs,

vs.

Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care-Orangeburg, LLC,

Defendants.

Civil Action Number: 2012-CP-38-0845

PLAINTIFFS' POST TRIAL MOTIONS

ATTEST: TRUE COPY
Virginia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED FOR RECORD
ORANGEBURG COUNTY, SC
2014 SEP 22 PM 12:09

Plaintiffs Make the Following Post – Trial Motions:

A. Plaintiffs' Motion for Judgment Notwithstanding the Verdict - Rule 50 (b) SCRCP

Plaintiffs made motions for directed verdict at the close of the Defendants' case on the issue of the scope of employment of the two nurse Defendants, seeking a ruling that no material question of fact existed for the jury's consideration of the issue because all of the evidence presented should have required the court to direct a verdict for the Plaintiffs on the issue, and hold as a matter of law that the two individual nurses were in the course and scope of the their employment when the reports at issue were made. The court, however, denied the motion.

The Plaintiffs hereby move for an order of the court for JNOV on the same issue, setting aside Questions 3 and 4 of the Verdict Form, and holding that nurse Defendant Johnson and/or nurse Defendant Peppers (now Davis) were as a matter of law, acting within the scope of their employment at the time the reports were made. Further, the trial court erred in charging the jury with Defendants' request to charge #12 setting forth law inviting the jury to find to the contrary.

Under the doctrine of *respondeat superior,* it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is

adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business. *Lazar v. Great Atlantic & Pacific Tea Company,* 197 S.C. 74, 14 S.E.2d 560; *Holder v. Haynes,* 193 S.C. 176, 7 S.E.2d 833. Not only were the reporting acts of the nurses at issue "reasonably necessary to accomplish the purpose of their employment", but rather they were instead absolutely mandated by the employer, and clearly in furtherance of the master's business. (relating to the care of the resident in room 39-A).

In defamation cases an agent of a corporation the employer is liable if the agent is acting within the scope of employment and in the actual performance of the duties of the corporation touching the matter in question. *Johnson v. Life of Ga.*, 227 S.C. 351, 88 S.E. 2nd 260 (1955). There is no question but that the statements made touch the matter in question, because it means concerning the subject matter of the slander the nurses were required to report. Id. (statements as to whether Plaintiff was changing diapers per facility policy vs. abusing resident).

Even slight deviations from employment by an agent have been held by our courts to be within the scope of employment as a matter of law. The following is quoted from *Adams v. South Carolina Power Co.*, 200 S.C. 438, 21 S.E.2d 17, 18: The terms 'course of employment' and "scope of authority,' are not susceptible of accurate definition. What acts are within the scope of employment can be determined by no fixed rule. The authority from the master is generally to be gathered from all the surrounding and attendant circumstances. In cases where the deviation is slight and not unusual the Court may, and often will, as matter of law, determine that the servant was still executing his master's business.

In *Miller v. C.P. Chems* 808 F. Supp. 1238 (DSC 1993), the court found instructive the law as expressed in Section 228 of the *Restatement*. The key principle is that a servant's conduct is within the scope of employment "only if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master." Also that the *Restatement (Second) of Agency* § 236 cmt. b; *id.* § 235 (act falls beyond scope of employment if "done with *no* intention" to serve master) (emphasis added).

The evidence presented at trial included Defendant/Employer UniHealth's uncontroverted policy that all of its employees were mandated to report possible abuse or neglect of a resident immediately. The uncontroverted facts are that both nurses testified they were aware of such policy and were carrying out the employer's policy directives at the time of the reporting events, and as to the consequences of failing to report, including being fired from their jobs with UniHealth. The nurses were both on duty at the employer's facility on the 11:00 p. m. to 7:00 a. m. shift, performing their jobs and were being paid for that work at the time of the relevant events of June 21, 2010. They were furthering the interests of the master in making these reports, and were attempting to follow the Omnibus reporting law of South Carolina, but just went about it in a reckless manner. At the very least, while Plaintiffs do not agree that there was evidence of any personal motive by either nurse to intentionally injure Plaintiff Ralph Williams, the Restatement standard cited above holds the conduct at issue inside the scope of employment if the conduct "... is actuated, at least in part, by a purpose to serve the master." And only falls outside the scope of employment if "...done with *no* intention to serve the master." Clearly that standard is met in the instant case. The fact that both nurses were serving a business purpose of UniHealth at the time of reporting cannot be denied. Both were acting within the scope of employment under any reasonable view of the evidence.

There was also no evidence presented by Defendants that either of the two nurses were somehow outside their employment when making these reports, nor was there any argument or suggestion or request by either of the defense attorneys during any portion of the trial while in the presence of the jury that either nurse was not working for the facility nor acting outside the course and scope of their employment at the time the statements at issue were made; or that they should find the nurses acted outside the scope of their jobs.

Indeed, Plaintiffs' counsel maintained in arguments to the jury that the nurses were indeed doing their jobs at the time the statements were made, and that the employer would thus be liable for those acts. The Plaintiffs maintained the contentions of reckless indifference by the nurse Defendants during the trial, not intentional conduct outside the scope of employment.

While it was not even contended by the Defendant UniHealth during the trial that nurse Johnson and her prior "run ins" with Plaintiff Ralph Williams created some personal vendetta or motive on her part to intentionally hurt Mr. Williams, there is absolutely no evidence upon which to base this claim, but instead only pure speculation. There was no basis for the court to invite the jury to entertain this speculation, particularly when none of the Defendants even addressed the subject in examination of witnesses or in addressing the jury directly. There was no basis for submission of it to the jury. While these prior "run ins" with nurse Johnson may have motivated the court to charge Defendants' Request To Charge #12 on scope of employment, the same may not be said about the decision to submit the charge on scope of employment as to nurse Defendant Davis. There was no prior history between Josette Davis and Ralph Williams, other than the friendship and respect they had for each other, according to the testimony. While the Plaintiffs firmly believe both nurses were clearly within their scope of employment when reporting based on the failure of any proof to the contrary, at the very least, the court should hold that nurse Defendant Peppers (now Davis) was acting within the scope of employment as a matter of law, and set aside question #4 on the Verdict Form, and enter judgments accordingly.

B. Plaintiffs' Motion to Conform the Evidence to the Proof Presented at Trial- Rule 15 (b) SCRCP

Rule 15 (b) provides that when issues not raised by the pleadings are tried by the parties with express or implied consent, they shall be treated as if they had been raised in the pleadings, and the court may treat them as being so raised and tried, allowing amendments to conform to the evidence at trial.

Defendants did not object to evidence about UniHealth's policy and requirement that Ralph Williams change the diapers of female residents of the facility, a policy and practice the Plaintiffs were critical of during the entire trial, offering testimony from the Plaintiff Ralph Williams on the subject matter. The job description for CNA's does not preclude the changing the opposite sex. Ralph was expected to do both sexes, and without a member of the resident's sex present. These points were stressed by Plaintiffs' counsel in both opening and closing arguments to the jury-a person of the opposite sex together in a setting where close contact is required in the genital area of the opposite sex. Here,

nurse Johnson saw something innocent, but perceived it in a different way, and then recklessly reported it. This policy by the facility certainly sets up for and contributed to the type of disaster which occurred in this case. We believe the jury was sensitive to this evidence, and more importantly, that it forms part of the basis of their finding of reckless conduct on the part of the facility in answer to question #7 on the Verdict Form.

This court should grant Plaintiffs' motion and allow amendment of the pleadings and entry of judgment in accordance with this evidence and finding by the jury in favor of the Plaintiffs in answer to question #7.

C. Plaintiffs' Motion in the Alternative for a New Trial Against UniHealth Only (with trial to be held at the conclusion of the appeals taken from this trial and post-trial motions). Rule 59 (a) SCRCP.

Rule 59 (a) provides that a new trial may be granted in cases tried before a jury "...to all or any of the parties and on all or a part of the issues... for any of the reasons for which new trials have been granted in actions at law in the courts of this state."

The grounds for this alternative relief are sought only if the primary motions filed by the Plaintiffs which allow the jury verdict against UniHealth to remain, as well as any appeals from this trial, end unsuccessfully.

The Verdict Form completed by the jury in this case shows an intent by the jury to hold all three Defendants liable to the Plaintiffs, with the jury believing the Defendant UniHealth being the most culpable of the three Defendants in terms of the relative awards punitive damages. Plaintiffs have argued above that the overall intent to hold the facility responsible should convince the court to conform the Verdict Form in questions #3 and #4 to reflect their intent. If the court does not conform the Verdict Form, or otherwise grant other relief sought herein, then the Plaintiff would urge the granting of a new trial against UniHealth only because the jury apparently did not understand the courts instructions on the law. (unless the court finds that UniHealth's opposite sex perineal care policy to be the basis of its answer to question #7 (c)) This misunderstanding resulted in an inconsistent verdict and forms the basis

of this request in the alternative for a new trial to UniHeath only which is within the court's power under Rule 59 (a).

South Carolina courts have granted new trials in cases where verdict forms are inconsistent. *Epps v. Freeman*, 261 S.C. 375, 200 S.E. 2nd 235 (1973); *Rhodes v. Winn-Dixie Greenville Inc.*, 249 S.C. 526, 155S.E. 2nd 308 (1967); *Daves v. Clearly*, 355 S.C. 216, 584 S.E.2nd 423 (S.C. App. 2003). Plaintiffs request this relief here in the alternative.

D. Plaintiffs' Motion to Set Aside Verdict Form Questions #3 and #4, and for a JNOV on the Scope of Employment Issue on the Grounds that the Court Erred in Submitting an Issue to the Jury Which was not by Raised by the Pleadings nor Tried by the Express or Implied Consent of the Parties. – Rule 15(b)

Plaintiffs' initial Complaint had allegations of both reckless and intentional conduct on the part of the nurse Defendants. See para. 170 of Complaint attached hereto for an example of same. All three Defendants answered denying these allegations. See Answer of Defendant Johnson at para. 171, Answer of UniHealth at para. 171, and Answer of Defendant Peppers at para. 171. (See Exh. 1). Based upon the position taken by the Defendants during the pendency of the case, and arguments for summary judgment for UniHealth that the nurses' conduct was outside their employment, Plaintiffs moved the court and obtained an order allowing amendment to remove allegations of intentional conduct on the part of the nurses. The Complaint was amended and the case proceeded to trial on same. Defendants' position on the issue remained the same and the Defendants presented no evidence of intentional conduct on the part of the nurse Defendants during any time in the trial.

The pleadings did not frame issues that encompassed the allegations of intentional conduct as the case went to trial. Yet the defense did not present argument or evidence of the nurse Defendants' intentional conduct to bring the nurses reporting acts outside their scope of employment. The issue upon which the Defendants now rely to extract the corporate Defendant from liability at the expense of the nurse Defendants was neither raised by the pleadings nor presented at trial by the Defendants by testimony or argument. And because the defense attorneys presenting the case at trial could not sacrifice their nurse Defendants to exonerate the corporate employer Defendant UniHealth because of the conflict

of interest in their representation of all three Defendants, the matter was not properly before the jury for them to consider the issue. The Plaintiffs certainly did not consent to the trial of the issue by express or implied consent under Rule 15 SCRCP, but objected. Defendants should therefore have been prevented from submitting an issue to the jury not allowed under the South Carolina Rules of Civil Procedure in the state. The Verdict Form should be corrected to reflect the error and the jury's intent to hold all three Defendants liable should be carried out.

E. The Conflict of Interest of the Attorneys Representing the Three Defendants' Conflicting Interests should Estop or Prevent Defendants from Claiming the Nurse Defendants Acted Outside their Scope of Employment at the Time the Conduct Occurred

The nurse Defendants have the same attorneys as the corporate employer UniHealth. An attorney cannot represent clients with conflicting interests unless the attorney gets written consent after full disclosure. We do not know whether that has been obtained. Regardless, the Defendants' attorneys cannot sacrifice the liability of some clients over other clients in the litigation. The defense attorneys did during the two plus years of the litigation, take legal positions adverse to the nurse Defendants which would have benefited the corporate Defendant UniHealth by asserting that the nurses acted outside the employment intentionally to cause Plaintiff Ralph Williams harm, which may exonerate the same attorneys' corporate client UniHealth. See brief of Defendant UPAC submitted in support of its summary judgment motion at pages 7-14 attached as Exh. 2). These pages specifically argue the company should be dismissed because the acts of the nurses allegedly were outside the scope of employment. It concludes with:

"For the reasons above, UPAC-Orangeburg is entitled to judgment as a matter of law because it cannot be held liable for the alleged intentional acts of Johnson and Peppers...."

The nurse Defendants did not move for summary judgment.

The Plaintiffs raised the conflict to the court in their brief opposing summary judgment. (See excerpt of Plaintiffs' Brief In Opposition To Summary Judgment, Exh. 3)

These Defendants cannot take such positions in this ligation as to sacrifice as lambs the nurse Defendants they represent, to suffer judgments to exonerate their corporate client Defendant UniHealth.

The defense attorneys cannot do indirectly what they cannot do directly, and still comply with the ethics rules in the State of South Carolina. While the attorneys continued to assert that the nurses acted outside the scope of their employment during the pretrial process as evidenced by their motions for summary judgment, after filing a pre-trial motion in limine to prevent the Plaintiffs from bringing to the jury's attention the conflict and the lawyers' treatment of their own client nurses (See Defendants' motion excerpts attached as Exh. 4) the Defendants attorneys agreed not to assert during the trial such conflicting positions, thereby exposing the corporate Defendant UniHealth to liability. They did, however, send to the court by way of email of 9-4-14 at 9:10 am (during the trial), with copy to Plaintiffs' counsel, request for jury charges on behalf of all three Defendants, a charge which Plaintiffs objected to at the appropriate time, which charge invited the jury to find the nurse Defendants acted outside their scope of employment. See attached email transmission and Defendants proposed Request To Charge # 12 (Exh. 5) suggesting that the nurse Defendants were on a personal vendetta or motive as opposed to a business purpose. Also, at 2:01 pm the same day (9-4-14), the Defendants proposed verdict form was transmitted by email to the court and Plaintiffs' counsel (during trial). (See Exh. 6) The proposed verdict form, questions #3 and #4 asked the jury "Do you find that [nurse's name] acted for her own personal reasons rather than within her scope of employment when she made her reports..." The Plaintiffs also objected to these at the appropriate time of the proceedings. The court accepted the defense request for charge and verdict form scope of employment questions over the Plaintiffs' objection, even with the conflict expressed to the court. The jury found in one part of the verdict form that the conduct of the nurses was outside the employment, but as to another verdict form question (#7), also submitted on Defendants proposed verdict form question (See Exh. 6), that the conduct on the part of the employer UniHealth was reckless, indicating a finding of conduct within the scope of employment, or in the alternative, the reckless conduct discussed in part B. above. They should be estopped from the advantage gained by their unexpected change of position on the subject at the trial.

In *Strickland v Strickland*, 375 S.C. at 84, 650 S.E.2d at 470, the Court outlined the various elements of the estoppel claim as follows:

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. Id. at 84-85, 650 S.E.2d at 470. See also *Auto-Owners v. Rhodes*, 405 S.C. 584, 748 S.E.2nd 781(2013) (judicial estoppel); *State v. Blakney*, 2014 S.C. App. Lexis 215 (judicial estoppel); See *New Hampshire v. Maine*, 532 U. S. 742, 749, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) " '[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him' ")

The court should rely on equitable or judicial estoppel because the Defendants took the position and stated to the court they would not present anything touching the issue of the nurses' scope of employment, and kept their word during the trial until 9:10 a. m. on September 4, 2014, whereupon they asked for a charge on scope of employment in direct contravention of their agreement not to address the issue. Plaintiffs relied on their statements to the court not to offer evidence nor otherwise address the scope of employment issue. Otherwise, Plaintiffs would have been arguing the defense attorneys' breach of their loyalty to their two individual clients in an attempt to get the deep pocket corporate facility out of the case. After such reliance by the Plaintiffs, the Defendants acted to the contrary and offered the charge and Verdict Form questions to the court which were accepted. Plaintiffs were prejudiced severely by the Defendants "about face" on the agreement not to address the scope of employment issue. They should be estopped from reaping the benefit of the about face on their agreement not to address the issue, under principles of South Carolina law set forth above.

Respectfully submitted,

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September 18, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **DEFENDANTS' POST-TRIAL MOTIONS FOR JUDGMENT NOTWITHSTANDING THE JURY VERDICT, OR IN THE ALTERNATIVE, FOR A NEW TRIAL ABSOLUTE**

TO: ROBIN FOSTER AND JAVA O. WARREN, ATTORNEYS FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendants Patricia A. Johnson, Josette Davis (*formerly Josette Peppers*), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively "Defendants" or individually identified as "Johnson" or "Davis" or "Unihealth"), by and through their undersigned attorneys, hereby move the Court pursuant to Rules 50(b) and 59(a), S.C.R.C.P., for a judgment notwithstanding the jury verdict rendered on September 8, 2014, or in the alternative, for a new trial absolute on the grounds stated below. Defendants will request to have a hearing and oral arguments on the motion which may be scheduled at such time and place as set by the Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

For the reasons previously asserted in their oral motion for directed verdict at trial, Defendants maintain that Plaintiffs' defamation claims never should have been presented to the jury for consideration because there was no competent, probative evidence presented at trial from which the jury could have reasonably found that Johnson and Davis did not act in "good faith" when they

reported their suspicions about Plaintiff Ralph C. Williams, Sr.'s actions on June 21, 2010. South Carolina's Omnibus Adult Protection Act require nurses to "immediately" report "suspected" sexual abuse and provides qualified immunity for nurses who do so in good faith. S.C. Code Ann. § 43-35-75(A). To encourage the "immediate" reporting of "suspected" sexual abuse, the Act presumes the good faith of reporting nurses. Plaintiffs bear a heavier burden to overcome this good faith presumption. A review of the testimony and evidence presented at trial yields only one inference – Johnson and Peppers acted in "good faith" and Plaintiffs failed to meet their heavy burden of proof on that issue. Further, allowing liability on the evidence presented in this case would eviscerate the qualified immunity and undermine the Act's purpose of protecting vulnerable adults from suspected abuse. The jury's verdict to the contrary clearly shows that it was actuated by considerations not founded on the evidence and was the result of inflammatory remarks made by Plaintiffs' counsel in closing argument which were calculated to appeal to the passions or prejudices of the jury. Therefore, the Court should exercise its power and duty to set aside the verdict.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at Unihealth Post-Acute Care – Orangeburg, LLC's skilled nursing facility in June 2010. More specifically, Plaintiffs filed this lawsuit alleging that Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they orally reported and provided written statements that Ralph Williams appeared to be attempting to have sex with a facility resident. Plaintiffs' allegations and theory of liability against Unihealth were limited strictly to the *respondeat superior* doctrine. (See Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

In their Amended Complaint, Plaintiffs alleged Johnson and Davis defamed Plaintiff Ralph Williams when they orally reported and provided written statements that Ralph Williams appeared to be attempting to have sex with a facility resident. Plaintiffs also alleged that Johnson and Peppers were not entitled to the qualified immunity provided under South Carolina's Omnibus Adult Protection Act, S.C. Code Ann. § 43-35-75(A), because the nurses did not act in good faith when they made their written and oral reports to their supervisors and local authorities.

The undisputed facts from trial show that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's CNA supply cart sitting outside of Room 39 in the facility.[1] When she opened the door to Room 39, Johnson saw Ralph Williams on the bed with the resident closest to the door.[2] Johnson screamed, "What are you doing!?"[3] Ralph Williams responded, "Will you please shut the door."[4] Johnson left the door open,[5] and she ran to get another nurse, Davis.[6] The two nurses immediately returned to Room 39 and found Ralph Williams in the corner of the room with the overhead lights off, at a minimum, and adjusting his pants.[7] Thereafter, Ralph Williams was escorted out of the room without objection,[8] and Davis went to alert the facility's Director of Nursing and the local authorities.[9] Ralph Williams never

[1] (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also, Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)
[2] The resident lying in the bed closest to the door was a 42-year-old female who lacked the mental capacity to consent to sex and was dependent upon others to care for all of her needs. She was a "vulnerable adult" as defined under South Carolina's Omnibus Adult Protection Act. S.C. Code Ann. § 43-35-10.
[3] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)
[4] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)
[5] (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)
[6] (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)
[7] (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6.)
[8] (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)
[9] (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

questions why he was escorted out of the room, and he did not, at this time, offer explanation to anyone at the facility what he was doing in the resident's room on her bed.

The Orangeburg County Department of Public Safety ("ODPS") arrived at the facility and investigated the incident.[10] ODPS determined that there was sufficient cause to arrest Ralph Williams.[11] The arresting officer, Officer Warrington, testified that he explained to Ralph Williams why they were at the facility,[12] and Ralph Williams did not protest while being arrested or offer any explanation for why he was in the room with the resident up on the bed. He did not suggest that there was misunderstanding or that there was a history between Johnson and/or Davis that might affect the credibility of their reports. He simply put his head down and said, "I'm sorry."[13]

An ODPS detective investigated the matter and through the solicitor sought an indictment. Shortly after his arrest, Ralph Williams admitted himself to the Dorn VA Medical Center in Columbia, South Carolina.[14] During his stay, he explained to a member of the staff, Ms. Mary Rogers, what transpired on the night of June 21, 2010.[15] More specifically, he stated that he was in Room 39, the resident had "already ripped off her diaper – which she was known to do," and that he was on the resident's bed in an effort to change the padding under the resident.[16] Ralph Williams's statement to Mary Rogers completely contradicted his trial

[10] (See generally, Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)
[11] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)
[12] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 274, lines 6-8.)
[13] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 287, lines 2-9.)
[14] (See Defendants' Exhibit No. 2A – *copy of relevant portion of Williams's Dorn VA Medical Records*.)
[15] (See Trial Transcript, Testimony of Mary Rogers, p. 733, line 19 through p. 735, line 4; see also Defendants' Exhibit No. 2A.)
[16] (See Defendants' Exhibit No. 2A; see also Trial Transcript, Testimony of Mary Rogers, p. 734, lines 2-5.)

testimony that the diaper was on the resident when he entered the room, that the resident was covered in urine and feces, and that he meticulously attempted to remove the diaper.[17]

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in "good faith" when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed $102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling $897,500.00 ($200,000 against Johnson; $97,500 against Davis; and $600,000 against Unihealth).

II. LEGAL AUTHORITY AND ARGUMENT

A. Standard of Review

Rule 50(b), SCRCP provides that "[a] party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for directed verdict; . . . [and] the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed." In ruling on a directed verdict or judgment notwithstanding the verdict motions, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

In deciding on the motion, "[i]f more than one inference can be drawn from the evidence, the case must be submitted to the jury [or verdict must stand]. However, if the evidence does not

[17] (See Trial Transcript, Testimony of Ralph Williams, p. 566, line 20 through p. 570, line 7; contra Defendants' Exhibit No. 2A.)

yield more than one inference, a directed verdict [or judgment notwithstanding of the verdict] in favor of the moving party is proper." American Fire and Casualty Co. v. Johnson, 332 S.C. 307 (Ct. App. 1998). The test that guides the Court in reviewing the evidence and considering whether to exercise "its power and duty to set aside a verdict on the ground of inadequacy is whether the verdict is so shocking and outrageous 'as to manifestly show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court.'" Ravan v. Greenville County, 315 S.C. 447 (Ct. App. 1993).

B. This Court improperly denied Defendants' Motion for Directed Verdict.

The evidence presented at trial in this case yields only one inference – Johnson and Peppers acted in "good faith" when they reported their suspicions regarding Ralph Williams on June 21, 2010 as they were required to do so by statute. Plaintiffs failed to present sufficient evidence to rebut the statutory presumption that the nurses acted in "good faith" when they made their reports. Therefore, the nurses were entitled to immunity under South Carolina's Omnibus Adult Protection Act ("the Act"), and the jury's failure to reach the same conclusion can only be explained on the basis that was influenced by considerations not founded on the evidence. Therefore, the Court should grant judgment in favor of Defendants notwithstanding the jury's verdict.

1. South Carolina's Omnibus Adult Protection mandated reporting.

In an effort to protect vulnerable adults, South Carolina enacted the Omnibus Adult Protection Act, which requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses, including Johnson and Davis, "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall* report

the incident in accordance with this section." S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, "in cases of .... *suspected* sexual assault law enforcement *must* be contacted immediately." S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has "reason to believe" or who "suspect[s]" sexual assault has no discretion in the matter—she "*must*" report the incident and notify law enforcement "immediately." "A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

2. The only inference from the trial testimony and evidence was that Johnson and Davis reported in good faith.

The uncontradicted and undisputed evidence at trial established that Johnson and Davis acted in good faith in reporting what they perceived to be an attempted sexual assault on a defenseless and vulnerable adult resident as they were required to do under the Omnibus Adult Protection Act. By Ralph Williams's own admission, he was in a resident's room (Room 39) at approximately 3:00 a.m. on the morning of June 21, 2010, with the door closed and at least some of the lights out.[18] Johnson found Ralph Williams in Room 39, and he admitted that he was climbing onto the bed in which a vulnerable resident was lying. Johnson screamed, "What are you doing!?" and Ralph Williams's only response was, "Please shut the door!" Johnson then rushed to get Davis, and when the two immediately returned to the room, Ralph Williams was adjusting his pants in the near corner of the room and the lights were still off. Ralph Williams did not, at this time, offer any explanation of the situation. Immediately thereafter, Ralph Williams did not object or protest as he

[18] Ralph Williams admitted that overhead lights were out but contended that light near the resident's bed was on. (See Trial Transcript, Testimony of Ralph Williams, p. 516, lines 7-15; contra Trial Transcript, Testimony of Josette Davis, p. 248, lines 12-20.)

was escorted out of the room, and Davis called the facility's director of nursing and 911 – the Orangeburg County Department of Public Safety ("ODPS") – to report what she and Johnson had seen. Meanwhile, Johnson contacted the resident's responsible party at approximately 4:00 a.m. to report her observations.

Another staff member remained with Ralph Williams until ODPS Officer Robert Warrington arrived around 3:24 a.m. Officer Warrington investigated the report, called for a female officer to come to take pictures of the resident and then determined that there was sufficient reason to arrest Ralph Williams. Officer Warrington testified that Plaintiff did not protest his arrest and said "I'm sorry." At no point, from the time that Johnson walked into Room 39 and screamed "What are you doing!?" up to and including the time of his arrest, did Ralph Williams ever indicate to Davis, Johnson, Officer Warrington, or anyone else what he was doing in Room 39 on the bed or otherwise suggest that there had been some sort of misunderstanding. By any objectively reasonable standard, these undisputed facts are a "reason to believe that a vulnerable adult ha[d] been ... abused, neglected, or exploited" and gave Johnson and Davis reason to "suspect[] sexual assault" had occurred. S.C. Code Ann. § 43-35-25(A), (G). At that point, Johnson and Davis had no choice in the matter; they were required by law to report what they had seen and to contact law enforcement "immediately." Id.

There was no competent, probative evidence presented at trial from which the jury could have reasonably found that Plaintiffs overcame the statutory presumption that Johnson and Davis acted in "good faith" when they reported their suspicions about Ralph Williams's actions on June 21, 2010 as they were required to do under South Carolina's Omnibus Adult Protection Act. Rather than rely on any actual evidence that either Johnson or Davis did not act in good faith, Plaintiffs' counsel induced the jury to employ prejudice against Johnson and Davis based on the

fact that they are women and are, therefore, by nature "calculating." To be clear, Plaintiffs' counsel did not limits his remarks to state that Johnson and Davis are "calculating" women – which would have been bad enough itself. Plaintiffs' counsel argued that all women and girls, by nature – his wife and daughters included and cited as examples – are "calculating."

> I'm married for 15 years, married my high school sweetheart and two daughters and myself. And I got a son. And I can tell you, women and girls[,] they think a little bit on another level than us guys. They can be more calculating, a lot more calculating.

(Trial Transcript, p. 791, lines 15-19.)

In light of the undisputed evidence that Johnson or Davis had a clear fact-based "reason to believe that a vulnerable adult ha[d] been ... abused, neglected, or exploited" and to "suspect[] sexual assault," and further in light of the patent issues with Ralph Williams (including his admission to perjury during the course of the trial),[19] it is clear that the jury accepted Plaintiffs' counsel's request to rely on prejudice and stereotypes and found against Johnson or Davis based solely on the fact that they are women and, therefore, by nature "calculating."

The jury obviously ignored testimony and evidentiary facts introduced during the trial which show that Johnson and Peppers acted in "good faith" at the time they reported their suspicions regarding Ralph Williams on June 21, 2010. More specifically, the jury ignored the following:

1. The perjury and discrepancies revealed in Ralph Williams's trial testimony proved that he was not a credible witness. Among multiple topics, Ralph Williams perjured himself in testifying about his extra-marital affairs[20] and was not truthful his

[19] (See Trial Transcript, Testimony of Ralph Williams, pp. 601-603; see also Testimony of Ralph Williams, p. 611, lines 18-25.)
[20] (See Trial Transcript, Testimony of Ralph Williams, pp. 601-603.)

employment history;[21] the location of the panic button inside Room 39,[22] alleged incidents involving Defendant Johnson,[23] and details regarding his conduct on June 21, 2010.[24]

2. As shown through the nursing facility's Perineal Care policy and procedure (Plaintiffs' Ex. 11), the CNA textbook from Orangeburg-Calhoun Technical School (Defendants' Ex. 25A), and the testimony of multiple witnesses – including Johnson,[25] Davis,[26] April Bowman,[27] and Deborah Pigott[28] – that all served as CNAs or supervised the same, there was absolutely no reason for Ralph Williams to be on the resident's bed at approximately 3:00 a.m. on June 21, 2010.

3. Ralph Williams never responded, protested or otherwise objected when Defendant Johnson and Davis required that he depart Room 39 at approximately 3:00 a.m. on June 21, 2010.[29]

4. The first known words Ralph Williams stated after departing Room 39 were those spoken in response to Officer Robert Warrington putting handcuffs on him as the officer making an arrest. Officer Warrington testified that Ralph Williams responded to the arrest by putting his head down and stating, "I'm sorry."[30]

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[21] (See generally Trial Transcript, Testimony of Ralph Williams, pp. 545-554.)
[22] (See Trial Transcript, Testimony of Ralph Williams, p. 519, lines 1-5; contra Defendants' Exhibit No. 26H – *picture of the wall closest to the door*; Trial Transcript, Testimony of Patricia Johnson, p. 202, lines 2-13; Trial Transcript, Testimony of Josette Davis, p. 253, lines 5-24.)
[23] (See Trial Transcript, Testimony of Ralph Williams, p. 501, line 17 through p. 503, line 1; contra Trial Transcript, Testimony of April Bowman, p. 727, line 12 through p. 730, line 8.)
[24] (See Trial Transcript, Testimony of Ralph Williams, p. 566, line 20 through p. 570, line 7; contra Defendants' Exhibit No. 2A.)
[25] (See Trial Transcript, Testimony of Patricia Johnson, p. 216, lines 15-25 and p. 217, lines 1-5.)
[26] (See Trial Transcript, Testimony of Josette Davis, p. 254, lines 15-23 and p. 255, lines 4-13.)
[27] (See Trial Transcript, Testimony of April Bowman, p. 725, line 24 through p. 727, line 11.)
[28] (See Trial Transcript, Testimony of Deborah Pigott, p. 742, line 10 through p. 745, line 2.)
[29] (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)
[30] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 287, lines 2-9.)

5. Defendant Johnson's good faith actions were supported by the call she made to the Representative Party of the resident, Ms. Bertha Tyler, at 4:00 a.m. on June 21, 2010 to notify Ms. Tyler of her observations.[31]

In summary, there is no competent evidence to support the jury's verdict, and it manifestly shows that "the jury was actuated by considerations not founded on the evidence and/or the instructions of the court;'" Ravan, 315 S.C. at ___. Johnson and Davis were mandated by law to report their suspicions regarding Ralph Williams, and the evidence and testimony from trial yields only one inference: that the nurses acted in good faith when they followed their legal obligations and reported those suspicions. The Court should therefore grant judgment in favor of the Defendants notwithstanding the verdict, in accordance with their directed verdict motion made at the close of all the evidence pursuant to Rule 50(b). Alternatively, because the verdict was the result of prejudice caused by Plaintiffs' counsel's direct appeal to prejudice regarding the "calculating" nature of all women during closing arguments, Defendants are entitled to a new trial. See Toyota of Florence, Inc. v. Lynch, 314 S.C. 257 (S.C. 1994) (holding the use of racial prejudice in counsel's closing argument resulted in clear prejudice such that the appellant was entitled to a new trial); South Carolina Highway Dept. v. Nasim, 255 S.C. 406 (1977) (finding counsel's use of epithets against an adverse witness warranted the grant of a new trial).

MOTION FOR A NEW TRIAL ABSOLUTE

Should the Court decline to enter judgment notwithstanding the verdict, Defendants contend, alternatively, that they are entitled to a new trial. "In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated

[31] (See Trial Transcript, Testimony of Patricia Johnson, p. 157, lines 10-11.)

as the "thirteenth juror." Such discretion is "founded upon the facts, the evidence, the witnesses, the total circumstances, the verdict and the judge's view of them." Vinson v. Hartley, 324 S.C. 389 (Ct. App. 1996). "Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge believes the verdict is unsupported by the evidence." Johnson v. Hoechst Celanese Corp, 317 S.C. 415 (Ct. App. 1995). When acting as the thirteenth juror, "[t]he decision of whether to grant a new trial is left to the sound discretion of the trial judge." Id.

The Court should grant the motion for new trial on the following grounds:

1. The jury's verdict is against the greater weight or the fair preponderance of the evidence. Defendants Johnson and Peppers incorporate by reference the list of facts that the jury ignored in Section (II.)(B.)(2.) above.

2. The Court erred in its evidentiary rulings by denying Defendants' objection to the introduction into evidence of DNA expert, Ms. Lilly Smalls Gallman of the S.C. Law Enforcement Division, on the grounds that:

    a. the Plaintiffs failed to properly and timely identify their expert pursuant to Rule 33(b)(6), SCRCP;

    b. the Plaintiffs' excuse of "my bad" was an insufficient explanation for their failure to name the witness in their answer to the interrogatory regarding the same and the Defendants were surprised by the witness given the irrelevance of her testimony;

    c. this information was irrelevant under Rule 401 of the SCRE; and,

    d. this information was unduly prejudicial, misleading and confusing under Rule 403 of the SCRE.

3. The jury was required to make its decision dutifully, fairly, impartially, without passion, without prejudice, and without excessive emotion. However, Plaintiffs' Counsel repeatedly intended to arouse prejudice or passion by eliciting testimony and trying to introduce evidence regarding God and the Bible in a blatant attempt to appeal to the emotions, passion and prejudice of the jury in the following ways:

   a. Plaintiffs' Counsel needlessly kept a copy of the Bible on Plaintiffs' table in plain view throughout the trial. The Plaintiffs' table was less than 10 feet from the jury box and in plain sight of the jurors.

   b. Ralph Williams had an additional copy of the Bible in his hands throughout the trial, and he routinely had it open and acted as if he was reading it throughout the trial.

   c. Plaintiffs called two character witnesses – Ms. Cynthia Mack and Dr. Earline Sabb – who were self-proclaimed pastors and repeatedly talked about biblical scriptures, stories from the Bible, and insinuated how God would help Plaintiffs prevail in this matter.[32]

   d. Plaintiffs' Counsel attempted to have Ralph Williams read from scripture from the Bible while on the witness because his counsel contended that the scripture was part of the evidence in this case.[33]

4. Any other errors the record may show were timely preserved.

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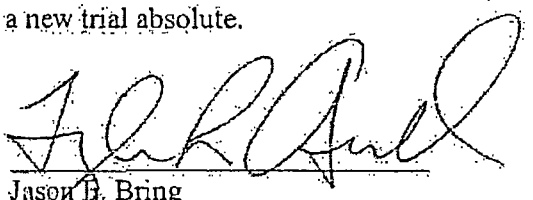
[32] (See Trial Transcript, Testimony of Cynthia Mack, p. 387, lines 13-24 and p. 417, line 15 through p. 419, line 18; see also Trial Transcript, Testimony of Dr. Earline Sabb, p. 450, lines 16-25 and p. 454, line 8 through p. 456, line 2.)

[33] (See Trial Transcript, Testimony of Ralph Williams, p. 533, line 4 through p. 534, line 11.)

5. In addition, Defendants request that the Court view the evidence, independent of the jury's findings, and grant a new trial in the exercise of its discretion as the thirteenth juror on the ground that the evidence does not justify the jury's verdict.

CONCLUSION

For the reasons set forth above, Defendants are entitled to judgment notwithstanding the verdict because the Plaintiffs failed to introduce evidence that would allow a jury to determine that Defendants Johnson and Davis did not act in good faith. The jury's verdict to the contrary clearly shows that it was actuated by considerations not founded on the evidence. Alternatively, the Court should grant Defendants' motion for a new trial absolute.



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Attorneys for Defendants

April 30, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS,	)	
	)	**DEFENDANTS UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC'S RESPONSE TO PLAINTIFFS' POST-TRIAL MOTIONS**
Plaintiffs,	)	
	)	
v.	)	
	)	
PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC,	)	
	)	
Defendants.	)	

TO: ROBIN FOSTER AND JAVA O. WARREN, ATTORNEYS FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendant Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter "Defendant" or "Unihealth"), by and through its undersigned attorneys, hereby responds to Plaintiffs' Motion for Judgment Notwithstanding the Verdict (Rule 50 (b)); Plaintiffs' Motion to Conform the Evidence to the Proof Presented at Trial (Rule 15(b)); and, Plaintiffs' Motion for a New Trial Against Unihealth Only (Rule 59(a)) (collectively "Post-Trial Motions").

SUMMARY OF PLAINTIFFS' ARGUMENTS AND UNIHEALTH'S RESPONSE

In the brief in support of their Post-Trial Motions and subsequent filings, Plaintiffs make a swarm of arguments – *over 50 pages worth* – which basically contend that the evidence presented at trial and their arguments to the jury showed: (a) Defendants Patricia A. Johnson and Josette Davis (*formerly Josette Peppers*) (hereinafter "Nurse Employees") did not act in good faith when they made oral and written statements regarding the actions of Plaintiff Ralph C.

Williams, Sr. on June 21, 2010;[1] and (b) the two nurses acted recklessly – *not intentionally* – when they made those oral and written reports and therefore were acting within the scope of their employment. However, Plaintiffs' arguments ignore South Carolina law and the burden of proof when attempting to show whether an employee's conduct falls within the scope of employment and whether the employer is therefore liable. Plaintiffs' arguments also ignore their own Counsel's opening statements and closing arguments to the jury regarding the alleged actions of the Nurse Employees. In addition, Plaintiffs' arguments disregard the answers to interrogatories on the verdict form and factual findings of the jury that the actions of the Nurse Employees fell outside the scope of their employment. Finally, Plaintiffs completely ignore SCRCP Rule 49(b) which specifically addresses the Court's three options when the answers to interrogatories on the verdict form are consistent with each other but one or more is inconsistent with the general verdict. For these reasons, the Court should deny Plaintiffs' Post-Trial Motions and, pursuant to SCRCP Rules 49(b) and 58, exercise its power to enter judgment in accordance with the jury's interrogatory answers and set aside the punitive damages award in the verdict against Defendant Unihealth.

I. PROCEDURAL AND FACTUAL BACKGROUND

Defendant Unihealth incorporates by reference the "Procedural and Factual Background" provided in its updated Motion for Judgment Consistent with Interrogatory Answers and Motion for Judgment Notwithstanding the Verdict, previously filed on May 1, 2015.

[1] For the reasons set forth in Defendants' Joint Motion for Judgment Notwithstanding the Verdict, Defendant Unihealth adopts and maintains the arguments that the Nurse Employees acted in "good faith" in making their reports and the Court should enter judgment in accordance with the same.

II. LEGAL AUTHORITY AND ARGUMENT

At the conclusion of the trial, the jury specifically found that the Nurse Employees acted outside the scope of their employment when they made their statements and reports regarding the actions of Plaintiff Ralph C. Williams, Sr. on June 21, 2010. (See Answers to Interrogatory Nos. 3 and 4 of the Verdict Form, attached hereto as Exhibit 1.) Accordingly, the jury determined that Plaintiffs failed to establish that the Nurse Employees were acting within the scope of their employment and were about the facility's business at the time they made their statements. The jury's consideration of the evidence, witness testimony, arguments of Plaintiffs' Counsel regarding the same, and ultimate factual determination on the scope of employment issue was consistent with applicable South Carolina law and should not be disturbed.

A. Plaintiffs had the burden of showing the actions of the Nurse Employees fell within the scope of their employment at the Unihealth.

Plaintiffs' Post-Trial Motions set forth a host of arguments regarding who made (or failed to make) a *prima facie* case and which party had the burden of proof (or production) on various issues, including whether the conduct of the Nurse Employees fell within the scope of their employment. However, Plaintiffs' arguments are without merit. South Carolina law clearly provides that in asserting a *respondeat superior* claim, the burden of proof is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business.

In Jones v. Elbert, 211 S.C. 553 (1945), the South Carolina Supreme Court held:

> Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.

Id. at 559. "The modern doctrine of respondeat superior makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant's employment." S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 179 (Ct. App. 1986). "An act falls within the scope of the servant's employment if it was reasonably necessary to accomplish the purpose of the servant's employment, and it was done in furtherance of the master's business." Wade v. Berkeley County, 330 S.C. 311, 319 (Ct. App. 1998).

The doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A ***plaintiff seeking recovery*** from the master for injuries ***must establish*** that the relationship existed at the time of the injuries, ***and also that the servant was then about his master's business*** and acting within the scope of his employment. Id. at 301 (emphasis added). An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and ***in furtherance of the master's business.*** Id. at 305; Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006) (emphasis added).

The act of a servant done to affect some independent purpose of his own and not with reference to the service in which he is employed is not within the scope of his employment so as to render the master liable therefor. Lane, 244 S.C. at 305; see also Crittenden v. Thompson-Walker Co., Inc., 288 S.C. 112, 116 (Ct. App. 1986) (holding "if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment"). Under these circumstances the servant alone is liable for the injuries inflicted. Lane, 244 S.C. at 305. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended. Id. at 306. Accordingly, actions

during even a short detour from the master's business for the purpose of purely individual interests fall outside the scope of employment. Armstrong, 371 S.C. at 276.

B. Plaintiffs failed to meet their burden of proof, and the jury's findings that the acts of the Nurse Employees fell outside the scope of their employment were consistent with the Plaintiffs' allegations, case theme and arguments.

Plaintiffs argue that their case theory and *prima facie* evidence showed that Unihealth was liable because of the acts of the Employee Nurses. However, in reality, the Plaintiffs' allegations in the Amended Complaint, the testimony of witnesses and evidence at trial, and the statements and arguments of Counsel to the jury supported just the opposite – the jury's finding that the Nurse Employees acted outside the scope of their employment.

The claims against Unihealth in the Amended Complaint were based entirely upon a *respondeat superior* theory that the employer is liable for the actions of the Nurse Employees. (See Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.) However, Plaintiffs repeatedly alleged in their Amended Complaint that the Nurse Employees ***did not act in good faith***, acted with ***actual malice***,[2] and intended to injure and charge Mr. Williams. (See Am. Complaint, ¶¶ 52, 53-88, 169, 170, 172, 187, 188, 190, 204-207, 221-224. 257, 269.)[3]

Through witness testimony during trial, Plaintiffs' Counsel continued the theme that the Nurse Employees acted intentionally, with personal motive and with actual malice. Specifically, Plaintiffs elicited testimony from Ralph and Linda Williams regarding an alleged rift between Ralph Williams and Johnson and suggested that alleged altercations created a motive for Johnson to falsely report that Ralph Williams was attempting to have sex with a resident.[4]

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[2] In South Carolina, common law "actual malice" has been defined as meaning "the defendant was ***actuated by ill will*** in what he did, ***with the design to causelessly and wantonly injure*** the plaintiff; or that the statements were published with such recklessness as to show a ***conscious*** indifference towards plaintiff's rights." Jones v. Garner, 250 S.C. 479, 488 (1968) (emphasis added).

[3] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein" with each cause of action.

[4] (See Trial Transcript, Testimony of Ralph Williams, pp. 500-506); see also Am. Complaint ¶ ¶ 53-88.)

During opening argument, Plaintiffs' Counsel Java O. Warren told the jury "[t]his case, ladies and gentlemen, is about a false statement that was made by Ms. Patricia Johnson, as well as, Ms. Josette Peppers against my client."[5] He went on to argue that Ms. Johnson's statements were made by design and with an intentional purpose by stating the following:

- "We believe her ***statements were made so that people would get the impression*** he's somewhere he's not supposed to be."[6]

- "No, this is the police station and there's a – pay close attention, there's a very important ***deliberate statement that was inserted*** into this police report."[7]

Incredibly, while explaining South Carolina's Omnibus Adult Protection Act, Mr. Warren stated, "Now, what is not good faith? ***Intentionally asserting false information.***"[8]

During Plaintiffs' closing arguments, Mr. Warren hammered his theme and argument that the actions of the Nurse Employees were intentional through use of terms such as "deliberate," "deliberately," "destroy," "destruction" or "calculating" over 20 separate times. He specifically argued, among other things, the following:

- "The statements made [are] not privileged. ... ***Destruction of critical material is what we'll show. Deliberate alterations.***"[9]

- "However, statements made while at the defendant Unihealth's facility are qualified privileged and subject to this Omnibus Act and if they're not made in good faith and as reckless, ***destruction of critical material, deliberate alterations***, stating opinions as facts and internal inconsistencies."[10]

- "And I said, Ms. Johnson -- I didn't want to confront him with his pants to his ankles. He's climbing up -- I mean, this is climbing on the bed with his pants to his ankles or her testimony is in the bed. ***That's deliberate alterations.***"[11]

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[5] (Trial Transcript, p. 110, lines 17-19.)
[6] (Trial Transcript, p. 112, lines 23-24.)
[7] (Trial Transcript, p. 115, lines 19-21.)
[8] (Trial Transcript, p. 123, lines 14-15.)
[9] (Trial Transcript, p. 761, lines 13-23.)
[10] (Trial Transcript, p. 762, lines 4-9.)
[11] (Trial Transcript, p. 766, lines 14-18.)

- "Shut the door, shut the door. Not one of them said, please -- ***that is deliberate alteration, omission of the facts.*** If you're following the law why do you have to omit anything?"[12]

- "She's moving her story. Moving her story. All she had to do was say that's what happened. She doesn't want -- ***she knows the deliberate intention for which she wrote this***. She can't stand on her own words."[13]

- "Problem is, Ms. Peppers didn't see anything. How do you make the exact same statement -- ***that is a deliberate alteration. You're stating things deliberately. She didn't even see them.*** Just like when we're talking about Ms. Johnson, how she's saying I'm looking for him on that back hallway, I'm trying to find him."[14]

- "Look for the presence of bodily fluids. But I have one that's real special. ***It's called destruction of critical material.***"[15]

- "Now, where in this list does it state there's a diaper in there? Where? Remember Mr. Williams was required to go immediately go outside the room. What I'm getting at is, ***the destruction of critical material.***"[16]

- "The first thing you're going to do is – where is that cart at. I'm looking for his cart. I'm not going through checking for all the rooms. ***That statement was made with a deliberate purpose.***"[17]

- "It takes a sick and demented person to even call that sex. That's rape. Prior run-ins with a lady turning blue, calling breathing on the phone to his wife. Hanging up. Ms. Patricia Johnson. ***Wickedness.*** That's the only way you have these allegations made. ***Just wickedness.***"[18]

- "Then on top of it you hide the diaper. The only thing to protect me. So when I tell people I was doing my job changing feces and urine the only thing that I have to protect my side of the story when all these people are investigating me and I'm locked in the jail cell, and officers and Unihealth employees have investigated it and don't take my statement, so I can say there's a dirty diaper with feces and urine on her. That's the only thing that I have to protect me. ***You're going to destroy it***, and I'm all over the news at dinner time."[19]

- "Changing diapers for a living to try to do a catering business in the day. That's why he's fighting. There was a dirty diaper in there. I didn't finish changing her. I know

[12] (Trial Transcript, p. 766, lines 22-25.)
[13] (Trial Transcript, p. 768, lines 1-5.)
[14] (Trial Transcript, p. 772, lines 10-18.)
[15] (Trial Transcript, p. 773, lines 10-11.)
[16] (Trial Transcript, p. 774, line 24 through p. 775, line 2.)
[17] (Trial Transcript, p. 778, lines 11-14.)
[18] (Trial Transcript, p. 785, lines 2-6.) Wicked is defined by Webster's as "morally bad; having or showing slightly bad thoughts in a way that is funny or not serious."
[19] (Trial Transcript, p. 786, lines 2-11.)

that's going to be in there. ***Destruction of evidence. It's not good faith. It's not good -- it's worthlessness. It's malice, it's actual malice.***"[20]

- "I'm married for 15 years, married my high school sweetheart and two daughters and myself. And I got a son. ***And I can tell you, women and girls they think a little bit on another level than us guys. They can be a lot more calculating, a lot more calculating.***"[21]

- "***Then you set a person up to be in this position***, charged a caseworker accused of trying to rape a woman."[22]

In summary, Plaintiffs assert that their case showed the acts of the Nurse Employees fell within the scope of their employment; but upon complete review of the pleadings, the elicited testimony and evidence, and Plaintiffs' Counsel arguments to the jury, Plaintiffs' case theory and arguments led the jury to the opposite conclusion – that the conduct of the Nurse Employees was intentional and fell outside the scope of employment. Stated differently, wickedness, making "deliberate" false statements and "destroying" evidence, bearing "false witness against thy neighbor," being a "calculating" woman, and trying to "set a person up" do not further any business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006).

C. The trial court properly submitted the "scope of employment" issue to the jury and provided adequate explanation and instruction necessary to enable the jury both to make answers to the interrogatories and to render a general verdict.[23]

Despite Plaintiffs' arguments to the contrary,[24] there was an issue of fact as to whether the Nurse Employees acted within the scope of their employment and that issue was properly

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[20] (Trial Transcript, p. 790, lines 9-15.)
[21] (Trial Transcript, p. 791, line 15-19.)
[22] (Trial Transcript, p. 793, lines 14-19.)
[23] To be clear, Defendant Unihealth's position that the scope of employment issue was properly submitted to the jury is based strictly upon the Trial Court's denial of Defendants' Motion for Directed Verdict. For the reasons set forth during trial and reiterated in Defendants' Joint Motion for JNOV, Defendant Unihealth maintains that all of the defendants were entitled to a directed verdict and are now entitled to judgment notwithstanding the jury's verdict. Moreover, the Act provides a "presumption" of good faith, and the trial court should therefore act as a gatekeeper regarding the same. Only after the Trial Court's denial of the Motion for Directed Verdict did Defendant Unihealth take the position that the factual question regarding scope of employment was properly explained and submitted to the jury.

explained in the jury instructions and later submitted on the verdict form for the jury to determine. Plaintiffs recognized as much in their Pre-trial Brief submitted to the Court, specifically stating that there was a question of fact as to whether "[Nurse Employees] were acting in the course and scope of their employment with Defendant Unihealth." (Plaintiffs' Pre-Trial Brief and Memorandum of Law, pg. 2.) Furthermore, for the reasons set forth in Section (II.)(B).) above and as the Trial Court concluded while ruling on Plaintiffs' Motion for Directed Verdict, "the way the case has been tried[,] there is inherently an issue about whether or not [the Nurse Employees] were acting inside or outside the scope of their employment, and that's a question of fact, ..., for the jury to determine." (Trial Transcript, p. 754, lines 3-6.)

After closing arguments, the Trial Court properly charged the jurors as to the applicable law in South Carolina and provided specific instructions regarding the *respondeat superior* doctrine and the definition of scope of employment. (See Trial Transcript, Jury Instructions, pp. 827-828.) Thereafter, the Court provided a verdict form that allowed the jury to make multiple factual findings – first, a factual finding regarding whether the nurses acted in good faith and, if not, a second factual determination as to whether the nurses acted outside the scope of their employment at Unihealth. (See Exhibit 1.)

After deliberating for nearly six hours, the jurors decided that (1) both of the nurses did not act in good faith and (2) that they both acted outside the scope of their employment in reporting their suspicions regarding Ralph Williams on June 21, 2010. (See Exhibit 1.) In other words, the jurors resolved the two questions of fact and determined that the alleged false reports

[24] Defendant Unihealth takes exception to Plaintiffs' Counsels' attempt to selectively extract quotes and misrepresent the arguments of Defendants' Counsel in support of their Motion in Limine to Exclude Legal Arguments Made on Behalf of Defendant Unihealth's Motion for Summary Judgment. Defendants' Counsel specifically denied that they would *not* want a jury on charge on intentional conduct or that it was *not* an issue of fact. (See Trial Transcript, p. 91, lines 21-25; see also p. 92, lines 7-21.) Furthermore, as stated by Judge Dickson in addressing the arguments, "until I find out what the testimony is[,] I'm not going to able to tell you what the charge is going to be." (Trial Transcript, p. 92, lines 1-3; see also p. 93, lines 11-14.)

of sexual abuse and malicious efforts to have criminal charges filed were outside the scope of the nurses' employment and therefore not in furtherance of Unihealth's business purpose and interests.[25] Accordingly, as a matter of law, Unihealth cannot be held liable for damages in this case. See Armstrong, 371 S.C. at 276.

D. The Parties did not try, by express or implied consent, the issue of whether Defendant Unihealth was reckless for having a policy that allowed an employee to provide care to a patient of the opposite sex.

In what can only be described as a desperate, shot-in-the-dark argument, Plaintiffs contend that, pursuant to Rule 15(b), the Court should uphold the punitive damages award against Defendant Unihealth because the facility was reckless for having a policy that allowed male CNAs to attend to female patients and therefore set up and "contributed to the type of disaster which occurred in this case." Not only did Plaintiffs fail to raise this argument at trial, it has no merit and should not be considered by the Court.

Under SCRCP Rule 15(b), when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleading. "Express consent may be demonstrated by a stipulation but implied consent depends on whether the parties recognized an issue not raised by the pleadings entered the case ***during trial.***" Dunbar v. Carlson, 341 S.C. 261 (Ct. App. 2000) (emphasis added). Moreover, "implied consent ***will not*** be found if all the parties did not recognize it as an issue ***at trial***, even if evidence in the record exists to support the amendment." Armstrong v. Collins, 366 S.C. 204, 227-228 (Ct. App. 2005) (emphasis added). In this case, Plaintiffs' Amended Complaint only alleged that Defendant Unihealth was liable strictly based on the actions of the Nurse Employees under a *respondeat superior* theory. (See Plaintiffs' Am. Complaint.) The issue of whether Defendant Unihealth was reckless for its policy was not tried by express or implied consent.

[25] While Unihealth and the Nurse Employee defendants disagree with these findings, if no new trial is entered, then the jury's interrogatory responses are controlling.

There was no stipulation by the parties, and the parties did not raise the issue during or at trial. Moreover, there was no testimony or evidence to support a finding that Defendant Unihealth was reckless for having a policy that allowed a care provider to care for patient of the opposite sex. Accordingly, Plaintiffs' Rule 15(b) motion should be denied.

E. The trial court should enter judgment in favor of Defendant Unihealth.

Given the jury's finding that the nurse employees both acted outside the scope of their employment, the trial court should enter judgment in favor of Unihealth and in accordance with the answers, notwithstanding the general verdict. See Rule 49(b), SCRCP; see also Elston v. Morgan, 440 F. 2d 47 (7th Cir. 1971) (holding that trial court did not abuse its discretion in entering judgment for defendants in accordance with the answer to the interrogatory).[26] The jury's award of $600,000.00 in punitive damages against Unihealth should be disregarded because of the jury affirmatively found that the Nurse Employees acted outside the scope of their employment when they made oral and written statements regarding the actions of Plaintiff Ralph C. Williams, Sr. on June 21, 2010.

[26] Defendant Unihealth notes that it could not identify a decision from a South Carolina Appellate Court directly on point; however, South Carolina modeled its rules of civil procedure on the Federal Rules. Rule 49(b) of both the SCRCP and FRCP provide that when the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict.

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Post-Trial Motions and, pursuant to SCRCP Rules 49(b) and 58, exercise its power to enter judgment in accordance with the jury's answers and set aside the punitive damages awarded in the verdict against Defendant Unihealth Post-Acute Care – Orangeburg, LLC. Defendant Unihealth is entitled to have a judgment entered consistent with the jury's interrogatory answers because the jury determined that the Nurse Employees acted outside the scope of their employment and Unihealth cannot be held liable for the nurses' alleged actions or any punitive damages as a result of the same.



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May 14, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Ralph C. Williams, Sr., and
Linda Williams,

Plaintiffs,

vs.

Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care-Orangeburg, LLC,

Defendants.

Civil Action Number: 2012-CP-38-0845

PLAINTIFFS' REPLY BRIEF TO DENY DEFENDANTS' POST TRIAL MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY VERDICT, OR DENY IN THE ALTERNATIVE, FOR A NEW TRIAL ABSOLUTE

FILED
MAY 16 2013
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY
Virginia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

DEFENDANT'S POST TRIAL MOTIONS FOR JUDGEMENT NOT WITHSTANDING THE VERDICT AND NEW TRIAL SOULD BE DENIED

The Facts established through the trial were that Mr. Ralph Williams was a Certified Nursing Assistant who was employed by UniHealth from February 10, 2010 until June 2010. Mr. Williams became a licensed CNA on November 10, 2009; was hired by UniHealth on February 9, 2010; and falsely accused of abusing a vulnerable adult on June 21, 2010 - His Birthday. Mr. Williams has been married for over 20 years to Linda Williams.

Patricia Johnson was Mr. Williams Supervisor who assigned him to care for male and female patients on the night of June 21, 2010. Mr. Williams had previously stated he did not want to perform UniHealth's required Perineal Care on Females. However, Ms. Patricia Johnson assigned him to care for female patients. Mr. Williams was assigned to care for Ms. Henrietta Mays (Resident Number "39A"). UniHealth requires male and females to perform their

Perennial Policy. Moreover, UniHealth does not require a member of the opposite sex to be present.

UniHealth's Perineal Care Policy is as follows:

"For females separate the labia, the clean downward from front to back with one stroke. Repeat using the clean side of the wash cloth wipe with each stroke. More than one wash cloth may be needed to be used. Rinse with clean wash cloth if applicable. Pat area dry with towel. Position patient on resident on side. Clean vagina area from anus to rectum with one stroke. Repeat until area is clean using clean part of the wash cloth. Wipe with each stroke. More than one washcloth wipe may be needed to use and pat dry with a towel . . . ." **(see Civil Trial Transcript at pg. 230 line 11-20).**

The facts established at trial are that Plaintiff R. Williams worked the 11 p.m. to 7:00 a.m. shift at the United Rehab Services (URS) unit and was assigned to care for both male and female residents. The Plaintiff Ralph Williams Job Description included duties of changing resident diapers which contain urine and feces. The Plaintiff Ralph Williams was assigned to care for Ms. Henrietta Mays (hereinafter referred to as "Resident Number 39A"). There were two residents in Room 39A on June 21, 2010. There was an overhead light which lit the entire room and a light over each patient's bed. As it was 3am in the morning Mr. Williams lit the light over Resident Number 39A's bed. **(see Civil Trial Transcript at pgs. 464-544).**

Additionally, the Defendant Johnson was assigned to work as Ralph Williams' Supervisor the night of June 21, 2010. Defendant Peppers was assigned to work as an LPN (Licensed Practical Nurse) the night of June 21, 2010. Defendant's Johnson's and Peppers' duties, as stated in their UniHealth job description, included reporting conduct deemed injurious

to the residents. (There is one button right beside the resident's bed that activates an audible alarm that sounds throughout the building. There is also a button that activates a flashing emergency light outside each resident's door.

Additional facts which are not in dispute are that on June 21, 2010, shortly after the alleged abuse of a vulnerable adult conduct by Plaintiff Ralph Williams, are that both Defendants Johnson and Peppers published statements to various third parties verbally and in writing alleging that the Plaintiff had sexually assaulted and/or abused Resident 39A.

Plaintiff was arrested on June 21, 2010 and charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult. The Plaintiff's criminal case went to trial on February 7, 2012. The criminal charge of assault with intent to commit third degree criminal sexual conduct was nol prossed by the Solicitor and a unanimous jury rendered a verdict of not guilty on the charge of abuse of a vulnerable adult in the matter of State of *South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-1390).

PLAINTIFF'S REBUTTTED THE PRESUMPTION OF GOOD FAITH - Under Omnibus Adult Protection Care ACT (OMPA)

Under The OMPA, § **43-35-75(A)**, there is a presumption that those persons who "report pursuant to the act or who participate in an investigation or judicial proceeding resulting from a report" acts in good faith and therefore is immune from civil or criminal proceeding. (*see attached* statute **S.C. Code Ann. 43-35-75(A).** Significantly however, the OMPA provides that "[i]n a civil or criminal proceeding good faith is a rebuttable presumption.

Under South Carolina law, the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. State v. Morgan. 352 S.C. 359, 574 S.E.2d. 203 (Ct. App 2002) *citing* State v. Baucom, 340 S.C. 339, 351 S.E.2d 922 (2000). The legislature's intent should be ascertained primarily from the plain language of the statue. Morgan, *supra.* Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. When faced with an undefined statutory term, the term must be interpreted with its usual and customary meaning. Id. In interpreting the statute, the word and it's meaning in conjunction with the purpose of the whole statute and the policy of the law should be considered. Whitner v. State 328 S.C. 1, 492 S.E.2d. 777 (1997). "If legislative intent is clear as reflected in the statutory language, any public policy as promulgated by this Court must give way." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d. 296, 301 (2012).

to Hainer v. American Medical International, Inc., a case involving similar facts and similar statute. 328 S.C. 128, 492 S.E.2d 103 (1997). Similar to the OMPA in this case, Hainer involved a statutorily mandated duty to report misconduct involving a patient. In addressing the statutory duty to report the Court in Hainer, indicated that "we are unpersuaded by Hospital's claim that, because it had a statutory duty to report misconduct, malice is precluded. Id.

The Court in Hainer, provided a statutory construction analysis for its findings. Id. At 133-34. The Court *citing* Adkins v. Varn, stated "[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning." The Court in Hainer indicated that it "cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. *citing* Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993), *see also* Estate of Guide v. Spooner,

318 S.C. 335, 457 S.E.2d 623 (Ct. App. 1995) (*empasis added* **if Legislature had intended certain result in statute, it would have said so**). The South Carolina Supreme Court in Hainer indicated that "[i]f the fact of the duty negated malice, the Legislature would have granted an absolute privilege . . .". Id. at 134.

The statute in Hainer, involved a similar statute with the same purpose, of protecting individuals under nursing care, and mandatory provisions to encourage reporting of abuse or misconduct. The South Carolina Supreme Court has held that it should not "construe a statue without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." Berkebile v. Outen, 426 S.E.2d 760 (1993). As previously stated "[t]he legislature's intent should be ascertained primarily from the plain language of the statue. Morgan, *supra*.

ACUTAL MALCICE REBUTS THE PRESUMPTION OF GOOD FAITH

The South Carolina Supreme Court in Hainer stated that "[p]rivileged communications are either absolute or qualified. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published . . . [w]hen qualified however, the plaintiff may recover if he shows the communication was actuated by malice." Hainer at 133-134.

The speaker may exceed the scope of the qualified privilege by making a communication that "goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff." Murray v. Holnam, 344 S.C. 129, 1401, 542 S.E.2d 743, 749 (Ct. App. 2001). Actual Malice can be established upon a showing of ill will, recklessness, or a "conscious disregard of the Plaintiff's rights." Constant v. Spartanburg Steel Products, 316 S.C. 86, 447

S.E.2d 194 (1994); *See also* Hainer, 492 S.E.2d 103, 492 S.E.2d 103 (S.C. 1997) (*quoting* Jones v. Garner, 250 S.C. 479, 488,158 S.E.2d 909 (1968)).

The Courts in South Carolina, have held that, it is not necessary that evidence must be offered of malignity or ill-will, nor that those facts should be found. Fulton v. Atlantic Coast Line R. Co., 220 S.C. 287, 296, 67 S.E.2d 425, 429 (1951). The time, place, and other circumstances of the preparation and publication of defamatory charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice. Id. at 296.

Defendant Johnson made reckless inconsistent statements. Defendant Johnson stated in her nursing notes and incident report that she saw the Plaintiff with his pants down and climbing on top of Resident 39A (However, in her trial testimony Defendant Johnson added for the first time that the Plaintiff Ralph Williams was naked, on top of, and actually in the bed with Resident No. 39A). Moreover, for the first time at Plaintiff Ralph Williams criminal trial, Defendant Johnson testified that Resident 39A's breasts were exposed. At no time almost 5 (five) years earlier did Defendant Johnson report this in her nursing notes or to the Police as a basis for her suspicion. Defendant Johnson acknowledges she had a duty to be accurate in her notes. **(see Civil Trial Transcript at pgs. 149-180).**

Defendant Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to sexually assault Resident 39A, nor did she inform him of any emergency situation involving him or Resident No. 39A. Plaintiff Ralph Williams never even knew what he was being accused of until the Orangeburg Police Department arrived. The Defendants acknowledge this in their brief:

Defendant Johnson did not yell or scream for help, where she was aware that resident 39A was physically and mentally handicapped, even though she witnessed a naked man on top of Resident No. 39A attempting to sexually assault her.

Defendant Johnson walked out the room and did not push an audible alarm located in Room 39A. Defendant Johnson did not push the alarm that would activate a light that flashes at the Defendant's skilled nursing facility. Defendant Johnson passed other nurses who were in close proximity to get to Josette Peppers, who was in the break room. Pursuant to Defendant Peppers' testimony, she was at or near the snack machine near the break-room during the alleged assault. Other nursing staff was on duty closer to Room 39A but was never notified prior to Defendant Peppers, even though there were about 5 other people on the wing of the building where the alleged rape occurred.

THE PHYSICALL EVIDENCE DEMONSTRATES RECKLESSNESS

The evidence collected evidence in room, included but not limited to, Resident 39A's gown, briefs, blanket, sheet, cover, fitted sheet, as well as Plaintiff's scrubs tops, scrub bottoms, his underwear and a red shirt that was found on Resident 39A's bed. **(see Civil Trial Transcript at pg. 280).**

There was no DNA evidence on any of these items. Plaintiff Ralph Williams was in the middle of changing Resident 39A, who still had urine and feces on her.

In particular, Defendant Patricia Johnson testified to Defendant UniHealth's Perineal Care policy for changing the diapers of female patients which testimony is as follows:

"For females separate the labia, the clean downward from front to back with one stroke. Repeat using the clean side of the wash cloth wipe with each stroke. More than one wash cloth may be needed to be used. Rinse with clean wash cloth if applicable. Pat area dry with towel. Position patient on resident on side. Clean vagina area from anus to rectum with one stroke. Repeat until area is clean using clean part of the wash cloth. Wipe with each stroke. More than one washcloth wipe may be needed to use and pat dry with a towel . . . ." **(see Civil Trial Transcript at pg. 230 line 11-20).**

Johnson gave contradictory testimony as to when she finished changing Resident 39A's briefs. Defendant Johnson initially testified that she finished changing her and "got all that mess of her" and later testified that she did not change resident 39A's brief prior to the police arriving.

Defendant Johnson's, testimony at trial is inconsistent on whether or not Resident 39A had been changed. IF Plaintiff Ralph Williams was in the bed with Resident 39A as Defendant Johnson testified, he would have had feces or urine on his scrubs **(see Civil Trial Transcript at pgs. 149-180)..**

Additionally, while Resident 39A was at the hospital, doctors and nurses conducted rape kit test, which were negative. Members of the Orangeburg Department of Public Safety also tested vaginal swabs from Resident 39A.

Moreover, the arresting officer, Officer Warrington, wrote a detailed report in June of 2010, and two years later testified in the criminal proceeding, indicating that Mr. Williams was cooperative and never tried to run. During the Civil Trial Officer Warrington had to have his recollection refreshed and testified from his previous notes. Incredibly despite Officer Warrington's inability to remember the events surrounding Mr. Williams' arrest from 4 (four)

years ago, he testified that Mr. Williams put his head down and said, "I'm sorry." This would have clearly been evidence that would have been in Officer Warrington's investigative notes or prior sworn testimony. **(see Civil Trial Transcript at pgs. 270-285).**

There was no DNA evidence from Ralph Williams identified on Resident 39A's genitalia, even though Defendant Johnson testified that he was naked and in the bed with Resident 39A. Moreover, there were no finger nail scrapings under Resident 39A's nails, or pubic hair.

The Defendant's offered testimony from Ms. Mary Rogers, a staff member at Dorn VA Medical Center in Columbia, South Carolina, who interviewed Mr. Williams while he was contemplating suicide for being on the news and in the newspapers for allegations of rape. During Ms. Rogers testimony she recorded that they had "already ripped off her diaper- which she was known to do." However, the evidence was clear that Ms. Mayes (Resident 39A) had a stroke, was partially paralyzed and could not use her hands and arms. Moreover, Ms. Rogers during her testimony acknowledged that her notes contained errors and that Ms. Rogers was communicating with Mr. Williams while he was under the cloud of being admitted for suicide. Mr. Williams denied ever stating Resident 39A ripped off her own diaper. Mr. Williams contended that it was impossible for Resident 39A to do so. Moreover, Johnson and Peppers also testified that Resident 39A was physically incapacitated. Mr. Williams testified that he did not finish changing Resident 39A's diaper, and that the patient still had feces and urine on ter. Significantly, Defendant Johnson testified that "we changed her and got all that stuff off of her" Defendant Johnson testified the "stuff" she was talking about was water from a wet gown. Mr. Williams contended that "stuff was feces and urine. **(see Civil Trial Transcript at pgs. 731-734; see Civil Trial Transcript at pgs. 149-180).**

Defendant Johnson indicated in her voluntary statement to the Orangeburg Department of Public Safety that "there is no doubt in my mind that if I had not walked in room he would have had sex with her" The Courts in South Carolina have held that "[a] mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain. Holman *citing* Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987); Tyler v. Macks Stores, 275 S.C. 456, 272 S.E.2d 633 (1980). **(see Civil Trial Transcript at pgs. 149-180).**

In this case, Defendants Johnson and Peppers use exaggerated language. Defendant Johnson left a helpless patient in the room with Plaintiff Ralph Williams, did not scream or yell and did not press any emergency audible or visual alarm, despite testifying that Plaintiff Ralph Williams was naked and in bed with a physically and mentally handicapped Resident.

THE USE OF EXAGGERATD LANGUAGE WAS RECKLESS

Defendant Peppers made the same conclusory allegation as Defendant Johnson's Voluntary statement even though they did not see the same thing, at the same time. In addition, Defendant Peppers testimony at the criminal trial she testified that she did not actually see the Plaintiff in an undressed state or in contact with Resident 39A. **(see Civil Trial Transcript at pgs. 233-237).**

Despite the aforementioned facts, Defendant Peppers proclaimed that Ralph (Plaintiff) was going to have sex with the resident if he did not get caught in her voluntary statement to the Orangeburg Department of Public. Defendant Pepper also testified that Defendant Johnson told her that Plaintiff Ralph Williams was actually having sex with Resident. **(see Civil Trial Transcript at pgs. 233-237).**

As the Court held in Fulton, "[t]he time, place, and other circumstances of the preparation and publication of defamatory charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice". Id. at 296. After almost two (2) years and approximately one (1) hour of jury deliberations, a unanimous jury rendered a verdict of not guilty on the charges of abuse of a vulnerable adult and the charge of assault with intent to commit third degree criminal sexual conduct in the matter of State of *South Carolina v. Ralph C. Williams, Sr.*

PLANTIFFS PRESENTED CIRCUMSTANTIAL EVIDENCE OF MALICE

Defendant Johnson testified that she had no prior run- ins with Plaintiff Williams. Ralph Williams has consistently asserted just the opposite, that there was prior run- ins between them. On two separate occasions in the months leading up to June 20, 2010, the Plaintiff Ralph Williams testified that Defendant Johnson refused to assist him with residents in emergency situations at the facility. Mr. Williams told his Supervisor Ms. Johnson that she should be fired, because she almost let a patient die. Mrs. Linda Williams also testified about how upset Mr. Williams was when she picked him up from work because a patient had almost died. Additionally, on another occasion, Plaintiffs Ralph and Linda Williams testified that Defendant Johnson telephoned the Plaintiff's wife from the facility at 2:30 a. m., and was breathing on the phone, causing dissension in his marriage. Mrs. Williams testified that someone picked the phone up when she called back and said "My Name is Patricia Johnson" and slammed the phone down. Mrs. Williams never knew of Mrs. Patricia Johnson prior to this event. **(see Civil Trial Transcript at pgs. 731-734; see Civil Trial Transcript at pgs. 649-701).**

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May 14, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **RESPONSE TO PLAINTIFFS' POST-TRIAL MEMORANDUM ON ISSUE OF STIPULATION**

During the May 29, 2015 hearing on the Post-Trial Motions, Plaintiffs distributed a Memorandum On Issue of Stipulation by Defendants (the "New Motion"). Having been submitted far beyond the deadline for submitting post-trial motions, not only was the New Motion untimely, it was also ungrounded in fact, and Plaintiffs had repeatedly waived the arguments therein.

INTRODUCTION

In the New Motion, Plaintiffs allege that the Parties had stipulated that Plaintiffs would be relieved of their burden of proof of establishing all elements of their *respondeat superior* claim. Not only is this allegation completely false, Plaintiffs now claim that Defendants violated the alleged "stipulation" and somehow prejudiced the Plaintiffs' case. Despite having never made this argument at any point in the trial, Plaintiffs then ask for the extraordinary remedy of having the Court disregard verdict form questions 3 and 4, or in the alternative, grant the Plaintiffs' Motion for Judgment Notwithstanding the Verdict on the issues of the scope of the nurses' employment in Plaintiffs' favor. Plaintiffs' arguments are without merit because there was no agreement or stipulation, and any arguments regarding the same have been repeatedly waived by Plaintiffs.

- The Parties never had an agreement or stipulation that Plaintiffs would somehow be relieved of establishing all elements of their prima facie case. In fact, the trial court specifically addressed the issue by explaining that the jury charges and instructions will be based on anything that the facts and evidence have, or arguably could have, proven. (See Trial Transcript, p. 93, lines 11-14.)
- Plaintiffs' arguments ignore South Carolina law regarding the burden of proof when alleging that an employee's conduct falls within the scope of employment and whether the employer is therefore liable. Plaintiffs' arguments also ignore their own Counsel's arguments to the jury regarding the alleged actions of Defendants Patricia Johnson and Josette Davis (hereinafter "Nurse Employees").
- Plaintiffs' arguments in the New Motion were waived. Prior to May 29, 2015, Plaintiffs never previously asserted on the trial record or in any briefings in support of post-trial motions that the Parties had an agreement or stipulation regarding scope of employment arguments or evidence. Accordingly, Plaintiffs waived any objections regarding the same.

For these reasons, the Court should disregard Plaintiffs' arguments in the New Motion.

AUTHORITY AND ARGUMENTS

A. The Trial Transcript shows that the Parties never entered a stipulation relieving Plaintiffs of their burden to prove all elements of their claims.

Plaintiffs' New Motion contains intentionally vague references to the Trial Transcript in support of their contention that the Parties had stipulated that Plaintiffs did not need to prove every single element of each of their claims. It is telling that Plaintiffs' New Motion does not provide a single specific quote or citation because there simply was no such agreement or stipulation between the Parties.

The relevant portion of the Trial Transcript that Plaintiffs generically reference in their New Motion starts at page 89, line 22 and ends at pg. 93, line 15 (hereinafter "Relevant Trial Transcript" and attached hereto as Exhibit 1). As indicated therein, Defendants' Counsel was making arguments in support of Defendants' final Motion in Limine, which sought to prevent Plaintiffs' counsel from manipulating arguments made *arguendo* in Unihealth's Motion for Summary Judgment and thereby "exclude the plaintiffs from alleging that the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams." (Ex. 1, p. 90, lines 4-13) At one point during the back and forth arguments between Counsel, Plaintiffs' Counsel specifically asked about jury charges and intentional conduct.

> Mr. Foster: So is Unihealth and Peppers and Johnson saying that they don't want to make any arguments about any intentional conduct, they don't want to ask for a jury charge on intentional conduct and how it may affect the case?
>
> Mr. Arnold: That is not.

(Ex. 1, p. 91, lines 21-25.) Immediately thereafter, the trial court explained, "I don't know what – until I find out what the testimony is I'm not going to be able to tell you what the charge is going to be." (Ex. 1, p. 92, lines 1-3.) The trial court later explained that "[the court will] be charging anything that the facts have – could arguably prove and like that. We'll go through and charge that. We'll deal with that at the end of the case, okay." (Trial Transcript, p. 93, lines 11-14.) Notably, the words "agree," "agreement," "stipulate" or "stipulation" do not appear anywhere within the five pages of Relevant Trial Transcript. (See Ex. 1.) Plaintiffs did not argue at that time or at any time during the trial that there was any agreement that would relieve them of their burden of proving all the elements of their case. Moreover, when the jury was charged on the issue of *respondeat superior* and provided the verdict form, Plaintiffs made no

objections regarding the *respondeat superior* charges and certainly did not assert that there was any type of agreement or stipulation making the charges or verdict form improper. These "stipulation" arguments are entirely manufactured after the fact.

In summary, the record citations referenced by Plaintiffs were taken out of context, there was no agreement or stipulation between the Parties, and it was abundantly clear that the trial court would issue jury instructions and provide a verdict form based upon the evidence and arguments presented during the trial.

B. Plaintiffs failed to meet their burden of proof, and Plaintiffs' own arguments were that the Nurse Employees acted outside the scope of the employment.

Under South Carolina law, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A ***plaintiff seeking recovery*** from the master for injuries ***must establish*** that the relationship existed at the time of the injuries, ***and also that the servant was then about his master's business*** and acting within the scope of his employment. Id. at 301 (emphasis added). Moreover, the burden of proof is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business. See Vereen v. Liberty Life Insurance Co., 306 S.C. 423, 427 (1991) (holding that burden of production and persuasion are with plaintiff and defendant "was free to leave the burden of proof on the [plaintiffs] and simply rely for its defense on the cross examination of their witnesses").

During the trial, Plaintiffs' Counsel declined to argue that the Nurse Employees' conduct "was then about [their] master's business," but instead made arguments to the contrary. More specifically, as pointed out in Unihealth's Post-Trial Motions, Plaintiffs' Counsel elicited testimony and argued to the jury that the conduct of the Employee Nurses was intentional and fell outside the scope of employment because wicked conduct, making "deliberate" false

statements and "destroying" evidence, bearing "false witness against thy neighbor," being a calculating woman, and trying to "set a person up" do not further the business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006). The Plaintiffs had the burden to prove that the Nurse Employees acted within the scope of their employment, and their failure to meet that burden was direct result of their own arguments and presentation to the jury.

C. Plaintiffs waived the arguments asserted in the New Motion.

As noted in detail above, Plaintiffs' New Motion claims that the Parties reached an agreement or stipulation prior to the trial; however, this argument was not raised until the day of the post-trial motions hearing on May 29, 2015 – nearly 10 months after the jury reached a verdict – and was therefore waived. Moreover, at no time during trial did the Plaintiffs assert that there was any stipulation whatsoever. Plaintiffs also failed to raise any alleged stipulation as a basis for objecting to the proposed jury instructions or the proposed verdict form that the Trial Court presented to the Parties. More specifically, Plaintiffs only had two objections to the Trial Court's jury charges: (1) an objection to a portion of the Omnibus Act that was to be read related to criminal penalties; and (2) an objection to the Trial Court's failure to provide instruction regarding the continuing publication doctrine. (See Trial Transcript, p. 756; attached hereto as Exhibit 2.)

Regarding the Trial Court's proposed verdict form, Plaintiffs did not make any objection based on an alleged agreement as grounds for excluding verdict Interrogatories 3 and 4. Instead, Plaintiffs responded to the Trial Court's presentation of the verdict form by moving for Directed Verdict on the issue course and scope of the nurses' employment but at no point contended that the Parties stipulated or had an agreement as to that issue. (See Trial Transcript, pp. 751-754; attached hereto as Exhibit 3.) Thus, even assuming *arguendo* that there had been any conceivable agreement or stipulation for arguments and evidence regarding scope of employment (which there was not),

Plaintiffs clearly waived any arguments regarding the same when they failed to raise an objection when the Trial Court reviewed the jury instructions and verdict form.

After the trial, the deadline for submitting post-trial motions in this case was September 18, 2014. Plaintiffs submitted their post-trial motions with briefs in support and did not assert any argument regarding an alleged "agreement" or "stipulation" between the Parties. Thereafter, upon receipt of Trial Transcript in March 2015, the Trial Court permitted the Parties to have additional time for the *limited* purpose of updating their arguments in their initial briefs with specific quotations and citations no later than May 1, 2015. This additional time period was not an opportunity to re-draft post-trial motions or create new arguments.

In summary, at trial Plaintiffs failed to assert any arguments regarding an alleged stipulation. Plaintiffs likewise failed to object to the verdict form on the basis of an alleged stipulation. Plaintiffs failed to object to the Court's charges on *respondeat superior*. Finally, Plaintiffs failed to assert an argument regarding an alleged stipulation in their post-trial motions and therefore waived any such argument. There was no stipulation.

CONCLUSION

For the reasons set forth above, the Court should disregard the arguments presented in Plaintiffs' New Motion. Plaintiffs were never relieved of their burden to prove every element of their case.

[*signature on following page*]

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Attorneys for Defendants

June 10, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Ralph C. Williams, Sr., and Linda Williams,	)	CA No. 2012-CP-38-845
Plaintiffs,	)	
v.	)	**PLAINTIFFS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND THE JUDGMENT**
Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care – Orangeburg, LLC,	)	
Defendants.	)	

FILED FOR RECORD
WINNIFRED B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2016 FEB -9 A 11:17

TO: Tyler Arnold and Jason Bring, Arnall, Golden Gregory, LLP, attorneys for the Defendants.

YOU WILL PLEASE TAKE NOTICE:

That the undersigned attorneys for the Plaintiffs do hereby move, pursuant to Rule 59, SCRCP, for the court to reconsider its ruling and for an order altering or amending the Order and Judgment of the Court dated January 14, 2016, granting a new trial in this matter. Plaintiffs also request that the court hear and rule upon Plaintiffs' post-trial motions timely filed following the jury's verdict in this case.

This motion is timely filed inasmuch as the undersigned received notice of the Order being transmitted to the Orangeburg Clerk of Court by letter of January 20, 2016, from Defendant's law firm, Arnall Golden Gregory, LLP and received by the undersigned January 25, 2016. This matter is requested to be heard no sooner that 10 days from the date hereof, and after a briefing schedule has been established by the Court.

The Plaintiffs assert that the trial court abused its discretion because the court's decision to invoke the thirteenth juror doctrine and grant a new trial absolute was controlled by an error of law and was wholly unsupported by the evidence. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

265 (1990); *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 670 S.E.2d 1(Ct. App. 2008); *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 551-52, 593 S.E.2d 504, 508 (2004). *See also RFT Mgmt. Co., LLC v. Tinsley*, 399 S.C. 322, 732 S.E.2d 166 (2012) (a trial court's decision on a motion for a new trial upon the facts is measured by whether the court abused its discretion).

Plaintiffs incorporate the email transmission of the trial court to the parties of November 23, 2015 with instructions to counsel for Defendants to draw an Order and setting forth the trial court's statements upon which the court granted the new trial pursuant to the thirteenth juror doctrine. *See* Exhibit "A" attached. Plaintiffs assert that the court's statements indicate the court's decision is controlled by an error of law and lacks any support in the testimony and evidence at trial.

The order also finds that the remaining pending motions were denied as "moot." Pursuant to Rule 59, SCRCP, Plaintiffs further request that the court amend the judgment to rule on each of Plaintiffs' post-trial motions timely filed following the jury's verdict, which motions are incorporated herein by reference.

Respectfully submitted,

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February 2, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR RECONSIDERATION**

Defendants Patricia A. Johnson, Josette Davis (*formerly Josette Peppers*), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively "Defendants" or individually identified as "Johnson" or "Davis" or "Unihealth"), by and through their undersigned attorneys, hereby respond to Plaintiffs' Motion for Reconsideration.

SUMMARY OF PLAINTIFFS' ARGUMENTS AND DEFENDANTS' RESPONSE TO THE SAME

In their two-page Motion for Reconsideration, Plaintiffs provide a procedural history, cite to a string of four cases regarding abuse of discretion in granting a new trial,[1] and then summarily argue in a single sentence that the Court "abused its discretion" by granting the Defendants' Motion for New Trial, referencing only the trial court's email transmission requesting that Defendants' draft a proposed order.[2] Notably absent from the Plaintiffs' Motion

[1] Of the four cases cited, only one case, Youmans v. S.C. Dept. of Transportation, 380 S.C. 263 (Ct. App. 2008), overturned the trial court's use of the thirteenth juror doctrine in the granting of a new trial. More specifically, the Youmans court found that the trial court abused its discretion in granting a new trial "based upon length of time of deliberations." Youmans, 380 S.C. at 288.

[2] To the extent that Plaintiffs' reference to the Court's email transmission requesting a proposed order somehow constituted an error or abuse of discretion, Defendants note that S.C.R.C.P. Rule 5(b)(3) specifically contemplates the submission and service of proposed orders to the Court for consideration. Accordingly, any argument that a request for a proposed order constitutes error or abuse is without merit.

for Reconsideration is: (1) any analysis or explanation regarding how the trial court potentially made an error of law, or (2) why the decision to grant the new trial was unsupported by the evidence. In summary, Plaintiffs' Motion for Reconsideration is a form motion requesting that the Court reconsider its Order granting the Defendants' Motion for New Trial ("the Order") without providing any explanation or basis for the same. In response to the Motion for Reconsideration, Defendants maintain that the Court's decision was not controlled by an error of law. Further, as set forth in the Order, the Court reviewed of the evidence and trial testimony and specifically "f[ound] that the evidence did not justify the verdict." Under South Carolina law, it was clearly within the Court's discretion "to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). The Court applied the correct legal standard for granting a new trial, and when conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable. *See* Worrell v. South Carolina Power Co., 186 S.C. 306, 313-14 (1938) (holding a "judge . . . [, sitting as] the thirteenth juror, possesses the veto power to the Nth degree . . ."). For these reasons, the Court should deny Plaintiffs' Motion for Reconsideration.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC ("UniHealth") in June

2010.[3] Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs' allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.' Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's supply cart sitting outside of Room 39 in the facility.[4] When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.[5] The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed.[6] Johnson confronted Ralph Williams by stating, "What are you doing!?"[7] Ralph Williams responded, "Will you please shut the door."[8] Johnson left the door open,[9] and she ran to get another nurse, Davis.[10] The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.[11] Thereafter, Ralph Williams was escorted out of the room without objection,[12] and Davis went to alert the facility's Director of Nursing and the local

[3] (See Pls.' Am. Compl.)
[4] (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)
[5] (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)
[6] (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)
[7] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)
[8] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)
[9] (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)
[10] (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)
[11] (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)
[12] (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of

authorities.[13] The Orangeburg County police arrived at the facility and investigated the incident.[14] The police determined that there was sufficient cause to arrest Ralph Williams.[15]

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed $102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling $897,500.00 ($200,000 against Johnson; $97,500 against Davis; and $600,000 against UniHealth).

D. Granting of Motion for New Trial

The Parties filed timely post-trial motions after the jury's verdict was rendered. Upon review and consideration of the motions, the Court initially requested in August that the Parties' submit supplemental citations to the record and then, in November, requested that Defendants submit a proposed order granting their Motion for New Trial Absolute. The proposed order was submitted via email, with all parties copied, on December 9, 2015. The Order was signed on January 14, 2016 and entered by the clerk on January 22, 2016.

II. LEGAL AUTHORITY AND ARGUMENT

For the reasons set forth below and as previously explained in their own Post-Trial Motions, the Court properly granted the Defendants' Motion for New Trial Absolute, and Plaintiffs' Motion for Reconsideration of the same should be denied.

Josette Davis, p. 250, lines 3-10.)

[13] (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

[14] (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

[15] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

A. South Carolina's Thirteenth Juror Doctrine

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

> This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); *see also Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall*

report the incident in accordance with this section." S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, "in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately." S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has "reason to believe" or who "suspect[s]" sexual assault has no discretion in the matter—she "must" report the incident and notify law enforcement "immediately." "A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

As set forth in the Order, based on the testimony of the witnesses and the evidence presented at trial, the Court exercised its discretion as the thirteenth juror and granted a new trial.[16] The Court found that the evidence showed that Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed.[17] In the end, the Court found that the evidence did not justify the verdict, and the facts of the case and the interests of justice persuaded the Court that a new trial was warranted.

[16] Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforced the Court's view that a new trial was warranted.

[17] The Court's Order, which cited specific testimony and evidence, was not intended to be nor was it exhaustive. The Order specifically provided that there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict.

III. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiffs' Motion for Reconsideration.

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March 16, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR, and LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE PEPPERS and UNIHEALTH POST-ACUTE CARE-ORANGEBURG, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

PLAINTIFFS' SUPPLEMENTAL BRIEF ON MOTION TO RECONSIDER AND TO AMEND OR ALTER THE JUDGMENT

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An error of law controlled the thirteenth juror decision because the trial judge related to the parties that he may have made a mistake in charging the immunity statute. Incorrect charges given to the jury are errors of law. Fairchild v. SC DOT, 385 S.C. 344, 683 S.E.2nd 818 (2009); State v. Bryant, 391 S.C. 225, 705 S.E.2nd 465 (2010). Because the charge was incorrect, given the court's view of the evidence, the post-trial decision made was therefore controlled by this error, and Plaintiffs' requested relief it its post-trial motions should be ruled upon and the thirteenth juror decision set aside by the trial court.

The court's decision is controlled by an error of law because the trial judge erred in charging the jury on the scope of employment, when the Defendants did not raise or discuss or offer evidence on the issue before the jury, and stated to the court that: "we do not want it stated that the facility has taken the position that that the ladies – acted intentionally. That is not our position." Tr. p. 90. After, the court responds, "if they were acting intentionally then the health care facility would not be liable." Tr. p. 91. Counsel then continues: "It would not be, but we're not going to be arguing that in this case, your honor." Tr. p. 91. Plaintiffs' counsel then states "... are they later going to do an about face and then ask you for a charge on intentional conduct that relieves UniHealth..." Id. Defense counsel responds "We're not

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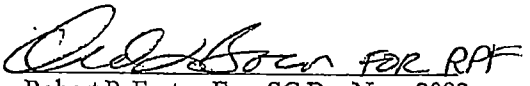
going to be, you know, dividing the defense in that sense." Tr. p. 92. The Plaintiffs rely upon this exchange, and no argument of intentionality is offered or made to the jury, and then, only evidence of "inside the scope of employment" is offered by the Plaintiff. It is not an issue framed by the parties at trial. Yet, the defense offers a jury charge request and two special verdict questions (#3 and #4) on scope of employment which are objected to by Plaintiffs. (Tr. p. 752, 753).

The Defense attorneys proceed to ask that two of their individual clients (nurses) be put on the chopping block in the face of a direct conflict of interest. This was wrong under our ethics rules. Despite their representations that the defense was not going to be divided, upon which Plaintiffs relied to their detriment, they should be equitably estopped, and the wrong should be righted and the verdict form questions #3 and #4 should be set aside. Further, as stated in more detail in Plaintiffs' post-trial motions brief, it was an issue neither raised by the Pleadings nor tried by the express or implied consent of the parties (brief p. 6-9 dated 9-18-14 incorporated herein). This charge on scope of employment and verdict questions #3 and #4 were errors of law which created the inconsistency in the verdict. The remedy should have been to set questions #3 and #4 aside.

Plaintiffs also incorporate their brief on their motion for JNOV SCRCP 50(b) on the scope of employment issue as further support that the thirteenth juror ruling was controlled by an error of law as well as Plaintiffs' submission of its Plaintiffs' Annotated Transcript of Witness Testimony and Evidence Presented at the Trial of the Case Filed August 17, 2015 in support of the Rule 59 motion to support that the decision was wholly unsupported by the evidence on issues of scope of employment and evidence of reckless conduct of the nurses to prove the rebuttable presumption under the applicable state statute reporting requirements.

Respectfully submitted,

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April 7, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS,	)	**DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEF TO THEIR MOTION FOR RECONSIDERATION**
Plaintiffs,	)	
v.	)	
PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC,	)	
Defendants.	)	

Defendants Patricia A. Johnson, Josette Davis (*formerly Josette Peppers*), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively "Defendants" or individually identified as "Johnson" or "Davis" or "Unihealth"), by and through their undersigned attorneys, hereby respond to Plaintiffs' Supplemental Brief to their Motion for Reconsideration.

SUMMARY OF ARGUMENTS IN OPPOSITION TO BOTH THE FILING OF THE SUPPLEMENTAL BRIEF AND THE MOTION FOR RECONSIDERATION

As an initial point, Plaintiffs' Supplemental Brief should be stricken from the record and not considered by the Court. SCRCP Rule 7(b)(1) clearly mandates that motions "shall state with particularity the grounds therefor, ..." Accordingly, the Court should not allow Plaintiffs to file a shell, two-page motion on February 1, 2016 in an effort to comply with a filing deadline,[1] and then, 67 days later, file a supplemental brief wherein they *attempt* to "state with particularity the grounds" for granting the reconsideration motion. In summary, Plaintiffs'

[1] Plaintiffs' initial motion provided a brief procedural history, cited to a string of four cases regarding abuse of discretion in granting a new trial, and then summarily argue in a single sentence that the Court "abused its discretion" by granting the Defendants' Motion for New Trial, referencing only the trial court's email transmission requesting that Defendants' draft a proposed order. Notably absent from the Plaintiffs' Motion for Reconsideration is: (1) any analysis or explanation regarding how the trial court potentially made an error of law, or (2) why the decision to grant the new trial was unsupported by the evidence.

Motion for Reconsideration filed on February 1 was a form motion lacking any explanation or particularity, and the Supplement Brief is an attempt to remedy the initial motion's inadequacies and should not be considered by the Court.

Notwithstanding the filing a sham motion to satisfy a filing deadline and over two months later attempting to supplement the same, Defendants maintain that the Court's decision to grant a new trial was not controlled by an error of law. As set forth in the Order, the Court reviewed of the evidence and trial testimony and specifically "f[ound] that the evidence did not justify the verdict." Under South Carolina law, it was clearly within the Court's discretion "to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). The Court applied the correct legal standard for granting a new trial, and when conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable. *See* Worrell v. South Carolina Power Co., 186 S.C. 306, 313-14 (1938) (holding a "judge . . . [, sitting as] the thirteenth juror, possesses the veto power to the Nth degree . . ."). Furthermore, Plaintiffs' argument about the jury charges on scope of employment are without merit, and the arguments regarding statements by Defendants' counsel while presenting their Motion in Limine prior to the trial are taking completely out of context. For these reasons, the Court should deny Plaintiffs' Motion for Reconsideration.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC ("UniHealth") in June

2010.[2] Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs' allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.' Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's supply cart sitting outside of Room 39 in the facility.[3] When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.[4] The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed.[5] Johnson confronted Ralph Williams by stating, "What are you doing!?"[6] Ralph Williams responded, "Will you please shut the door."[7] Johnson left the door open,[8] and she ran to get another nurse, Davis.[9] The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.[10] Thereafter, Ralph Williams was escorted out of the room without objection,[11] and Davis went to alert the facility's Director of Nursing and the local

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[2] (See Pls.' Am. Compl.)
[3] (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)
[4] (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)
[5] (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)
[6] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)
[7] (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)
[8] (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)
[9] (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)
[10] (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)
[11] (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of

authorities.[12] The Orangeburg County police arrived at the facility and investigated the incident.[13] The police determined that there was sufficient cause to arrest Ralph Williams.[14]

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed $102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling $897,500.00 ($200,000 against Johnson; $97,500 against Davis; and $600,000 against UniHealth).

D. Granting of Motion for New Trial

The Parties filed timely post-trial motions after the jury's verdict was rendered. Upon review and consideration of the motions, the Court initially requested in August that the Parties' submit supplemental citations to the record and then, in November, requested that Defendants submit a proposed order granting their Motion for New Trial Absolute. The proposed order was submitted via email, with all parties copied, on December 9, 2015. The Order was signed on January 14, 2016 and entered by the clerk on January 22, 2016.

II. LEGAL AUTHORITY AND ARGUMENT

For the reasons set forth below and as previously explained in their own Post-Trial Motions, the Court properly granted the Defendants' Motion for New Trial Absolute, and Plaintiffs' Motion for Reconsideration of the same should be denied.

Josette Davis, p. 250, lines 3-10.)

[12] (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

[13] (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

[14] (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

A. South Carolina's Thirteenth Juror Doctrine

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

> This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); *see also Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall*

report the incident in accordance with this section." S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, "in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately." S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has "reason to believe" or who "suspect[s]" sexual assault has no discretion in the matter—she "must" report the incident and notify law enforcement "immediately." "A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

As set forth in the Court's Order, based on the testimony of the witnesses and the evidence presented at trial, the Court properly exercised its discretion as the thirteenth juror and granted a new trial.[15] The Court found that the evidence showed that Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed.[16] In the end, the Court found that the evidence did not justify the verdict, and the facts of the case and the interests of justice persuaded the Court that a new trial was warranted.

[15] Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforced the Court's view that a new trial was warranted.

[16] The Court's Order, which cited specific testimony and evidence, was not intended to be nor was it exhaustive. The Order specifically provided that there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict.

D. The Trial Transcript shows that the Plaintiffs never objected to the jury charged or verdict form and were never relieved from their burden to prove all elements of their claims.

Plaintiffs' Supplemental Brief contains intentionally vague references to the Trial Transcript in support of their argument that the Court erred by charging the jury on scope of employment and including interrogatories regarding the same on the verdict form. However, Plaintiffs blatantly fail to cite the relevant portion of the transcript that shows: (a) Plaintiffs' counsel did not object to the jury charges; (b) Plaintiffs' counsel did not object to the verdict form; and (c) Plaintiffs' counsel actually argued that the nurse employees outside the scope of their employment in closing arguments.

The relevant portion of the Trial Transcript that Plaintiffs generically reference in their Supplemental Brief starts at page 89, line 22 and ends at pg. 93, line 15 (hereinafter "Relevant Trial Transcript" and attached hereto as Exhibit 1). As indicated therein, Defendants' Counsel was making arguments in support of Defendants' final Motion in Limine, which sought to prevent Plaintiffs' counsel from manipulating arguments made *arguendo* in Unihealth's Motion for Summary Judgment and thereby "exclude the plaintiffs from alleging that the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams." (Ex. 1, p. 90, lines 4-13) At one point during the back and forth arguments between Counsel, Plaintiffs' Counsel specifically asked about jury charges and intentional conduct.

> Mr. Foster: So is Unihealth and Peppers and Johnson saying that they don't want to make any arguments about any intentional conduct, they don't want to ask for a jury charge on intentional conduct and how it may affect the case?
>
> Mr. Arnold: That is not.

(Ex. 1, p. 91, lines 21-25.) Immediately thereafter, the trial court explained, "I don't know what – until I find out what the testimony is I'm not going to be able to tell you what the charge is going to be." (Ex. 1, p. 92, lines 1-3.) The trial court later explained that "[the court will] be ***charging anything that the facts have – could arguably prove and like that.*** We'll go through and charge that. We'll deal with that at the end of the case, okay." (Trial Transcript, p. 93, lines 11-14 (emphasis added).) Notably, the words "agree," "agreement," "stipulate" or "stipulation" do not appear anywhere within the five pages of Relevant Trial Transcript. (See Ex. 1.) Plaintiffs did not argue at that time or at any time during the trial that there was any agreement that would relieve them of their burden of proving all the elements of their case. In summary, the record citations referenced by Plaintiffs were taken out of context, there was no agreement or stipulation between the Parties, and it was abundantly clear that the trial court would issue jury instructions and provide a verdict form based upon the evidence and arguments presented during the trial.

Next, when the Court set forth the jury charges on the issue of *respondeat superior* and provided the verdict form, Plaintiffs' Counsel made no objections to the *respondeat superior* charges or regarding the verdict form – they merely responded, "No reply" and proceeded to make a Motion for Directed Verdict. Furthermore, Counsel certainly did not assert that there was any type of agreement or stipulation making the charges or verdict form improper. These arguments in the Supplemental Brief are entirely manufactured after the fact.

Finally, under South Carolina law, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A ***plaintiff seeking recovery*** from the master for injuries ***must establish*** that the relationship existed at the time of the injuries, ***and also that the servant was then about his master's business*** and acting within the scope of his employment. Id. at 301 (emphasis added). Moreover, the burden of proof

is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business. See Vereen v. Liberty Life Insurance Co., 306 S.C. 423, 427 (1991) (holding that burden of production and persuasion are with plaintiff and defendant "was free to leave the burden of proof on the [plaintiffs] and simply rely for its defense on the cross examination of their witnesses"). During the trial, Plaintiffs' Counsel declined to argue that the Nurse Employees' conduct "was then about [their] master's business," but instead made arguments to the contrary. More specifically, as pointed out in Unihealth's Post-Trial Motions, Plaintiffs' Counsel elicited testimony and argued to the jury that the conduct of the Employee Nurses was intentional and fell outside the scope of employment because wicked conduct, making "deliberate" false statements and "destroying" evidence, bearing "false witness against thy neighbor," being a calculating woman, and trying to "set a person up" do not further the business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006). The Plaintiffs had the burden to prove that the Nurse Employees acted within the scope of their employment, and their failure to meet that burden was direct result of their own arguments and presentation to the jury.

III. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiffs' Motion for Reconsideration.



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August 1, 2016

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG Ralph C. Williams, Sr., and Linda Williams, Plaintiffs, v. Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care – Orangeburg, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CA No. 2012-CP-38-845 **PLAINTIFFS' REPLY**

Ralph C. Williams, Sr., and Linda Williams (Plaintiffs) file the following Reply to the Response filed by the Defendants to Plaintiffs' Supplemental Brief to their Motion for Reconsideration. The Court should not be persuaded by Defendants' arguments, should grant Plaintiffs' motion for reconsideration, withdraw the prior order, and permit the jury's verdict to stand.

I. The Court Should Not Strike Plaintiffs' Supplemental Brief

Defendants contend that the Court should strike the Memorandum Plaintiffs filed in support of their Motion for Reconsideration, contending that under Rule 7(b)(1), SCRCP, the motion itself was insufficient and the memorandum is not appropriate. (Response, pp. 1-2). Defendants characterize the initial filing as a "sham motion" filed solely to satisfy the filing deadline. (Response, p. 2). The Court should reject these arguments.

Rule 7(b)(1) provides that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The particularity requirement of Rule 7(b)(1) is to be read flexibly in recognition of the peculiar circumstances of the case. *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010). Non-particularized motions have been allowed where the

opposing party knew or had notice of the particular grounds being relied upon. *Id.* By requiring notice to the court and the opposing party of the basis for the motion, Rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly. *Id.*

Therefore, when a motion is challenged for a lack of particularity, the court should ask whether any party is prejudiced by a lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly. *Id.* The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized. *Id.* When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1). *Id. See, also, Lucey v. Meyer*, 401 S.C. 122, 132, 736 S.E.2d 274, 279 (Ct. App. 2012) (when the trial court is able to discern the relief requested, "[i]t is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'").

Defendants' argument here demonstrates a fundamental misunderstanding of the South Carolina Rules of Civil Procedure and how they operate. Adopting the strict rule the Defendants advocate would not only violate *Camp* and its progeny, such an application of Rule 7(b)(1) would offend the policies underlying the rules of civil procedure. *Compare Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (noting civil procedure rules should not be written or interpreted to create a trap for the unwary lawyer or party, citing to Rule 1, SCRCP (civil procedure rules "shall be construed to secure the just, speedy, and inexpensive determination of every action")).

The motion Plaintiffs filed averred to the grounds Plaintiffs asserted in support of their

motion. This Court and the Defendants were able to discern the relief requested from the motion. In fact, Rule 7(b)(1) acknowledges that "[t]he requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

As to whether the motion was a "sham" as Defendants contend, there is nothing false or misleading about the motion. *See, e.g., Germofert Mfg. Co. v. Castles*, 97 S.C. 389, 393, 81 S.E. 665, 666 (1914) ("The word 'sham' is synonymous with 'false' and applicable to all pleadings which fall within its terms, whether good or bad in substance"; it indicates a pleading that is "manifestly false, and interposed to delay" and a pleading is not a "sham" merely because it may be "legally insufficient"). Defendants accuse Plaintiffs of filing a "sham motion" but do not aver that the motion is "false" or interposed for delay. The Court should reject this characterization of Plaintiffs' motion and the subsequent memorandum in support.

The Court should deny the Defendants' request to strike the memorandum in support of the motion and should consider the arguments contained therein.

II. Plaintiffs' Contentions Have Merit

Defendants assert that the contentions contained in Plaintiffs' memorandum are "without merit" and the arguments are "[taken] completely out of context." (Response, p. 2). Again, the Court should not be persuaded by these arguments. This Court, and not the Defendants, will be the judge of whether the arguments Plaintiffs tendered have merit.

As for the context, Plaintiffs adhere to their contentions that Defendants sandbagged them and did so to avoid the obvious conflict of interest for defense counsel that arose once Defendant UniHealth contended its own employees acted on their own, that is, outside the scope of their employment. By suddenly changing positions and contending the nurses were acting

outside the scope of their employment with UniHealth, the nurses' own lawyer began casting blame on them to the benefit of their employer, whom the lawyer also represents. Counsel did this after assuring the Court, and Plaintiffs, that Defendants would not "divide the defense."

Defendants go to great pains to relate the testimony in a light most favorable to them. (Response, pp. 3-4, 6). Of course, the jury heard that evidence together with the other evidence outlined in Plaintiffs' memorandum of August 17, 2015. And while it is within this Court's discretion to grant a new trial under the "thirteenth juror" doctrine, the Court should *not* do so where a fair preponderance of the evidence supports the jury's verdict. *RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012).

What is fascinating here is that the same counsel represented and continues to represent both the employer, UniHealth, and its employee nurses whom UniHealth is claiming acted on their own, that is, outside the scope of their employment. To avoid this obvious concurrent conflict of interest prohibited by Rule 1.7, RPC, Rule 407, SCACR, UniHealth did not offer evidence on the scope of employment issue or argue the issue to the jury, and its counsel stated, "we do not want it stated that the facility has taken the position that the ladies – acted intentionally. That is not our position." (Tr. p. 90). The Court remarked "if they were acting intentionally then the health care facility would not be liable," (Tr. p. 91) to which Defendants' counsel responded, "it would not be, but we're not going to be arguing that in this case, Your Honor." (Tr. p. 91).

When Plaintiffs' counsel sought to verify that Defendants would not later on "do an about-face" and ask the Court "for a charge on intentional conduct that relieves UniHealth," Defendants' counsel replied "we're not going to be, you know, dividing the defense in that sense." (Tr. p. 92). Despite these assurances and Plaintiffs' reliance upon them, and despite the

lack of any evidence or argument on the point, the Defendants' counsel requested a jury instruction and two special verdict questions (#3 and #4) on scope of employment, over Plaintiffs' objections. (Tr. pp. 752, 753).

In the Defendants' response, purportedly filed on behalf of *all* the Defendants, counsel argues strenuously that the evidence showed the nurses were furthering their own agenda, they acted intentionally and outside the scope of their employment, they made "deliberate" false statements and "destroy[ed]" evidence, and are at best on their own in the fault found by the jury. (Response, p. 9). This argument is seriously detrimental to these nurses, and will be on retrial, yet the same counsel is purporting to represent their interests while trying to exonerate their employer by placing all blame on those employees. Such is offensive not only to the spirit of Rule 1.7 but to the letter of the Rule as well. Had Defendants stuck to their word and faced the jury in a united front, such a concurrent conflict would not have arisen or would have, at best, been waivable.

The Court should not permit the Defendants to whipsaw the Plaintiffs in this manner. The jury heard the evidence, heard the arguments, and rendered their verdict, even in the face of UniHealth's attempt to deflect undetached blame onto its own employees. The Defendants then asked this Court to use their change of position to undercut that verdict. What's rewarded will be repeated. The Court should hold the Defendants to their word, and prevent their lawyers from eviscerating the rules regarding concurrent conflicts of interest.

CONCLUSION

For the reasons stated in this and previous filings, Plaintiffs request that the Court reconsider its decision to grant the Defendants' motion for new trial, withdraw the prior order, and permit the jury's decision to stand.

Respectfully submitted,

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August 11, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2012-CP-38-00845

Ralph Williams, Sr., and Linda Williams, Plaintiffs, v. Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care Orangeburg, LLC Defendants.	Transcript of Record

September 2, 3, 4, 5 and 8, 2014
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge, and a jury

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moved for summary judgment in this case and during the course of oral arguments the arguments made regarding the status or what the state of the law was in the state of South Carolina and whether or not the facility could be held liable. The facility remains supportive and 100 percent behind these two nurses, but in the pleadings and in our briefing we said assuming -- which for the sake of argument, these two acted intentionally, we contended to the Court that that would not be within the scope of employment and therefore the facility could not be held liable. We merely want to exclude the plaintiffs from alleging that the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams.

So basically, Your Honor, we're trying to exclude any legal arguments regarding the status of South Carolina law to be presented the jury in opening or otherwise in this case, and I think -- I'm sorry, you look confused.

THE COURT: Yeah. I'm sorry, because you usually can make arguments about whatever South Carolina law is.

MR. ARNOLD: Your Honor, we don't want it to be stated that the facility has taken the position that these ladies --

THE COURT: Uh-huh. (Affirmative response.)

MR. ARNOLD: -- acted intentionally. That is not our position. We only made that argument for purposes of the sake of argument at summary judgment.

THE COURT: Okay, but intentionality, if they were acting intentionally then would the health care facility be liable?

MR. BRING: It would not, but we're not going to be arguing that in this case, Your Honor.

THE COURT: I thought that's what y'all talked about in chambers. So why would they argue -- I thought they were arguing recklessness and not intentionality; is that what y'all --

MR. WARREN: Yes.

THE COURT: -- And I realize that there's some discussion about whether reckless and intentional are the same thing under South Carolina law.

MR. WARREN: Yes, sir.

THE COURT: But -- but they want to keep the health care facility in?

MR. ARNOLD: Yes, Your Honor.

THE COURT: They don't want to get into intentional, is my understanding.

MR. ARNOLD: Yes, sir.

THE COURT: Okay. All right.

MR. FOSTER: So is UniHealth and Peppers and Johnson saying that they don't want to make any arguments about any intentional conduct, they don't want to ask for a jury charge on intentional conduct and how it may effect the case?

MR. ARNOLD: That is not --

THE COURT: I don't know what -- until I find out what the testimony is I'm not going to be able to tell you what the charge is going to be.

MR. FOSTER: Well, are they later going to do an about face and then ask you for a charge on intentional conduct that relieves the UniHealth but puts Peppers and Johnson --

MR. BRING: We're not going to be, you know, dividing the defense here in that sense. Now, as we've talked about in chambers and throughout these pleadings, Your Honor, the element for them to overcome our statutory immunity is to show that the defense did not act in good faith, that is the equivalent, in our minds at least and we think under the law, bad faith and bad faith would imply some kind of intentionality and so there are going to be, we think, charges on the fact that whether we acted without good faith and that's for the jury to determine and you to charge them on, but we're well in advance of that, but for them to argue that the facility's saying that these folks did it intentionally, we've not said that, never said that and we don't want them arguing that to this jury especially until you've charged them, Your Honor.

MR. FOSTER: In the pre-trial brief there's a sentence under the legal issues section that reads if the jury find that they did not act in good faith, that would be the two nurses, the jury must also determine whether the two nurses

you should not hold an attorney's objection against his or her client, nor should you conclude from my ruling on the objection that I favor one side over the other.

Again, I would ask you to pay close attention to all of the evidence presented to you. It is you, the jury, who will determine the facts in this case and as a result you will have to evaluate the credibility, which simply means the believability of each witness who testifies in this case. After doing so, I am assured that you will be prepared to render a fair and just verdict in this case.

All right. Mr. Warren.

PLAINTIFF'S OPENING - MR. WARREN:

Good morning, Your Honor.

THE COURT: Good morning.

MR. WARREN: Good morning, Madam Clerk. Good morning, ladies and gentlemen.

This case, ladies and gentlemen is about a false statement that was made by Ms. Patricia Johnson, as well as, Ms. Josette Peppers against my client. It was one of the most horrific false statements that you can make against a person. They accused Mr. Williams, a CNA of raping an incompetent, incapacitated patient with feces and urine on her.

Now, there were run-ins in the past between Ms. Johnson and my clients, but to begin with on June 21, 2010, about 2:50 a.m. in the morning. Ms. Johnson knock on the door to the

part of defamation when you accuse someone of committing a crime. That's what -- that's why -- the First Amendment has many protection but they do not protect false speech.

Now, the defense, there's going to be evidence about the Omnibus Act, and the Omnibus Act, which is their defense is that they are required by law, which they are, to report any suspicion of sexual assault. And if they don't report it there will be -- they can be charged or fine -- with a fine or crime, however the statute has a very important exception that it does not protect. If you make this statement that is not in good faith. It only protects good faith statements for situation just like this. So if you make a statement that you are required by law to make and you make that statement and it's not in good faith you can be held liable.

Now, what is not good faith? Intentionally asserting false information. This information about I'm trying to find him, I'm looking down this hallway. I'm looking down another hall. I'm looking down a back hall. I'm checking rooms, plural, on this hallway. Then in the midst of that before you put the defamatory statement on what you stated, you saw by Mr. Williams was changing the diapers.

Now, there is a perineal policy, what it is a policy about changing a residents diapers. So they have a policy and, you know, forgive the graphics of the policy, but the policy requires a CNA, when he's changing a female patient, to

we hope, okay.

All right. Mr. Warren, is plaintiff ready to call it's first witness?

MR. WARREN: Yes, sir, Your Honor. Plaintiff calls Patricia Johnson to the stand.

THE COURT: All right. Ms. Johnson, put your left hand on the Bible and raise your right hand and the clerk is going to swear you in.

THE CLERK: Just state your name for the record, please?

MS. JOHNSON: Patricia Johnson.

(WHEREUPON, Patricia Johnson was sworn to tell the truth.)

THE CLERK: Thank you. You may be seated.

THE COURT: Tell me when you're comfortable, okay.

MS. JOHNSON: Okay.

THE COURT: You ready?

MS. JOHNSON: Yes.

THE COURT: All right, Mr. Warren.

PATRICIA JOHNSON - DIRECT EXAMINATION

BY MR. WARREN:

Q Ms. Johnson, would you please state your full name for the record, please?

A Patricia Johnson.

Q And Ms. Johnson, where are you currently employed?

A UniHealth Post-Acute Care of Orangeburg. 755 Whitman

Street.
Q Okay, and how long have you been there?
A Since 2005.
Q Okay. And what is your job there?
A I'm a Licenced Practical Nurse.
Q How long have you been a licenced practical nurse there?
A Five years.
Q And prior to working as a licensed practical nurse what did you do?
A I was a Certified Nursing Assistant.
Q Okay, and you were actually terminated from UniHealth at some point in time; is that correct?
A Yes. I was removed from the roster and the reason why I was removed from the roster was I was going to school to get my nursing degree and I worked as needed and as needed we had to work at least one time within that month and if I didn't work that one time we would be removed from the roster. I talked to the administrator and I told her that now I was in school I wasn't able to work, and she say well I have to remove you from the roster and when you finish school you can come back and you've got a job.
Q Okay.
A And that's what happened.
Q Okay. So your statement was that you weren't discharged or terminated; is that correct?

MR. WARREN: This is Plaintiff's Exhibit No. 4.

MR. BRING: When you show something new if you could just let us know. Thank you.

THE COURT: Okay.

BY MR. WARREN:

Q Showing --

MR. WARREN: Plaintiff is showing Ms. Patricia Johnson Exhibit No. 4, map of the facility.

BY MR. WARREN:

Q Now, Ms. Johnson, is this your nurses station at the nursing home; is that correct?

A Yes.

THE COURT: Now, if you want her to step down.

Ms. Johnson, you can step down and you can point out anything you need to point out.

BY MR. WARREN:

Q This is the nurses station; is that correct?

A This is the nurses station.

Q Okay, and what is this hall, this hall is called what?

A This is the rehab hall.

Q Is this the back hallway?

A This is the back hall.

Q Okay, and this is the middle hall?

A This is the middle hall.

Q Thank you.

MR. WARREN: Plaintiffs offer Exhibit No. 4.

MR. ARNOLD: Your Honor, I believe we've already --

THE COURT: Yes. I think -- ladies and gentlemen, part of the time that we were doing things, organizing things, the plaintiff and the defendant agreed that certain exhibits were already in evidence and so you can just remind those that it is in evidence.

Exhibit No. 4 in already in evidence without objection. Okay. Thank you, sir.

BY MR. WARREN:

Q Now, do you recall the persons that were working the third shift on September 20, 2010?

A Well, Ralph Williams was working and Pat Bruce. I can't remember who was on the other side. So it was Pat Bruce and Ralph Williams.

Q Okay. You all had the CNA assignment sheet that night; is that correct?

A Yes.

Q The CNA assignment sheet will list the person there; is that correct?

MR. ARNOLD: What exhibit is that?

MR. WARREN: Plaintiff is showing the witness Exhibit No. 35A.

BY MR. WARREN:

Q Could you read those names?

A Yes, I can read the names.
Q And read it into the record?
A It has Alicia, Brady, Patricia and they have Ralph, but they have a line drawn through his name, but he was at work.
Q Okay. Now, the CNAs were assigned to rooms; correct?
A Yes.
Q And their rooms were assigned -- Ralph was assigned to Rooms 39 through 64; is that correct?
A Yes.
Q So 39 through 64 would be -- could you stand up, please. Ralph had all of these rooms on these hallways.
MR. WARREN: Plaintiff is showing witness Exhibit No. 35A.
BY MR. WARREN:
Q So Ralph had this section of the building; correct?
A Yes.
Q And on this sheet Alicia had Rooms 1 through 10?
A Yes.
Q Which is down here, near the residents lobby; correct?
A I don't know what rooms she had. That's what that said, that's what she had.
Q She had one through 10?
A If that's what that paper said that's what she had.
Q Okay, and Brady had 11 through 28?
A Yes.
Q And Patricia had 29 through 38?

A Yes.
Q And Ralph had all these; is that correct?
A He had all these rooms, but all these rooms were not filled. Some of them were working -- you need to realize he didn't have no more patients than anybody else. The patients were divided evenly. It look like he had the majority of the residents, but he didn't.
Q Okay, and do you know the rooms that were empty?
A I can't recall at this time.
Q Now, you stated that -- isn't it true you wrote a statement in the nursing notes alleging Ralph was sexually assaulting the resident in 39A?
A I wrote a statement --
Q Uh-huh. (Affirmative response.)
A -- that statement that --
Q Could you read --
A Could I stand, Your Honor -- and describe --
THE COURT: Hold on a second. I know he's got it blown up. I think they've got a statement right there.
MR. WARREN: This is plaintiff showing the witness Exhibit No. 8.
BY MR. WARREN:
Q Could you read that for the jury?
A This nurse making rounds and looking for CNA Ralph Williams to check on another resident and I checked all the

rooms on the back hall and couldn't find him. This nurse then started checking the rooms on the middle hall and when I walked into Ms. Mayes room I see CNA Ralph Williams with his pants down climbing up on the resident. I stated, what are you doing. CNA Ralph Williams stated, please shut the door. At this point, I went to get the other nurse, Josette Peppers to witness. When we walked back in the room he was fixing up his clothes and the room was dark and the covers was messed up on the bed. And I got at 3:00 a.m. manager notified and at 3:25 police department notified. At 4:00 a.m. responsible party, Bertha Tyler, sister, was notified.

Q Thank you. So at 3:25 the police were notified?

A That's what I got on my statement. Those are estimated times. I didn't call the police. Josette calls the police.

Q Right. You didn't call them; correct?

A No, I didn't call them.

Q Okay. Now, Ms. Johnson, I'm showing you photographs, Plaintiff's Exhibit No. 6. Plaintiff's No. 6 is a grouping of three photographs. That last photograph -- this is a photograph of resident 39A bed; is that correct?

A It looks like her bed.

Q This next picture is a photograph looking into the room; is that correct?

A Yes.

Q This next photograph is a photograph of a view of the

hallway; is that correct?

A Yes.

Q So we have a picture of the room, a picture looking into the room, a picture of the hallway, picture of the rest of the hallway.

Now, Mr. Williams used to push a cart around; is that correct?

A Yes.

Q And CNAs have a cart that supposed to be outside the room; right?

A Yes.

Q And Ralph was in Room 39A with the cart outside the room; is that correct?

A Yes, he was.

Q You stated in your nurse's statement that you were looking up and down these rooms. How many rooms did you go in?

Q When I started looking for Ralph Williams I didn't count how many rooms I went in. I went in all the rooms in the back hall. I heard an alarm, a bed alarm was ringing. I was near the nurses station, heard the bell alarm ringing and it was coming from the rehab direction. I ran down that way and I saw -- and one of the residents was getting out the bed and I assisted her back to her bed. Then I started checking -- I didn't look down that way towards 39A, I looked to the rehab

MR. WARREN: Plaintiff's Exhibit No. 8.

THE COURT: Okay. That's the one she just read?

MR. WARREN: And I asked her to read two sentences.

THE COURT: Okay.

MR. WARREN: Just to read the sentences.

THE COURT: Okay.

MR. WARREN: Her testimony is that she didn't check the middle room on the --

THE COURT: I understand.

MS. JOHNSON: No --

THE COURT: Ms. Johnson, here's the sad truth about the way the trial goes is he gets to ask questions and once he asks a question you need to respond and then you can explain it.

MS. JOHNSON: Yes, Your Honor.

THE COURT: Yes, ma'am.

MR. WARREN: Thank you, Your Honor.

BY MR. WARREN:

Q Would you just read this sentence to here?

A This nurse making rounds and was looking for CNA Ralph Williams to check on another resident I checked all the rooms on the back hall and couldn't find him. This nurse then started checking rooms on the middle hall.

Q Stop. Now, let me see that. So you started checking rooms, rooms, plural, on the middle hall. His cart's right

here outside of Room 39A and you start checking the rooms looking for Ralph correct?

A Yes.

Q Now --

MR. WARREN: Your Honor, I'm showing the witness Plaintiff's Exhibit No. 11, which is the perineal policy.

THE COURT: the what policy?

MR. WARREN: The perineal policy, Plaintiff's Exhibit No. 11.

THE COURT: Okay.

BY MR. WARREN:

Q Okay. Now, could you just read the number one on the perineal policy. Number one, what does it state?

A It state provide for privacy.

Q All right. Thank you. Could you read, just read number two?

A Perineal care is given during the daily bath and after voiding or bowel movement.

Q Now, would you read the procedure, what are you required to do, starting with number one?

A Wash hands.

Q Now, read number two?

A Assemble necessary equipment and take the patient --

Q Now, that equipment that we just talked about is on -- that equipment, isn't it true, the equipment is on the cart

right outside the room, isn't that correct?
A (No response.)
Q On Ralph Williams cart he keeps his equipment --
A It should have been on the cart, yes.
Q -- is that correct?
A Yes.
Q Now, read number three.
THE COURT: Is that the same thing?
MR. WARREN: The same exhibit.
THE COURT: The same exhibit?
MR. WARREN: Yes, Your Honor.
A Before entering the room identify yourself and explain to the patient what you are going to do.
BY MR. WARREN:
Q Now, could you read number four?
A Provide privacy by closing the door to the room and pulling the cubicle curtain all the way around the bed.
Q Okay. Now, can you stand up. Is this the curtain that is required to be pulled around the bed?
A Yes.
Q Okay. Thank you. So this curtain -- now, read number three?
A Knock before entering the room. Identify yourself and explain to the patient resident what you are going to do.
Q Okay. And if you have to change a diaper you have to

tell them you have to change a diaper, right?
A Yes.
Q Now, read number four?
A Provide privacy by closing the door to the room and then pulling the cubicle curtain all the way around the bed.
Q So when -- so isn't it truth that when Ralph is in this room to have the door closed; isn't that true?
A He's required --
Q Just answer the question yes or no?
A Yes. But --
MR. ARNOLD: Your Honor, if he'll allow her to respond.
THE COURT: I understand. And you know she needs to answer it, she needs to answer it yes or no but she can explain it.
MR. WARREN: Okay.
THE COURT: Okay. So Ms. Johnson go ahead.
A Yes, he's required to close the door. He's required to provide privacy, but the lights have to be on. He not supposed to have the lights off.
BY MR. WARREN:
Q Now, stop right there. There's two sets of lights. There's a light right over the bed, isn't that right?
A The switch --
Q And there's also a light switch --
A Yes.

Q -- and so if it's night time and he doesn't want to disturb this other patient he can cut the patient's light on the room; isn't that correct?

A Yes, he could, but the lights were off.

Q And the curtain was wide open?

A The curtain was pulled, but it was some space where I could see when I opened that door.

Q Okay. Where in this statement does it say there was space where you could see?

A Nobody ever told me I had to write every detail --

Q All right. Now, --

A -- in my statement.

Q -- Okay, well, let's take your statement. Isn't there an alarm in this room?

A It's an alarm in the room.

Q Okay. Did you press the alarm?

A No, I didn't. I didn't press the alarm because the alarm is at the head of the bed in between the two bed, and I would have had to reach over, climb over Henrietta Mayes or either go around and confront Ralph Williams and I was -- I didn't do that.

Q Okay. Isn't it -- so you stated there was no doubt in your mind he was going to rape her, isn't that right?

A No doubt in my mind if I had not walked in that room. I believe that. Nobody can't tell me nothing different. I

believe he would have had sex with her.

Q And you went down the hallway, you didn't press the alarm --

A No.

Q -- because you didn't want to confront Ralph --

A No. I didn't want to climb over -- I wasn't going to climb over the resident and try to reach this panic button or go around and confronting him putting me and the patient, I was not going to do that.

Q So you left the patient when there was no doubt in your mind he was going to have sex with her, you left her?

A I didn't abandon the patient. I didn't abandon the patient. When he yelled at me, he said, please shut the door. He wanted me out of that room. He knew he was busted. He wasn't me out of that room. I looked to the right. I looked to the left and Josette was the only person I saw.

Q And so you stated that you saw Josette Peppers; is that correct?

A I saw Josette Peppers.

Q Did you yell to her?

A No, I didn't yell.

Q Did you shout?

A No, I didn't shout.

Q But you saw her?

A I saw her.

Q Now, the police came and you made a statement; is that correct?

A Yes, I did.

Q And --

MR. WARREN: I'm showing the witness Plaintiff's Exhibit No. 9. Voluntary statement.

BY MR. WARREN:

Q Now, the last sentence on this statement, could you read that sentence?

A There is no doubt in my mind if I had not walked in the room he would have had sex with resident.

Q Thank you. Now, Ms. Johnson, did you -- you gave a prior statement, sworn testimony in this case; isn't that correct?

A Yes.

Q Now, in that testimony didn't you state that you changed her and got all that mess off of her --

MR. BRING: Your Honor, this has is not impeachment.

MR. WARREN: I'm move on.

MR. BRING: He can use it for impeachment purposes but not beyond that.

THE COURT: Okay. If she testified the same way earlier we don't go over it again.

MR. WARREN: Okay.

THE COURT: Thank you, sir.

MR. WARREN: Thank Your Honor.

BY MR. WARREN:

Q Now, prior to the police coming to the scene, did you change the resident?

A No, I did not change the resident.

Q Now, I'm showing you a copy of your former testimony and you was asked --

THE COURT: Okay. Before -- if you don't mind, Mr. Warren, if you'd let us know the page and the line number?

MR. WARREN: Page 85. The question --

THE COURT: What line?

MR. WARREN: Line 1 and her answer is at Line 7. I'll read --

THE COURT: And give her a chance to look it over and --

MR. WARREN: Okay.

THE COURT: And ask her if she recalls the testimony.

MR. WARREN: All right.

THE COURT: Okay.

BY MR. WARREN:

Q Ms. Johnson would you look over that testimony. Now, the question is when you got Mr. Williams out of the room until law enforcement showed up and y'all went back in with law enforcement did you or anybody in your presence go in and do anything with the resident as far as clothing or anything of that nature while waiting for law enforcement. Did you read your answer starting at Line No. 7?

A At Line No. 7 it said, no, we had -- we changed her, we got all that stuff off of her, put a clean diaper on her. But this was after the law enforcement came. When they came that's when we changed her diaper.

Q So the diaper had feces and urine?

A No, it did not.

Q Your statement, your statement just stated that you changed her and got all that mess off of her?

A No. The mess I was replying to was her gown. It was no feces. No feces.

Q What's mess?

A The gown. She wet and then we got this t-shirt off of her and the gown, and we gave it to the law enforcement. The DON was in the room. The CNA was in the room. We change here while they was there. We did not touch her until they came to the facility.

Q Now, you stated that you didn't do anything until law enforcement got there. I'd like for you to review your former testimony, Lines 11 through 16 where you stated that --

MR. BRING: What page, Your Honor?

MR. WARREN: I'm on same page, Page 85, just further down at Line 11 where she's asked did you do anything before law enforcement got there and you said, no.

MR. BRING: Can you read the question?

MR. WARREN: I'll read the question.

BY MR. WARREN:

Q I'll read the question. Okay. So my question was when y'all left the room and got Mr. Williams out of the room until law enforcement got there did y'all do anything as far as changing her diaper or changing her clothing or doing anything with her bedding? No, no -- and your answer is at Line No. 16?

A (No response.)

Q Read those three words.

A I did not change her, really not touch her until law enforcement came.

Q Could you please read your answer? It's three words.

A Did y'all do anything as far as changing her diaper or changing her clothing or doing anything with the bedding? No. Nothing. And that was referring to the resident. I didn't do anything to the resident.

Q You didn't do anything to the resident?

A I did not change her until the officers arrived.

Q This -- your statement, your testimony was that you didn't change her or do anything until law enforcement arrived?

A I did not change her until the officers arrived.

Q Now, you also stated in your prior testimony that Mr. Williams had his buttocks exposed --

MR. BRING: Your Honor, this is a complete -- do you want

to handle this?

THE COURT: Okay. Mr. Warren, if you don't mind ask her any of the questions that you want to ask her about what happened.

MR. WARREN: Yes, sir.

THE COURT: Okay?

MR. WARREN: Okay.

THE COURT: If you believe that her answers are different you may then cross-examine -- you may ask her to review the deposition testimony.

MR. WARREN: Yes, sir.

THE COURT: If you just go through and let her testify, okay?

MR. WARREN: Okay.

BY MR. WARREN:

Q Now, Ms. Johnson, you gave this prior to the police statement; is that correct?

A Yes, it is.

Q Where in that statement does it state -- did you make testimony -- first let me ask you this. Was Ms. Mayes breast exposed when you saw her through the curtain?

A Yes.

Q Okay. Now, where in any one of these statements did you say that her breast was exposed?

A I don't have -- I didn't put any details, no details in

my statement --
Q Okay.
A -- that her breast were exposed.
Q Right.
A It's no where in my statement that I saw his naked butt.
Q Right.
A But I saw it. Nobody said I had to put every detail in my statement.
Q Now, did you tell Josette Peppers that he was having sex?
A No, I did not.
Q Okay. So her testimony would be incorrect?
A I did not tell Josette that he was having sex.
Q Now, rather than pressing the alarm -- your testimony was rather than pressing the alarm, climbing over top of Mr. Williams you went and got Josette Peppers; is that correct?
A I did not press the panic button. The panic button was at the head of the bed in between the two residents. I would have had to climb over Ms. Mayes or go around and confront Ralph.
Q Now, in your statement that you wrote to the Orangeburg Police Department, you walked -- did you run into the room or did you walk back into the room?
A We went into the room.
Q Did you walk or did you run back into the room?
A We entered the room.

Q Did you walk or did you run?
A We entered the room. When we hurried back to the room. When we entered the room he was fixing his pants and he sat down in the chair and put his head down.
Q Isn't it true that your statement says when we walked back into the room --
A When I said when we walked back into the room we entered that room. That's what we observed, we observed him tying, fixing up his clothes and he sat in the chair and put his head down.
Q So he didn't run?
A No, he didn't run.
Q And he waited until the police came?
A Yes, he did.
Q And you stated that you knew he was busted?
A He knew he was busted.
Q Uh-huh. (Affirmative response.) And that's why he just stayed there. Isn't it true that he didn't even know that you were making this allegation against him?
A Call it however you want to call it, but he knew he was busted.
Q And that's why he just stayed there?
A He knew he was busted.
Q Did he try to jump off the bed?
A He knew he busted.

Q I asked you a question. Did he try to jump off the bed?
A He froze. I stopped him from committing this act. I stopped him and he froze. He yell at me please shut the door. He didn't ask me to help him. He didn't ask me, Ms. Johnson, can you help me with this resident.
Q He said --
A He yelled, please shut the door.
Q Didn't he say please shut the door because the curtain was back?
A No. He said please shut the door. He meant for me to get out. He knew he was busted and he froze. He froze.
Q And isn't it true, you just read from your policy what the policy states that he's required to have a curtain pulled around the bed; isn't it true that you pulled the curtain back?
A I didn't pull nothing back.
Q You didn't -- did you walk into the room?
A I entered the room. I was still in the door. I never went all the way in.
Q So you see the curtain in the doorway.
MR. WARREN: I'm just showing the plaintiff -- the witness has identified photograph that's Exhibit No. 6.
THE COURT: And if you'd hand that to her. It would be easier if you want to hand her the stuff.
MR. WARREN: Yes, sir.

person at the time.

BY MR. WARREN:

Q You state in those documents that you knocked on the door?

A (No response.)

Q And those documents that you are reading are Plaintiff's Exhibit No. 8 and Plaintiff's Exhibit No. 9. Do you state in any one of those exhibits where you knocked on the door?

A Like I said before, I didn't write every detail. Nobody said I had to write every detail. I knocked on the door and I went in.

Q Now, you stated you didn't write every detail, but on the voluntary statement, which is Plaintiff's Exhibit No. 9, could you read the last sentence on that statement?

A If I had not walked in the room he would have had sex with Ms. Mayes.

Q Now, on the nursing notes, did you include that statement on the nursing notes on Plaintiff's Exhibit No. 8?

A No.

Q Now, at your prior criminal trial testimony, didn't you state that Mr. Williams was totally naked and in the bed with Ms. --

THE COURT: Mr. Warren. Mr. Warren. Ask her just what did, what she saw and like that.

MR. WARREN: Let me back up a bit.

BY MR. WARREN:

Q Ms. Johnson, you indicated you walked in to this room, resident 39A; is that correct?

A Yes.

Q Isn't it true that you gave prior testimony that Mr. Williams was totally naked and on top of her?

A I didn't say totally naked. I saw his naked butt.

Q You said he was butt naked and in the bed?

A I saw his naked butt. His naked butt was exposed to me. I saw his naked butt, all of this.

Q Uh-huh. (Affirmative response.) Now, in looking at Plaintiff's Exhibit No. 8 and Plaintiff's Exhibit No. 9, where do you state that you saw Mr. Williams naked butt?

A His pants was down. I didn't put naked butt, but that's what I saw, his naked butt. He was in the bed, he was climbed over her and he was climbing over her like he was about to have sex with a woman. Climbing over the bottom of the bed over her, lights out, in the dark. No business in the bed. No business with the lights out.

Q Now, your statement -- now, your statement that you gave to the OP, the Orangeburg Police Department, your statement states that his pants were down to his ankles?

A I did not say that.

Q What did you say?

A I said his pants was down and he was climbing on top of

the resident.

Q Wouldn't it be an important fact that he's about to have sex that you put his naked butt exposed?

A Just what I said I put. His pants was down. He was climbing on top of the resident. I saw his naked butt. That's what I put. I didn't put every detail --

Q So he --

A -- in my statement.

Q -- was --

A His naked butt.

Q So he was naked and in the bed?

A His naked butt. That's what I saw.

Q So he --

A Whether he had his shirt, I don't know, but he had his pants -- his naked butt was exposed to me. I was in shock. He froze. He yell at me. Please shut the door. Please shut the door.

Q And you obeyed?

A I didn't shut the door.

Q Now, was he in the bed?

A He was in the bed climbing on top of the resident.

Q And her breast were exposed but you don't indicate that in any of your previous statements?

A I didn't put any details in my statement about Mr. Williams.

Q Don't you think it would have been important to put in there if he was totally naked?

A I didn't say he was totally naked.

Q Okay. And now in light of Mr. Williams trying to have sex with her you run down the hallway, you don't try to stop it; is that correct?

A I stopped it when I opened the door.

Q Uh-huh. (Affirmative response.)

A I stopped it. He froze. I backed out the room. I saw Josette. I needed to get help with Mr. Williams.

Q And how many people were in the facility that night, you testified earlier, was eight people in the facility; is that correct?

A Two CNAs on my hall. I can't remember the exact number, but it was a nurse supervisor --

Q Now, when you pressed the alarm isn't everybody in the facility required to come to the room?

A Yes.

Q The room -- it is a flashing light, is that correct?

A Yes, it is.

Q And also the alarm, when you hit the button it sounds the alarm, isn't that true?

A You hit that button that light flash outside the door.

MR. WARREN: No further questions at this time.

THE COURT: You want to take a break now?

A At UniHealth Post-Acute Care, Orangeburg.
Q And you're an LPN there?
A LPN, yes.
Q And how long have you been an LPN?
A Five years.
Q Just to remind the jury, have you always been an LPN?
A No. I used to be a Certified Nurses Assistant.
Q And that's a CNA?
A Yes.
Q And so did you get a promotion from CNA to LPN?
A Yes.
Q And did you have to go to school to become an LPN?
A Yes.
Q Why don't you tell the jury a little bit about your schooling and your educational background?
A I graduate from Orangeburg Wilkinson High in 1982. I attended Calhoun County High School Certification in CNA in 1997. I went to back to school at OC Tech in 2009.
Q So when you went back to school did you go during the day?
A I went during the day.
Q And after you became an LPN you went back to UniHealth of Orangeburg?
A Yes.
Q What are the job duties of a CNA?

A Midnight shift.
Q And what are your duties and responsibilities during that shift?
A My duties and responsibilities is to take care of the residents, monitor the CNAs. I pass out medicines, and I also did some treatments at night.
Q Are most of the residents asleep at that time?
A Most of them sleeps.
Q Are there many visitors?
A No.
Q Doctors coming in and out?
A No doctors.
Q Basically just the staff, the patients, that's who is at the facility at that time?
A Yes.
Q Not much going on between midnight and 5:00 a.m.?
A No.
Q What about the duties and responsibilities of the CNA during that midnight shift?
A CNAs are required to answer the call light, required to make their rounds every two hours and when I say make rounds, they check on the patient, turn and reposition, change their diapers, just basic patient needs.
Q So it's relatively quiet during that time period?
A Yes.

Q I want to talk about the events of June 21, 2010. Why don't you tell the jury in your own words what happened?
A I was near the nurses station and I heard a bed alarm ringing and it was coming from the rehab side, which is the back hall. So I ran down that hall to see who alarm it was, because we has patients that has bed alarm is because they're a fall risk. So the resident in Room 50, she was getting out the bed. So I assisted her back to the bed. She was wet and then I start looking for Ralph Williams because he was assigned to that patient. So I went in all the room on the back hall. Then I came back up. I went to the middle hall. I looked in those -- I looked in those rooms and I saw his cart parked at Room 39 and I went -- I said, well, he's in that room. So I went there and knock on the door and when I pushed the door open I saw him climbing on top of Ms. Mayes, his pants was down, the lights were out and he yelled at me, please shut the door, and I backed out. He didn't ask me, can you help me. I backed up. I looked to the right. There was nobody at the nurses station, looked to the left. Josette was the only person I saw. I said to her, hurry, come on. I said, Ralph is trying to have sex with Ms. Henrietta, and we hurried back, and when we got back to the room he was fixing up his clothes and he sat in the chair and he put his head down.
Q Before he said please shut the door, did you say anything

to him?
A I said what are you doing. That's when he yelled and told me to please shut the door. And that's when I backed out the room.
Q I'm going to grab the facility map that's right there. When you the resident -- you said the bed alarm that was going off was in Room 50; is that correct?
A Yes.
Q Okay. And what's it mean when the bed alarm is going off?
A That means the resident is trying to get out the bed and their bed alarm is going off and you need to go and see.
Q Why would a resident have a bed alarm on that bed.
A It's for fall and we puts alarms on them so we can hear if they try and get out the bed.
Q And that resident in Room 50, was she at risk for falls?
A Yes.
Q And did you put her back in the bed?
A Put her back in the bed.
Q And when you put her back in the bed did you notice that her briefs were soiled?
A Correct.
Q And so that is why you went on this back hall looking --
A That's why I was on the back hall, because I saw him down there earlier that night, so I started looking in the rooms on

the back hall first.
Q And when you went to Room 50 had you come from the nurses station?
A I came from the nurses station.
Q And was anyone at the nurses station with you at that time?
A I was by myself.
Q Had you seen anybody before you went to Room 50 on the hallway?
A Nobody on the hallway.
Q So you checked these rooms that you've already explained were not completely all occupied, right?
A No, some of them were empty.
Q So when you came back around you were going to check this middle hall, correct?
A Yes.
Q And you went to Room 39 because --
A I saw the cart.
Q -- the cart was there, right?
A Yes.
Q Okay. Thank you. Now, did Ms. Mayes reside in Bed 39A?
A Yes.
Q Was she in that room alone?
A No, there's another resident there?

Q What is the condition of her roommate or resident?
A Her roommate is a dementia patient and she was not aware of her surroundings.
Q When you say not aware of her surroundings?
A She was not aware of what was going on.
Q So she was not very responsive and probably wouldn't have been able to respond to anything?
A Would you expect a CNA who cares for the residents in Room 39 to know about the status of those residents?
A Yes.
Q Did Ralph Williams routinely care for the residents in Room 39?
A Yes.
Q And now the cart outside the room, just because the cart is outside the room doesn't necessarily mean that the resident is in that room, does it?
A No. They have the cart outside the room and they can be in another room helping somebody else.
Q So if it's in the middle of the hall they can be in any room?
A Yes.
Q Now, I want to go back to your description of Mr. Williams position on the bed when you went in that door?
A Okay.
Q Tell me about it?

A When I opened the door he was climbing on top of -- climbing on top of Ms. Mayes, his -- his naked but was showing, the lights were out and he was climbing on top of her like he was getting ready to have sex with her, like a man getting ready to have sex with a woman.

Q Was he fully clothed?

A I saw his naked butt.

Q Have you ever said he was completely naked?

A No.

Q And when you've used the term naked you use that to mean his naked butt?

A His naked butt.

Q Naked from the waist down?

A His naked butt.

Q Okay. Describe for me the position in the status of the resident in Bed 39A?

A The resident laying on her back. Her eyes open and she was just looking.

Q Did she yell out to you?

A I don't think she know what was happening to her.

Q Was she clothed?

A Her gown was pushed up over her breast. Her breast was exposed.

Q Any other body parts exposed?

A I couldn't see anything else because he was over her.

Q Could you see anything from the waist down?
A I couldn't -- he was over her. I couldn't see anything but her breast.
Q Do you know if the diaper was on or off?
A No.
Q Could you see her vagina?
A No.
Q Mr. Warren asked you about your sworn statement, that you never stated or wrote that her breast were exposed?
A I didn't write any details in my statement about Henrietta Mayes.
Q So you didn't write any details about what body parts you saw?
A Right.
Q Were you interviewed by the police officers?
A I was interviewed by officers and I told them everything.
Q Did you provide any details about the body parts that you could see?
A Yes.
Q When the officers asked you to do the voluntary statement, did they ask you to put every single detail on that?
A No one asked me to put every single detail.
Q Did you provide some of the additional information

Q And were the light on in the hallway?
A Lights were on in the hallway?
Q So that depicts what you were able to see, your view?
A Yes.
Q And you're 100 percent sure the lights were off in the room on June 21, 2010?
A Yes.
Q And then how were you able to see?
A The light from the hallway shining into that room, that was how I was able to see.
Q When you opened the door you saw Mr. Williams on top of Ms. Mayes, what did you do?
A I yelled at him. I say, what are you doing? And that's when he yelled back at me, please shut the door. He didn't ask me to come help me. I'm trying to change the resident. He just yelled at me.
Q And so it wasn't a casual, hey, what are you up to?
A No.
Q It wasn't a hey, what are you doing?
A No.
Q It was a what are you doing, something's wrong?
A Yes.
Q What did Mr. Williams say in response?
A He yell at me. He say, please shut the door, and he froze. I stopped him from climbing any further on Ms.

Mayes. I backed out the room, and Josette was the first person, the only person that I saw. Nobody else was there. Nobody was in the hallway. Nobody was at the nurses station. Josette was the only person that I saw and I hurried to her.

Q Now, after he shouted back at you, did he kind of freeze?

A He froze.

Q Like he'd been caught, literally, with his pants down?

A Yes.

Q In your opinion, did you stop him from what he was doing?

A Yes, I did.

Q You stopped him from climbing further up on Ms. Mayes?

A Yes, I did.

MR. FOSTER: Objection. Leading.

THE COURT: If you don't mind just asking her --

MR. ARNOLD: Under Rule 11©, Your Honor, I thought I was allowed to ask leading questions.

THE COURT: You mean, because she is being cross-examined.

MR. ARNOLD: Yes, Your Honor.

THE COURT: Normally that would be the case, but -- it's so much more effect if you just ask her the question. She can tell it that way.

MR. ARNOLD: Yes, sir.

BY MR. ARNOLD:

Q And what did you do next?

A I backed out the room. I saw Josette. We hurried back to the room. When we got to the room he was fixing his pants. He sat down in the chair and he put his head down.

Q I believe you said you looked up and down the hall?

A Yes, I did. I looked up and down the hall.

Q You looked to the left?

A I looked to the left, I looked to the right. Josette was the person I saw. I got her. I told her to come on. I said, Ralph is trying to have sex with Henrietta, and she came. We hurried back. We went in the room, and he was fixing his clothes, tying his pants.

Q You said earlier when you went and looked in all these rooms you came around here and that's when you saw -- how long did it take you to come around here and then go to that room, Room 39?

A It didn't take long.

Q It didn't take long. Was anybody at the nurses station when you

A Nobody was at the nurses station.

Q Was anybody at the nurses station when you backed out of the room?

A No.

Q First person you saw was --
A Josette.
Q About how far down the hall was she?
A She was about eight to 10 rooms.
Q So about right here?
A About right here.
Q And was she facing you?
A She was walking across.
Q So walking across?
A Uh-huh. (Affirmative response.)
Q Okay, and that's -- you ran towards her?
A Yes.
Q Ms. Davis was the very first person you saw on that night?
A Yes.
Q Did you see anyone else?
A No.
Q If someone was at the nurses station would you have gone there?
A I would have gone there.
Q Did you bypass anyone else?
A No.
Q You didn't seek out Josette for some other reason did you?
A No.

Q Why did you run to her?
A She was the only person I saw.
Q Did you scream to her?
A No.
Q Did you hit the alarm?
A No.
Q Where is -- looking at 26B -- why don't you stand up for a second. Where's the alarm in that room?
A This is the alarm.
Q Why didn't you go hit that alarm?
A Because I would have to climb across Ms. Mayes and try to get to this alarm or go around and confront Ralph Williams.
Q Okay. You can sit back down. You were here in the opening arguments when Mr. Warren said that there was an alarm just two feet away and you could hit it like that. Is that true?
A That's not true.
Q Why is that not true?
A Because the alarms in all the room is in that position.
Q I'm going to hand you what is marked Defendant's Exhibit No 26H. I've provided you with a copy of 26H, as well. What does this picture depict?
A This is the picture in the first incident room to the right is the sharps container where you put the sharps and

A This is another socket.
Q Is there any alarm device on this wall in this room?
A No.
Q So you couldn't have stepped two feet and just hit an alarm?
A No, because I never went all the way in the room. I was in the doorway.
Q There isn't an alarm here for you to hit?
A There isn't an alarm. No.
Q The only alarm in that room is between the two bed, correct?
A This is the alarm, this is how the alarm in every room in the facility, every bed.
Q Okay. Thank you very much. So you were startled by what you saw?
A I was shocked.
Q The first person you saw was Josette?
A First person I saw was Josette.
Q And what did you do?
A I told Josette, I said, hurry, come, Ralph is trying to have sex with Henrietta.
Q Did you rush to Josette?
A I rush to Josette.
Q And when you left did you close the door?
A I did not close the door.

Q Did you ever turn on the lights?
A Never turn on the lights.
Q So you left the door open?
A I left the door open.
Q Plaintiff's counsel, Mr. Warren, suggested you abandoned the patient; is that true?
A I didn't abandon the patient. I stopped him from what he was trying to do. He froze. I went to get help. Ms. Mayes needed help. I went to get help.
Q So in your assessment, you confronted him, stopped the danger --
A I stopped him.
Q And you needed additional help to take care of the situation?
A Yes.
Q Now, when you went up to Ms. Davis, did you have an in-depth conversation?
A No.
Q How old could it have been?
A 30 seconds. It wasn't a minute. 30 seconds, no more than 30 seconds.
Q If that?
A If that.
Q And your message was hurry, come on?
A Hurry come on.

Q And how did Josette react?
A We hurried. We hurried back down there together.
Q Did y'all just walk back to Room 39?
A We hurried. We rushed.
Q Rushed. How much time do you think passed between the time you were standing in the doorway, went and got Josette and returned?
A 30 seconds.
Q Okay.
A 30 seconds.
Q I'm going to hand you what has been marked as Defendant's Exhibit No. 26M.
Mr. Arnold: I've provided you all a copy of Defendant's 26M.
BY MR. ARNOLD:
Q What is that picture depict?
A This is a picture of the outside of 39.
Q And is the door closed?
A The door is closed.
Q Is that an accurate depiction of the door at the time you and Josette returned to Room 39 on June 21, 2010?
A Yes.
Q Were you present when this picture was taken?
A Yes.
MR. ARNOLD: Your Honor, Defendants would move to admit

Q The lights were still off?
A The lights was still off. He didn't even turn the lights on.
Q Was Ralph still on the bed with Ms. Mayes?
A No, he was standing up fixing his clothes and he sat in the chair.
Q Where was the resident in Bed 39A?
A She was in bed, still on her back and the covers were strowed over here.
Q Could you see any of her body parts at that time?
A No.
Q So you couldn't see whether her gown was still pushed up?
A No.
Q When you say the bedding was thrown sloppily over her, what do you mean by that?
A It was just like strowed over her. It wasn't neat. It was just throwed across her.
Q I'm going to hand you a copy of what I've marked as Exhibit 26C.
MR. ARNOLD: You all have a copy of that.
BY MR. ARNOLD:
Q What does 26C depict?
A This is a picture of Ms. Mayes room.
Q It was room -- this is a picture that was taken inside

that she indicated that the curtain would have been there on the 26 --

MR. ARNOLD: On June 21, 2010.

THE COURT: -- on June 21. Okay. So the jury should understand that there should be a curtain in that picture as well. Okay. Thanks.

(Defendant's Exhibit No. 26C, photograph, was marked and entered.)

BY MR. ARNOLD:

Q And is this blown up picture of 26C?

A Yes.

Q And if you'll step down. Show us where Ralph Williams was when you came back in the room?

A He was standing in his area fixing his pants and he sat in the chair and he didn't say anything.

Q What kind of pants did he have on?

A Nursing uniform. It had a drawstring.

Q Where was the resident in Room 39?

A She was on the other side of this curtain.

Q The other resident?

A 39B.

Q What about Ms. Mayes?

A Ms. Mayes was laying on her back, covering just throwed over her.

Q Did she say anything to you when you entered the room?

A She didn't say anything. She couldn't. I don't think she know what to say.

Q Is she able to communicate?

A She has difficulty talking because of the stroke and she only say yes, no.

Q If you'll return to the chair. So he sat in the chair, and that chair is depicted in 26C?

A Yes.

Q And did he say anything?

A He say, what?

Q What did you and Josette do in response?

A Josette asked him to come out the room.

Q So Josette asked him to leave the room.

A Josette asked him to leave the room.

Q Did he leave the room?

A He came out the room.

Q He didn't say, like, why?

A No.

Q He didn't say I'm not done changing her?

A No.

Q No protest about --

A No protest.

Q -- leaving the room? So what happened when Mr. Williams was asked to leave?

A I asked Josette to call the DON and then I went and

looked for the policy and then I star the RN Supervisor and I told her not to let Mr. Williams go into any resident room.

Q Did someone stay with Ms. Mayes?

A One of the other CNAs.

Q Do remember who the other CNA was?

A Pat. Her name was Pat Bruce.

Q Pat Bruce. She was the CNA that was under you that night?

A Yes.

Q And Josette called 911?

A Josette called the DON and the DON told her to call 911.

Q Did you know the exact times she placed those calls?

A No, I didn't know the exact times. When we document in our notes our times are estimated times, but if they wanted to know the exact time they could review the 911 call, they can review the call, you know call the officers. They can look at that report and it will give them the exact times. Those are just estimated times when I documented. And that document almost at the end of the shift.

Q So you told the RN supervisor not to let him Williams in any other rooms?

A Yes.

Q Did you touch Ms. Mayes or provide any care to her

while y'all waited for the police?
A No, I did not. When the police arrived that's when I changed Ms. Mayes. Me and another CNA and also the DON was present after the police arrived. I did not touch her until after the police arrived.
Q And Mr. Warren asked you some questions about that earlier, didn't he?
A Yes.
Q And he read from the trial transcript; correct?
A Yes.
Q I'm going to hand that -- a copy of it to you. I gave you the wrong copy. I'm sorry.
THE COURT: Can I see y'all one second.
(Off the record bench conference with counsel and the Court.)
THE COURT: Please continue. I'm sorry to interrupt you.
BY MR. ARNOLD:
Q I've provided you a copy of some sworn testimony that he had you read from earlier, Page 85; correct?
A Yes.
Q And he had you read from Lines 1 through 8; correct?
A Yes.
Q And then he skipped over Lines 9 and 10, and had you read Lines 11 through 16; is that correct?

A Yes.

Q I'm going to read aloud and you just confirm what I'm reading is correct. Starting on Line 1. Question: Now, from the time that you all got Mr. Williams out of the room until law enforcement showed up and you all went back in with law enforcement, did you or anybody in your presence go in and do anything with Ms. Mayes as far as her clothing or anything of that nature while waiting for law enforcement. Your answer: No, we had -- we had changed her. We got all that stuff off of her, put her a clean diaper on her. And here at Line 9, which he didn't allow you to read --

A He didn't allow me to read that.

MR. WARREN: Objection, Your Honor, because I gave her the transcript and I do believe that I had her read that line. That's my interpretation, but that's fine. In terms of her characterization of me skipping over the transcript.

THE COURT: I understand. You can go ahead and read it. Regardless of the characterization --

MR. WARREN: Yeah, right. It speaks for itself.

THE COURT: -- you can go ahead and read it. Okay.

BY MR. ARNOLD:

Q And the question was, was that before or after the police got there, and what was your answer? You read that?

A It was after the police got there.

Q Question: Okay -- and then you went on to read, but you

weren't able to read Lines 9 and 10 earlier where you clarified that it was after?

A It was after.

Q Thank you very much. Now, when you went in the room did you smell any feces?

A No, I didn't smell any feces.

Q Mr. Williams is going to claim that the diaper was full of feces and it was still on her. You're certain you didn't smell any feces?

A Didn't smell any feces.

Q If a resident were to have feces in her diaper would you expect to smell it?

A I would expect to smell it. Sometimes you can smell it in the hallway. There was no smell of feces.

Q You're certain you didn't touch or otherwise change Ms. Mayes prior to the arrival of the authorities?

A I did not touch Ms. Mayes.

Q You waited until they did their investigation --

A Yes.

Q And at their direction you changed her?

A Yes.

Q At any time did you see feces on Ms. Mayes?

A No.

Q Were you in the room when the authorities arrived?

A We went in the room together.

Q And that was after the police told you to?
A After the police told me to.
Q After they took photos?
A Yes.
Q After they collected their evidence?
A Yes.
Q And why did you need to change her briefs?
A Because they took everything. They took her gown, they took all that, and I put a clean fresh gown on her and her diaper.
Q Because she was going to the hospital, right?
A She was going to the hospital.
Q A few more questions. Please remind me again, when did you first become a CNA?
A In 1997.
Q And how long did you serve as a CNA?
A From 1997 to 2009.
Q Okay. Any other facilities besides UPAC of Orangeburg?
A Orangeburg Nursing Home.
Q Okay. Was Orangeburg -- was UPAC Orangeburg, was it formerly know as Orangeburg Nursing Home?
A Yes.
Q As a CNA you had the same responsibilities that Mr. Williams had in 2010, correct?
A Yes.

Q And you attended to residents routinely, correct?
A Yes.
Q And I want to talk about specifically changing the residents, their briefs, do you ever do that?
A Yes.
Q Regarding the briefs, are their procedures on how to do that?
A Yes.
Q Is there training on how to do that?
A Yes.
Q And where do you get that?
A CNA school.
Q CNA school and do you receive on the job training?
A You receive on the job training also.
Q In any of the training that you ever received does it require the CNA or the care-giver to be up on the bed?
A No.
Q If you had to guess, how many diapers, briefs have you had to change?
A Thousands.
Q In the thousands of briefs that you've changed, have you ever gotten in or on a residents bed?
A Never.
Q Other than Ralph Williams, who claims he was up on the bed changing the resident, have you ever observed any other

CNA or care-giver up on the bed with a resident?
A No.
Q Other than Ralph Williams have you ever seen someone naked up on a bed with a resident?
A No.
Q Now, earlier plaintiffs handed you what they marked as Exhibit No. 11. Are you familiar with that document?
A Yes.
Q It's the Nursing Care on how to change the resident, correct?
A Yes.
Q And he had you read certain numbers, one, two, three and four, correct?
A Yes.
Q Anywhere in this document does it say get up on the bed to change a resident?
A No.
Q Put a knee up on the bed?
A No.
Q And why wouldn't you want to be up on the bed with the resident?
A You're not supposed to be up on the bed with the resident. You're supposed to stand beside the bed.
Q And if you can't handle the resident on your own what are you supposed to do?

A You get help. You ask someone to help you.
Q Okay. Thank you very much. Ms. Johnson, as a nurse at UPAC Orangeburg, do you have legal obligations regarding reporting abuse or suspected abuse?
A Yes, I do.
Q And what are those?
A It's the Adult Protection Act.
Q And that was the Adult Protection Act that Mr. Bring referred to in his opening, right?
A Yes.
Q And that requires you to report even a suspicion of an abuse?
A A suspicion.
Q And what if you fail to report?
A I could go to jail for not reporting. I can -- they can fine me up to so many hundreds of dollars. I can be reported to the State Board of Nursing, termination.
Q So if you don't report --
A If I don't report.
Q -- you could lose your job?
A Yes.
Q Does the facility have any reporting requirements or rules?
A Yes.
Q And what would happen if you fail to report suspected

abuse at the facility?

A Termination.

Q So you could face up to a year in jail, you could face up to a $2500 fine?

MR. WARREN: Judge --

THE COURT: I'll let him finish that. Go ahead.

BY MR. ARNOLD:

Q And you could have your license revoked?

A Yes.

Q When you saw Mr. Williams up on the bed with Ms. Mayes, did you suspect abuse was occurring?

A Yes, I did.

Q And is that why you reported it?

A Yes.

Q Did you make up these allegations in some sort of effort to get Ralph Williams in trouble?

A I did not.

Q Did you ever tell Ms. Davis, hey, let's take down Ralph by claiming he was trying to have sex with a resident?

A No.

Q Is there any doubt in your mind about what you saw when you opened the room, the door, to Room 39 at the nursing facility during the early morning hours of June 21, 2010?

A No doubt.

Q Does what you witnessed still affect you today?

Q I'm just saying it changes.
A I didn't have any detail. I did not write every detail on my statement.
Q Did you read -- on Plaintiff's Exhibit No. 8, you state that you walked into --
A I entered the room.
Q Okay, but previously you said you were standing in the hallway.
A I did not say I was standing in the hallway. I entered the room.
Q You also stated you could stand in the hallway you could see through the curtains?
A I said the lights in the hallway shined in the room.
Q So you didn't say that you were standing in the hallway and looked through the curtains?
A The lights in the hallway, when I opened the door, I walked in the room, but I was still in the doorway. I wasn't all the way in the room like he's trying to say. I was in the door.
Q I'm not saying it.
A I was in the door.
Q Would you read Plaintiff's Exhibit No. 8, would you read what you wrote -- first of all, let me back up. When you write nursing reports are you required to be accurate in these reports?

MR. WARREN: That's Plaintiff's No. 9.

THE COURT: Oh, 9. Sorry. Excuse me.

BY MR. WARREN:

Q -- and on Plaintiff's Exhibit No. 9, you stated when I walked in Henrietta Mayes room, isn't that correct?

A Yes.

Q And aren't there two alarms in the room. Isn't it true that this is a call button for the patient, isn't that correct?

A The panic button is on that wall, also.

Q Okay. So you've got two buttons. You did state in your testimony there's actually two buttons in that room, is that correct?

A There's a panic button and they have a call bell. That is the panic button. This --

Q So there's a call button. Do you feel free --

A Yes, it is.

Q So there's a call button and a panic button?

A Yes, it is. All of it is in this area. All of this here. There's a panic button and there's a call button.

Q Where? Where is it at?

A On this wall.

Q Okay.

A On this picture.

Q Can you show me the panic button?

A One of these button is the panic button. I can't tell you exactly which one, but one of them is the panic button.
Q And -- Mr. Williams -- excuse me, is that not a panic button on this side of the wall?
A No.
Q And this furniture, are you saying that this furniture was in that same position that night?
A This chair was here.
Q So this -- so five years later, almost, the furniture is in the exact -- everything is the same?
A This chair was here.
Q And --
MR. WARREN: If I may get these exhibits, Your Honor?
THE COURT: Sure.
MR. WARREN: I can go get the photos.
THE COURT: Which photos --
MR. WARREN: This --
THE COURT: -- that's what?
MR. WARREN: I believe it's Plaintiff's No. 6.
THE COURT: Okay. All right. That's enlarged Plaintiff's No. 6. And if you don't mind, do you mind -- yeah, hold it.
MR. WARREN: Plaintiff's Exhibit No. 6.
BY MR. WARREN:
Q Now, in looking at Plaintiff's No. 6. Just stand up --

THE COURT: Oh, you want her to step back down there.

MR. WARREN: Yeah.

BY MR. WARREN:

Q You can step back down, please. Now, you're saying that this is the same room as that night. You're saying that this headboard is the same as that headboard, is that what you're saying?

A This is the room. I didn't say this was the exact bed, but this was the room. This is the exact position her bed was in.

Q And you were --

A There was a chair by that wall.

Q Okay.

A He's standing right here in this spot. He was fixing his pants, and he sat -- in that chair there. He sat in that chair by the wall.

Q Right. Didn't take off running?

A No, he didn't.

Q And you didn't yell?

A No, I didn't yell.

Q And you didn't scream?

A No.

Q And this curtain -- now, let me ask you this question. Did you look -- because your testimony previously was you were looking through the curtain in the hall. Was you

A He was over her.
BY MR. WARREN:
Q Okay. So her top was up, her breast was exposed, is that correct?
A I could see her breast.
Q Okay. So you his skin contacting her skin, is that correct?
A He was climbing on the resident. He was climbing on the resident.
Q Well, you just stated that he was naked and in the bed?
A I said several times that his -- I saw his naked butt, several times.
Q You stated he was naked and in the bed?
A I saw his naked butt.
Q Which one is it, Ms. --
A I saw his naked butt.
Q You said --
A I saw his naked butt.
MR. ARNOLD: Your Honor --
THE COURT: Hold on.
A You're trying to make me change what I said.
THE COURT: Ms. Jackson.
A I know what I saw, sir.
THE COURT: Whoa. Whoa. Okay. We've gone over this. We have beaten this horse --

MR. WARREN: Yes, Your Honor.

THE COURT: -- absolutely to death.

MR. WARREN: Okay. I'm going to go to the next issue.

THE COURT: Good.

MR. WARREN: Okay, Your Honor -- excuse me.

BY MR. WARREN:

Q Now, Mr. Williams was a CNA as you stated, correct?

A Yes.

Q And he was required to care for these residents, correct?

A Yes, he was.

Q And you had this policy, which we have as Plaintiff Exhibit No. 11, where it tells how he's supposed to change the resident, is that correct?

A Yes.

Q And you have a female, a policy for females, is that correct?

A We have a policy for how CNAs is supposed to.

Q And you also have a policy for males, is that correct?

A It's a policy.

Q Now, rather than try to read this whole document I'm going to ask you to read the specific parts that's relevant to the testimony.

Now, could you read Item No. 10, so you won't think I'm trying to skip over anything.

MR. ARNOLD: Which one is that, Your Honor.

MR. WARREN: 11 as I stated previously, Your Honor.

THE COURT: I'm sorry. Which one was it?

MR. WARREN: 11.

THE COURT: Plaintiff's 11.

BY MR. WARREN:

Q Could you read to the ladies and gentlemen of the jury Item No. 10 for females, what he's supposed to be doing when he's changing a resident. Could you read that for me, please?

A For females, separate the labia, then clean downward from front to back with one stroke. Repeat using the clean part of the washcloth. Wipe with each stroke. More than one washcloth may be needed to be used. Rinse with clean washcloth if applicable. Pat area dry with towel. Position patient and resident on side. Clean rectal area from vagina to anus with one stroke. Repeat until area is clean using clean part of the washcloth. Wipe with each stroke. More than one washcloth wipe may be needed to use and pat dry with a towel.

This is our policy, but it don't say turn the light off, get in the bed. He had no business in the bed.

THE COURT: Ms. Johnson. Ms. Johnson, just answer his questions, okay.

BY MR. WARREN:

Q Now, Ms. Johnson, is there a policy for men caring for an changing the diapers for women?
A It's a policy.
Q And did Ralph have a right to be where he was in that room?
A He had a right to be in the room.
Q Okay, and -- and -- and he changing her in that room?
A He was changing her, but not with the lights off and in the bed.
Q Uh-huh. (Affirmative response.)
A Climbing on top of her. He doesn't have a right to go in the room, turn the light off, climb on top of her, naked butt exposed.
Q Now, aren't there two lights in that room?
A It's two light switches in the room, yes, it is, but the lights were off.
Q Can I finish my question? There is a light above or overhead light, is that correct?
A Yes.
Q That would light the whole room, is that correct?
A Yes.
Q And there is another light where you can go and just turn on the light for that bed, is that correct?
A Yes.
Q Wasn't that the light that was on, over the bed?

A There was no light on in the room.
Q So it's 3:00 o'clock in the morning, is that correct?
A Whatever the time say.
Q And you can see her breast exposed, is that correct?
A Yes.
Q And you can see his naked butt in the bed, is that correct?
A Yes.
Q Now, -- and in the face of seeing this -- you didn't go in the room you just saw it from the hall because you didn't go in the room.
A I knocked on the door and I entered the room. When I say entered the room I was in the doorway not exactly all the way in the room. You know how you step in a room, but you're not all the way in the room. That's how I was.
Q Okay. You didn't pull the curtains back?
A No.

MR. WARREN: No further questions.

THE COURT: All right. Anything on re-cross limited to his redirect?

MR. ARNOLD: Nothing, Your Honor.

THE COURT: Pardon me?

MR. ARNOLD: No, sir, no further questions.

THE COURT: Okay. You may step down Ms. Johnson. Thank you, ma'am.

All right. Is the plaintiff ready to call it's next witness?

MR. WARREN: At this time we call Ms. Peppers to the stand.

THE COURT: Okay. All right, Ms. Davis, if you'd put your left hand on the Bible, please ma'am, raise your right hand and the clerk is going to swear you in.

THE CLERK: Could you state your name for the record, please?

MS. DAVIS: I'm Josette Davis.

(WHEREUPON, Josette Davis was sworn to tell the truth.)

THE CLERK: You may be seated.

JOSETTE PEPPERS DAVIS - DIRECT EXAMINATION

BY MR. WARREN:

Q Good afternoon, Ms. Peppers.

A Good afternoon.

Q Now, Ms. Peppers could you please state your name for the record?

A Josette Derita (sp) Davis.

Q Okay, and at the time of the incident what was your name?

A Josette Derita Peppers.

Q Okay. And back in 2010, where did you work?

A At UniHealth Post-Acute Care of Orangeburg.

Q Okay. What was your duty at that time?
A I was a Licensed Practical Nurse.
Q Okay. And as a licensed practical nurse what was your duty?
A I was to provide medicine, pass out -- well, pass out medicine, doing treatments and also supervise the CNAs.
Q Okay, and what shift did you work?
A 11:00 to 7:00.
Q Okay. And were you working on June 21, 2010?
A Yes.
Q What rooms were your responsibility?
A I was on the other side on another unit.
Q Could you stand up and look at this diagram?
A Sure.
Q Okay.
MR. WARREN: Plaintiff counsel is showing the witness Exhibit No. 4.
THE COURT: Okay.
BY MR. WARREN:
Q Now, could you point out to where you were at in the building?
A (Indicating.)
Q Where is the nurses station at you would go to
A Here.
Q This is the nurses station, correct?

A Yes.
Q And at the time you were going to break room, is that correct -- well, first of all, June 21, 2010, you worked the 11:00 to 7:00 shift, correct?
A Correct.
Q Okay. And approximately what time did Ms. Johnson come to get you?
A I'm not sure of the time, but as I know I was walking to the snack machine to get me a snack.
Q So the snack machine is in the break room, is that correct?
A It's an area where they have a snack machine there, yeah.
Q Okay. And she had a conversation with you when she came to get you, correct?
A It was not a conversation, you know, she did told me what she had to tell me.
Q Okay. And she told you that Ralph was having sex, wasn't that correct?
A She told me that -- she came to me, rushing up to me and then she said to me, come on, something about Ralph is in Ms. Mayes room with his pants down, and she said something -- I don't recall all the details, but I -- she said something with sex.
Q Okay. Now, do you believe that Ms. Johnson told you

that Ralph was having sex?

A Like I say, I don't recall all the details when, you know, she was saying what --

THE COURT: Ms. Davis, go ahead and sit back down, okay.

A -- Like I said, I don't recall all the details when she came up to me but I remember she was telling me to come on. Like she was anxious, nervous, something just happened. She said Ralph is in Ms. Mayes room with his pants down and she was saying something about, you know, with sex, but I don't recall the details because it was four or five years ago.

Q Uh-huh. (Affirmative response.) Now, if you would, Ms. Peppers, would you read the the relevant portions of the testimony, I guess, from Line --

THE COURT: Is that different from what she's testified to?

MR. WARREN: It is, Your Honor.

THE COURT: Okay.

BY MR. WARREN:

Q And the question asked in this testimony was Ms. Peppers so you kind of lay a foundation of how Ms. Johnson was acting when she came up to you. What did she say to you when she encountered you in the hallway there?

THE COURT: You're going to give her the Page --

MR. WARREN: Former testimony, I'm on Page 95.

THE COURT: Okay. What line?

MR. WARREN: Line 12.

THE COURT: Do you have a second copy that you can give her so she can look at it.

MR. WARREN: I got one.

THE COURT: Oh, she's got it right there. Okay. So --

BY MR. WARREN:

Q Okay. Now, -- just take your time to review it right quick. Okay.

A Uh-huh. (Affirmative response.)

Q Now, isn't it true -- former testimony where you put your hand on the Bible -- and swore, is that correct?

A Correct.

Q Now, when you did that former testimony which was several years ago.

A Uh-huh. (Affirmative response.)

Q You stated, she told me to come -- to come with her and she said Ralph was having sex with Ms. Mayes, isn't that correct?

A Well, what this says --

Q Is that your testimony?

A Yes, I see what this says. Yes.

Q All right. Now, you were asked a second time --

A Uh-huh. (Affirmative response.)

Q -- right there on Line 14, right next under it. All right, did you know who she was talking about, Ralph, did

BY MR. ARNOLD:

Q Josette, I'm just going to ask you some questions as well.

A Uh-huh. (Affirmative response.)

Q Has your name always been Josette Davis?

A No.

Q What was your full name?

A Josette Derita Peppers.

Q Okay, and why did it change?

A I got married in 2010 to my husband, Jonathan Davis.

Q And where do you and Jonathan live?

A We now live in Cordova, South Carolina.

Q Are you from Cordova originally?

A No, I'm from St. George, South Carolina.

Q And you said you were married, do you and your husband have any children?

A Yes, we have a six-year-old boy.

Q So in 2010 he was two-years-old?

A Yes.

Q And are you currently employed?

A Yes, I am.

Q And what's your position -- where do you work?

A I work at UniHealth Post-Acute Care of Orangeburg.

Q And what's your position there?

A I'm a Licensed Practical Nurse.

Q And do you work anywhere else?
A Yes, I do. I work at Calhoun Convalescence Center.
Q And are you full-time at both?
A Full-time at UniHealth Post-Acute Care and I'm, like, part-time at Calhoun Convalescence.
Q And how long have you been an LPN?
A Seven years.
Q And have you always been a LPN?
A No.
Q What were you before you were an LPN?
A I was a Certified Nurses Assistant.
Q And that's a CNA that we talked about?
A Yes.
Q And sort of similar to Ms. Johnson you went from CNA and became an LPN?
A Yes.
Q And that was sort of a promotion?
A Yes.
Q And did you have to go to school?
A Yes, I did. I went to OC Tech in Orangeburg County Technical College.
Q Why don't you give the jury a little bit of background about your education?
A I graduated from Woodland High School in 2004 is when I got my CNA certification. I went to Clafflin University

here and during that time I was working as a nursing assistant and then I went to OC Tech. I transferred to OC Tech and that's how I got my nursing license. I got my LPN.

Q And you've done some classes to become an RN, right?

A I did. I went to -- I also went to South Carolina State University for some classes but I didn't finish.

Q So you haven't finished that program?

A Huh-uh. (Negative response.)

Q And we heard Ms. Johnson earlier, but why don't you describe in your own words the job responsibility of a CNA?

A Certified Nursing Assistant, they provide care for residents that cannot do for theirself. Like they wash, change, feed. Basically, whatever you can't do for yourself they basically do for them.

Q So it's fair to say CNAs have the most interaction with the residents?

A Yes.

Q And what about your job responsibilities as an LPN?

A As LPN, I supervise CNAs, I pass out medicine, do wound care and whatever the doctors say. I carry out the doctor's orders.

Q And what kind of facility is UPAC of Orangeburg?

A It's a skilled nursing home. We have long-term care.

Q And the residents that are there?

A They got like dementia, although there's a mixture of

A Yes.
Q And that's where --
A Pat -- yeah.
Q And were y'all the only two LPNs on shift that night?
A Yes.
Q One LPN at this nurses station and one at this station?
A Yes.
Q And then there were two CNAs assigned to Ms. Johnson?
A Yes.
Q Okay. Thank you. I want you to tell the jury about the events of June 21, 2010 in your own words.
A Okay. I was walking down the hallway going to the snack machine and all of a sudden, you know, Patricia Johnson come rushing up to me. And then she was telling me to come on, come on, Ralph was in the room with his pants down, in Ms. Mayes room with his pants down. And then she was saying, you know, something about sex, you know, but I can't remember all the words. So we quickly rushed down the hallway, you know, to Room 39 and that's when I went up to the room, the door was closed or whatever. So I didn't knock, I went in the room. The lights was off and, you know, I kind of peeked through the curtain, because the curtain was like closed. So I kind of peeked through the curtain and the lights was still off and the hallway had a light on so I could see inside the room when I opened the

door, and that's when I see him. He was standing like in the corner area beside the bed and he was adjusting his pants. He was like tying his pants and he just, you know, sat in the chair. He was saying something to Ms. Mayes, like mumbling. I don't know what he was saying. Then he just hold his head down. Then he looked at me and said what? And --

Q And did you ask him to leave the room?

A Yes. I asked him to leave the room.

Q And did she -- did Ms. Mayes live in Room 39?

A Yes, she did.

Q Did she live there alone?

A No, she had a roommate.

Q What was the status of her roommate?

A She had dementia, meaning that she's not aware of person, place and time.

Q Would she have been able to respond to anything going on in the room?

A No.

Q Would you expect to see a CNA who cares for her routinely to know about their abilities to respond?

A Of course, yeah.

Q You mentioned that Pat Johnson came rushing up to you.

A Uh-huh. (Affirmative response.)

Q What did she look like, what was she acting like?

A She was nervous, anxious like. It was clear like she wanted to cry and at that time I knew something was going on, that something had happened. It was obvious that something happened.

Q Have you ever seen her like that before?

A No.

Q And what did she say to you?

A She just came up to me, telling me to come on, you know, Ralph was in the room with his pants down.

Q And how long was that conversation?

A I mean, it didn't last long, less than 15 -- 30 minutes, I mean, 30 seconds, I mean. It wasn't long.

Q Did you have an in-depth conversation?

A No.

Q It was like hurry, come on?

A Yes.

Q And how did you react?

A I respond, like we rushed down the hall and rushed -- rush walked. It wasn't like we ran, it was rush walking. Speed walking.

Q So how far would you estimate how far you were from Room 39?

A I'd say about eight to 10 rooms down.

Q And so each one of these are rooms?

A Yes.

A No.
Q So you rushed to the room.
A I rushed to the room.
Q Door was closed.
A Door was closed.
Q And you opened it?
A I opened it.
Q Did you knock?
A No, I didn't.
Q You just opened it.
A I opened it.
Q Were the lights on in the room?
A The lights was off.
Q The lights were off?
A Off.
Q They've talked about two different lights. There was a light that was just above Ms. Mayes bed that was on?
A There was no lights on.
Q So neither one of the two lights was on?
A No lights.
Q If the lights were off how did you see him?
A The light in the hallway is on and bright. Soon as you open the door you can see right in there.
Q It says Exhibit 26C, does this reflect what you saw for the most part in the room?

A Yes.
Q And there was a curtain that is no longer there that was there?
A Uh-huh. (Affirmative response.)
Q And where was Mr. Williams in the room?
A He was right up in this area here, up in here adjusting his pants, adjusting his pants right there.
Q What about Ms. Mayes?
A She was like laying in the bed, laying flat in the bed.
Q Could you see anything -- well, describe her?
A She was just -- it was just the covers were messy all over her, just throwed up on her. I didn't see anything. All I see was this cover just sloppy on her like somebody just rush and put something on her.
Q Is that normal?
A No.
Q Does Exhibit 26C accurately reflect the kind of lighting that you saw on that night in question?
A Yes.
Q And you said he was adjusting his tie on his scrub pants?
A The drawstring, yes.
Q And he sat in the chair?
A Uh-huh. (Affirmative response.)
Q And he put his head down?

A He mumbled something and put his head down. I don't know what he said. He look at me and he say, what?
Q And what did you say in response.
A I said, I told him to leave the room.
Q And did he say anything in protest?
A No, he did not.
Q Did he ask you why he needed to leave the room?
A Nope.
Q Did he say I'm not done changing her diaper?
A No.
Q Josette, Mr. Williams alleged that there was a diaper full of feces; did you smell any feces in the room?
A No.
Q Have you ever smelled an adult diaper that was full of feces?
A Yes, I did.
Q If there was a diaper full of feces on that night would you have smelled it?
A I would have smelled it, but I didn't smell it.
Q What about cleaning supplies for changing a resident?
A I didn't see that either.
Q What happened after you asked Mr. Williams to leave?
A Pat told me to call, you know DO -- you know, Director of Nursing because she -- she was all a mess. She was anxious. So I went ahead and called the DON and the DON

instructed me to call 911.

Q And who was -- Director of Nursing, is that the head nurse?

A Yes. That's my supervisor.

Q And was she at the facility at that time?

A No, she was home.

Q So you called her at approximately 3:00 a.m. and woke her up in the middle of the night?

A Yes, I did.

Q How long after you left the room did you call the director of nursing?

A Immediately, right after I left the room.

Q What did she say?

A She told me, you know, to call 911.

Q Did the Director of Nursing end up coming to the facility?

A She did.

Q Okay. And did you call 911?

A I did.

Q And how long after you hung up with the DON did you call 911?

A Immediately, right after.

Q And what did you tell the 911 dispatcher?

A I told them that we suspect the abuse and that, you know, we need somebody here and they came.

Q And did you provide any other details?
A No, I didn't.
Q Did you ever touch Ms. Mayes or otherwise provide care for her after you saw her on that night, June 21, 2010?
A No, I didn't.
Q And you're certain of that?
A Positive.
Q Were you in the room when the police arrived?
A No, I wasn't.
Q Were you present when the covers were pulled back?
A No, I wasn't.
Q Do you know if the police collected evidence?
A No.
Q Did you speak to the police?
A Right after, yeah.
Q So you provided a written statement?
A Yeah.
Q And did they question you?
A Yes.
Q And did those statements differ from what you're testifying to today?
A No.
Q Were you telling the truth when you spoke to the authorities on June 21, 2010?
A Yes, I was.

Q And you're telling the truth today?
A Yes, I am. I have no reason to lie on him. I mean, I have nothing against him. Nothing back then, I still today don't have nothing against him.
Q And there's been some talk of the call button and the emergency panic button? If you'll stand up for one moment. I'm directing to you what I've -- we've marked as Exhibit 26B, which is blown up. Point to me in the room where these two buttons are?
A The emergency button is some -- it's over here. One of them buttons. I can't make out which one.
Q And as far as on this wall next to the door, and I'm pointing you directly to Exhibit No. 26H, is there any button or panic button on that wall?
A No.
Q And you were here when Mr. Warren said, just two feet away I could just go in and hit the alarm. In 2010, June 2010, was there any panic button or anything on this wall?
A No.
Q Is there one today?
A Nope.
Q so for the last five years there's not been a panic button on this wall?
A No.
Q Thank you. There's been talk about a rift between

Ralph Williams and Pat Johnson. Did you ever hear anything about a rift between those two?

A No.

Q From Ms. Johnson?

A No.

Q What about from Ralph Williams?

A No.

Q I have a few more questions. You first became a CNA when?

A In high school in 2004.

Q And where do you -- what other facilities did you work at besides UPAC of Orangeburg?

A St. George Nursing Home and also in Orangeburg Nursing Home which changed to UniHealth.

Q And your responsibilities as a CNA were they similar to what Mr. Williams' were on that night?

A Yes,

Q And when you change a diaper, do you ever have to get up on the bed?

A No.

Q Any training that you've ever received that says get up on the bed?

A No.

Q If there's a resident you can't handle by yourself what are you supposed to do?

A You're supposed to get assistance. You're always taught not to, you know, change somebody that is too heavy for you by yourself, to always get help.

Q How many diapers would you say you've changed?

A Thousands.

Q In the thousands that you've changed have you ever gotten up on the bed?

A No. Never.

Q And have you changed residents that were much larger than you?

A I did.

Q How tall are you?

A About what, five-one. Never had to get up on the bed.

Q Ms. Davis, as a nurse, do you have an obligation to report suspected abuse?

A Yes.

Q And what happens if you don't?

A I can get in trouble. I can get, you know, fired, terminated, go to jail.

Q Does the facility have any reporting requirements?

A Yes, they do.

Q What could happen if you fail to report in accordance with the facilities policies?

A You can get terminated.

Q After Pat Johnson came rushing up to you and you went

to the room I believe you testified the door was shut, the lights were off, the bedding was sloppy on Ms. Mayes --

A Uh-huh. (Affirmative response.)

Q -- and Ralph Williams was adjusting the string on his scrub pants --

A Uh-huh. (Affirmative response.)

Q -- did you suspect that abuse had occurred?

A Yes.

Q Is that why you reported it?

A Yes.

Q Is that why you called 911?

A Yes.

Q Did you make up any allegations in some sort of effort to get Ralph Williams in trouble?

A I wouldn't never make up false statements against somebody so they can lose they job or even cause me my job, and you know, risk losing my job over a false statement.

Q Did you ever come up with some sort of plan with Pat Johnson?

A No. Like I said, I never did have nothing against Ralph, as of today. I don't have nothing against him. I would not make up nothing against him.

Q Is there any doubt in your mind about what you saw when you opened the door of Room 39 at the nursing facility in the early morning hours of June 21, 2010?

A No doubt.

MR. ARNOLD: No further questions, Your Honor.

THE COURT: All right, Mr. Warren, whenever you're ready?

JOSETTE PEPPERS DAVIS - REDIRECT EXAMINATION

BY MR. WARREN:

Q Now, Ms. Peppers --

A Uh-huh. (Affirmative response.)

Q -- you indicated you were working that evening, is that correct?

A Yes.

Q And Ms. Johnson came to you stating that, from your previous testimony, that Mr. Williams was having sex, correct?

A I stated -- like I stated, she came rushing up to me, telling me to come on to the room, he had his pants down and she was saying something about sex, but she was all anxious and incoherent. She said something.

Q I understand that. I understand that. I appreciate that, but didn't you testify that she told you he was having sex? I can get your testimony if you want?

A I know what that says, but, you know, like I said, you know, that's how she came up to me.

Q So your recollection is better now than it was almost five years ago?

A Like I said, I know that that says. So, I mean, it maybe not the exact words, but, you know --

Q Here's the exact words. Now, did you also give a statement, Plaintiff's Exhibit No. 12, Ms. Peppers. Could you please read that?

A I was called to the resident room by another nurse --

MR. ARNOLD: Your Honor, I'm going to object. I didn't bring up Exhibit 12. That's going outside the scope of my examination of her.

THE COURT: Okay.

MR. WARREN: She indicated that the police questioned her, she indicated what she did -- we covered the whole subject area. He talked about when the police went in the room. He talked about what did she do, what did she see when she was in the room. He talked about the fact that the covers were sloppily thrown on the bed in the room.

THE COURT: Okay. I'm going to note your objection on the record. Thank you.

MR. ARNOLD: Thank Your Honor.

BY MR. WARREN:

Q Could you read that statement please?

A Yes. I was called to resident room by another nurse, Patricia Johnson. She stated that employee Ralph was in the room with his pants down. I rushed to the room, he was fixing up his clothes. He sat in the chair and started

talking to her. Curtain was pulled around bed, covers were thrown sloppily on bed and room was dark. Ralph was going to have sex with the resident if we didn't come.

Q Now, didn't you just testify you didn't see anything when you got to the room, back to the room? Did you testify that you came back to the room and you opened the door, is that correct?

A Yes. I opened the door.

Q And you testified that -- did you pull the curtain back?

A The curtain was kind of pulled and so I kind of peeked. It was, like I said, the room was dark. And then when the light came in the room from the hallway shine in the room, and, you know, I can see inside the room by the light shining.

Q And you're saying Mr. Williams was back in this corner, though, right?

A He was -- he was in this area, here. He was like in this area.

Q So you contend this is the same room -- you contend this is the same room?

A It's the same set-up. It's the same set-up.

Q It's the same set-up. So the curtain --

A The curtain is not there, that's the only difference.

Q And the headboard is the same?

Q So this photograph here in 2014 is a new photograph, because -- you're saying this is the same room?

A This is the same room. Same room.

Q Now, your statement, you stated that -- you stated that Ralph was going to have sex when the resident if he didn't got caught?

A Yes.

Q But you stated you didn't see anything?

A According to her statement and according to what I observed, just like if you was to tell me it's raining outside and my windows down, 30 seconds later I go outside I don't see no rain, but it's evident that it rained because my window is down. I see water in the car. It's water all over the car, so it rained. It's the same scenario.

Q Uh-huh. (Affirmative response.) Same scenario, it's raining. So you don't --

A I had evidence -- when I came to the room the evidence -- it's obvious that something happened. He adjusting his pants, the room is dark. There's no reason for that. I mean --

Q So he's in this room, Exhibit 6. He's in this room with the curtains drawn in total darkness?

A In the room in the dark with the door closed.

Q Now, you're saying that you immediately went and contacted the police, correct?

A I notified my supervisor --
Q Uh-huh. (Affirmative response.)
A -- which told me to, you know, call 911.
Q And Ms. Johnson stayed in that room, isn't that correct?
A Well, we told him to come out the room.
Q I understand Mr. Williams went out the room --
A Uh-huh. (Affirmative response.)
Q -- but Ms. Johnson stayed in that room, is that correct?
A I don't know what she did. I don't recall what -- if she stayed in the room, but I know when I told him to leave the room, I went immediately to the nurses station.
Q Yeah, you immediately called 911, didn't you?
A I call my supervisor which told me to call 911.
Q Right.
A Yes.
Q And that's what you immediately did, that was the first thing that you did when you came in the room?
A We reported the abuse, suspected abuse, we reported. That's what I did.
Q And, Ms. Johnson, while you did that, she stayed in that room, isn't that correct?
A Like I said, I went to the nurses station to call. I'm not sure where Johnson was, but I was at the nurses station.

Q So because you walked in this room and you pulled this curtain back and you had to look this way, didn't you. You didn't just walk in the room. Isn't that correct, wouldn't you have to --

A When I walked in the room, like I said --

Q -- wouldn't you have to look around the corner?

A -- the curtain was pulled, so I -- like with this curtain pulled, I had to look right here.

Q Uh-huh. (Affirmative response.)

A That's where I looked and that's where he was.

Q Right.

A And I seen him up in this area.

Q So you went in the room and looked in the corner, is that correct?

A I said, when I came in I was in the doorway and the door was open. I peeped around the curtain and then that's when I seen him up in this area.

Q And abased on that, you state that Mr. Williams would have sex if he didn't get caught?

A Thank God that Patricia was there, because she stopped it from happening.

Q But you didn't see anything, isn't that correct?

A Like I said, according to, you know, what Pat told in my statement and what I seen for myself --

Q Right. Ms. Johnson told you he was actually having

sex, isn't that correct?

A Like I said, in my statement, when Pat told me to -- come to the room that he's down there with his pants down. She's anxious, -- something happened. When I come back to the room, lights off and he adjusting his pants, it was obvious something had occurred.

Q And that's something that occurred is he would have sex but he caught correct?

A If he didn't got caught.

Q Now, you indicated that you were down here going to the break, to the snack machine?

A Uh-huh. (Affirmative response.)

Q And resident's Room No. 39A is all the way down here?

A Uh-huh. (Affirmative response.)

Q So Ms. Johnson came down here and got you at the snack machine?

A Uh-huh. (Affirmative response.)

Q She didn't go down here. She went up here to the break room where the snack machine is and got you and you came back, and based on her telling you he was having sex that's what you expected to have found when you got to the room, is that correct?

MR. ARNOLD: Objection, Your Honor. Argumentative. She's already stated once her testimony -

MR. WARREN: It's a fair question, though.

THE COURT: I'm -- let him finish. Okay. I understand it's argumentative. I'm going to let her answer the question. She's been doing it fine.

BY MR. WARREN:

Q Based on what Ms. Johnson told you, you're in the break room at the snack machine. She left Room 39A. She's came all the way to the break room and how many employees on that night, approximately eight?

A Probably.

Q And she comes from this room, comes down here to the snack machine and your testimony was she said Ralph is having sex, come here. My question is, when she told you that you expected somebody to be having sex or finishing having sex when you walked in the room even though you didn't see it, isn't that correct?

A I expected to see something happen.

Q Right. Because that's what she told you?

A Like I said, I seen him adjusting his pants in the room in the dark. He should never be in the dark in the room.

Q And you state -- based on that you can just make a statement that accuses somebody of having sex without seeing them?

A Like the statement with the rain. I don't have to see the rain to know that it was raining. I mean, same case scenario. I mean --

BY MR. FOSTER:

Q Officer Warrington, good afternoon.

A Good afternoon.

Q Where are you employed?

A Orangeburg Department of Public Safety.

Q And how long have you been there?

A Seven years.

Q Okay. What's your current rank?

A PSO2.

Q Okay. How is that -- what does that stand far in your hierarchy?

A It's right towards the bottom, second --

Q Are you on patrol?

A No, I'm in special operations.

Q Were you working on June 21, 2010?

A Yes, sir.

Q What shift were you working?

A I was on the night shift. I was working Bravo shift.

Q And that's what to what?

A It was 8:00 p.m. to 8:00 a.m.

Q All right. Did you get a call or a dispatch to go to UniHealth facility in Orangeburg?

A I did.

Q And do you have with you your notes or your report from that visit?

A I have a report that I took or a copy of a report that I took.

Q What time did you arrive at the facility?

A 0320.

Q 3:20 a.m.?

A I actually arrived at 3:24, I got dispatched at 3:20.

Q Okay, and were there any other officers on the scene?

A According to the report there was a PSO Scott, O'Cain and Corporeal Hanes.

Q So who got there first?

A I did.

Q So when you arrived you were first?

A Yes, sir.

Q And Officer Scott came after you then, right?

A Yes, sir.

Q That's a female, Stephanie Scott, on patrol?

A Yes, sir.

Q She was working the same sift that night?

A Yes.

Q Okay. Who did you talk to when you arrived?

A Initially, I met with -- I spoke with the complainant, Ms. Johnson. She was the one who called me. She met me outside.

Q Patricia Johnson?

A Yes.

Q And what did you do when you were there, as a result of that conversation what did you do?

A Well, we were there for a complaint of criminal sexual conduct. So we identified who was the complaint, who was the suspect and who was the victim and then we did an investigation into complaint.

Q Okay. Were you alone in your cruiser, you didn't have a partner with you when you responded?

A We don't have partners.

Q Okay. So did you -- where did you go first?

A Well, when we met them outside and then there's like a small waiting area --

Q Ms. Johnson?

A The two complainants, Ms. Johnson and Ms. --

Q Peppers, at the time?

A Yes. We met with them outside and then they took us inside where Mr. Williams was. He was right inside the door. There's a little area, I guess, right inside the door.

Q When you go in the front door?

A Yeah.

Q Like a lobby area?

A Somewhat like a sitting area. I can't really remember what it looked like, I just remember that it was separate from the facility.

Q Was he sitting down?

A He was in a chain inside there.
Q Was he by himself?
A Yeah, I guess. I don't know anybody else was in there.
Q Did you approach him and begin to speak to him about what had happened?
A I asked him initially what -- why he felt we were there and I told him why we were there. I informed him that we would be placing him in investigative detention.
Q Okay. So the first time you met him you explained that to him. Did you restrain him with handcuffs or whatnot?
A We actually did. I actually restrained him behind his back and Mirandized him just in case.
Q Okay. Where did you put him?
A By that time we had more officers on the scene, I don't remember exactly who got there or what order, but we had an officer standby him to keep him separate from both the complainants and the victim.
Q So he stayed on the property --
A Yeah, he --
Q -- but was --
A -- was somewhere else out of my field of vision.
Q Where'd you go next?
A Let's see. I went back to try to speak -- well, I was speaking with both of the nurses at the time.
Q That would be Peppers and Johnson?

A Yes. And we moved around the facility to where the victim's room was.

Q Okay. What did they tell you about what happened?

A Well, according to them, it was Ms. Johnson that said she couldn't find Mr. Williams and she went into Ms. Mayes room, who is the victim. She said she saw him on top of Ms. Mayes and Ms. Mayes was laying down on the bed on her back, had her grown pulled up and Mr. Williams was on top of her with his uniform scrubs down around his lower area, around his feet. It appeared to her that he was trying to initiate sex with her.

Q And what did Ms. Peppers tell you when you first talked to her about what had happened?

A Well, I talked to her after I got that, and then she said that Ms. Johnson came to get her and that when she came back in with Ms. Johnson that he was in the room pulling up, you know, getting his -- kind of fixing, she said he was fixing his clothes and told them to shut the door and get out.

Q Did she say anything about when they came back to the room whether it was dark in there or whether the light was on?

A I can't recall.

Q So where did you go from there?

A From there it was explained to me that --

Q By who, by who?
A By Ms. Johnson and Ms. Peppers.
Q Okay.
A That the gown was pulled up over the victim, but the victim had been covered up by the nurses. So at that point, we have a thing in public safety where if there's going to be a questionable area where a male should not view a female unless it's dire circumstances, males will exit the room and let a female officer see what's going on.
Q So did the nurses tell you that they had covered Ms. Mayes up?
A She was covered up. I don't recall who said they covered her up.
Q Okay. Somebody at UniHealth covered her up?
A Somebody had to, yes. She was covered up the first time I saw her.
Q From a previous time when she was exposed?
A She -- when I first saw the victim she was covered up. I never saw the victim uncovered, like, out from under the bed sheet.
Q Did Peppers or Johnson or anybody at the facility tell you they had covered her up?
A I can't tell, that's not on my report.
Q Okay. When you walked into the room, Room 39 where Ms. Mayes was --

A Uh-huh. (Affirmative response.)
Q -- when you walked in there for the first time, had any other officer already been in there?
A I can't recall. We were moving about.
Q Was Stephanie Scott with you when you entered Room 39?
A She had to be with me, at least one time when I went in there. As for the first time I don't know, but she was with me whenever I entered the room to go talk to her.
Q The first time did you walk in there alone, alone officer in there or was somebody else already in there?
A I can't recall.
Q The first time you walked in there you saw her covered up?
A Yes.
Q And there after did Stephanie Scott come into the room?
A She did.
Q Was that because she was the female officer who should tend to these kinds of things?
A Yes, sir.
Q Okay. Did you then leave the room or did you stay in there?
A I'm required to leave the room if there's going to be a female exposed or something like that.
Q So did you leave the room?
A Yes.

Q And did Stephanie Scott stay in there?
A Yes.
Q Were you observing anything about what happened?
A She went in with the express purpose of speaking with and checking on the state of the victim, and when she's required to take pictures or do anything like that, we're not allowed to observe.
Q Okay.
A We will observe the photographs later to ensure what they are but we're not allowed to observe that process.
Q Okay. So did you go in there when Stephanie Scott was attempting to communicate with Ms. Mayes?
A Yes.
Q And how did that go?
A Not very well. The victim has a mental incapacity.
Q Okay. So then somebody wanted to get the state of dress and picture of it underneath the covers?
A Yes.
Q And so you left the room?
A Yes.
Q And she took care of that?
A Yes.
Q And then what happens from there?
A After that --
Q Are you finished in the room yet or you've got to do

some more stuff?

A Well, let me see. After they took the picture I went out and talked, again, with the two complainants, Ms. Peppers and Ms. Johnson, and asked them if they would be willing to provide a written statement.

Q They said yes?

A They did, and they gave a statement.

Q To you or was it to somebody else?

A There was -- If you have a chain of custody form, maybe that will tell me if I dropped the two statements in evidence.

Q I do have that. I'll get to that in a minute.

A Okay.

Q I'm showing you a copy of the original Patricia Johnson voluntary statement, Exhibit No 9. Is that the kind of statement you're talking about?

A Yes. Actually, I would not have received this statement as it was written. PSO2 O'Cain would -- Corporal Hanes would have witnessed this statement. So it was given to them.

Q Okay.

A And they were later given to me and I dropped them in the chain of custody.

Q Likewise, here's the statement, Exhibit 12, for Josette Peppers. Is that what that is?

A Yeah. Yeah.
Q Same two people took these --
A Yeah.
Q Okay. Did they tell you anything, verbally, any different than what you had been told before by the two complainants?
A Huh-uh. (Negative response.)
Q Did you have some obligations to collect some evidence?
A We did.
Q Let me stop -- Did Stephanie Scott tell you what the state of dress or undress at the time?
A She told me what the picture was and when I dropped the evidence and printed it out to be able to drop it, it confirmed what she was telling me.
Q Okay. What other work did you have to do in the room?
A All we did was we collected items that were on the bed. According to the report I collected the gown that Ms. Mayes was wearing, the blanket, the sheet, the mattress cover, the fitted sheet, as well as, a red shirt that was found under Ms. Mayes public (sic) area on the bed.
Q Okay. Did Ms. Mayes leave the facility by EMS with Stephanie Scott while you were still there?
A I believe Ms. Mayes was transported. I don't remember when in that process it was, but she was transported to the hospital.

Q When you collected all this evidence that --
A That was before she was transported. We collected all of that stuff --
Q What about the clothing she was swearing, did you collect that before she left?
A I can't recall.
Q Do you have -- I'm going to show you what has been introduced as Plaintiff's Exhibit 2A. Is that your signature on the document?
A That's my handwriting.
Q Did you observe chain of custody as you collected that evidence and took it to the evidence lockers?
A Yeah. I had all the evidence in my possession. They would have been in bags.
Q There's not a mention of a brief or diapers in there, is it?
A Let me see -- scrub top -- a diaper you said?
Q A diaper or briefs. I believe Ms. Mayes was incontinent.
A No. I don't see that in here.
Q Did Ms. Johnson or Ms. Peppers, either one of them tell you that they had changed Ms. Mayes that you can recall?
A As far as I knew, as the reporting officer, we got there Ms. Mayes was in the same state she was in before they called us and she left to go to the hospital -- Ms. Mayes

left to go to the hospital. As far as I know, nobody changed or did anything to anybody. We had four officers there. I'm pretty sure that would have come up.

Q Did you see the evidence before it was put in bags?

A I had to physically check to see it was in the bags. Yes.

Q Somebody else put it in the bags?

A It was put in the bags by the officer that collected it and since we were all in the same area, it was all collected and stored and one officer -- I was the reporting officer was charged with chain of custody of all that evidence, and then I had the responsibility, I dropped it.

Q Okay. Did the nurses or anybody at the center change Ms. Mayes before she went to the hospital or change her gown or her brief or anything else?

A I can't say that they didn't but I didn't see them do it.

Q Do you see a gown -- yeah, you see a medical gown worn by victim. What does that mean?

A It was actually like one of those hospital gowns that has the tie in the back where you can get it off easy.

Q Okay. Do you don't know why the briefs are not mentioned in here?

A I'm pretty sure if we could have gotten DNA off of it would have collected it.

Q I mean, you haven't gotten that far yet, it's just not on the -- what was turned in at this point.

A I collected everything I thought was important and obviously that wasn't there, I didn't collect it.

Q Okay. Did you check the trash cans from the disposal areas for diapers?

A I can say that I didn't.

Q Did you smell any odor of feces or urine in the room at any point in time that you were there?

A No. I was actually thankful for that.

Q Did you take part in the removal of the sheets, the mattress protector from the bed?

A Yeah. I actually collected the stuff out of the room, that was out of the room, like the sheets and the bedspread and all that.

Q And the red shirt you identified on here, do you remember a red shirt being around or what it has to do with this, it was not what she was wearing?

A It -- all I remember is it was placed right up under where her pelvic area would have been on the bed. That's where I remember it being.

Q You saw it there?

A Yeah, it was there when I walked in.

Q When you walked in wasn't she covered up?

A No, I mean, like when she's up and moving around.

Q She being Ms. Mayes?
A Yes.
Q Somebody moved her, though, right?
A Yes. I had to collect what was laying on the bed, in the middle of the bed.
Q Okay.
A When there was nobody in the bed.
Q She's not able to get up and walk around, is she?
A No. She had to be helped out to the ambulance.
Q And when you turned in this evidence, what's the process at the police department for doing that; you've got some forms that are filled out?
A Yes. You're holding that.
Q That's your part --
A Yeah. We -- when we get all our evidence together we itemize it, try to explain what the best description of it is. We put it all -- if there are things that need to be separated, different articles of clothing, different items, different size and weight or if too many or something like that they have to be in separate packages and they have to be all marked by items number, quantity and we seal them and we take them to the evidence locker, which is a secure area in our department --
Q Right.
A -- and we log that into a log book and then we fill out

this form, leave a copy with the evidence technician. If she's not on duty we put it in there with the evidence and then we secure the locker and then it can't be opened or tampered with until the evidence technician arrives.

Q All of you officers at the police department trained to these procedures?

A Every single one of us, yeah.

Q Okay. I'm showing you what has been placed into evidence as Plaintiff's Exhibit 4A (sic) it's a booking report. It's got your name on it. What role did you have in this?

A I was the reporting officer and therefore I decided there was enough to effect an arrest, so I was also the arresting officer.

Q Okay. And so did Mr. Williams then ride in your cruiser downtown?

A I did not actually transport him. He was transported.

Q And booked and arrested --

A Yes.

Q -- and placed in the detention center?

A Yes.

Q Thank you.

THE COURT: All right, Mr. Arnold?

MR. ARNOLD: Thank you, Your Honor.

THE COURT: Yes, sir.

ROBERT WARRINGTON - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Thank you for coming here today, officer.

A No problem.

Q I believe you testified Ms. Johnson was the one who met you outside?

A Yes.

Q So she wasn't in the room when you arrived?

A No. The complainant was actually standing outside waiting on us when we got there.

Q And it is your believe that she was in the same state from the time that 911 was called until you arrived?

MR. FOSTER: Objection. Leading, Your Honor. Oh, it's cross.

THE COURT: That's okay. I understand. That's okay. Thank you, sir.

Go ahead, Mr. Arnold.

A It's my understanding from the sequence of events that I was told by the complainant and the other witness, that after they witnessed what happened, left, came back in and it was over, they called us and everybody was where they were when we got there. I didn't hear anything else.

Q And so from individuals that you spoke with and evidence that you gathered you thought there was proper grounds to arrest him?

A Yes.
Q Did Ralph Williams say anything to you while you put the handcuffs on him?
A Well, when we first met and I asked him why he thought we were here and why -- what he thought was going on, he kept saying I'm sorry. He was sitting and had his head down and kept -- you know, saying I'm sorry.
Q So he said I'm sorry?
A At least once, yeah.
MR. ARNOLD: No further questions, Your Honor.
THE COURT: Anything on redirect?

ROBERT WARRINGTON - REDIRECT EXAMINATION

BY MR. FOSTER:
Q Was the statement made by Mr. Williams placed in your report?
A No, it was not.
Q Do you have an independent recollection of it today?
A It's one of the few things I can actually remember him saying to me, because he didn't talk to me hardly at all.
Q Okay. Thank you.
MR. ARNOLD: Nothing further, Your Honor.
THE COURT: Okay. Thank you, sir. You may step down.
MR. WARRINGTON: Thank you, Your Honor.
MR. FOSTER: Our next witness will be Stephanie Scott.
THE COURT: All right. Ms. Scott.

Officer Scott, if you'll come there and put your left hand on the Bible, raise your right hand, please ma'am. The clerk is going to swear you in right now.

THE CLERK: Could you state your name for the record, please.

MS. SCOTT: Stephanie Scott.

(WHEREUPON, Stephanie Scott was sworn to tell the truth.)

THE CLERK: Thank you. You may be seated.

STEPHANIE SCOTT - DIRECT EXAMINATION

BY MR. FORSTER:

Q Good afternoon, officer. You're Stephanie Scott?

A Yes, I am.

Q You work for the Orangeburg Department of Public Safety?

A Yes, I do.

Q What's your position there?

A Right now I'm a criminal domestic violence and sexual assault investigator, as well as the victim's advocate.

Q How long have you held that position?

A Altogether, about four years.

Q Okay. What was your position June 2010?

A At that point I was an officer assigned to road patrol.

Q Okay. Did you happen to be on duty June 21, 2010?

A Yes, I did.

Q Were you the only female officer at the police department at that time on patrol?
A Not of the police department but that shift, yes.
Q That time.
A On duty at that time, yes.
Q Right. Right. Did you get a call to go over there because you were the only female officer on patrol?
A That is correct.
Q What time do you think you arrived there --
A It was --
Q -- approximately?
A -- about 10 minutes after the call came out. I was clearing up from a traffic stop. So I was a little delayed.
Q You were delayed by a traffic --
A Yes. I conducted a traffic stop and I had to finish that up before I could respond.
Q Okay. Would that call have come at the same time that Warrington was called?
A I think as soon as he arrived on scene he called for me, but like I said, I had stopped a car and I had to finish up with that first.
Q So he says he got there at 3:24, then it would have been after 3:24 that he called you and whatever your finish time added to your drive time you got there?
A Yes.

Q Okay. Were there any other officers on the scene when you got there?
A When I arrived I do think Officer Brooks was on scene, but I did not see him. I saw his car.
Q When you were in the facility, when you were there you didn't see him?
A I did not see Officer Brooks, no. I saw Sgt. Murdaugh (sp) and I saw Officer Warrington.
Q Those were the only officers that you saw on the scene there?
A Yes, and me Sgt. Hane (sp) arrived at the same time.
Q Okay. And was your main duty and responsibility to come there because of the fact that the female was at issue here and you needed to respond to her and take care of that investigation?
A Yes. To talk with the female.
Q Okay. Who did you talk to first when you got there?
A I was met by Officer Warrington and Sgt. Murdaugh in the hallway as I arrived. They gave me a brief rundown of what they wanted me to do.
Q And did you do any of your own investigation and discussing anything with Peppers or Johnson, the complainants?
A No.
Q Okay. Did you do any -- have any discussions with

Ralph Williams?

A No.

Q Okay. Did you see Ralph Williams there?

A No, I never did see him.

Q After you were briefed did you go straight to Room 39 where Ms. Mayes resided?

A Yes. I was briefed outside of the room, probably three or four doors down. So then I went right to the room?

Q Were there any officers in the room when you were being briefed outside?

A No. There was an officer standing at the door, but there was nobody --

Q Nobody coming in or out?

A No.

Q No nurses or anybody like that?

A No.

Q So when you went into the room, did you go in by yourself?

A I think it was me and Sgt. Hane that went in together. You know, the task that given was just for me.

Q Okay. And so lights on in the room?

A Yes.

Q Did you see the resident in the bed, Ms. Mayes?

A Yes.

Q And was she covered up?

A The covers were over her, yes.
Q Okay. What was the state of the covers on her?
A They were pulled up over her.
Q Pulled up like you would expect for someone who resides in a nursing home and has covers over them?
A Yes.
Q Did you try to speak with her?
A I did introduce myself, as I do with all victims that I'm dealing with. So I did introduce myself, but they did advise me that, you know, she was --
Q Mentally incapacitated?
A -- mentally -- yes.
Q And did you believe that to be the case after your interactions with her?
A Yeah. She told me she was five.
Q Okay. So you didn't try to get much of a history from her?
A No, I did not. I explained to her what I was going to do and that was it.
Q Okay. Were any of the nurses in and about the room when you were, employees of UniHealth?
A I think one came in to assist me and that was it, but the room was -- the door was closed to protect the privacy of the victim.
Q Uh-huh. (Affirmative response.) So do you know the

name of the one nurse that was there?
A No, I don't. We never spoke.
Q Do you see her in the courtroom sitting over on that side?
A I couldn't recall.
Q Would you recognize her if she was sitting here?
A No, I wouldn't.
Q Okay.
A It was that brief.
Q All right. Was there another resident in the room at the time?
A I believe there was because the TV on the other side was on.
Q Yeah.
A But there was never said anything, we never heard anything.
Q The curtain was drawn was drawn between the two?
A Yes, there was a curtain between the two.
Q But her curtain, her privacy curtain was open or not?
A You couldn't see her.
Q If you looked from the hall could you look in there and see her?
A No.
Q If the door was open?
A No.

MR. BRING: Your Honor, just for clarification purposes I think they're talking about two different residents.

THE COURT: Yes.

MR. FOSTER: I'm talking about Ms. Mayes now. I'm back to Ms. Mayes.

THE COURT: Yeah, I know, and I think she is still on whether you can see the other resident.

A I can see Ms. Mayes, but not the other.

BY MR. FOSTER:

Q Okay. Right, but if someone standing out in the hallway, the door is open, can they see Ms. Mayes?

A You can see her feet.

Q Does that mean the privacy curtain was partially pulled around her, Ms. Mayes.

A It was partially but you could still see her feet --

Q Okay.

A -- because of the way it was wrapped around --

Q Okay.

A -- was from her right side.

Q Did you have any discussions with the nurse there in the room about any history that had happened since the allegations were discovered?

A No.

Q And before y'all got there?

A No. I was never privy to any of that information. I

was just there for the -- to gather --

Q Did anybody discuss in your presence whether or not Ms. Mayes had been changed, that is, you know, she is incontinent and wears a brief. Any discussion with anybody about whether she had been changed?

A No. She was still in the same clothes that -- you know, that whatever happened we got the call.

Q How did you gather that information that she was in the same clothes, did somebody tell you that?

A As soon as the officers arrived we were more secure.

Q Well before the officers arrived is the time period I'm inquiring about?

A No, I was not -- I was not aware of any -- nobody told me about her being changed. So no.

Q Were you aware that one of the nurses was in the room alone with the --

MR. BRING: Objection, Your Honor. Facts not in evidence. No evidence of that.

BY MR. FOSTER:

Q Do you know whether or not a nurse was in the room alone with Ms. Mayes after the incident --

A I'm not aware --

Q -- let me finish the question. After the incident had been discovered.

A I am not aware, but I do not think it would be likely

because the officers secured the room.
Q And before the officers got there?
A No, I would not know that.
Q Who in your department might know that?
A I don't think anybody would know if anybody was in there before our arrival.
Q But no discussions about anybody being in the room after it was discovered?
A Not to me.
Q Okay. Okay. So -- and no discussions ever about changing her at all?
A The only discussion about changing her is when the supervisor advised me to gather the clothes she was wearing and the bed linens --
Q Uh-huh. (Affirmative response.)
A -- and they were going to put fresh lines because she was going to be transported to the hospital.
Q Okay, and so did you take a picture of her state of dress underneath the covers?
A Yes, I did.
Q And how did you go about setting up to take the pictures. What did you do?
A I explained to her what I was going to do. I untucked the blanket and the sheet from the end of the bed where it was tucked under. I lifted it up and I took a picture.

Q A digital picture?
A Yes.
Q On cell phone or camera?
A No, it was on a camera.
Q And was anybody else in the room when you took the picture and lifted the sheet up?
A There was a nurse, I believe, but I do not recall exactly, but I believe there was a nurse standing at the head of the bed.
Q Okay. Did you remain in the room for the collection of the evidence?
A Yes, absolutely.
Q And did you collect the evidence constituting her clothing, that being her brief and her gown?
A Yes, as well as a red t-shirt that was under her and the bed linens.
Q That would be the -- Okay. And you're saying the brief would be one of those?
A Yes.
Q This is Plaintiff's Exhibit 2A. It was entered into evidence. Items that Officer Warrington impounded in the jail, evidence locker?
A Yes.
Q Do you see a listing of Ms. Mayes brief on that document?

A No, I don't.
Q Would you expect to find it there?
A I would expect that it would be listed, but it may have been in the bag of the clothing that she was wearing at the time, along with the gown. There was two bags and one was a large bag for the bed linens. One was a large bag for the bed linens --
Q Uh-huh. (Affirmative response.)
A -- and another was a bag with what she was wearing when I collected it.
Q And did you also collect the green scrub top and green scrub bottom from the victim?
A No that was --
Q I'm sorry, that was the defendant. From the suspect.
A From the suspect.
Q All of these different items are listed individually, the shirt, the gown, the sheet, the mattress protector, the fitted sheet, the -- there's no mention of the brief.
A Like I say, it may have been in the same bag as the nightgown.
Q Okay. Was there a disposal container in the room for soiled diapers, soiled briefs?
A I did not see one.
Q Did you ask anyone at the facility about whether she had been changed?

A No.
Q And did you smell any urine or feces when you lifted the sheets up to take the picture?
A No.
Q Did you accompany or did you get Ms. Mayes, help her out of the facility into an EMS vehicle for transport to the hospital?
A No.
Q How did she get out there; the facility?
A The facility. They have their own contract with an ambulance service out there.
Q Oh, the hospital bed?
A Not -- they don't transport beds. They use --
Q And then you either followed or met them at the hospital?
A I met them at the hospital because I stopped at our headquarters and got the CSC kit?
Q What does CSC stand for?
A Criminal sexual conduct.
Q And what's the purpose of getting that kit?
A The hospital doesn't carry them. We carry them for evidence collection.
Q Is that for purposes of testing for DNA?
A Yes.
Q Okay. So you dropped by, got that, went to the

hospital and met Ms. Mayes there?
A Yes.
Q And she was seen in the ER?
A Yes.
Q And that's the -- is that the standard protocol before they get seen by an SAME nurse?
A Yes. We arrive, I request the SAME nurse and we stand by until the SAME nurse arrives.
Q Okay. And so you have the kit with you. You release her to the SAME nurse and she goes into another area of the hospital?
A Usually the same room. It's a certain room in the hospital.
Q Okay, and then you give the kit to them. In this case was that Jamie Smoak?
A Yes, it was.
Q And do you stay in for the evaluation and collection or do you --
A No I did not. Not that particular day, I did not.
Q Okay.
A Because one of the nurses from the home had arrived.
Q So were you -- had you completed your duties at that time.
A At that time, yes. I contact -- the detectives contacted me as well as the victim's advocate who was on

call at that time and contacted me and they said, you know, one the SAME nurse arrived that I was free to go and the SAME nurse would call for somebody to pick it up.

Q What time do you think EMS got her to the hospital?

A I'm not sure.

Q What time did she see the SAME nurse?

A I'm not sure.

Q Okay. Thanks.

THE COURT: Okay. Mr. Arnold.

MR. ARNOLD: Thank Your Honor.

STEPHANIE SCOTT - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Ms. Scott, you testified that when you went into the room, did you smell any feces?

A No.

Q Have you smelt human children before?

A I have two children. Yes.

Q Adult feces?

A Yes.

Q You testified you pulled the sheet up from the bottom of the bed, correct?

A Yes, I untucked it and pulled it up.

Q And did you see a diaper?

A Yes, I did.

Q Did that diaper have feces?

A No, it did not.
Q Did she have feces on her at all?
A No.
Q As far as this Exhibit 2A that they pointed out to you, and I'll hand that to you. He pointed out there wasn't a diaper listed. Did anyone from the facility have anything to do with collecting and putting down things that are on that list?
A No. The items were collected by me. They were packaged by me and Officer Warrington took the bags from the room and filled out this.
Q And when you saw the diaper, where was the diaper?
A It was pulled down to about mid-thigh on her.
Q So was it on her properly?
A It was on her properly, but it was not pulled all the way up. I mean, both legs were through the hole as was intended.
Q No feces on her?
A No.
Q Was there any feces in the diaper?
A No.
Q And would you have put a feces diaper in the clothes bag that had feces in it?
A No. It would have required separate handling in a bio-hazard --

Q And as far as changing Ms. Mayes prior to departure to the hospital, that was necessary wasn't it?
A Yes, it was because her -- the things she was wearing was being entered -- taken as evidence.
Q So the workers at the facilities had to change her at that point so that she didn't go to the hospital naked?
A That's correct.
Q And you directed them to do that?
A Yes.
MR. ARNOLD: No further questions, Your Honor.
MR. FOSTER: One final question, Your Honor, about the evidence collected.
THE COURT: Okay.

STEPHANIE SCOTT - REDIRECT EXAMINATION

BY MR. FOSTER:
Q Was the -- let me see Exhibit 2 again. Was this medical gown that you list -- that you listed here, that you took part in collecting, that's what I wanted to ask about.
A Are you asking about the medical gown?
Q It says medical gown, but there was some kind of top that she had on.
A I don't remember exactly. I'd call it a nightgown.
Q Okay. Was that nightgown wet?
A No. It would have been collected separately if it was wet. It would have been handled differently. It would have

been put in a bag with a bio-hazard sticker so the evidence technician would know.

Q Did it have any stuff on it?

A No.

Q Thank you.

THE COURT: Anything on re-cross?

MR. ARNOLD: No, sir.

THE COURT: All right. Thank you. You may step down.

Is plaintiff prepared to call its next witness?

MR. FOSTER: We're going to call Jamie Smoak.

THE CLERK: Mr. Smoak, would you place your left hand on the Bible and raise your right. Raise your right.

THE COURT: Raise your right hand.

THE CLERK: Set your papers down.

MS. SMOAK: I'm sorry.

THE COURT: Could you state your name for the record, please?

MS. SMOAK: Jamie Smoak.

(WHEREUPON, Jamie Smoak was sworn to tell the truth.)

THE CLERK: Thank you. You may be seated.

THE COURT: All right. Your witness, Mr. Foster.

MR. FOSTER: Please the Court.

JAMIE SMOAK - DIRECT EXAMINATION

BY MR. FOSTER:

Q Your name?
A Jamie Smoak.
Q You live here in Orangeburg?
A Yes.
Q What do you do for a living?
A I'm the Nurse Manager of the Emergency Room at TRMC and I'm also the coordinator of the Nurses Sexual Assault Examiner Program.
Q At the Regional Medical Center?
A Yes.
Q How long have you been with the hospital?
A Since 2002.
Q Now, how long have you been the sexual assault coordinator?
A Since 2006.
Q Okay. Is that your full time job?
A Nurse Manager and SAME, yes.
Q Are you also a nurse --
A Yes.
Q -- by trade?
A Yes.
Q How long have you been a nurse?
A Since 2001.
Q That's an RN?
A Yes.

Q Did you have an occasion to be called in to the work on June 21, 2010?
A Yes.
Q To the hospital?
A Yes.
Q And did you arrive for purposes of forensic exam?
A Yes.
Q Was that on a lady by the name of Henrietta Mayes?
A Yes.
Q Did you perform that exam?
A Yes.
Q Did you begin your examination about 7:45 a.m. that morning?
A I believe so. That's what's documented on the notes.
Q Do you have your notes with you if you need them to refresh your memory on all this? I think 7:43 is what you have on the first page?
A 7:43.
Q Okay. And was there also another officer that accompanied Ms. Mayes to the examining room with the police department?
A Was an officer in the room with me during the exam?
Q No. Did you meet an officer there that was with Ms. Mayes in the room?
A Yes, I believe so.

Q Do you know which one it was?
A I don't.
Q Okay. Did that officer then leave the room and you, then, performed your examination?
A Yes, the officer does not stay in the room.
Q Did you find Ms. Mayes to be mentally incapacitated?
A She has some mental deficits, yes.
Q Okay. Did the officer leave a CSC kit for you to use?
A Yes.
Q And what is the purpose of that kit?
A To collect evidence from the person.
Q For purposes of what?
A For forensic evidence, for DNA purposes.
Q And you're aware, familiar with those kits and how to use them?
A Yes.
Q And you're familiar with how to keep chains of custody on them?
A Yes.
Q And trained in those policies?
A Yes.
Q And do you always follow those policies?
A Yes.
Q And did you on this occasion?
A Yes.

Q Did you examine the totality of Ms. Mayes's skin?
A Yes.
Q Did you examine her genitalia?
A Yes.
Q Her vaginal area?
A Yes.
Q Did you perform a procedure whereby you were able to access her vagina and take swabs where you thought appropriate?
A Yes.
Q And did you collect such and put them in evidence sealed packages, labeled?
A Yes.
Q Did you find any evidence of any physical trauma to any part of Ms. Mayes body?
A No.
Q Did you find any area of Ms. Mayes body where she was bleeding or it appeared she had been bleeding?
A No.
Q Did you find some fluid that you collected a swab on in the area between her vagina and her anus?
A Yes.
Q And that area is called what?
A Perineum.
Q Would you describe what that fluid looked like?

A Milky colored fluid.

Q Okay. Swab it, put it in the same kind of evidence envelop --

A I dry it first.

Q -- label it -- what?

A I dry it first.

Q And then go through that procedure?

A Uh-huh. (Affirmative response.)

Q Did you also take an oral swab from her, inside of her cheeks?

A Uh-huh. (Affirmative response.)

Q That was a yes?

A Yes. I'm sorry.

Q And was that for purposes of getting a DNA standard for her?

A Yes.

Q And you allowed that to dry, put it in an envelop and seal it?

A Yes.

Q Label it, put it with the kit?

A Uh-huh. (Affirmative response.)

Q Is that a yes?

A Yes.

Q Did you also take scrapings of her fingernails?

A Underneath her fingernails, yes.

Q Underneath her fingernails. You collected whatever was under there?
A Yes.
Q What purpose does that serve?
A If someone scratches someone they can get skin underneath their nails.
Q Skin cells underneath there?
A Uh-huh. (Affirmative response.)
Q And you collect those in the same way, except they probably don't have to dry out?
A They don't have to dry.
Q Put them in with the kit?
A Yes.
Q Label it?
A Yes.
Q Seal it?
A Yes.
Q Did you also obtain a swab on her facial area of what you thought might be some kind of saliva on a portion of her cheek or mouth area?
A Yes.
Q And would that be dried and put in the envelops, seal it, label it?
A Yes.
Q Put it with the kit?

A Uh-huh. (Affirmative response.)
Q What was the time you collected this evidence; do you have a place on your notes where you recorded that?
A I know on the individual envelops in the actual kit it has a place where I have to document the time that I put each piece of evidence in that envelop. I started the exam around 8:00 a.m. and finished the exam around 9:00. That's the actual physical exam part.
Q Okay. Did you observe any trauma to her vaginal or genital area, anywhere?
A No.
Q Do you, then, when this is complete, allow her to be discharged to where the hospital sends her?
A Yes.
Q And you close your kit up and what do you do with it?
A I seal my kit and I notify law enforcement that it's ready to be picked up.
Q And do you hold it somewhere until they get it?
A It does not leave me until somebody picks it up.
Q Okay, and did someone come to pick it up that day?
A Yes.
Q Do you know who it was?
A No.
Q Was it someone from the Orangeburg Police Department?
A Yes.

Q Okay. Were there any changes made to it, --

A No.

Q -- did you open any of the envelops, tamper with it in any way?

A Each envelop has to be initialed and sealed, and I can't open it once it's sealed.

Q If somebody attempts to get into one of the envelops would it be evident?

A Yes.

Q Not like the Ziplock bags?

A No.

MR. FOSTER: Just a moment, Judge.

Thank you. Answer any questions Mr. Arnold may have.

THE COURT: Anything on cross?

MR. ARNOLD: Yes, Your Honor. Briefly.

THE COURT: Okay.

JAMIE SMOAK - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Ms. Smoak, is it normal for the police to bring a victim to you to clean her up before they come?

A For the police to --

Q Clean up the victim?

A I've never heard of such. They take their clothing for evidence, but to actually clean them up, I haven't heard of that.

Q So you would expect them to arrive the way they were when they come to you?

A Yes.

Q Did you see any sign of feces anywhere on Ms. Mayes?

A No.

Q And why did you take the swab from the face?

A Because she pointed to that area --

MR. FOSTER: Objection, Your Honor. We have a standing ruling from you from yesterday.

THE COURT: Okay. I'm going to excuse y'all for a second. You can't talk about anything. I've got to be reminded. Y'all can leave for one second. We'll be right back in here. Remember you can't talk about anything you've heard so far.

(Jury out at 4:42 p.m.)

THE COURT: All right, Mr. Foster, you're going to have to remind me. I don't remember --

MR. FOSTER: We made a written Motion in Limine on any communications whether by oral or by gesturing from Ms. Mayes based upon her incompetency. It was found by Judge Harrington in the criminal trial and my recollection yesterday was that you also found similarly and I think they may have even conceded on it.

THE COURT: Okay. I remember had a note on the first day we talked about Judge Harrington trying it. I'm trying

A Hi.
Q Your name?
A Brian Queen.
Q Where do you live, Mr. Queen?
A Columbia, South Carolina.
Q And what do you do for a living?
A I'm the News Director at Wis TV.
Q And where is that located?
A Columbia.
Q All right. What is your job there, your title there?
A I'm the News Director, Manager of the News Department.
Q Okay. Tell me a little bit about WIS, does the signal reach Orangeburg, South Carolina?
A It does. We serve a 10 county DMA.
Q What does DMA stand for?
A Demographic audience. So we serve about 407,000 households in the Columbia and the Midlands.
Q Okay. Have I asked you to come here today to discuss the June 21, incident insofar as WIS is concerned in connection with its broadcasting?
A Yes.
Q Are you prepared to do that?
A I am.
Q On June 22, 2010, did WIS run a news story on television about the incident here in Orangeburg involving

Ralph Williams and UniHealth?

A We did. We aired something in our 5:00 o'clock newscast that day.

Q Okay. And who was the anchor person that delivered the broadcast about that story?

A Judi Gatson, our main anchor.

Q Judi who?

A Gatson.

Q Gatson?

A Uh-huh. (Affirmative response.)

Q And did you look up the achieves for that broadcast?

A I did.

Q Could you find -- what did you find when you looked up the archives for that broadcast?

A I found the script that Judi read on the air at 5:00 o'clock. It was maybe 20 seconds, 25 seconds in length.

Q Okay. What did Judi say, according to your records?

A This is verbatim from the script. An Orangeburg man is behind bars this afternoon after police say he tried to rape a handicapped woman. Police have charged 54-year-old Ralph Williams, Sr., with assault with the intent to commit criminal sexual assault. Investigators say several employees at UniHealth on Whitman Street saw Williams trying to have sex with a 42-year-old disabled woman early Monday morning. A judge issued a bond, police say more charges are

pending.

Q And during the time that Judi was reading the script, what you just said, what were people seeing on the television screen?

A That would have been two things. There would have been Mr. Williams picture, his mug-shot, and then there would have been a map of the facility in question.

Q In Orangeburg?

A In Orangeburg.

Q Would that mug-shot have been obtained from the jail, detention center?

A They would have sent us in press release. I'm not sure who the agency was.

Q Okay. And you said there about 2010, you gave me the demographics, I think, already?

A I gave you the whole demographics. I'm not sure who many people were watching that particular newscast that day.

Q Okay. Did you have the opportunity to run a Google search on Ralph Williams of Orangeburg?

A I have, and it still comes up going to her web story.

Q Her web story?

A Yeah, it would be a separate story than a broadcast which would be on WISTV.com.

Q And that's on the internet?

A It is.

Q And can I get you to demonstrate that for me on this tablet?

A Sure.

Q Is this the familiar Google screen?

A It is.

Q Do you mind if I demonstrate this for the jury?

A No, that's all right.

MR. BRING: Can we see that first?

MR. FOSTER: Sure. Sorry.

MR. BRING: You just have the Google screen?

MR. FOSTER: Yes.

MR. BRING: Let me see it before you -- I mean, if you put something in there let us see it first.

MR. FOSTER: Okay.

BY MR. FOSTER:

Q When you type Ralph Williams, Orangeburg, South Carolina or Orangeburg, SC?

A (Witness complies.)

Q And hit enter, search?

THE COURT: Before -- are you doing that?

MR. FOSTER: Again, we're redoing it. Do you want me to verify that?

THE COURT: He just typed in Ralph Williams, Orangeburg.

MR. BRING: I think I should be able to see the search.

THE COURT: Yeah. If you go back and retype it in.

MR. FOSTER: Yeah.

BY MR. FOSTER:

Q Just go back and retype it in.

A (Witness complies.)

Q Okay. Do you have your hits there?

A Yes. I have her --

Q What's the number one hit? Can you read the heading?

A The story is entitled, Assisted living employee charged with attempted rape at the facility.

Q And when would this internet story have been posted on the WIS website?

A It would have been that same day.

Q So June 22, 2010, and would it have been there consistently since then up until the time you just searched it today?

A Well, it's still active. It's part of our archives.

Q Okay. Is what I'm showing you, Exhibit 14A the same as what you're looking at on that Google screen?

A It appears to be.

MR. FOSTER: Your Honor, I would like to show the jury the screen search.

THE COURT: 14A is in without objection; isn't that correct?

MR. FOSTER: No, it isn't.

COURT REPORTER: No.

THE COURT: And you need to contribute to it.

MR. FOSTER: Who appropriates money for such?

THE COURT: I'm not sure.

MR. FOSTER: Jason, do you want to be over here when he hits the top hit?

THE COURT: Yes.

BY MR. FOSTER:

Q Okay. Please put your finger on the top hit and scroll up just a bit. Is what I'm looking at the actual internet article on the WIS website?

A It is.

Q And is there a picture of Mr. Williams shown?

A It says Ralph Williams, source Orangeburg Corrections.

Q Okay, and what's the date on this article?

A June 22, 2010.

Q Okay. And what I am showing you is Exhibit 14B. Have you had a chance to compare 14B to this article on the WIS website that we just pulled up?

A Yes, it is printed from our website.

Q And is it the same, although the quality is not as good as the resolution?

A It is.

MR. FOSTER: Your Honor, we would ask that 14B be entered.

THE COURT: Any objection?

MR. BRING: No objection, Your Honor.

THE COURT: All right. 14B is in evidence without objection.

(Plaintiff's Exhibit No. 14B, WIS website screen shot was marked and entered.)

MR. FOSTER: Permission to pass around for the jury?

THE COURT: You just want to pass around 14B?

MR. FOSTER: No, I want to -- this the quality is not as good.

THE COURT: Okay.

BY MR. FOSTER:

Q So what the jury is looking at now has been on the internet and available with the Google search since June 22, 2010?

A It has.

THE COURT: Anything else with this witness?

MR. FOSTER: I'm don't have any other questions.

THE COURT: All right, Mr. Bring, I think he's through with any questions.

MR. BRING: Yes, Your Honor. Just a few.

THE COURT: Yes, sir.

MR. BRING: Then we can get everybody out of here.

THE COURT: Yes, sir. And I don't know if you want to wait while they're passing it around. I wanted to let you know he was through.

Q Your newspaper -- excuse me, you television program and your website you enjoy certain immunities for what you publish, correct?

A Yes.

Q Okay. Immunities mean immunity under the law for things you publish in good faith, correct?

A No response.

Q No further questions, Mr. Queen.

MR. FOSTER: Redirect, Your Honor.

THE COURT: Anything on redirect?

MR. FOSTER: Yes.

BRIAN QUEEN - REDIRECT EXAMINATION

BY MR. FOSTER:

Q Has anyone from UniHealth contacted you or anyone else you know of at WIS to ask you to run a story to apologize for what happened or to retract what happened? Anybody contacted you?

A Nobody's contacted me. I'm unaware of any connection.

Q Thank you.

THE COURT: Anything on recross?

MR. BRING: Yes, Your Honor.

BRIAN QUEEN - RE-CROSS EXAMINATION

BY MR. BRING:

Q Has Mr. Williams or his attorneys, have they contacted you and demanded a retraction or a correction of the story?

Q Good morning, Captain.
A Good morning.
Q What's your name?
A Carl Shultz.
Q You live in Orangeburg?
A St. Matthews.
Q Okay. What do you do for a living?
A I'm a Captain with the Orangeburg Department of Public Safety. I supervise investigations, forensics, which includes evidence.
Q You're over the evidence collection?
A I am. Correct.
Q Okay. How long have you been such?
A Seven years.
Q Okay. You have prior years in law enforcement as well?
A 21 years.
Q Okay. What exactly is your job as a forensic head entail?
A Now I'm a supervisor, but at the time I was a crime scene investigator. I collected evidence. I supervised evidence intake, distribution. The forensic analysis of evidence.
Q Uh-huh. (Affirmative response.) Have you been trained in policies that relate to chains of custody?
A I have. I'm also an Internationally Certified Property

and Evidence Room Specialist through the International Association of Property and Evidence.

Q Okay. And does the Orangeburg Department of Public Safety have and implement and follow such chain of custody policies and dealing with evidence --

A We do.

Q -- under those rules?

A We do.

Q Is how evidence is stored in your cases vitally important to the police department?

A It's essential.

Q And do you train your underlings to comply with those?

A We do.

Q What did you do in connection with this case?

A My part of this incident was picking up the criminal sexual assault kit from the Regional Medical Center.

Q You remember the date you picked it up?

A Can I refer to my notes, please?

Q You may.

A It was May 21 -- I'm sorry, June 21, 2010.

Q Okay. And did you personally pick it up from the nurse at the hospital?

A I did. Myself and another crime scene investigator met with Jessica Smoak, the nurse at the --

Q Jamie Smoak.

A -- Jamie Smoak.
Q Did it appear that the kit was not tampered with in any way?
A Everything was sealed up when I got the kit.
Q If the kit is tampered with or sealed or opened is it very obvious?
A It's obvious. It is.
Q Okay. What did you do with the kit?
A I brought the kit back. It's already sealed so there's no additional packaging that needs to be done. I brought it back, put it in our -- we have an evidence locker system with a cooler, keeps the kit cool. I filed out an evidence property sheet, submitted that with the kit and logged it into evidence.
Q Okay. Did you bring anything else back from the hospital other than the kit?
A The clothing, I believe -- again, if I can refer to my notes. Yeah, it was the clothing. Yes, the clothing from the victim from the kit and the 12 page forensic examination.
Q Can I look at the piece of paper you're looking at?
A Okay.
Q What you're looking at is a carbon --
A Of that.
Q -- verses what's been marked and entered into evidence

as Plaintiff's Exhibit No 2B. Is that the same document?
A It is the same document. This is a carbon of a multi-page document. This is the copy for my records.
Q So it says victim's brief, removed by TRMC nurse in parentheses?
A Correct. I put that there to indicate that I did not physically take it because my capacity as crime scene investigator a lot of times means I took it myself, but the nurse actually took it, packaged it, sealed it up and I never actually see the briefs inside the bag.
Q Which nurse would have done that, would it have been Ms. Smoak or some other nurse?
A That I can't answer.
Q Do you know which brief this was?
A I do not.
Q Do you know anything about whether she was changed before she went to the hospital?
A I do not. I was not at the scene.
Q Okay. On the Exhibit 2B, there's also mentioned of box with two buccal swabs from suspect. Correct?
A Correct, sir.
Q Let me back up for a minute on that. In addition to picking up the sexual CSC kit from the hospital on June 21, did you perform another activity that related to Mr. Williams?

A I did. On the way back from the hospital I was contacted by one of the investigators who said they had a search warrant to obtain a buccal swab from the suspect. I met with the investigators and the suspect at the Orangeburg County Detention Center.

Q I'm handing you what's been marked as Plaintiff's Exhibit No. 39, the search warrant. Will you look at that document, please?

A Yes, sir. And I have a copy of that. That is the search warrant that was given.

Q Is it signed by a judge?

A It is signed by a judge. It is signed by our Municipal Court Judge, Barney Howser.

Q Okay.

A By the investigator and then by myself after I received it.

Q What does it authorize to be searched and for what?

A This authorizes that essentially all we're trying to get is the DNA or a buccal swab from the inside of the individuals mouth.

Q Nothing else?

A Nothing else.

MR. FOSTER: Your Honor, this has not been previously introduced and we move to have it introduced.

THE COURT: Have you seen that?

MR. ARNOLD: We have, Your Honor. No objection.

THE COURT: No objection. Okay. Plaintiff's 39 is in evidence without objection.

BY MR. FOSTER:

Q And so how did you go about accomplishing that execution of the search warrant?

A We have individual kits that we've come up with. What they are, they're sterile kits. We open them up, basically we take a Q-tip. We stick it inside the cheek, swirl it around, get the saliva, take it out, put it in the box, seal it with evidence tape and put it in evidence with the same procedure we did with the CSC kit. The buccal swabs are less intrusive. It takes 15 seconds to get them.

Q Okay. Did you go to the detention center or the jail to do that?

A I did.

Q And you met with Mr. Williams?

A I did.

Q You told him you had a search warrant?

A We did. Investigators were already there with him at the time.

Q And you said you put it, along with the other items, in the evidence locker on 2B?

A Correct, sir.

Q Okay. And what did you do with the CSC kit?

A Once it's logged into our evidence locker, it is submitted to the State Law Enforcement Division, SLED, for additional analysis. We do not do that here at this time. I filled out the proper paper work electronically with the chain of custody to submit it to their lab. Then it is hand-carried, I don't know if I did it or if our evidence technician did it, but it is then hand-carried to the State Law Enforcement Division.

Q Somebody drives it down there?

A Yes, sir.

Q Is this the Chain of Custody form, Exhibit 2D?

A It is. This is the electronic version of what they call I Lab. This is the chain of custody to submit it and to follow it.

Q Okay. So in addition to the CSC kit, what else would have been sent to SLED?

A The buccal swab, I know, and -- I'd have to look at it to see, but probably the brief --

Q Do you want to look at it?

A Yes, sir. Thank you. Actually, everything -- the CSC kit, the clothing, the briefs and the buccal swabs were all sent to SLED.

Q Okay. Up to this -- it was sent to SLED. Let's get the date on that; can you give us that?

A On June 23, 2010.

right.

MR. FOSTER: All right.

BY MR. FOSTER:

Q Up until that point had you taken any buccal swab samples from any other person such as employees of UniHealth?

A No. No, I had not.

Q Okay. Did the items that you sent to SLED, did they come back?

A They did.

Q And did you receive a report --

A Yes --

Q -- from SLED when they came back?

A Yes, sir, we did.

Q Did they come back on April 12, 2001 (sic)? I'm handing you Exhibit 3, which is in evidence?

A That's correct. April 12, 2011.

Q And did you put these items then back into the evidence locker?

A They were logged back in, just the reverse process that they went out. The chain of custody, sign them out from SLED to us.

Q So chain of custody was preserved?

A Yes.

Q As a result of the test, as a result of your receipt of

this Exhibit 3, the results of the DNA analysis, did you take any additional buccal swabs from any UniHealth employee or any other person?

A No.

Q Was that ever considered?

A I don't know. I was not the investigator on the case.

Q Please answer any questions one of these gentlemen may have for you.

THE COURT: Mr. Arnold?

MR. ARNOLD: Just a few.

THE COURT: I just wanted to know who it was.

CARL SHULTZ - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Good morning, Capt. Shultz.

A Good morning.

Q Capt. Shultz, did you actually take the kit to SLED?

A I don't know if I took it or if our evidence clerk. I would have to look at the paper work.

Q Okay. I'm going to hand you what previously was identified as Exhibit 2B.

A This particular copy doesn't -- this was the original. This doesn't have the subsequent chain of custody on it.

Q Well, that name below you?

A That's Debra Byrd. That is our evidence technician. That is when she took it, removed it from the locker and put

MR. FOSTER: I'm pretty sure it's on the table up there.

THE COURT: Well, I'll see.

BY MR. ARNOLD:

Q So Debra Byrd --

THE COURT: It'S right here.

BY MR. ARNOLD:

Q -- the last person to have the DNA evidence --

THE COURT: It's already in.

BY MR. ARNOLD:

Q -- or the kit before it went to SLED?

A Correct.

MR. ARNOLD: No further questions, Your Honor.

MR. FOSTER: I have some.

THE COURT: Okay. Anything on redirect?

MR. FOSTER: Yes.

CARL SHULTZ - REDIRECT EXAMINATION

BY MR. FOSTER:

Q When did you say the kit came back, was it April --

A It was April of 2011.

Q This Exhibit 2C that counsel referred to that was signed by Debbie Byrd, would you take a look at it?

A Yes. It's an evidence form filled out which would have been the contents that were removed from the CSC kit by SLED. So when she brought the kit back there was additional evidence and she signed it in. That's what this is.

Q So the kit came back before the April report -- I'm sorry, the April report came before the May 5 --

A Possibly what happens is they send the report to us and they store the evidence and we usually go pick it up in bulk because we have so much at one time.

Q But there's only one item listed on here, on 2C. It reads Item No. 14, Quantity 1, Sealed envelope containing hair collected from victim's briefs. Parenthesis, collected at SLED, end parenthesis. Would there have been anything else that accompanied that?

A These items would have come back with that, however -- and if you'll allow me to explain. These copies were probably made as the case jacket was prepared, so it would have been some time before the additional chains of custody would be showing. So the current forms as they are now would have the chains of custody on them.

Q Do you know which briefs --

A I do not.

Q -- this is talking about?

A I do not.

MR. FOSTER: No further questions.

THE COURT: Anything on recross?

MR. ARNOLD: No further questions, Your Honor.

THE COURT: All right. Thank you, Capt. Shultz.

MR. SHULTZ; Thank you.

A Yes, I did.

Q So did our court reporter. Glad you could make it. What do you do for a living?

A I'm employed by the South Carolina Law Enforcement Division as a DNA Analyst.

Q Okay. How long have you been doing that for SLED?

A Since January of 1990, so it's 24 and a half years.

Q Okay. What education do you have?

A I have a degree in biology from the University of South Carolina. Once I received my --

Q When did you get that?

A 1980.

Q What after that, if anything?

A After that I continued working in the area of molecular genetics where I did sequencing and cloning of DNA, and then I began to work with the South Carolina Law Enforcement Division in January of 1990 as a -- I was hired as a DNA Analyst and that time I attended the FBI DNA Typing Schools.

Q The what?

A The FBI DNA Typing Schools. I was also trained in the area of serology to be able to identify body fluids. I've done crime scenes and I've also attended the South Carolina Law Enforcement --

Q The Criminal Justice Academy?

A Yes, I have. I'm a Certified Police Officer.

rules.

THE COURT: Any objection?

MR. ARNOLD: Your Honor, we just want to renew our prior objections stated regarding the delay in timeliness of their --

THE COURT: And that is preserved and noted on the record regarding her being an expert, though, that --

MR. ARNOLD: We do not challenge.

THE COURT: Okay. We'll preserve the earlier objection about going into this area, but she is qualified as an expert and can give her expert opinion on DNA.

MR. FOSTER: Thank Your Honor.

THE COURT: Thank you.

BY MR. FOSTER:

Q Let me go into another area, general area. Do you know of the term, chain of custody means?

A Yes, I do.

Q How long have you known what that means?

A It was since I've been working at SLED.

Q Okay. Is it very important at SLED?

A Yes.

Q And what kind of policies and procedures does SLED have with regard to chain of custody?

A There's so many. Once evidence is submitted our protocol states we need to keep our chain of custody intact

so we're able to tell the flow of a particular piece of evidence and if there's any discrepancy in the packaging, who handled the evidence last can be detected.

Q Okay. I'm going to hand you Exhibit 3A that's already in evidence. Is this a copy of the computer generated chain of custody at SLED for this case, the items?

A Yes, this is an example of the chain of custody.

Q It's for this case, isn't it?

A Yes, it is.

Q In connection with your work in this case, did you and your fellow comrades at SLED follow proper police and chain of custody with respect to this evidence?

A Yes, we did.

Q Do you have your notes with you on this case?

A I have my report?

Q Do you have the same thing I'm showing you on Exhibit 3?

A Yes, it is.

Q When did the items come down to SLED?

A They were submitted to SLED, based on the information I have, on June 23, 2010.

Q Okay. And did all the evidence that you have here in your report come down at one time or were there different shipments?

A The paper work that I have indicate that the CSC kit,

the briefs and the buccal swabs from Mr. Williams came at the same time.

Q Nothing else came later?

A Nothing that I received -- was given to me.

Q Now, there's something on Page 2 of your report. It says briefs from victim and debris from briefs?

A Yes.

Q I can't remember whether you included that in what you said came down?

A I said briefs.

Q Okay. And then there's an enclosed evidence bag with what's called debris from briefs?

A No, the --

Q The report is what it says.

A Yes, but you had the briefs and the briefs are checked for whether there's any hair or anything in there is any hair or anything in there. If there's any debris then it's taken off the item and sub-itemizes is what we call it. That's it's 2.1 and put in a separate envelope.

Q So is that something that you or your department does or is that something that came to you like that?

A That's what I did.

Q Okay. And what are you looking for in the briefs to do a DNA analysis?

A I'm looking for an indication of any body fluids in the

briefs and also I'm looking for hairs that could come from the victim.

Q Okay. Would you know anything about the origin of these briefs?

A No.

Q Would you tell the jury what DNA is?

A DNA stands for Deoxyribonucleic acid. So we use the short term DNA. It's considered to be the blueprint of the body. Everyone's DNA is different except for identical twins. The vast majority of DNA, I would say, is pretty similar in that you have to make two eyes and two legs and two arms, but the portion that we look at is different than what you would consider those particular parts of the DNA. We compare a person's DNA profile to evidence that's submitted in a case to determine whether you have a match or you do not have a match between the evidence and the person DNA standard. So I'm going -- when I receive evidence, I analyze it, develop a DNA profile from that. I receive the person's standard. It could be blood or buccal swab, which is a cheek swab, and develop a DNA profile from that. And then I do a comparison between those items and then generate a report from my findings.

Q And this case, did you have a buccal swab from the suspect Ralph Williams?

A Yes, I did.

Q Did you have a buccal swab from Henrietta Mayes?
A Yes, I did.
Q Are those also called a standard?
A Yes.
Q Did you receive, also, some fingernail scrapings of Ms. Mayes right and left hands?
A When the sexual assault kit is done these items are collected during the examination. So within that kit were her fingernail s2rapings from the left and right hand.
Q Okay. Was there a sample of vagina swabs and a vaginal smear submitted to you?
A Yes.
Q What's the difference between those two things?
A The vaginal swab is a Q-tip inserted into the vaginal area and swabbed. That same swab is taken and make a smear on a microscope slide, which is a piece of glass that is about this long, approximately two inches long, and you take that swab and you smear it on and you let it dry.
Q Okay, what additional benefit or information do you get from the slide with a smear verses the swab?
A Well, I would take the swab and I would do -- the analysis I would do to check for the presence of semen or check for the presence of body fluids on that particular swab. The smear is made so I can go back to it and check and see if there's any sperm, which is different from semen,

on that smear.

Q And did you make a determination, in your opinion, as to whether or not the vaginal swab contained any evidence of semen?

A No. Based on my report there was no semen identified on the vaginal swab and on the vaginal smear there was no spermatozoa, which is sperm.

Q There was no sperm on what?

A On that slide.

Q Okay. You also had an item, suspected body fluid swabs --

A Yes, I did.

Q -- Item 1.5?

A Yes.

Q And what did you find that fluid to be, if anything?

A No semen identified.

Q Is that what you were looking for or testing for?

A Yes.

Q Did you do any further analysis to determine what it was?

A No. I only checked it for the presence of semen.

Q What did you determine with respect to whether or not Ralph Williams could be -- was excluded as not matching the DNA on the fingernail scrapings?

A I'm reading from my report and it states that no DNA

profile foreign to the victim, Henrietta Mayes, was developed from Items 1.6.1 and 1.6.2, which are the right and left hand and fingernail scrapings.

Q Would you then rule out Ralph Williams DNA as a result of that finding?

A There was on one there -- no one's DNA was detected but for hers on the fingernail scrapings.

Q What else did you conduct the DNA analysis on?

A I also did the DNA on suspected saliva swabs and I reported my results from that.

Q Did you do any DNA analysis on the vaginal swabs or smears?

A No, I did not.

Q Is that standard protocol?

A No body fluid detected on those items. Then the analysis stopped there.

Q There's nothing to identify with Ralph Williams in any of these items, the 1.2, the vaginal swabs or 1.3, the vaginal smear?

A No.

Q Can you absolutely rule him out as being involved with that?

A I did not do an DNA analysis on those two items.

Q Okay. What else did you do DNA analysis on that we did not discuss?

A Well, I did DNA analysis on 1.4, which was suspected saliva swabs.

Q Okay.

A I was able to generate an analysis from that particular item.

Q Is there an X and a Y chromosome as part of our makeup as humans?

A Yes. What he's referring to is the sex chromosome. A female would be X and a male would be XY.

Q Okay. So I'm an XY and you're an X?

A Yes.

Q Okay. With respect to the salvia swab or fluid, was there any Y chromosome associated with that?

A I was not able to pick up any Y on that particular item --

Q So that's the Y?

A -- I need to clarify that, please. That item?

Q Sure.

A Okay. Item No. 1.4 is the suspected saliva swab. I was able to obtain DNA from it and it was a mixture. I'm reading from my report that the DNA obtain from Item 1.4 is a mixture of at least two individuals and the DNA profile, the major contributor to this mixture is consistent with the DNA profile of Ms. Mayes. And then the last statement is that Ralph Williams cannot be excluded as a possible minor

contributor to this mixture.

When we're looking at a person's DNA profile we're looking at 16 different areas on the chromosome and that would be including the sex chromosome. The first part is just your regular DNA and not your sex chromosome, and within that mixture I could not exclude Mr. Williams from that. And what he's referring to is the sex chromosome. I was not able to pick out the Y and based on my years of experience since the minor contributor was so low that I see why you couldn't pick out the Y because it would go below the threshold that would allow detection.

Q Or there may not be any male chromosome?

A There's a possibility of that and also the fact that I was not able to pick it out.

Q You really don't know, do you, for sure?

A Well, when I look at my electro-sphereogram there is an indication, but as to the law of thresholds, I can't testify to that.

Q Okay. And did you conclude the saliva swab was a saliva fluid as opposed some other kind of fluid?

A I tested it for that. It was saliva indicated.

Q Okay. Now, you said it was a mixture of at least two individuals, could it be three, five -- how many could it possible be --

A Based on --

Q Would it be in your file, your report?
A It was just taken, given to me as a suspected saliva swab -- I'm looking at the protocol that was done at the time of the examination to see if they have it there or not, but I don't know exactly where they collected it from.
Q The lady that did the examination testified yesterday it was from around the mouth and cheek.
A Okay.
Q Just a moment.
Did you receive as items of evidence for consideration any medical gown worn by the victim?
A No, I did not.
Q Any red shirt from the bed under the victim?
A No, I did not.
Q Any green blanket from the victim's bed?
A I did not.
Q Any white sheet from the victim's bed?
A I did not. I didn't receive any clothing or bed linens from the victim.
Q Then you didn't receive a pink mattress protector from the victim's bed?
A I did not.
Q One white fitted sheet from the victim's bed?
A No.
Q When you had the briefs that you had you said you shook

them out and checked them carefully?

A Yes. Whatever I could visually see on the briefs I removed --

Q I'm sorry. I interrupted you. Go ahead. Say that again.

A The debris that I stated was what was -- what I saw on the briefs.

Q And what kind of testing do you do?

A You do a visual inspection of the brief. You look for bodily fluids or any kind of debris, as I stated. There was some debris but it was not hair.

Q It was not hair?

A It was not hair.

Q Was there anything from which you could do a DNA analysis?

A I didn't see anything, no.

Q Okay. Thank you. No further questions. Please answer any my friend has.

THE COURT: Mr. Arnold.

MR. ARNOLD: Yes, sir.

LILY GALLMAN - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Good morning.

A Good morning.

Q Couple of questions in follow-up. I think I was

tracking six items you tested. The first one was a vaginal swab, correct?

A Yes.

Q And you were checking for sperm?

A I was checking for semen.

Q And if Mr. Ralph Williams didn't have sex with the victim would you expect to find semen?

A No.

Q And this was the vaginal smear, correct?

A Yes.

Q If Ralph Williams didn't have sex would you expect to find semen there?

A No, I wouldn't. I would not expect to find semen or spermatozoa.

Q Okay. The buccal swab in the cheek, were you checking those to see if there was a kiss or anything?

A Evidently, during the time of the examination the nurse noticed something there. So a suspected saliva swab was taken, as I was told, from the cheek of the victim, and so I tested that for saliva.

Q Okay. And then the fingernails, this was from the victim's right and left hands, right?

A Right.

Q And this particular victim, are you aware of her abilities of her right hand?

dependant upon CNAs to provide all care to her, would you expect to find DNA under her fingernails?

MR. FOSTER: Same objection.

THE COURT: And I'll do the same ruling. Go ahead.

A If the victim is not able to pull, scratch or do anything to an individual who is there with them you wouldn't expect to see DNA but there's a possibility of anything happening.

BY MR. ARNOLD:

Q And you mentioned the underwear or the briefs that you looked at, was there any feces or were there any dirty items in there?

A I didn't document anything.

Q And you said there were no hairs?

A No.

Q And not even potentially the victim's hairs?

A No. The brief that was there was fibrous and I checked them under the microscope and there were not hairs, based on my examination.

Q The plaintiff called you here today, correct, put you under subpoena?

A Yes.

Q Did they ask you to do any of the statistical analysis that he was questioning you about?

A No.

Q And what did you do --

THE COURT: Mr. Warren, I had to get Mr. Foster to talk up.

MR. WARREN: Okay.

THE COURT: If you don't mind doing that as well.

MR. WARREN: Okay.

THE COURT: I'd appreciate it. Thank you, sir.

MR. WARREN: Yes, sir.

BY MR. WARREN:

Q You said that Haligmeyer prior to Sarah Lee?

A Yes, sir.

Q And approximately how long did you work at Haligmeyers?

A About 12 years.

Q Okay. All right. Now, you stated your were disabled. What's the, I guess, the basis of your disability?

A I had a stroke.

Q Okay. And how long ago was that stroke you had?

A Three years ago.

Q Okay. Now, Mr. Rivers, are you familiar with Mr. Ralph Williams?

A Yes.

Q Okay. How did you know Mr. Ralph Williams?

A He's my cousin, I mean, my wife cousin husband. He's a good fellow.

Q How long have you know Mr. Williams?

A Oh, about 20-something years.
Q Okay. Are you familiar with the events that occurred on June 21, 2010?
A Yes.
Q Okay. How are you familiar with those events?
A Well, couple of days afterwards we was sitting on the porch, sitting there talking, me and the Rev. We was sitting there talking and this fellow we call the meat man came from around the house and came up and grabbed Ralph and said, --

MR. BRING: Objection, Your Honor.

THE COURT: Hold on. I'm going to sustain that objection. He can't go into what somebody else said.

MR. WARREN: Well, what he's doing is stating the mind of the hearer, he can state what he observed.

MR. BRING: That --

THE COURT: He can say what he saw.

MR. WARREN: Right. That's what I'm saying, observed.

THE COURT: But he was just getting ready to say what somebody else said who is not in court, like that. He can say that they had a conversation, he can say he saw him, but he cannot say what somebody else said to Mr. Williams.

BY MR. WARREN:
Q What I'm asking from you, Mr. Rivers, is what did you see and observe Mr. -- this person the meat man, what did

MR. RIVERS: Okay.

THE COURT: Okay. All right, sir.

BY MR. WARREN:

Q Okay, continue to state what you observed and what you saw?

A I seen this man grab Ralph and jacked him up and I don't know if he had some brass knuckles or either knife on the side.

Q Now, do you have your own person opinion why he jacked him up and had those brass knuckles, and you can state your opinion as to why you believe he did that?

A But it was because of, I guess, what they said Ralph did.

Q Okay. And in saying what they say Ralph did are you talking about the allegations that were in the newspaper?

A Yes, sir.

Q Okay. And you're familiar with the allegations that was in the newspaper?

A Some of them.

Q Okay. If I hand you this Exhibit 15B, are you familiar with that? You can read the headlines.

A Yeah.

Q Is that the article, is that what you're referring to what happened, June 21, 2010?

A Yes.

Q Okay. And when you read that publication could you basically -- go ahead and read that headline so the jury can understand what you're looking at?

A Assault charge against care worker.

Q Go ahead speak up?

A Okay. Assault charge against care worker.

Q Okay. Now, did this particular -- did you also see this particular article?

THE COURT: Which one is that?

MR. WARREN: This is 15A.

BY MR. WARREN:

Q Would you read that?

MR. BRING: I don't think he ever said if he saw the first article, he hasn't said he saw the second article.

MR. WARREN: Yeah, he stated he saw the first article.

THE COURT: Yeah. I think he did say he saw the first one.

MR. BRING: Okay.

THE COURT: But he -- did you see that article, Mr. Rivers?

MR. RIVERS: No, sir, not this one.

THE COURT: You did not see it. Okay.

BY MR. WARREN:

Q This is Exhibit 15C, would you identify that, can you identify what that is?

A (No response.)
Q The document?
A Yes.
Q Okay. Newspaper?
A Yes.
Q What's the article, is this the newspaper you saw on June 21, 2010, June 22?
A Yes.
Q Does that look like the article that you saw?
A Yes.
Q Could you read the top of the article?
A Care worker accused of trying to rape a woman.
Q Okay. Now, in your opinion, is that the basis of why the meat man jacked Ralph up?
A Yes.
Q All right. Thank you.

THE COURT: No other questions?

MR. WARREN: No further questions.

THE COURT: Anything on cross?

MR. BRING: Yes, Your Honor.

THE COURT: Okay. Mr. Bring, your witness.

TERRY RIVERS - CROSS-EXAMINATION

BY MR. BRING:

Q Mr. Rivers, good morning.
A Good morning.

Q My name is Jason Bring. I represent the defendants here today. I just have a few quick questions here for you. You said you are a cousin of Mr. Williams; is that right?
A Yes.
Q And this --
MR. FOSTER: Jason.
THE COURT: I think he wanted to explain that somehow.
A That's my wife cousin husband.
BY MR. BRING:
Q Okay. Cousins by marriage?
A Uh-huh. (Affirmative response.)
Q Okay. And this event y'all were talking about that was at the rooming house wasn't it?
A Yes.
Q And y'all were all sitting on the front porch, right?
A Yes, sir.
Q Doing a lot of drinking, right?
A No.
Q You were drinking beer, right?
A No.
Q No. So if Mr. Williams said y'all were all drinking beer you're going to disagree with that, right?
A Well, I don't think we was.
Q Okay. Who all stays at that rooming house?
A It was quite a few people.

THE CLERK: State your name, please.

MS. MACK: Cynthia Mack.

(WHEREUPON, Cynthia Mack was sworn to tell the truth.)

THE COURT: You may be seated.

MS. MACK: Thank you.

THE COURT: All right, Mr. Warren.

MR. WARREN: Yes, sir.

CYNTHIA MACK - DIRECT EXAMINATION

BY MR. WARREN:

Q Good morning, Ms. Mack, how are you?

A Good morning.

Q Would you please state your name for the record, please?

A My name is Cynthia K. Mack.

Q And Ms. Mack where do you reside?

A I reside in Orangeburg at 498 Armstrong Terrace.

Q Okay, and how long have you lived at that location?

A I have lived at this location, the particular location with this one property for the house I'm living in is probably 8 months. The property that I live on, I've been living there probably like 25 years.

Q Okay. What do you do for a living?

A I work at the Department of Health and Human Services. I'm a Medicaid worker. My particular area is Medicaid

nursing home eligibility.

Q Okay. Now, did you go to school to get some education prior to getting that job?

A I have a degree in Counseling Education. I have a degree is Theology and I have a Master's Degree in Nutritional Science.

Q Okay, and as your job as a case worker, could you describe your job?

A What I do is when you have somebody who financially do not have the ability to pay for medicaid nursing home we do the paperwork that will help them get assistance through Medicaid through the State of South Carolina.

Q Okay, and do you have any other occupations?

A I'm also the minister of State Holy Temple.

Q Okay, could you describe what State Holy Temple is?

A State Holy Temple is a Coleman -- it is a church on Coleman Avenue.

Q Okay. How long have been the pastor of that church?

A I've been the pastor probably about 14 or 15 years, I think.

Q When did you take over as pastor of that church?

A I took over after the death of my father.

Q Okay. So he founded the church?

A He founded the church.

Q And how is it you know Mr. Williams?

A I know Mr. Williams through my sister. He is married to my sister Linda Williams.

Q Okay. How long have you known him?

A Probably about 25, 27 -- 27 years, probably.

Q Okay. Talk to the ladies and gentlemen about Mr. Williams.

A Okay. When I first met Ralph it was not the best relationship in the world. I dislike Ralph. I did not want my sister to marry Ralph at all. And so with that relationship through time we learned to be able to get along with each other.

Q Uh-huh. (Affirmative response.)

A We learned as Ralph -- and being honest when they got married I did not go to the wedding ceremony. But last year, I was the one who actually did their vow renewal.

Q And why is it that you came to be so endeared with Ralph?

A It is through the process of where you get to know someone and you be around them. You be able to learn their heart. And when I first met him, I was much more younger, much more judgmental of him, and so as you develop you're able to realize you've got to know the heart of someone to understand who they are.

Q Okay. All right. And you say the heart of someone, what do you mean by that?

A What I'm saying is I could not have where -- me and Ralph butt heads quite often.
Q Well, --
A We look at some things from different points of view.
Q What type of things?
A Ralph is the type of person who if he believes something he's going to fight for whatever he believes for whatever he believe, whatever thought he has.
Q Uh-huh. (Affirmative response.)
A I'm the type of person whatever I believe I'm going to fight for whatever I believe in.
Q Uh-huh. (Affirmative response.)
A So sometimes we have different conflicts of interpreting certain things and so we have disagreements.
Q And certain things, such as scripture, what type of things?
A Well, some things about scripture. Both of us like cooking.
Q Okay.
A So some things about how it should be done. How you can decorate. Where it is cooked and how it should be cooked will cause this disagreements.
Q So y'all both are cooks?
A We -- he's the main cook for our church. I'm the baker. And I'm going to always continue to maintain the

fact that he might be the main cooker, but I am the baker.

Q So what is his reputation as a cook?

A Ralph is an excellent cook. Ralph, in his cooking process, one of the things that benefitted a lot of people at one time wanted to have Ralph come and cook and stuff. Ralph came and cooked, Ralph did the job real fine. He know how to prepare that food real fast. He have knowledge about cooking. He's going to go back and study and research and do a recipe and find out how to do that recipe.

Q Okay.

A So he's a very experienced good and he's a great cook.

Q Okay. Is that based on the community or is that based on your opinion?

A That is based on the community and a lot of people would hire Ralph for the purpose that he was a good cook and him being in a good cook they knew he was not going to just hang around that and like try to just loaf around and meet the clock. My sister, sometimes, I wish Ralph would just slow down so that we can get more money, because he was like sometimes going different places and he was the prep cook. You know, he cook for other people. There were times they would do different things for different people for different type of jobs that somebody was having something. Ralph would help prepare the menu or he was actually the main cook in getting the food there and available.

Q What do you know about the events that occurred on June 21, 2010?

A On June 21, 2010, my sister called and my sister call me and she said --

MR. BRING: Objection, Your Honor. Hearsay.

THE COURT: All right. I'll sustain that objection.

BY MR. WARREN:

Q You can't say what a person said.

A What a person said, okay.

Q Did you see anything or observe --

A On that day I met my sister at the -- at my sister to a bond hearing to go get the money to bail Ralph out.

Q Okay. Who provided that money?

A I did.

Q And why did you provide the money for Mr. Williams?

A Because they were not financially strong and one of the things that we did was actually help them at certain times and at that particular time they were just getting where they were finally because of the job that he had, that he had at the nursing home, they were just beginning to get financially strong because you were having income coming in. So at that point I provided the funding for -- to do the bail.

Q What was the bond hearing for, what was the --

A It was -- the first charge was, if I may not say

exactly what, but it was attempted sexual assault against, I think, somebody who was not capable of caring for themself. I don't know the exact terminology of it, but that was the first charge.

Q Outside is there anywhere else you saw about these charges?

A I saw it in the paper the next day. I saw it in the paper, but before that having seen it in the paper, I saw -- we went and did the bond to prepare to bail him out. The bond was sent to the Court and so my sister went to actually go and pay the bail and she was waiting for Ralph to get out. Later she found out, I got a call from my sister and my sister said to me --

MR. BRING: Objection, Your Honor.

BY MR. WARREN:

Q You can't say what she said.

A Okay. Well, at that particular time I found out --

Q What was it you said -- the day after -- was it -- I'm showing the witness Exhibit 15C.

A Okay. That particular conversation happened that Monday7.

Q Now, you said the next day, I guess you saw the paper or whatnot. Could you explain that?

A Right. That next day I read in the paper that Ralph was charged and at that particular time it was that he had

just attempted, and I'll say, to rape someone. Attempted to rape someone. But understand that I already knew that they were taking up the level of the charge.

Q Okay.

A When I said what it said --

Q When you said they were taking up the level of the charge, can you explain that?

A What happened was, on that Monday, Latisha, (sp) I think Latisha Coakley --

Q Okay.

A -- took up the charges from attempted rape to rape.

Q All right. And is that the bond hearing that you attended?

A The bond hearing that I attended happened on that Tuesday.

Q Why did they took the charges up?

A The reason why they took up the charges was because the Latisha Cackle indicated that she actually (inaudible).

Q Okay. Now, and did you come to know something different later on?

A Yes.

Q Okay. Now, could you describe to me about after this event in terms of Ralph and what did you do?

A Okay. When I heard the information, the first thing I was like, I can't believe Ralph would do that. I was

extremely upset that that was going to be something that Ralph would have done. There's no way in my mind I could imagine that that would have been something that Ralph did.

Q Uh-huh. (Affirmative response.)

A But understand that that came to my knowledge because I heard somebody in law enforcement who I would have said would not have just go and say to a wife that we found semen.

Q Uh-huh. (Affirmative response.)

A And when I heard that they found semen, that even more brought anger because at that point I was saying they found semen. So my point was, to my sister, I said, well, you're going to divorce him. And before just meditating, I read the paper, what was in the paper on that Tuesday --

Q Could you -- I'm having you look at 15C. Could you read the title of that article and tell me what you read in the paper?

A Case care worker accused of trying to rape a woman. At that particular point I read in the fact that there was a worker, workers at the nursing home -- I don't call it UniHealth. It was named something else in the past. There was a worker at Unihome (sic) UniHealth that saw Ralph actually -- in the bed, beside the bed or because it's two different articles that I actually read. One was in the bed, standing by the bed. Then another one was in the bed,

actually with him. The first article was something like in the bed or beside the bed.

Q Now, after those articles, people -- did you come --was your opinion of him, did it change? What was your opinion?

A When I read the article I was at work. I was extremely upset. I was extremely upset and I was then -- I said to my sister, are you going to divorce him? But in the time that same day before I got to the bond hearing --

Q What length of time was that?

A That was probably, I think probably before 1:00 o'clock. I can't remember. My heart said, my spirit said to me, Cynthia, Ralph is going to have to do his time, but we're still going to support him, and you're going to go and stand by your sister and be there as she stood by her husband.

Q Uh-huh. (Affirmative response.)

A Okay? So we went to the hearing and -- for the bond hearing, and at that particular hearing where they did the procedure to increase it to where it was a rape charge, not attempted, but a rape charge.

Q When did your opinion change, what time? A What happened was my sister -- it came to my knowledge that I needed to speak to Ralph.

Q Okay.

A It came to my knowledge that I need to speak to Ralph.

want to let them know your --

THE COURT: Oh, yeah. No, I think that would be good. That would be good. So we don't have any objection, but let's see how much longer she's going to be and then we'll go from there.

MR. WARREN: Okay.

THE COURT: All right.

(Jury in at 11:55 a.m.)

THE COURT: Some conversations take longer than others. That was my fault. Okay.

All right, ladies and gentlemen, we're going to continue with the direct examination of Ms. Mack.

Mr. Warren.

MR. WARREN: Yes, sir, Your Honor.

THE COURT: Yes, sir.

BY MR. WARREN:

Q Ms. Mack, you were talking about the reputation that's part of this case that we have to establish of Mr. Williams before and after the events on September 21, 2010.

Now, you indicated previously when you first met Ralph 25 years ago that, you know, -- let's just talk briefly about how that changed and then we'll talk about after, and go ahead. So 25 years ago you met Ralph and let's talk about how that changed over the years that changed and you grew to love him. Go ahead.

A In my opinion, when I first, when we first met Ralph we had a hostile relationship. After getting to know Ralph in his heart I was able to say that Ralph had a good heart even though he may have where there were things that I disagree with.

Q Uh-huh. (Affirmative response.)

A One of the things I said when I first met him I was younger. I was more judgmental. I was not where I had the understanding of true Christian values within my heart, as well. One of the things that I learned is when we come in contact with people we cannot look at their past and make a decision about what they have done in their past and judge them.

Q What do you mean by that?

A What I'm saying is that the Christian point of view is everybody have flaws, it would not necessarily determine if somebody drinks that there is a bad person because their heart can still be a good person, and as the Bible says, it is not what goes into a man that defiles him, it is what comes out of him. And over time I saw that Ralph was the type of person, if it was somebody hungry, he was going to be the first person to say when we're having these events we're going to take these plates and we're going to serve these people. Ralph was the person if anybody was walking the street where our church is, it is a drug area. Ralph

was always taking plates and just giving to people in the community. So he was very concerned about the homeless with the understanding about 27 years ago Ralph also was homeless.

Q Okay.

A So within time I was able to learn the type of person that Ralph was. What was really down into his heart. I could not be where I'm going to say I'm going to judge him on the fact that we may argue and have different opinions about certain things. I cannot judge and say this man is a bad man because he have the flaws just like all of us. All of us with have a time when we argue, and I had to be able to realize that also my life-style that I had was somewhat protected. I never had where I was a person who used drugs or drank, but it took me years to be able to understand and that was a failure on my part.

Q Okay.

A But it was a failure on my part to be able to learn that you cannot judge somebody because they were somebody who drank. You cannot judge somebody and say that they used drugs and say that is a bad person. We all come from different circumstances and different situations. So I had to learn and took the opportunity to say, I got to get to know Ralph as a person and in the mist of time I will tell Ralph, say Ralph I love you and I will stand by you. And I

had to be able to say this person might have a problem with drinking, may have a problem with using drugs, but that is what the church is for. We're not called to judge someone, and one of the things of going through that is that the Bible says that you must try the spirit, and through this whole ordeal I have tried the spirit of Ralph.

Q And after June 21, 2010, in trying that spirit, what did you come to an understanding?

A One of the things in trying Ralph's spirit, I watched and I observed. I watch and I observe what happened. Never once did I ever see Ralph say I did this, even during the time that he was drunk. Never once did he have any indication, and there is something about people that when they do something that because of the guilt that you carry, the guilt that you carry, you have a way of letting people know, you know, I'm not saying that I did it, but I did do it. I never one has the inkling of Ralph saying that he did this here.

Q And when you say this here?

A I'm talking about as for Ralph -- because I couldn't remember the abuse of a vulnerable adult or attempting rape or when the charge went up to actually raping a vulnerable adult. I never once had him indicated that he was guilty of that.

Q Now, just talk to me about your beliefs and opinions

not -- specifically regarding to how the reputation of Ralph may have been diminished after September 22, (sic) from your observations, not statements that people made.

A Okay. From my observation, I find that in life, as I had problems of being able to look at things from a perspective. You can imagine that if your picture was placed in the paper. If your face was placed on television that people will judge you as being guilty of what the charge is.

Q Now, I'm just handing you -- just talk to me specifically about people's opinions as it relate to his -- the effect on his reputation and how they looked at him different. Just limit your testimony to that.

A Okay.

Q I'll show you Exhibit No. 15B --

A And -- 15B. In my opinion people felt that Ralph raped this person. It changed their perspective of who Ralph was. They did not want to be around them, and I don't have any problem with that because I understand that is normal. They did not want to have Ralph come and cook. They didn't not want him to be in their business, because to have a rapist in your business, that can be bad business for you.

Q So are you saying, was he publically hated during this time?

A In my opinion, he was publically hated.

Q Okay.
A Because he had been charged with being a rapist.
Q Okay. And it's your understanding that it was not just actual rape but also an attempted --
A Yes. It was where it was attempted rape against -- not only just rape but you're talking about a vulnerable adult.
Q And do you understand the facts of what was alleged to have happened, you read that in the paper?
A Yes. I have where of having the understanding of what occurred and how it occurred.
Q It's right there in the paper where you can read it --
A Right.
Q -- right quick so you can familiarize yourself with it?
A If I can see it. Read the whole charges?
Q Just read it to familiarize yourself with it.
A Charges was amended to --
Q You don't have to read it --
A I don't have to read it out loud?
Q -- just familiarize yourself with it.
A Okay.
Q Once you familiarize yourself you can give an opinion on the allegation.
A Okay.
Q And also I'm showing the witness Exhibit 15C, an article, and after reading -- you stated you read these in

the paper?
A Right.
Q Could you --
A I read it on the Internet.
Q Okay.
A And I saw copies being pulled down. Okay.
Q Okay. Now, let me show you these Internet articles, Exhibit 15A and 15B; is that what you --
A Right. This is what I read.
Q Okay. Now, just give the jury your opinions based on how they changed, based on these articles, your opinions on what happened?
A Okay. On -- am I to say how -- just talk about the articles?
Q Just give your opinion as to --
A Okay.
Q -- your belief in the truthfulness of those articles.
A Okay. In my opinion when I got an understanding of what I read that --
Q And your conversations with Ralph --
A Right.
MR. BRING: Your Honor, I want to clarify. It is her opinion about whether this occurred or was it --
MR. WARREN: Her opinion as to whether it occurred.
MR. BRING: Your Honor, we object to that. She has no

foundation for that.

MR. WARREN: Well, based on her --

MR. BRING: She can't read the newspaper and --

THE COURT: Hold on a second. The issue about this in this case is his reputation.

MR. WARREN: Yes, Your Honor.

THE COURT: She can testify as to what she -- whether she believes it damaged his reputation or not. Whether she believes he did it or not --

MR. WARREN: Okay.

THE COURT: -- she can't go into that.

MR. WARREN: Okay.

THE COURT: Okay?

MR. WARREN: All right.

THE COURT: She can testify as to whether she believes she damaged his reputation or not.

MR. WARREN: Okay.

MS. MACK: Okay.

BY MR. WARREN:

Q Just talk about how it damages his reputation?

A That once people had where you have rapist over your name, over your head, you are called a rapist, people will never want you around. They are going to be questioning, are you a rapist. When you have been someone -- someone said you are a rapist nobody going to trust you. People

will say you are the worst person in the world. People are going to question how could you do that to your wife. People are going to question if we have this person ever rape somebody else. So when you are called or someone has said you raped somebody you are forever labeled no matter what happened. You are forever labeled as a rapist and there will be some people who will always say you are a rapist no matter what. They will always say because that charge have been placed on you, you are a rapist. They will not try to look for the opportunity to see there was two sides to a story. So when you are called a rapist that name will be carried with you and one of the things that --

MR. BRING: Your Honor, I'm trying to give leeway, but this goes far beyond your ruling on her opinion of his reputation in the community.

BY MR. WARREN:

Q Could you just --

MR. BRING: She's giving her own --

MS. MACK: To the jury?

THE COURT: No ma'am. No, ma'am.

MS. MACK: Okay.

THE COURT: The question that Mr. Warren asked you, I believe, you know.

MS. MACK: Is --

THE COURT: No, no. Let me finish. The question, do

you believe his reputation in the community has been damaged by these charges. Yes or no.

MS. MACK: Yes.

THE COURT: Okay.

BY MR. WARREN:

Q And then lastly, could you talk about the effect on the marriage?

A In my opinion --

Q And your sister.

A -- to have for to go almost two years or a year and a half without knowing --

Q Let me caution you --

A Okay.

Q -- to speak specifically --.

A Okay.

Q -- to how it effected the marriage. So --

A I --

Q -- and your observation of how it effected the marriage and your sister.

A Okay.

Q Specifically that.

A How it effect the marriage?

Q Yeah. Your observations of how it effected the marriage and your sister?

A Yes. The marriage was effected. It is my opinion that

their marriage was effected by this event.

Q What did you observe?

A I observed that my sister was very stressed. I observed that there was more arguments.

Q What do you mean by stressed?

A She was stressed because she was carrying a load that -- not knowing exactly what was the results of certain things. Not being having where --

Q And do you mean by certain things --

A I'm talking about not knowing what the results of the DNA.

MR. BRING: Your Honor, he's been cautioned.

THE COURT: I understand. We're going to straighten it out. Okay.

Ladies and gentlemen, we need to take one more quick break, okay, and then we'll bring you back in here. I promise you it will only be about five minutes. Okay. Than y'all. You can't talk about what we've heard so far.

(Jury out at 12:11 p.m.)

MR. WARREN: I'm done.

MR. BRING: I'm not.

THE COURT: Just wait. Everybody wait.

All right. Now, Mr. Bring, I'm going to let you put --

MR. BRING: We've had an entire pattern of contempt for the Court's directions in this case, Your Honor. Not only

THE COURT: All right. Are you ready to go?

MR. WARREN: Yes, sir.

THE COURT: Are you ready, Mr. Bring?

MR. BRING: Yes, Your Honor.

THE COURT: Okay.

If you'll bring the jury back in.

(Jury in at 12:15 p.m.)

THE COURT: All right. See, I told you it wouldn't be long, okay. So one time I was right.

Now, we're going to resume with the questioning of Ms. Mack at this point.

MR. WARREN: No further questions.

THE COURT: All right. Mr. Bring, any questions?

MR. BRING: Yes, Your Honor.

THE COURT: All right. Your witness.

MR. BRING: Thank Your Honor.

THE COURT: Yes, sir.

CYNTHIA MACK - CROSS-EXAMINATION

BY MR. BRING:

Q Ms. Mack, I just want to cover a few things. We haven't deposed you before; correct?

A No.

Q Okay. I understand from your testimony this morning, you said you work at the Department of Health and Human Services?

A Correct.
Q And you handle nursing home eligibility issues?
A Yes. Correct.
Q And that's to get coverage in nursing home for folks that need payment for --
A Correct.
Q A lot of that is done by Medicaid; is that correct?
A Correct.
Q Okay. And in your experience with that, it's not entirely uncommon for a 42 year old to be in a nursing home; is that correct?
A It is not uncommon.
Q It is not?
A It is not uncommon.
Q Okay. The majority of patients in nursing homes are elderly; correct?
A The majority are. Usually somebody who is probably over the age of 65.
Q Right, because that's when Medicaid kicks in with the majority of folks; correct?
A Medicaid will pay for nursing home payment if they're eligible regardless of the age.
Q Okay. And to be eligible you need to be fairly incapacitated; correct?
A You must meet the level of care for Medicaid benefits.

Q Right, and in order to be in a nursing home you have to have some type of issue that needs on-going care; correct?
A When it is Medicaid client you have -- they have to be intermediate or skilled.
Q Uh-huh. (Affirmative response.) You mentioned earlier that you and Ralph started with a hostile relationship; right?
A Yes.
Q Is that the word you used?
A I probably did. Yes.
Q And why was that?
A It is because I didn't like Ralph. Ralph was homeless, he was on drugs. That's my perspective. So I did not like Ralph.
Q And you are Mr. Williams' pastor but you're also his sister-in-law; correct?
A Correct. Yes.
Q Now, when this first happened your initial reaction was to tell your sister that she needed to leave Ralph; correct?
A Correct.
Q And part of that was based on your understanding that he had prior infidelities with his wife; correct?
A No. That was not -- that was not my reason for that. It was what I read in the paper --
Q Okay.

A -- that made me say that he needed to leave, because to have where someone accuse someone of something, I'm just going to say, oh, what about what I read in the paper I was saying she needed to leave.

Q So you were willing to, based on what you read in the paper to advise your wife -- I mean advise your sister that she needed to leave her husband; right?

A No. I didn't advise her that. I asked her that.

Q Okay. You asked her to leave him?

A No. I asked her was she going to leave him, because my perspective, my opinion was there is no way this person when I saw in the paper there were two employees that said this person did that. I was thinking there were two employees that actually saw the event.

Q And you're aware that the initial paper article said that it was allegations of attempting to have sex; right?

A Right.

Q They used the word attempting; correct?

A It was, it was initially attempted.

Q Okay.

A And later that afternoon it went to actually committing the act because semen was supposed to have been found.

Q And that upgrading, as you called it, was -- and the semen allegations, those came from the police officers; correct?

A Correct.
Q They didn't come from the nursing home employees; correct?
A No.
Q And so the allegations, and you understand that, the allegations from the nursing home folks was that they suspected that Mr. Williams was attempting to have sex with this resident; correct?
A It is what the initial charge was that it was attempt. That was my understanding of the initial wording at that particular point. That was my understanding that that was coming from the police department. That was my understanding at that time.
Q And since you kind of work in this area of getting folks into nursing homes you would agree that if you have an elderly or someone who is disabled in a nursing home and if workers there suspect that there's sexual abuse going on they should let the police know about that shouldn't they?
A I believe that they should let the police know about that instance. Matter of fact, I would consider it to be mandatory to let the police know about that incident.
Q And you -- are you aware now of Mr. Williams's prior infidelities with his wife?
A Yes, I do know there were?
Q Were you aware prior to this coming out?

A Yes, sir.
Q Still a lot of college friends in the community?
A Yes, sir.
Q Do you still talk them?
A Quite frequently. Yes, sir.
Q Okay, and that's both high school and college friends?
A Yes, sir.
Q Okay. Now, sometime in the -- what do you know about the events that happened on June 21, 2010?
A Unfortunately, I received a call from my dad, which he told me --
Q I instructed you before you can't say anything that somebody told you. Remember we talked about that?
A Correct.
Q So you can only talk about your understandings?
A Due to my understanding the event occurred on June 21, 2010, and due to my understanding it was very disturbing, I was shocked and apparently I was pretty much disgusted, because all those things, knowing my father, was not subjective to my father due to his character.
Q Now, did you look somewhere to get information on this?
A Yes, sir. I actually looked on-line and I looked at -- I looked at the Internet, read the story for myself.
Q Showing the witness Plaintiff's Exhibit 14B. Could you state what that headline states?

A Assisted living employee charged with attempted rape at facility.

Q And just look at that, familiarize yourself with it?

A Sir?

Q Just look at that, familiarize yourself with it and just give me your opinions.

A (Witness complies.)

Q And is this what you looked up?

A Yes, sir.

Q And this is WIS, that's the website you looked up?

A Yes, sir.

Q And you're familiar with this news station?

A Yes, sir.

Q Because you lived in Orangeburg?

A Yes, sir.

Q Okay. Now, when you -- what was your reaction when you read this article?

A Again, I was shocked. For the most part disgusted, because I know my dad is not perfect, but in no ways time my dad did not do this. It wouldn't have mattered if the entire country came and told me that as a whole, but I know my dad. People may have opinions about my dad, but I know my dad. Again, my dad is not perfect, but my dad has a heart of gold and with that heart of gold he has a gift from God that would benefit each and every one in this room. And he

does that by culinary, what you call in some words, cooking.
Q Okay.
A And he's -- I have not heard not one complaint of no one not liking his cooking.
Q Uh-huh. (Affirmative response.)
A So --
Q And so you indicate he had a known reputation for being a top cook here in Orangeburg?
A Yes, sir.
Q And it's your understanding that people sought after him?
A Yes, sir.
Q Now, prior -- after June 21, 2010, what was your understanding of his reputation?
A In complete shutdown.
Q Okay. Could you elaborate?
A Well, due to my understanding and my knowledge of Orangeburg, South Carolina his reputation took a major hit. He was unable to obtain employment and more so than anything, it effected his way of being physically as well as psychologically, his mental state. I know this because I've dealt with my dad daily.
Q So while he was going through this you talked to him daily?
A Daily.

Q Okay. And you tried to offer support to him?
A Yes, sir.
Q And your understanding and pressures of his feeling is what -- did he cry or what type of --
A He had a multitude of emotions. He cried, depression, disappointed, felt less than a man. You name it, he felt it. The times that he cracked a smile or joked around was because of who I am as a person, because I tend to try to lift people up. That's what I've been taught in terms according to God. We not supposed to lift -- if we can't lift them up we're not supposed to deal with it at all. So if anything I wanted to lift my dad's spirits up, because his spirits was at an all-time low.
Q Uh-huh. (Affirmative response.) Okay.
MR. WARREN: I believe at this time, no further questions.
THE COURT: All right. Thank you.
Anything on cross?
MR. ARNOLD: No questions, Your Honor.
THE COURT: You may step down. Thank you, sir.
All right. Is plaintiff prepared to call their next witness?
MR. WARREN: Yes. Dr. Earline Sabb.
THE COURT: Dr. Sabb, do you mind putting your left hand on the Bible and raising your right hand. Clerk's going to

Q Uh-huh. (Affirmative response.)
A And I got a church on October 7 -- 27, I'm sorry.
Q Okay.
A It's like ordained a day apart.
Q Now, how -- are you familiar with Mr. Williams, Mr. Ralph Williams?
A Yes.
Q Okay. Tell me how you're familiar with Mr. Williams?
A I met Ralph about 27 years ago.
Q Okay.
A When he was courting his wife Linda, in my yard.
Q Okay. And did you introduce her or how did you --
A Linda introduced Ralph to me.
Q Okay. So you --
A And my little boy. So yes.
Q And your little boy. Okay. So you're good friends with Linda?
A I'm good friends with the entire Mack family.
Q Okay. Okay. Over the years how have you come to know Ralph in this community?
A We're neighbors. We live like a street over from each other now, and that's been about 14 years.
Q 14 years. In your opinion, your understanding, what was Ralph's reputation in this community among the people who knew him?

A Well, he's well-known in the community. My opinion is he's a good man and a respectable man. Ralph loves his loud music. So when we hear it we know to call Ralph and tell him to turn the music down. He likes oldies but goodies.

Q Okay. And you know of any other activities in the community like his jobs and types of things he's done in the community?

A Yes.

Q Can you talk about that?

A He was caterer with my sisters, in fact, at Mr. J's. They all worked there and they did catering.

Q Do you know anything about his cooking as a caterer?

A Yes. Ralph feed me quite often.

Q Okay. So did he have a good opinion, a good reputation in the community in regards to his cooking?

A He had a good -- at one time he had a good reputation in the community as a good caterer.

Q Now, you stated you were familiar with the events that happened on June 21, 2010. How did it come to your understanding about the events that was happening involving Mr. Williams?

A It's my understanding that I heard through the community and then on the Internet.

Q Okay. I'm showing you Plaintiff's Exhibit 14B. One exhibit, it's 14A and 14B, one is a search and one is the

actual -- could you read the top of that?

A Assisted living employee charged with attempted rape at facility.

Q And is that how you became familiar with what happened on June 21, 2010?

A More so, like I said, it was my understanding because I heard it in the community.

Q Okay.

A But then I went to Google it.

Q And you read that article?

A Yes.

Q When you first read that article about Mr. Williams attempted rape, what was your opinion?

A I felt in my heart it was not true.

Q And why did you think that?

A Because I know Ralph Williams. I know Ralph Williams.

Q The last 27 years?

A I know Ralph Williams. Yes.

Q And after this article how do you feel his reputation has changed?

A Oh, it has changed. He does not have a job, cannot find a job.

Q Uh-huh. (Affirmative response.)

A And the people that he used to cater for, my sisters, all of them worked together for years, but not now he can't,

because of the article.

Q Uh-huh. (Affirmative response.) Did you talk to Ralph during this time, did you see Ralph or observe Ralph during this time frame?

A Because of my Sabb Consulting business --

Q And don't enter any statements he may have told you, but you can talk about observations that you saw?

A Yes. My observation when he came to my house, he and his wife. I saw tears. I knew it was time to pray. So I began calling on the name of Jesus and binding the devil because God would prevail and I wanted him to believe that. If you are not guilty, the truth will prevail. The Bible says it.

Q And did you give him any type of scripture?

A Yes. I asked him to go in the Bible and read about Daniel and he was in the lion's den. And I told him, Daniel was in the lion's den. You've got to remember he prayed seven times a day. So you're not better. Pray. Pray until something happens. We talked about Paul and Silas. Go read about it.

Q Talk to me about Paul and Silas. Tell me --

A They were in jail, locked up, but one day through pray the gates opened. They was happy, they was free. Miracle. Miracles do happen.

Q Any other type of scriptures that you counseled him on?

A Yeah. We talked about David.
Q Talk to me specifically about David?
A To let the Lord be his shepherd. If you just let the Lord be your shepherd, even when your cup run over. I say, Ralph when your cup runs over ask God for a refill. That's all you got to do. Just ask the Lord and he'll give it to you. It might not come in your time, and that's what I told him, but it will come.
Q How many times did you counsel Ralph?
A I talked to he and his wife numerous times. When he gets burdened, he finds Earline Sabb. He'll come around the corner. She'll come around the corner.
Q You've been kind of a spiritual --
A Oh, yes.
Q Now, there was one particular occasion that he may have been really down?
A Yes.
Q Certain scriptures that you may have talked to him about when he was having a particular difficult day?
A Yes.
Q Could you tell us about any particular difficult day he had and the scripture you may have counseled him --
A After he got out of the hospital after the attempted suicide we talked about James and the truth. You don't have to take your life to prove a point. Just believe, believe

in the great I Am. Believe in the comfort that he sent for us, because Jesus Christ is our comforter. Just believe.,

Q Thank you, Dr. Sabb.

MR. WARREN: No further questions.

MR. ARNOLD: No questions, Your Honor.

THE COURT: Okay. You may step down.

MR. WARREN: I have one more question, Your Honor.

MR. FOSTER: I didn't communicate well --

MR. WARREN: My co-counsel has advised me of something.

THE COURT: Hold on one second. Okay. Go ahead. If you've finished getting advice you can ask.

MR. WARREN: Okay.

THE COURT: Go ahead.

BY MR. WARREN:

Q One last question, well, couple in this line of questions. Did you see or observe the impact on Mr. Williams wife, Linda?

A Yes, I did.

Q First of all, how do you know Linda?

A We lived in the same yard, their house was here, my house was here on Goff Avenue.

Q Did you grow up with Linda; how long have you know them?

A I've known them for 27 years.

Q And Ralph introduced her to you?

A Linda introduced me to Ralph.

Q Okay. Now, talk to me about what you witnessed in terms of Linda's -- what went on with Linda in terms of what you observed?

A I observed her being very upset because he was upset. Because they had to go through this. She was trying to get him to understand it would be all right even though, his thing was he's a man, she shouldn't have to pay all the bills and this and that. You know, things like that. She's strong. She supported him anyway. She stood right by him. That was my statement to her. You be there for him, because if things were reversed he would be there for her, and I know that.

Q And did you witness her, you know, emotions?

A Yeah. She was crying. When they came to me she was crying. Both of them were.

Q And was it a long period of time that they endured this, did you feel it was over a long period of time that they endured this?

A I think they're still enduring it.

Q Thank you.

THE COURT: All right. Now, Mr. Arnold, any questions?

MR. ARNOLD: No questions, Your Honor.

THE COURT: All right. Thank you, sir.

You may step down.

A I'm from North, South Carolina.
Q Okay. How far is that from Orangeburg?
A Approximately 30 miles from Orangeburg?
Q And how long have you lived in North, South Carolina?
A About -- over 20 years.
Q Over 20 years. Okay. What do you do for a living?
A I'm employed with the Orangeburg County Department of Social Services as a Human Services Specialist II.
Q And how long have you worked there?
A I've been there 26 years.
Q Okay. What job do you do there at the facility?
A I work with economic services, food stamps and FI.
Q Okay. Who all do you work with?
A I work with Linda Williams.
Q And how long have you worked there with Linda?
A 26 years.
Q 26 years. And how -- do you know her husband?
A Yes.
Q Okay, and how long have you know Mr. Williams?
A I've know Ralph for over 20 years.
Q Now, in terms of their marriage, what do you know in terms of your observations of the last 26 years of their marriage?
A I guess they're just like anyone else, they have ups and downs.

Q Okay, and what do you know about her feelings towards Mr. Williams?
A She loves her husband. She loves her husband.
Q And what is your opinion in terms of Mr. Williams?
A He loves Linda.
Q And as a -- now, what do you know about the events that happened on June 21, 2010?
A I know what I read in the paper, what it alleges. He allegedly molested a vulnerable adult.
Q Okay. Times and Democrat?
A Yes.
Q I'm showing the witness Exhibit 15C. Is that the article?
A Yes.
Q Now, could you read the title of that article?
A Caseworker accused of trying to rape woman.
Q Just familiarize yourself with the contents briefly. Now, what was your reaction when you read that article?
A I didn't believe that he did it.
Q And why?
A From what I know of Ralph. It was my opinion, I just felt in my heart that he didn't do it.
Q Now, this article says trying to.
A Right. Uh-huh. (Affirmative response.)
Q You still didn't believe it?

A Still didn't believe it.
Q Why?
A It was my gut feeling, it was in my heart. I didn't fell like Ralph would do that.
Q And talk to me about what do you know of Ralph to have that opinion in the community, what is he know for, why you have that -- hold that belief.
A Ralph, he is a loving person. He has his ways like anybody else, but overall he's a good person. And I just didn't feel like he would do something of that nature.
Q Not attempt to sexually --
A I don't believe he attempted to do that.
Q Now, what is your understandings of how his reputation has changed in the community since then. Now, don't talk about what people specifically told you, but talk to me about his understandings of how his reputation has changed?
A Well, I have worked with Ralph on a catering job, so I know what he is capable of doing, but since this has happened, all of that is kind of squashed. He's not as popular as he used to be. Because I know what he's capable of doing as far as his catering business and everything.
Q Talk to me about his catering business, is that something he did well?
A Oh, very well.
Q Talk to me about that?

A He's done weddings, he's done picnics, he's done parties or cooked for churches. I know he's done all this.
Q He hired you to work for him on some of these --
A Not necessarily hired me, but I volunteered to help on occasion.
Q Okay. Now, talk to me about since -- after June 21, 2010, has he had the same opportunity?
A Not as much. He may cook for a church every now and then, but other than that, he hasn't been doing too much catering.
Q Now, what do you know of him, his desire to work?
A As far as I know he wants to work. That's all I know. I'm assuming he wants to work.
Q Based on what you're known over the years?
A He's been a working man, a hard working man.
Q Had multiple jobs?
A Yes.
Q Two jobs at a time?
A He has. At one point, he has.
Q And you're aware that he went back to school?
A Yes. He worked for his CNA license.
Q And did he also try to work while getting his license?
A I think he was working.
Q And talk to me a little bit about your observations of Linda and how it effected their marriage, this occurrence,

this alleged, attempted rape on June 21, 2010.

A Well, when she came by the office -- even though we'd already seen it, you know, when she came by the office to tell us about it, she was devastated. I can only imagine how she felt. Of course, she cried, we cried with her because that's what family do. We were there for her, whatever capacity she needed us.

Q Are you family?

A Yeah, I consider myself family. We may not be blood but we're family.

Q And y'all cried with her?

A Yes. We cried with her. I told her, you know, he's innocent until proven guilty and I just felt that he didn't do it and I tried to comfort her the best way I knew how.

MR. WARREN: No further questions.

THE COURT: Okay. I'm going to make sure this time. No further questions?

MR. WARREN: No further questions.

THE COURT: All right. Anything?

MR. ARNOLD: No questions, Your Honor.

THE COURT: All right. You may step down. Thank you, ma'am.

Is plaintiff ready to call the next witness?

MR. WARREN: Yes, sir, Your Honor.

THE COURT: All right.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-CP-38-0845

Ralph C. Williams, Sr., and Linda Williams, ... Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC ..... Respondents.

RECORD ON APPEAL - VOLUME 2

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A Are you talking as far as reference wise?
Q Uh-huh. (Affirmative response.)
A Not that I can recall.
Q Did you fill out an application?
A Yes, I did.
Q Who were some of the professors that you may have had at OC Tech?
A Ms. Pigott, I think is her name. She was the main instructor until we went to clinicals and then we just had people from Methodist Oaks that came in and, you know, go over things with us to pass the test.
Q Now, did you seek out references from people and ask people to write anything on your behalf?
A To get a job?
Q Yes.
A I --
Q I'm showing this witness Plaintiff's Exhibit No. 19. Do that look like what you received?
A Yes.
Q would you read that for us?
A Ralph Williams has successfully completed a certified nursing assistant curriculum at Orangeburg Calhoun Technical College in the 2009 Fall term. Mr. Williams was a dedicated student who worked hard to earn his credentials of Certified Nursing Assistant. I feel Mr. Williams will be a valuable

asset to the health care field and worthwhile addition to any facility. Feel free to contact me at this number -- Sandra Moore, Career Training and Development Director.

Q Now, did you also have to fill out an application?

A Yes, I did.

Q Okay. I'm showing plaintiff Exhibit No. 28. Could you take a look at that; does that look like what you filled out?

A Yes, it is.

Q Okay. Now, on this application you were asked on Page 2, have you ever been convicted of a crime other than a minor traffic infraction. And you put no. Could you talk to us about that?

A Well, it was my understanding that UniHealth, they said -- my understanding that for me to get the job they would have to do a SLED background check. I, inadvertently, I checked no, but I mean, I should have -- I didn't really consider the DUOS that important at that time, because I haven't driven in almost 20 years.

Q All those charges we talked about were 20 years --

A Yeah. I'm just saying I really didn't -- it was my mistake but I really didn't consider that and then after the background came back from SLED that said I was good to go. I didn't -- I didn't think I had lied or tried to be deceitful, I wanted to work.

Q And they hired you?
A That day. Soon as it came back they hired me that day. Told me to report for training. I mean, this didn't come up until this.
Q And the second question is have you been discharged from employment and explain?
A Okay. Now, from my recollection the only job I ever lost since I've been in Orangeburg, South Carolina was at Koyo and that was because of the points system. You get 40 points. You miss a day and you lose X amount of points.
Q Well, first of all, let's look at the time frame. When did you work at Koyo, was that 20-something years ago?
A 25.
Q 25, 30 years?
A Yes. Basically, the first real job outside of cooking that I had in Orangeburg where I made some pretty decent money.
Q Okay. So about 25 or 30 years ago?
A Yeah. It was on the points system. And then, you know, that was in that era, too, where alcohol, the drug abuse was kind of crazy like. You know, you drink all day long and the next thing you're trying to go to work, you know. You're calling in sick and like that, and eventually the points added up and I lost the job.
Q And that was about 30 years ago?

(Jury in at 3:51 p.m.)

THE COURT: All right, ladies and gentlemen, we're going to continue with the direct examination of Mr. Williams.

Mr. Warren. Yes, sir.

BY MR. WARREN:

Q Mr. Williams, we pick up, I guess you had just getting ready to get started at UniHealth. Talk to me about beginning at UniHealth. When were you hired and this sort of thing?

A I'm not exactly sure of the correct date. I think it was February.

Q Okay.

A I got the job and I had a couple days of training during the day. Towels, diapers and pampers, all the necessary things I needed to put on my cart to complete my shift when I started.

Q So how long was training?

A Two days, about two days.

Q So where did you begin working?

A I started working -- during the training they had me on the older wing, not the rehab side. They had a lot more CNAs to help me. After training I went to night shift and I think the first couple of days I think they initially had me on the rehab ward, but I went and spoke to my nursing supervisor and explained to her that I really didn't feel

comfortable, you know, dealing with women, because another wing in the older side they had a section for men. I felt more comfortable interacting with them, keeping them clean or whatever. So they switched me.

Q If you would, Mr. Williams. You made reference to -- Plaintiff's Exhibit No. 4, looking at the facility, Plaintiff's Exhibit No. 4. So talking about where you initially began working at?

A Okay. I initially began working on this wing. This is called rehab. A lot more women, you know, a lot less men.

Q This is where you began working at?

A Right. The first couple of nights. So I asked the nurse supervisor, I really didn't feel comfortable. I wanted to work over here. All these rooms right here were mostly men. And then a couple guys right here. But I had very few female patients to deal with. When we were trained, you knock on the door, you introduce yourself. My name is Ralph Williams, I'm the CNA for the night. I'm here to see if you're wet or dry, do you mind. If they are coherent or awake they have the opportunity to say yes or no. They say no, which when I started there the majority of the ladies they wasn't used to a guy. So I had to go back and tell the nurse on duty I need to switch with a female CNA worker. They would do that and I would maybe take one of the men. So they split the rooms up odd even. So one

night you've have all the even numbers, next night you'd have all odd numbers.

Q Let me ask you a question right quick, Mr. Williams.

A Okay.

Q You stated Plaintiff's Exhibit No. 11. Did you identify what that is?

A Perineal care.

Q Okay. And what is that, perineal care?

A Perineal care will provide cleanliness and comfort to patients/residents. Prevent odor, prevent infection. Observe patient/resident skin condition. Equipment, if necessary, water in basin. Incontinent care supplies as provided by health care center, i.e., wash cloth, soap, wipes, peri-wash, towels, disposable gown, if needed, gloves. General -- provides for privacy. Perineal care is given during daily bath or after voiding or bowel movement.

Q Now --

A Cleanse perineal area from front to back, see procedures for male and female -- (inaudible) -- assemble necessary equipment --

Q When are you suppose to do when you approach a room. You were just beginning to mention that. What are you supposed to do?

A We were taught at OC Tech that the door is not just a patient room, that's their home. You walk in to somebody's

house you knock on the door. Ring the doorbell. You knock on the door. You introduce yourself. My name is Ralph Williams, I am your CNA for this evening. May I have your permission to see if you're wet or dry, soiled or need water. But you've got to ask permission before you do anything. Then you've got to specifically tell them what procedures you're planning to do.

Q So when you go to them you have -- you said, listen, I am Ralph Williams, and you're talking to them, I am your CNA and you --

A No. You knock on the door. The door comes open and you say, I am Ralph Williams, I'm your CNA for this evening. I'm here to check to see if you're wet or dry. You got to get permission to walk in that room unless they're asleep. You've got to announce yourself. That's they house, that's they home. They said, yeah, come on in. Then once you assess the problem, pull the cover back, lifting the gown or whatever, because they have -- the pants they have on has three lines on it. They're blue. Three lines of blue that means they're dry. Put the covers back on.

Q Okay, you can sit down.

A If that three lines is green that means that patient has a bowel movement or urinated on themselves. That means you've got to change them. Ma'am or sir, whoever, you're wet. Female, they have the right to say no, I don't want

you to do this. I much prefer to have a female CNA. That's when you go back out in the hallway and notify your supervisor. If a female CNA is right there in the same hallway, I can say, Ms. Bruce, Ms. So-and-so, you know, she prefer you do this. So why don't you take this lady right here and I'll take Mr. John Doe down the hall.

Q Now, Ralph, Mr. Williams, you indicated when you first started working there, you requested that you not --

A I told her I really didn't feel comfortable --

Q Who is this?

A Ms. Shriver, she was the nursing supervisor. I told her I didn't feel comfortable, so she switched me.

Q Okay.

A She switched me. But then I guess she got a better job offer and we got another supervisor and I'm back on -- with the women at night time.

Q And who was your supervisor when you had to go back to women at night time?

A On my hall?

Q Yes, sir.

A Ms. Patricia Johnson.

Q Okay. Now, let's talk about this additional policy, this perineal policy. What do you have to do, you have to provide privacy, what do you have to do?

A What you have to establish you have permission. First

of all, you shut that door back. If there's two residents in the room initial privacy is when you take the curtain and you don't even want the other patient to see what you're -- you got permission from that patient. You put the curtain all the way around. You leaving a space for you to bring in your necessary supplies to do the task that you've got to do. So you've got supplies. Because what you're doing -- you might have a visitor come in to see the other lady over here, but you don't want that visitor to see you in the middle of taking care of this other patient. That's where the privacy issue comes from. Once you establish privacy, you go back to your cart, you get the necessary equipment. This the way I would do it. Get the necessary equipment all at one time; pampers, panties, gloves, wash cloth, liquid soap, whatever needed to -- after I assess what the problem is. I bring that and put it either on the chair or at the end of the bed. I put it somewhere close where the soiled paper is taken off and put in a plastic bag, little bag and put in a bigger bag, that's attached to the cart.

Q Now, Mr. Williams, you indicated there was a policy for if a female didn't want you to change --

A Right.

Q -- you would change a male, but what if they couldn't speak, what was UniHealth's policy.

A Well, at 11:00 o'clock the majority of the patients

were usually asleep.
Q Uh-huh. (Affirmative response.)
A But you usually out of courtesy you would still go through the introduction.
Q Okay.
A And if you realize that they're asleep, you gently raise the sheet to see if they wet or dry. If they dry, put it back down, turn the lights off, keep going.
Q What was the policy if the couldn't speak?
A It wasn't -- I never saw any written policy. Seems like -- basically two days of training, I guess they figured the training I received at OC Tech would suffice enough for me to do whatever was necessary.
Q Was it a CNA there to help you and train you on the job?
A Well, Ms. Patricia Bruce she helped me a lot. She helped me with the charting process. She helped me do charting. Once you initially get there you get a supervisor, Patricia Johnson. She gives you a list of people that she wants you to take vital signs from. Okay. I got a list from Patricia Bruce. We go take the vital signs, that's the first thing we do. Report back to Ms. Johnson and she takes the vital signs and she logs them, plus we log them also.
Q Uh-huh. (Affirmative response.)

A Then the next hour that's when we start making the rounds. I heard testimony earlier that every two hours. If you got 30-something people, 30-something people on the wing and it's divided by two people. You got 16 people, whatever. So I mean, a lot of these people are incontinent, so they sit up in their room and drink water, so they're constantly wetting themselves up. Often me and Ms. Bruce, I mean, we -- I mean, we went every hour on the hour. Because you know it's care. You know you don't have to wait until 6:30 in the morning and you get off at 7:00 o'clock, 15 patients that you've got to change and wash and get ready for breakfast. You had to get three people up every morning on your shift, and bed, bath them and put them in the wheel chair and roll them out to the cafeteria where they're served breakfast.

Q And every two hours you fall behind?

A That's right.

Q Now, was there a policy for changing females? If you don't recall look at Exhibit No. 11. And what was the policy for changing females, could you read that to the jury, what UniHealth required you to do?

A Knock before entering the room. Identify yourself and explain to the patient/resident what you're going to do. Provide privacy by closing the door to the room, pulling the cubicle curtain all the way around the bed. Assemble

equipment on the over the bed table. Put on gloves, have a patient or resident use the bedpan or go to the bathroom for perineal care. Position patient/resident, then drape so patient/resident is exposed as little as possible. Talk to patient or resident while performing this procedure.

Q So you're supposed to talk to them?

A For female, yeah.

Q And now read what UniHealth requires you to do for females to the jury. This is what UniHealth's policy is.

A Okay. For females, separate the Labia and clean down --

Q Is that labia.

A Excuse me. Labia, and clean downward from back with one stroke -- from front to back with one stroke. Repeat using the clean part of the washcloth for each stroke. More than one washcloth or wipe may be used. Rinse with clean washcloth if applicable. Pat area dry with towel, position patient/resident on side, clean rectal area from vaginal to anus with one stroke. Repeat until it is clean using clean part of the washcloth or wipe with each stroke. More than one washcloth or wipe may be used. Pat dry with towel.

Q Now this is what UniHealth requires you as a male to do to females?

A Yes.

Q Now, let's -- talk to me about had you had any prior

run-ins with anybody at UniHealth?

A I wouldn't call it a run-in. Mis-communication. I've only been on the job maybe less than a month. Came in at 11:00 as usual. Set up my cart, got everything ready, you know, to do my job. I'm doing my vitals and there is one lady from my section, she had a -- she had an oxygen machine or something in the room, but beyond my scope of training to do anything about that. My job was to take --

Q How long had you been there, let's get time frames?

A Maybe less than a month.

Q Okay. So probably March or something?

A Yeah. So I'm doing vitals, you know, and I took her vitals, but her blood pressure and respiration it was too low. It didn't look right. I mean, I had the lady a couple of weeks but I mean usually a sudden drop, you know, I'm supposed to alert somebody. So I went to the nurses station and told my immediate supervisor.

Q Who was that?

A Patricia Johnson.

Q So she was your supervisor at that time?

A Yeah. She was my supervisor since I been working there at night after leaving day shift for training. So I told her the totals and she said, well, go back and check them again. So I went back to the room and opened the door and this was a Caucasian lady. She was basically turning blue.

I came back to the desk and I said, man, I think I need some assistance.

Q Who did you say that to?

A Patricia Johnson. She was doing some paper work. And I don't know if she didn't hear me or whatever, but it scared the hell out of me. I didn't -- I just got to be a CNA, I don't want to see nobody die on the job, you know. So I ran to the other end of the hallway and got another LPN. She came back, helped me get this lady back stabilized, called the ambulance and took her to the hospital. After this happened, I was shaken. I vocalized -- I cannot say -- I mean, that lady right there is incompetent. I said she need to be fired. This lady almost died on me. She was doing some paper work and she wouldn't even get up to assist me with a patient on one of her wings. And that's what happened.

Q Was there another incident with Ms. Johnson?

A Well, yeah.

Q Did you talk to her about that?

A After that had passed, you know, we didn't really have any words. I'd say two weeks after that, like I said earlier we're required to get at least three people up in the morning. So I forgot his name, a white gentleman, but he was very large. So I got my two other ladies up, gave them a bed bath and put their clothes on, brushed their

hair, put them in the wheelchair and rolled them out. When I got to the man, the last gentleman, we usually have a hydraulic lift that is very heavy. We have to take this hydraulic lift and put him in the wheelchair. But we're also trained if the hydraulic lift is not available we are trained as a CNA, they have this thing called a sliding board. It's like a piece of wood, but it's shellacked. What you do is you position your wheelchair, lock it down. Run the rails up, like this right here, and put the bed to the chair up under the gentleman's behind and you gently -- can I get up?

THE COURT: I think you can just tell us what you're --

A You gently slide him into the chair. That morning, both of us, he was trying to help me but we lost footing. If that man had fell on the floor he would have broke something. So Ms. Patricia Johnson was distributing medications. She was two doors down from where I was at. I said, help. I need some help. Ain't nobody come. I cried out again, and the janitor came and helped me stabilize this man instead of my immediate supervisor. That kind of upset me some more.

Q Did you vocalize that to Ms. Johnson?

A I -- yeah, I didn't vocalize it the same way I did the last -- I might have said something under my breath walking away, but I -- she probably heard what I said, and I can't

recall exactly what I said.

Q Now, you have a phone, is that correct?

A Say again?

Q You have a phone that you use, correct?

A Yeah.

Q Have you ever had to use that phone and call anybody?

A Yeah. Me and my wife had an argument. Yeah, we had an argument. Get up at the last minute and all this. So we -- you know, I had some choice words. After I got to work, I got -- I did my -- take my vital signs of people. Took my first readings, you know, checking on the people in the bed. I called back and said, you know, baby, I'm sorry. I figured I need that ride to work so I'd apologize now. So I mean, I said I was sorry and let it go at that. I hung the phone up and went back to work. Then I get home the next morning, she asked me, who in the hell is Patricia Johnson? I said, that's my supervisor, what about it. What's going on with that? Ain't nothing going on. I'm just here doing my job. Why is she calling my house at 3:00 o'clock in the morning? I have no idea. I been thought about it a couple of days. We trying to figure out what is going on.

Q Because you're working at nights?

A I'm working at night. I'm trying to make some money. I apologize for the argument we had. I feel that is over with, but I'm getting home and being accused of some

improprieties on the job with somebody I really just -- hey, how you doing. I ain't really trying to have no conversation with this woman. She's my supervisor, but I'm trying to do my job. I take care of these patients, see what I see. But when I get home, my wife looks at me cross-eyed and asked me who Patricia Johnson is. My supervisor.

Q Now, you mentioned when the patient turned blue and you told Patricia Johnson you ought to be fired, when your wife got you evening, you know, what happened, did you explain?

A Well --

Q When she picked you up that evening --

A That morning.

Q That morning.

MR. BRING: Your Honor, that calls for hearsay it sounds like.

MR. WARREN: No, I'm asking his description when she picked him up. What -- you know, what his reaction and emotions towards --

A I told my wife --

BY MR. WARREN:

Q No. Go ahead.

A I mean, I explained to her what happened on my shift that night. She just told me --

Q Not what she told you.

A Okay.

Q Describe what --
A I just told her how I feel and how it scared me. That's it.
Q I guess you felt like the lady almost died?
A Yeah. I mean, I've never witnessed -- I mean I've seen people dead as a bat, but I ain't never seen somebody die on me. I mean, I'm supposed to be providing some sort of care. I mean, I just wasn't ready for that.
Q And Mr. Williams -- you don't have a driver's license?
A I haven't had a driver's license since I got the DUOS.
Q In '80 -- so you don't really drive?
A No. I mean --
Q That's fine. I just wanted to correct why you were being picked up. Now, talk to me about where you ever suspended from working at UniHealth at any point I time?
A Yeah. An incident there's a husband and wife in this room. Now, I believe I was scheduled off that day, but they called me in and asked me, you know, to work in someone's place. So I got to work, same routine, got my stuff ready on my cart, said hello to the gentleman. This room, I went in there, I checked him he was dry. But that morning when the two siblings came to visit their parents they thought they saw a bruise on, I think, their father's head. They were questioning -- they wanted to know what happened. They questioned us, me and I think two other CNAs about this.

Q Okay.
A They told us they would put you on suspension until we get to the bottom of this. I lost a days work, but I was eventually called back to work.
Q That was April or something?
A Yeah, I really don't recall exactly what month, but I remember the event.
Q Now, after that --
A But it was no written write-ups.
Q That you know of?
A That I know of.
Q Now, after that, I guess they investigated you came back to work?
A Yeah. I came back doing what I usually do.
Q Did you hear anything else about it?
A No.
Q Nobody mentioned anything about it?
A No.
Q Your supervisor Patricia Johnson talk to you about it?
A No.
Q Now, let's go to June 20, 2010, and I guess you're --
A Yeah.
Q -- going to work?
A June 20, 2010, it was my 54 birthday.
Q Now, let's talk about the 21 --

A Okay. I went to work at 11:00 o'clock. As usual I got all my supplies ready on my cart, everything, pampers, different size for different people and I proceeded to go on my route.

Q Now, let's stop right here. You can look at Exhibit 4 and show where you're at. Exhibit 4, you get to work that night?

A Okay. These are my rooms. One, two, three, four, -- five, and then these back here and this was empty and this is the nurses station. Nurses station right here, and I had these right here. I had the side that's L shaped like this. So I got -- I made my rounds and then this beauty shop, what we call the beauty shop, that's basically like a lounge for CNA where we did our charting. So every hour -- so starting back over here, parked my cart outside this door, went in assessed the problem, fellow was wet, got the necessary equipment off my cart, brought it back to the room, shut the door, provide privacy and I proceeded to start doing my job.

Q Okay. Now, I'm showing you Plaintiff's Exhibit No. 6, does that look like --

A Yeah, this is something similar to the room.

Q Can you describe that -- so now you stated what happened?

A So I went in there, this lady, her pamper needed to be

changed, but by her being paralyzed, by her being paralyzed on her left -- she was paralyzed. She really couldn't give me any help.

Q Uh-huh. (Affirmative response.)

A So she was a big boned woman, you know, she was too heavy. I'm a little light-weight dude. So I had to basically prop myself on the bed to get my job done?

Q And was that because of your back and your --

A Yeah, I can't just --

Q -- arthritis of the knees?

A -- Man, I just can't -- it's a procedure about how you're supposed to change a pamper. You ain't supposed to lift people legs up like you do a little baby and snatch it out from under them. You've got to gently turn, bring them this way, pull -- either push it in and get on the other side of the bed and bring them back this way and pull it out.

Q Pull what out?

A Oh, the pamper. The pamper. And that's what I was in the process of doing, but in the middle of this procedure Ms. Johnson entered the room, back the curtain, asked me, what are you doing? I said, would you please shut the door. I started to say what does it look like I'm doing. I'm changing diapers, man. I just said, please shut the door. I asked her again, please shut the door. All right. She

didn't shut the door. She just walked out the door. So I had to stop what I was doing, go around and shut the door back, get back the privacy issue and start with this lady again trying to get this pamper off her which had feces and urine. Next thing I know Ms. Johnson comes back with Josette Peppers, they walk in the room and they said, Ralph, you need to leave the room. I left the room, stood outside, right outside the room in the hallway.

Q What about did you fix your pants up or anything like that?

A Well, yeah, I fixed my pants because when I was leaning on the bed trying to do what I was doing, I guess the ties or whatever got caught. So just basically was pulling them back up on me so they wouldn't be hanging off my behind. So I went and stood in the hallway.

Q Uh-huh. (Affirmative response.)

A After that I went from the hallway to the patio, the patio to the paddy wagon, paddy wagon to the jail.

Q Now, when did it become known to you what the allegation was, did you know when they came back in the room did they tell you?

A When they came back in the room, said, Ralph please step out of the room. By her being supervisor, Ms. Johnson, I did what I was told.

Q Could you ever go back in the room at all?

A No. I was not allowed to go back in that room.
Q Did you finish changing the diaper?
A No. I was stopped. I was stopped in the middle of my procedure.
Q So that dirty diaper should probably still been in that room?
A Yeah. I didn't take it out of there.
Q Did you see any red shirt that was on the bed?
A No. I don't recall seeing no red shirt.
Q What -- is there something you put on the bed when you're changing a person?
A See, what they had, they have a sheet, but then they have a pad that's pink.
Q What color is it?
A It's pink and white. It's pink with white borders on it. It's a mattress -- I guess you'd say a pad. So if they do have an overflow or urine or feces it won't mess the sheet up.
Q So you just --
A You discard the pamper and the pad.
Q So you kind of put that underneath them?
A Right. When you make up the bed you put the sheet on there and you put the top -- the bottom fitted sheet, and you put the sheet, but then before they get back in bed you put this pad back in there. That's what they lay on. That

keeps -- the CNA, the CNA, they not going to just -- you know, they're like housekeeping, too. They change beds, toilet papers, stuff like that.

Q You said who changes beds?

A CNAs.

Q Okay. Go ahead.

A You know, they keep the upkeep of the room and the upkeep of the patients, you know, people dry.

Q Okay. Go ahead about the pad?

A The pad. You put that on there, that keeps from -- not necessarily from having to change the bed every time the patient uses the bathroom, you know, from being incontinent.

Q Talk to me about the procedure of you know someone's got to be changed. How you know they have to be changed?

A It's a pamper. They buy these briefs that have these lines on them. They're blue. That means that they're -- if you see the stripes, the three stripes. If you lift up the gown and see the lines are still blue that means that resident is dry.

Q Take me exactly through the procedure that night when you went in the room and did you -- you were outside the room with your cart, did you see anybody before you went in the room or --

A No, I really wasn't paying attention. I was going to the room.

Q Did you go to -- when you got your supplies off the cart did you notice anyone?

A No.

Q All right. Go ahead.

A Well, I knocked on the door, introduced myself. By this time, 3:00 o'clock in the morning, I know everybody is basically asleep. Some of the gentlemen might stay up and watch TV, they can't go to sleep. But the majority of the patients are asleep, but I still, you know, knock, you know. I knock, I'm not talking much -- if they sleep I'm talking to myself, you know, my name is Ralph Williams. I realize they're asleep, I try to go in as quietly as possible, pull the sheet back, lift the gown up. I went in there and lift the gown, the stripes were turned from blue to green. So I knew this patient was wet. So I went back to my cart, got the necessary supplies, brought it back in --

Q When you went back to your cart did you see anybody that you can recall?

A I didn't recall seeing anybody. And I mean, it's just basically from the hallway, you might be able to see just as much of the person who is sitting behind the desk.

Q So the -- could you point out on Exhibit No. 4 where this nurses station is in relationship to Room 39A?

A Right here.

Q Where is the nurses station?

A Nurses station is right here.
Q Now where is your cart?
A Right here.
Q Now can you see your cart from that nurses station?
A Yes, you can.
Q Can you see the nurse from the nurses station?
A If she was there I would be able to see her. She would be able to see me walk into the room. Come back out, bend down to get something on the cart.
Q Do you recall if she was there when you came out?
A I really don't recall.
Q Do you remember?
A No.
Q All right. So you had two rooms from the nurses station, how many -- how far?
A Oh, this -- what -- I don't know.
Q Is it from me to here?
A From me --
MR. BRING: Objection, Your Honor. He said he didn't know.
THE COURT: He -- I'm going to let him try --
MR. BRING: Well, he's kind of leading in that sense. It would be if the witness has an approximation, not Mr. Warren.
BY MR. WARREN:

Q Okay. If you're in the room -- you're in this room how far is that?

A From where that lady in that white shirt is at, about that far.

Q Okay.

A From me.

Q From where your cart was?

A I'm the cart, that's the nurses station.

Q So you go out -- what's that, 15 to 20 feet?

A Give or take.

MR. BRING: Objection, Your Honor. I don't want to get a tape measure out, but it's a lot longer than that.

THE COURT: Yeah, well, I agree, it's a lot longer that that. If we -- if you want to bring a tape measure so we can get a specific measure, but I can tell you it's longer than 15 to 20 feet.

MR. WARREN: This right here.

THE COURT: That lady right there.

BY MR. WARREN:

Q Right here?

A Yeah.

Q Where I'm standing at?

A Yeah.

Q That's the distance from your cart to the room?

A I'm the cart.

Q Okay. This is the nurses station?
A Right.
Q Now, so you come out and you get your supplies?
A Right.
Q What was the supplies you got to go back in the room?
A Gloves, wipes, pampers, briefs, the pad -- anything that -- particularly running back and forth to the cart. Okay, the person had feces or urine or whatever, you're going to get your liquid soap, wash clothes, towels, the little basis you can go in the bathroom and put water in, particularly if there's feces, you can use warm water to wash her off. You get that, some pampers, briefs, and -- briefs, towels, gloves, soap, basin, pads. That's about it.
Q Where do you put that at once you go back into the room?
A It's either in the chair, but -- she had a chest of drawers like you have in your house, she had a chest of drawers with a TV on top of it.
Q I'll show you Plaintiff's Exhibit No. 6. So if that a fair state of the room?
A Yeah, I would say yeah.
Q So where would that chest be?
A That chest would be on this wall right here.
Q Along this wall?
A See this was the door, right?

Q Yeah.
A Soon as you open the door the chair and then the chest would be right there where she had the TV and then a little table at the end back there.
Q Okay. Describe the room; was the TV on?
A No. TV was off.
Q Okay. And what did you do when you walk in the room; did you go in the darkness, what did you do?
A No. When I went in the room I didn't turn the top light, that would disturb this patient over here in this other bed.
Q Uh-huh. (Affirmative response.)
A It's a light over the bed. Once you put -- provide privacy you put this light on that that light is enough illumination for you to proceed and do what you have to do.
Q Okay.
A I can't change pampers in the dark.
Q Would you be, I guess, be all over the -- go ahead, continue.
A Yeah. Okay. You would pull this cover down, I guess to the end of the bed. Well, first you pull it down to make sure if the resident is wet or dry. Once you make sure about the lady, her pamper need to be changed, you fold the covers down, all right?
Q Uh-huh. (Affirmative response.)

A Then you would proceed to come back out this room get your equipment. Come back in this room, put your stuff in this chair right here, and proceed to start getting on this side of this lady --

Q Hold, stop right there. Are you saying on this side of the bed?

A On this side of the bed, pulling this lady so you can put this pamper up under her and go to this side of the bed and pull her this way and pull it out.

Q So you changed Ms. Mayes from this side of the bed; is that correct?

A That's where I started.

Q Okay, and then, also, you worked your way around and go both side?

A Well, see she's laying flat like this. You can't -- she can't help, she can't do nothing.

Q Can she move her hands or anything?

A No. She can't do anything. So you know, gently, you got to turn her. You let the railing down, do that, put the railing back up.

Q Where is the railing?

A It's on -- you've got two railings, on both sides of the bed --

Q Okay.

A -- to keep her from falling out.

Q Okay.
A So you let the railing down, pull --
Q Put the pad up under her?
A Yeah. Pull her -- tuck it up under her and then put this railing back up. Come around, put this railing down and you pull -- you got to pull her this way. Pad is already up under her back or whatever and you can pull that out.
Q So when you were in the middle of changing Ms. Mayes at what point did --
A When I was on this side, this when the door, this door came open asking what are you doing?
Q You're on this side of the bed right here?
A Right.
Q Okay. Now, are there -- how -- if someone needs help in a room is there anything that a patient can press or if you need help and assistance or anything you can push?
A Okay. If this lady say for instance -- if this lady needs some help beyond the scope of our training, there's a button on this wall they call it a panic button. I'm just a CNA. That alerts the LPN and all the CNAs, all the facility workers at that time to come to this -- (making beeping noises) -- come to assist -- come to assist me.
Q Now, is there another alarm for a patient or anything?
A They have a call button. This is -- that's what this is right here.

Q But that's not a panic button?
A When I worked at the facility that panic button was on this wall.
Q How long ago was that?
A Five years ago.
Q Okay. Go ahead.
A This right here is a call light so if the patient is asleep, when this railing is up, you can take that and drape it around her so all you've basically got to do is push it and that light comes on and blinks.
Q Can Ms. Mayes do that, press the call button?
A No. No.
Q Okay.
A Press the call button?
Q I don't know whether she can or not?
A I don't believe she can even do that.
Q So you're right here changing her?
A Right.
Q And she walks in and you say what?
A First of all, once you're -- privacy issues, I said, would you please shut the door.
Q And because I guess once you --
A The room door was open and she pulled my curtain aside.
Q And so I guess --
A This lady, you know, she had her gown up and I'm in the

process of trying to change her.

Q Okay.

A And I had -- I said, would you please shut the door. What are you doing? Would you please shut the door. So she left the room, just left the room.

Q What did you do?

A I stopped what I was doing over there, shut the door, came back provided privacy, went back on that side and started to continue what I was trying to do.

Q And is that UniHealth policy that we've identified when you're changing that they require you to do, I guess -- as you're doing that, what is that policy telling you to do as far as a female?

A As far as a female?

Q Yeah.

A That's what I trying to do. Separate the labia and --

Q All right, that's it.

A Labia and then clean down back to front with one stroke.

Q Okay. That's enough. Now, is this a picture of Exhibit 6 from the hallway; Is this a fair representation in terms of the room in terms of --

A That's a room --

Q It's a fair -- is this a similar room?

A Well, I can't look at that and reply to that because

I've never seen the room in the daylight.
Q Okay. Is there a window in that room, in Ms. Mayes room that you can recall?
A Not that I can recall.
Q Okay. So it would have been a lot darker than this?
A Yes. See actually I believe that wing of the rehab, I don't think there was too many rooms didn't have no windows, because --
Q Now, I'm showing you, I guess, Defendant's 26, and does this look like --
A No. I mean that may be a room in the facility but that's not the room on that -- on the wing that I was on. That long hallway in the middle right there, that's -- no, that's not that room.
Q Have you ever seen a call button like that?
A No. Not when I was there.
Q Would the call light look more similar to -- is this more similar to the room?
A Yeah. I would say so.
THE COURT: Which one is that?
MR. WARREN: I'm sorry, Your Honor, this one is No. 6.
THE COURT: It's what --
A That's more --
MR. WARREN: Plaintiff's Exhibit No. 6.
A -- that's more what the rooms were set up like in 2010.

BY MR. WARREN:

Q So -- the Plaintiff's No. 6, -- Defendant's Exhibit No. 26, is the curtain on this side or this side?

A Well, this --

Q The curtains that you wrap around the bed, is it on this side of the room or this side of the room?

A Well, I don't understand the question. What are you --

Q What side -- let me show you Plaintiff's Exhibit No., 6. Do you see the curtain in that picture?

A Yeah, I see the curtain. See the way this -- these curtains were designed were in a U shape on a rail. You could take it from here --

Q Uh-huh. (Affirmative response.)

A -- and take it all the way back around there. The bed over here had a curtain to go like that. So it didn't go all the way --

MR. FOSTER: Your Honor, I don't think that all the jurors can see.

MR. WARREN: Sorry.

A See, when I worked at the facility this railing system was slightly tried to bend like a U shape, like you would take the end of the curtain and you would bend it all the way around the bed. That's a privacy issue.

BY MR. WARREN:

Q Well, point to the side of the bed that is opposite

that is -- I guess the side that is not closest to the doorway.

A There.

Q Now, talk to me about -- you go out, you're out in the hallway, they told you not to go back in the room. What happened next?

A Okay. I'm out in the hallway. I can't go back in the room. Then this other lady, I don't know what her title was but I believe she was an LPN or somebody in training or somebody that was on that wing that same night. It was me Patricia Bruce and another young man, CNA in training. So all total it was five people just on that side of the building.

Q Could you point to Plaintiff's Exhibit No. 4, five people on what side of the building?

A From the rehab side. From this hallway, from this hallway right there it was two CANS, regular full-time, CNA in training. A nurse and another lady. I don't know if she was in training. I think they said in testimony that she was an RN, but I know there was another woman down there and she was not a CNA. There were two CANS, three CANS total.

Q So you're saying about five people on this hall?

A Five people on that side.

Q Now, so they get you to go outside?

A Okay. I stood outside in the hallway and they just

basically -- I think I overheard they say, well, you stay with Mr. Williams while we take care of something, whatever. So we stood there for a minute. I said, I'm going to smoke a cigarette. So I went on the patio and was smoking a cigarette and another guy was asking me what was going on. I said, I really don't know, I don't know what the hell is going on. Excuse me. I'm just trying to, you know, do my job. So I smoked the cigarette, walked back into the facility, and we walked toward the front of the building. Walked towards the front of the building --

Q Could you --

A -- walked towards the front of the building --

Q -- four --

A Okay --

THE COURT: Okay, wait one second. Wait one second, just so Mr. Bring can see it, too. Since we're getting into -- all right.

A Come back toward this right here, this hallway and it comes back to right here. That's where --

Q How long were you on the patio.

A About two minutes. Long enough to smoke a cigarette.

Q Okay. Then where did you go?

A I came back inside. They walked me back around. I could see the commotion, you know, people coming in -- the administrator or whatever. They walked me back here and

that's where I was put in handcuffs and read my Miranda rights and I asked him what was going on.. He said don't worry about it, we got to get statements from the two nurses.

Q So they said don't worry -- Okay, talk to me about not necessarily what people told you, but what did you say to people, I guess, the officer who came and arrested you?

A I said, what's the charge were.

Q Okay.

A And they say was attempted to try to molest this lady.

Q All right. What did you say in response?

A I just said -- I'm just trying to do my job, man, I change pampers. So you know --

Q So did you say --

A After he read me my rights I just didn't say anything else. After he said you're being accused of trying to molest this lady in this room. He said, you've got the right to remain silent -- you know, what ever. Okay.

Q Did you ever say I'm sorry?

A No. Why?

Q Now, what happened next?

A After that I was transported to the detention center where they took my green top and my green pants and put them in an evidence bag and gave me a uniform from the jailhouse. I wasn't -- I went to sleep. I got up and they took me to a

bond hearing down on Middletown Street. And I just walked up to the judge -- area or whatever, the detective came in and whispered something and I was escorted back to jail.

Q Okay, and do you know what happened next?

A Well, I stayed in jail for a little while, then these two detectives came and took the swabs out of my mouth. I spent another evening in prison, in jail, and then the next morning I had another bond hearing and I was released. Well, I went down to the bond hearing. I think my sister-in-law -- they got the money together, but they took me back to the jail and they told me I was free to go. I walked home from the complex in jailhouse clothes because I -- they took my scrubs. So I just walked home, got in the bed and told her -- turned on the news and there it was.

Q What did you see on the news?

A Well, basically, WIS TV, Judy Gaskins, saying nursing home employee arrested for -- I can't think what the wording was -- it said rape, attempted rape. That's -- as soon as that came on TV the phone started ringing off the hook. You know, it was dinner time, everybody sitting dinner they see my face splattered all over the television they trying to figure out what's going on. Has Ralph Williams lost his mind. And I'm just so paranoid I know I didn't leave the house for a good week. I mean, I didn't go outside to feed the dogs. Just the stigma of that word, rapist, rapist.

That was prison charge for me. That's when -- that's when it -- even though the -- is a jail, once I got home that's when my prison sentence started. Every day. I mean I would stick my hand out the door like this to get the mail. I didn't want my face to be seen. I didn't want to go to the grocery store. I didn't want to go to the gas station. Only place I went was to church because I knew I'd be supported by the church family. Besides that, I didn't go to Reed's the grocery store. I just phobia, you know, people looking at me. And people were. Jesus Christ, Orangeburg is no bigger than a shoe, so I mean everybody know everybody, know what I'm saying?

Q Uh-huh. (Affirmative response.)

A I mean, it was just -- I was down -- just that stigma of being a rapist, and then what my wife had to go through, to see the expression on her face. We didn't sleep in the same -- we didn't in the same bed for almost 30 days because she was wondering if -- or how or how could you --

Q And at the time they said they had found --

A Yeah. Oh, they say we got a hit. So it's like --

Q Hit on what?

MR. BRING: Objection, Your Honor, I think that calls for hearsay.

BY MR. WARREN:

Q Okay, were the charges upgraded?

A My charges were upgraded from -- I don't know the correct word, but the charges were upgraded to sexual misconduct with something to included a vulnerable adult. That's what -- that's what the charges were upgraded. Something else -- something else --

Q What was your understanding of what the something else was?

A I had no idea. I mean, I didn't read anything, I just knew the charges were upgraded.

Q Did you later become knowledgeable about what they said?

A Well, later, I mean, after I eventually came home and I saw the two different arrest pieces of paper --

Q Uh-huh. (Affirmative response.)

A -- I saw the thing.

Q Okay. Now, you were talking about -- how was it trying to get work?

A Well, at first, you know, it -- you got to realize one thing in Orangeburg, you know, a lot of people in Orangeburg don't have the luxury of television, you know, cable, because you have to get Time Warner cable until they came out with the analog box. Lot of people were just watched movies. So it was just the learned people who knew that, you know, Ralph Williams was charged with this. So I was able to get a job at this place called the Crab Pit.

Q I'm sorry?
A A place called the Crab Pit. It was a seafood restaurant. A friend of the family. They knew I was a good cook.
Q Did you describe to them what happened?
A Well, I got the job and I worked there for --
THE BAILIFF: Your Honor, excuse me. The foreperson of the jury want to hear the name of the place again.
A Oh.
THE BAILIFF: She can't hear.
A The Crab Pit. It's located on Highway 601 going towards, past the hospital. Whatever, but I mean I worked there for maybe two, three months. Maybe at that much, but I had a problem with the bartender. When the owner's would leave to do whatever she wanted free food. She wanted me to cook her free food. I'm trying to help these people make money, because the more money they make the more money I get. So I said, the policy is you got to pay half-price for the food. So she got upset, so she went to the Internet, pulled up the article and put it on the desk and he saw it. But every time he came to question me about it we were really busy. He said, Ralph, I got to talk to you about something. I said, okay. That's night -- hey, I got to talk you to. I said, what have you got to talk to me about? So he pulled up this -- threw it on the desk. Said, what's

this about? I said, yeah, man, I said, this is something I had to deal with. I said, you got a problem with that? He said, yeah, I do, because I can't have --

MR. BRING: Your Honor.

THE COURT: Okay.

BY MR. WARREN:

Q Don't talk about what he said.

A Okay. He said he had a problem with it. So eventually I lost that job.

Q Okay. What about other jobs?

A I was fortunate enough to get another job at another restaurant. The restaurant was named the Brown Derby. Business has slowed down but I was able to come in there and give them -- the lady who worked there was kind of elderly. They had been there 30 years. So I was able to come in there and helped them generate more business, and the owner heard about the allegations they came and told they have to go in a different direct.

Q Don't say what they said.

A Okay. I lost that job --

Q How about --

A -- because of it. Well, after that, it was just -- I put in applications, but usually people when they're -- everything is electronic right now. So you put in an application, most of the application you got to do that on-

line. Then they check your references, they usually go through Google. They Google me, they see this article. So I mean it's a no win situation. The catering business was basically nullified because of that. So I had no other recourse but just stay involved in my church and my church family, and do whatever I could do with them.

Q Did they support you during this?

A Wholeheartedly.

Q Now, what happened to your nursing license, your CNA?

A Oh, well, it was suspended. Suspended. I've gotten it back. I'm a licensed CNA now.

Q I'm showing you Plaintiff's Exhibit No. 25. Did you -- hold on a second. Let me see that, Ralph.

THE COURT: Show that to him.

MR. BRING: Got it.

THE COURT: You got it. Okay.

BY MR. WARREN:

Q I'm showing you Plaintiff's Exhibit No. 25.

A Yes.

Q Could you identify that?

A Yes.

Q That's been marked and entered.

A I guess it's reinstatement.

Q It's a what?

A Reinstatement. No, this is not -- has continuous

certification from the current expiration date. This nurse's aid has no sustained findings of abuse or neglect or misappropriations of property found in the South Carolina Nurse's Aid Registry.

Q What date is that?

A This is -- Oh, 9/2/2014.

Q That's as of today.

A Yeah.

Q So are you able to go to work as a CNA now if you could find employment?

A Yeah, I would have pursued --

Q Is that something you want to pursue now?

A No. Not unless I worked at the VA with veterans, all men. I mean, I couldn't -- I mean, even though there's a need for dedicated care takers out there, but don't get me wrong, this trial of, you know. See, until a publication is produced saying that Mr. Williams is good to go. I mean, there's always going to be a little cloud.

Q Let me ask you, you indicated that you were severely depressed right after you were arrested. Do you have any type of -- what was your mental state and did you go receive treatment for that?

A Yeah. I started going back and forth to the Dorn VA. I'm a veteran. So I figured I can go talk to a Navy Chaplin, you know, and I was already on medication for pain.

relationship with my God. So see what I'm saying. But it's just the fact of not knowing what tomorrow may bring. That's a very, very -- it's a very low place to be.

Q You -- this right here talks about a nurses registry that you are now fully -- the charge was substantiated. I guess there was a time it wasn't?

A Right. It had been on the nurse's registry. I was on there for -- because of these allegations I was on this registry.

Q Could you read us -- what type of scripture, could you pick a scripture?

THE COURT: Okay. We're going to take a break, okay.

All right, ladies and gentlemen, we're going to take about a five minute break. We're going to be right back out there. Thank you.

(Jury out 4:58 p.m.)

THE COURT: All right. Now, before we get started in that, Rule 610. Look it up. If you don't have it, I've got it.

You can sit down, you can stand if you want to.

No, I'm talking about the Rules of Evidence. I'm sorry.

MR. WARREN: Okay.

THE COURT: You know where I'm going with that?

MR. WARREN: Yeah.

A That is correct.
Q And you started work in February 2010; right?
A That's correct.
Q Okay. Before that you had filled our your employment application; right?
A That is correct.
Q Okay, and we'll get to that in a minute. After UniHealth you worked at the Brown Derby Restaurant; right?
A That is correct.
Q That was about 60 days; correct?
A Correct.
Q Mr. Sean Orr terminated you from there; right?
A Well, I wouldn't call it termination. I would say laid off because he said the restaurant was going in a different direction.
Q So he was going in a different direction; right?
A Right.
Q Then you went to Senior Catering; right?
A That is correct.
Q And they fired you because you walked off the job there; right?
A Allegedly.
Q Okay. Now, becoming a CNA you applied to UniHealth and we covered your employment application a little bit yesterday; right?

time; right?
A Right.
Q One of the reasons you didn't have a driver's license is you lost it because of your DUOS; correct?
A That's correct.
Q That's why you wanted to work at UniHealth because it was close by your house; right?
A That's correct.
Q About a mile away; correct?
A Less than.
Q Less than. Most of the time your wife would take you and pick you up?
A That's correct.
Q But that's one of the reasons it was convenient for you was because you didn't have a driver's license?
A I agree, yeah.
Q You walked everywhere if your wife wasn't taking you?
A Right.
Q Okay. And did I hear you say yesterday another reason you chose UniHealth was they wouldn't take child support out of your check?
A I said -- say that again?
Q You said something about your paycheck coming from Georgia --
A I said after I got the job I realized when I got my

Q And one of the resources you were and were trained on at OC Tech was this Nursing Assistant's Handbook?
A That is correct.
Q And that is one of the things Ms. Pigott trained you on; right?
A That is correct.
Q And then you applied to UniHealth right after school and they gave you your first job; right?
A As far as being a CNA.
Q Working as a CNA. Now, you only worked at UniHealth for, was it, about four or five months total?
A Something like that.
Q You mentioned at first you worked on the day shift; right?
A Couple, two days. Couple days to train. They brought me in to train, you know, to walk around with other CANS that had already been there.
Q Okay. Kind of learn the ropes; right?
A Yeah. Find out where supplies were located, where to punch in at, you know, time clock. Just basically walk through, getting adjusted to procedures.
Q Right, and then you switched over to the night shift; right?
A That's correct.
Q And you wanted to work the night shift; right?

A Yes, I did.
Q Okay. You said yesterday that they threw you over to the night shift, but that's where you wanted to work; right?
A I wanted to work with the night shift. Yesterday I stated they threw me back on the rehab ward where there were a lot of ladies. I wanted to work nights and, you know, men are there at night, too. They could have let me stay down there where I felt more comfortable.
Q The rehab wing has both men and women, correct?
A The most -- the majority of the rehab wing had a lot of female patients.
Q And that changes. People come and go; right?
A Not necessarily so.
Q Rehab is usually quicker than those longer staying folks?
A To be honest -- I don't know.
Q Okay. Now, likewise the day shift is busier than the night shift?
A Right. They have more CANS.
Q They just have a lot more activity, because everybody's up.
A Sure. Everybody's got to get a bath, everybody got -- some people got to be fed. More, you know, more activities going on.
Q You've got visitors coming into the facility?

A That's correct.
Q You've got family coming in?
A Same -- yeah.
Q You've got doctor's coming in?
A I wouldn't know. I was working at night.
Q You got people going to therapy?
A I assume so.
Q Okay, and that stuff isn't going on at night; right?
A No.
Q The residents are mostly sleeping at night?
A Majority of them are.
Q Not as many people roaming the hallways, right?
A Well, nobody actually roam the hallways in a nursing home.
Q Okay. Not as many people walking up and down the hallways, right?
A I guess so.
Q Okay. Let's talk about changing briefs. There's procedures for changing briefs, right?
A That's correct.
Q Okay. And you learn those procedures at school; correct?
A That's correct.
Q Part of what you do is you study this handbook; right?
A That's correct.

Q Okay. And it's important that you follow the procedures correctly because you could harm a resident; their bones are brittle, right?
A That's correct.
Q Okay. So you have to do it by the book; right?
A That's how we were trained.
Q Okay. Now, on the night of June 21, 2010, you went into Ms. Mayes room and you checked her brief; right?
A That's correct.
Q That was about 3:00 o'clock in the morning; right?
A Somewhere about that time.
Q It's your testimony that you raised her gown; right?
A That's correct.
Q Looked at the indicator on their?
A That's correct.
Q Noticed that there was an indicator line on her brief?
A That's correct.
Q Her brief was still on her; right?
A That's correct.
Q And her indicator line to you meant that there was either urine or defecation; right?
A Right. It changed colors.
Q Right. But you don't know which until you pull the brief off; right?
A What do you mean you don't know which what?

Q Whether it's urine or --

A Oh, no. You don't know whether it's urine or feces or both.

Q Okay. Now, you went over to her roommate and checked her brief, right?

A I was still with Ms. Mayes.

Q Okay. You never checked her roommate?

A No. One at a time.

Q Okay.

A We don't multi-task.

Q There's a big dividing curtain between the two rooms?

A That's correct.

Q There's a separate privacy curtain and then it goes around the bed; right?

A That's correct.

Q You went back out into the hall and got your supplies?

A After I assessed the problem.

Q Came back in, pulled the privacy curtain?

A That's correct. Shut the door.

Q Shut the door. And then you started working on Ms. Mayes brief; right?

A That's correct.

Q And you're certain that the brief was on Ms. Mayes?

A It -- yeah, I'm positive it was on there. I'm going to change this woman, okay. They don't sleep nude. All right.

So she had to have her brief on.

Q Uh-huh. (Affirmative response.)

A So once I note the indicator line had turned green, I knew she was either wet or had defecated on herself. I got my supplies, I came back and I started the process of -- you know, giving her privacy. Start the process of doing my job.

Q So the brief was definitely on there?

A Yes.

Q Okay, and you had to take the tape off both ends of the brief; right?

A Right.

Q Okay. You went around to one side of the bed and lowered the guardrail on one side?

A I was already on that side.

Q Okay. That's how you do it, you have the side rails up?

A The side rails is up -- when the patient is in the bed, to keep them from falling to the floor most -- whoever the CNA who gets them ready for bed before I get there, you know, get them dressed and ready for bed, they put the railing up and tie the call thing around there so they can call if they need assistance.

Q You put the side rails up, you lower one side rail down; right?

A Right.
Q So you could take the tabs off that side, right?
A Well, I lower the guard rails down and took both taps off. This lady was immobile. She had a stroke. So she couldn't assist me in no way.
Q Her arms wouldn't move?
A Right.
Q And that's when you noticed after you took those tabs off she'd had a bowel movement?
A Feces and urine.
Q Feces and urine?
A Right.
Q You said the feces was all over her hips and her back?
A That's right.
Q You said it was a huge bowel movement; right?
A I didn't -- I don't remember saying that. Huge?
Q You don't -- you want me to refresh your memory?
A Sure. Please.
Q Okay. This is 217 of the prior testimony. Okay, and then the person is here, talking about where the bed is, right? See that? So at Line 14, the person is here. Answer: The person is here. When I come in the room I assess. I look at the stripe right below and it's blue, so when I came back out and got all my equipment, they have, you know, don't pull those down. They've got the tape on

them, and you open them up. This -- all this goes around the client and the resident, all this. Inside of this. So I'm taking -- the tape is open like this, and I see it's huge.

A Okay.

Q Okay, and that's referring to the bowel movement; right?

A Right.

Q And you said it was all up on her hips?

A On her back.

Q On her back. And that said, indicated you went back out to get supplies when you saw that there was a bowel movement?

A Right.

Q And you come back in?

A Correct.

Q And according to you, you shut the door, right?

A Correct.

Q And then you prop yourself up on the bed to try to change her?

A After I shut the door I put the curtain around for privacy issues.

Q And then you prop yourself up on the bed trying to change her; right?

A I had to because she was about a hundred -- she was a

lot heavier than I was, and by -- by me having back problems I had to actually use the knee to pull -- I'd have to demonstrate it. I can't basically describe it.

Q You got --

A I had to put a knee on the bed to brace myself because of the weight, to pull her so I can start the process of getting this diaper off of her.

Q And you know, Mr. Williams, ain't nothing in this book about propping yourself up on this bed, is there?

A I'm not sure. It's been a while since I saw that book.

Q Do you recall anything?

A I don't recall anything, you know.

Q You know there's nothing in that book about having your pants down in bed, right, with a resident?

A No, there's nothing in the handbook that says that.

Q Okay. Your lawyers talked about yesterday, Plaintiff's Exhibit 11, this policy on perineal care; right?

A Right.

Q On how to change a resident; right?

A That's correct.

Q You want to look at it again? There's nothing in that policy about propping yourself up on the bed with the resident, is there?

A Nope.

Q There's nothing in that policy about having your pants

off in bed with a resident is there?
A No.
Q So you're propping yourself up on the bed with this resident with a huge feces filled diaper?
A Right.
Q And then Ms. Johnson walks in the room?
A Back up for a minute, sir.
Q Answer my question.
A What?
Q Ms. Johnson walked in the room at that point; right?
A Go back. I didn't understand what the question was?
Q Okay. You've got a resident with a feces filled diaper; right?
A Okay.
Q You know it's huge; right?
A Right.
Q It's on her hips and it's on her back; is that correct?
A That's right.
Q And you're propping yourself up on the bed; right?
A I've got a knee on the bed.
Q And then Ms. Johnson walks in the room?
A Right.
Q And she asks what are you doing?
A Right.
Q And your response is please shut the door.

A Please shut the door.
Q Right?
A Right.
Q You didn't ask her for help?
A No, I didn't ask her for help.
Q You didn't ask her to help you roll over this heavy woman; right?
A No, I did not.
Q You didn't say give me a hand?
A No, I did not.
Q You didn't say I'm changing Ms. Mayes?
A No, I didn't -- I just told her to please shut the door.
Q And then she left the room; right?
A Yeah, she left the room.
Q She left the door open?
A Left the door open.
Q You had that curtain there around, right?
A No, that curtain wasn't -- no. After she left the room I had to stop what I was doing, go back and create the privacy issue by shutting the door, putting the curtain back that she moved when she came and asked me what are you doing. Then I continued trying to remove this pamper out from under Ms. Mayes.
Q So you close the door after she leaves?

A Right.
Q And then you go back to working on trying to get the pamper --
A After securing, you know, giving the privacy issue.
Q You said it was about three to four minutes before Ms. Johnson and Ms. Peppers returned?
A I really don't know what the time frame was.
MR. BRING: We're on Page 247.
MR. FOSTER: I think I've got the wrong -- What page?
MR. BRING: 247, previous testimony.
BY MR. BRING:
Q And then you said three or four minutes --
MR. FOSTER: Line?
MR. BRING: Line 1.
MR. FOSTER: Okay.
BY MR. BRING:
Q In about three to four minutes later her and Peppers come back in the room and ask me to leave the room; right?
A (No response.)
Q Now, do you think it was three or four minutes?
A If it's on that record right there it has to be, but I don't agree with that.
Q You don't know if there was anyone at the nurses station?
A I didn't observe anything -- only thing I knew when I

came to work that evening there was on that wing of the facility there was five people on that wing.

Q When Ms. Johnson left the room to go get help --

A Right.

Q -- you don't know if there was anyone at the nurses station at that time?

A No, because I proceeded to go back and finish the task I was trying to do.

Q Okay, and you were wearing draw-string pants that night; right?

A That's correct, that's what we were issued.

Q And then at that time while Ms. Johnson was gone you still had not put a clean diaper on Ms. Mayes; correct?

A I didn't have a chance. By the time I got back to trying to continue my task that I was in the room for Ms. Johnson and Ms. Peppers came back and ask me to leave the room.

Q And you still had not gotten that dirty brief off of the resident, have you?

A No because the weight, I had to try to get it off her, that's why I had my knee on the bed, because I had to pull her toward me, push the pamper up under her, up under her back. After that was done, raise the bar back up, go around the opposite side where my back would be facing the door, let that down, pull her back again towards me and pull that

out, but I didn't have a chance to finish that task.
Q So the diaper was still on her when you --
A Yeah, the diaper was still on her when they told me to leave the room.
Q Okay, and according to you there was still feces in this diaper?
A Yes, urine and feces on there.
Q And the diaper would have still been on her body at that time; right?
A She would have still been on top of the diaper.
Q Okay.
A Body on top of the diaper.
Q Now, before Ms. Johnson entered the room you had already been working with the resident for several minutes; right?
A I went out and -- like I said before, after entering the room, I assessed the problem, I realized the lady had urine, had defecated on herself. I went back to my cart by the door in the hallway, got the necessary equipment, came back in there, provided privacy and start -- began -- was trying to do what I do every night which is get this pamper on off this lady, get her cleaned up and move on to the next room.
Q And the three to four minutes that you say that they were gone --

A Right.
Q -- you still hadn't gotten the diaper off; right?
A She was a heavy lady.
Q Now, on the night shift you had to change about 15 diapers an hour; right?
A An hour? We just -- well, I don't -- I can't really say. Yeah, maybe 15. It might be more. I don't really recall. It's been about four years ago. How many residents on any given night were on that hallway.
Q Does 15 diapers an hour sound about right?
A Yes, that sounds about right.
Q So in an hour that's about 60 minutes; right?
A (No response.)
Q 60 minutes in an hour?
A Yeah.
Q And you divide 60 by 15, you know, that's four minutes per resident; right?
A Right.
Q Okay. Now, when Ms. Johnson and Ms. Davis returned they came in and asked you to leave; right?
A That is correct.
Q You didn't argue with them; right?
A No, that's supervisor.
Q They told you to leave the room and you stood outside?
A Right outside the door.

Q And someone came to stand with you; right?
A Right. I think she was an LPN in training.
Q No one told you they were calling the police; right?
A No, they did not.
Q But you knew you were in trouble; right?
A I didn't know what was going on.
Q You were nervous and went out back for a cigarette; right?
A Well, I went outside to smoke a cigarette. I wasn't nervous. I went outside to smoke a cigarette to figure out what all this commotion was about as far as me doing my job.
Q And you don't recall how much time passed when you left Ms. Mayes room and when the police arrived; right?
A No, I don't recall. How much time was it?
Q You recall -- I want to be clear. You were definitely the one who started taking Ms. Mayes brief off; right?
A She was one of my assignments.
Q And the brief was on her when you went in the room?
A That's correct.
Q You're certain about that?
A I'm certain.
Q Now, you remember after all this went down, because of your two years in the Navy you had access to VA care; right?
A Say that -- because of my -- what now?
Q Because you were in the Navy for two years --

A Yeah.
Q And you sued her in this case; correct, Ms. Davis?
A Yes.
Q Let's look or talk about this alleged telephone call with your wife and Ms. Johnson?
A Right.
Q Your dealings with Ms. Johnson at the nursing home were strictly business; right?
A That's it. Sometimes not even a hello.
Q You came into work, clocked in, got an assignment sheet from Ms. Johnson and that was about it; right?
A You know, just following the instruction of what my job duties were. I come in, she would give me the list of patients she wants vital signs from. I went and did that and came back gave her the list and she charted it. After that it was just basically checking on patients for the rest of the evening.
Q Now, about this alleged call. You said you'd had a fight with your wife that night?
A Not a fight, an argument.
Q So you waited until break; right?
A I waited until about -- it wasn't a scheduled break. I waited until I got some of my vitals done. I did my charting done and then I decided -- I asked permission to use the phone.

Q Fight was about the fact that she had to wake you up to go to work and you didn't want to go; right?
A I -- yeah, probably something similar to that. Not didn't want to go to work, you know, I just -- I mean I'm a hard person to wake up once I get into a good sleep. I'm not an easy person to wake up. All my wife it's been like that.
Q You got in an argument with her about that; right?
A Exchange of words.
Q She still had to take you up to work; right?
A Yeah.
Q And then you waited until about 2:00 o'clock in the morning while she was sleeping; right, because she worked days.
A I didn't know if she was sleeping or not. I don't really know exactly what time it was. I just felt I had to call and apologize to my wife.
Q You called her from the nurses station?
A Yes, sir.
Q And you say when your wife called back to the nurses station the person who answered the phone said, this is Patricia Johnson?
A I couldn't say hearsay, but from my understanding when I got home she asked me who is Patricia Johnson. Then she explained what had happened.

A I mean, that's a work area.
Q After that you never confronted Ms. Johnson and said your wife was made about being prank called in the middle of the night?
A I don't recall.
Q When your wife came to pick you up the next morning because she had to pick you up the next morning; right?
A Right.
Q She didn't come inside the facility and try to talk to Ms. Johnson; right?
A No.
Q She never demanded to speak to a supervisor; right?
A I don't think she would have carried it that far?
Q Let's talk about this heavy man you talked about earlier?
A Oh, yeah.
Q You said he weighed about 300 pounds; right?
A Well, you know, three or plus.
Q You're in there trying to not just change him but transfer him to a wheelchair by yourself; right?
A That's correct.
Q With your bad back; right?
A That is correct.
Q And when you called for help you said a CNA and a janitor came to help you right away; right?

A The CNA that was coming on duty, she was in the hallway and a janitor was in the hallway, also. Well, there was three people in the hallway; a janitor, an on-coming CNA and Nurse Johnson.

Q Now, you're in the room trying to get a 300 pound man out of his bed into a nursing home wheel chair; correct?

A That is correct.

Q And you don't know where in the hall these people are; correct, because you're in the room, correct?

A I know where they are in the hallway because I'm in the last room at the end of the hallway.

Q I see.

A I know Ms. Johnson giving out the last of her room medication before she goes home. I had to pass her to go to this man's room. I had to pass her also when I had to go get the sliding board to do this procedure to get this man out the bed, because the hydraulic lift was already being used by another CNA.

Q And you didn't ask her for help then?

A Who?

Q Ms. Johnson.

A No, I didn't ask her for help, because I thought I -- looking at the training manual, there's a chapter about using the sliding board. I figured I could handle it by myself. But unfortunately his weight shifted and he started

to fall. He didn't fall and that's why I was holding him up, holding him up with my bad back asking or hollering for help. Now, if I holler for help and you're my immediate supervisor and you're right there in the hallway, I think you would have to investigate that.

Q You'd have to hear it first, right?

A Yeah.

Q Okay. Now, the CNA you mentioned was April Bowman; right?

A I'm not sure of the name.

Q And then this janitor; right?

A I'm not sure of his name, either.

Q Okay, and as you testified yesterday you said you think you mumbled something to Ms. Johnson but you're not sure if she heard you; right?

A I'm not -- I testified yesterday that I might have mumbled something under my breath, but being disgusted because if this man would have fell I would have got charted, you know.

Q She didn't write you up; right?

A Say again?

Q She didn't write you up?

A No, she didn't have time to do that.

Q She never wrote you up, though, did she?

A No.

Q Ever?
A Not to my knowledge.
Q Okay, you've got the employment -- your lawyers have your employment file. Did you see any write-ups in there?
A Not to my knowledge.
Q Okay. She could have written you up for --
A She could have written me up the first time I told her she was incompetent.
Q -- she could have written you up -- I'll ask you to answer my questions. She could have written you up for not transferring the resident and getting help; right?
A I assume so.
Q And if she had heard you mumbling she could have written you up for that; right?
A I assume so.
Q Okay. You talked yesterday about some resident you said had blue lips; right?
A Blue lips. Whole face turning blue.
Q Somebody was getting blue lips.
A I said lips?
Q That's the way I heard it.
A Should be on record, shouldn't it?
Q Okay. You said you go and take the blood pressure of this resident; right?
A Blood pressure, respiration and temperature.

Q Nothing blue about her at that point?
A Not at that point. I just noticed levels were extremely kind of low. So instead of me proceeding to the rest of the other patients I went immediately back to the nurses station. I showed Ms. Johnson the totals I got and she just said, well, Ralph go back and check it again.
Q And this was less than two months after your first job as a CNA; right?
A Correct.
Q Ms. Johnson was a nurse?
A Yeah, a licensed LPN. She was my supervisor.
Q So she had a lot more medical training than you did; right?
A That's true; that is correct.
Q She went to school for a couple years to become a nurse; right?
A That's correct.
Q And at that point you'd been a CNA for less than 60 days; right?
A That's correct.
Q Okay. Now, what typically happens if vitals are abnormal nurses will tell you to go back and recheck them won't they?
A That's correct.
Q You went back to the room and you noticed the patients

lips were blue; right?
A Well, blue -- when I went back to the room all I saw of this lady, yeah, she was turning light blue. I mean, not just lips -- she didn't look well, okay.
Q And when you saw this you kind of panicked; right?
A I did. I did panic.
Q And you ran down the hall; right?
A After I saw this I went back to Ms. Johnson again and I told her, I don't know the exact words, something is seriously wrong with this lady. I don't know if maybe I didn't say it loud enough or she didn't hear me. I don't know what happened, but she didn't respond as quickly as I thought she should have.
Q I want you to listen to my question, real quick?
A Okay.
Q You kind of panicked; right?
A Yes.
Q And then you ran down the hall; right?
A No. I stopped back by the nurses station to tell Ms. Johnson again.
Q Let's look at prior testimony again. This is Page 221 through 222. Let's put it this way, you kind of panicked; right?
A Yeah, I did panic.
Q You didn't hit any alarm buttons; right?

A See, I was right by the nurses station.
Q You didn't hit any alarm buttons?
A No, I didn't hit any alarm buttons.
Q Okay.
A I didn't do that.
Q And another nurse came to help you; right?
A I had to go down -- the other end of the building, that nurse -- I think her name was Irons. I'm not -- I'm not sure, but I know -- that nurse had been there a couple of times on the night shift with me, some nights when Ms. Johnson was off she would sometimes work on that rehab wing. I went and got another Licensed Practical Nurse and we ran down there and got her and we ran back and she helped me stabilize Ms. Brown until EMS arrived and took her to the hospital.
Q And all these rooms that you say the panic buttons are right by the doors, you ran past all these rooms with these alleged panic buttons right by the door you didn't hit one, did you?
A I didn't hit one. I just went and got another nurse.
Q Okay. While we're talking about that, your lawyers were showing you some pictures yesterday, one they've been showing in this case a lot. This room.
A Okay.
Q Now, this has got the lights on and this was taken

pictures; right?
A No, I didn't see any on those pictures.
Q Okay. Now, regarding this incident where you're running down the hall --
A Right.
Q -- getting another nurse and you're running back.
MR. WARREN: Objection.
A Right.
Q You said Ms. --
MR. WARREN: Objection. He didn't say running.
THE COURT: He just said running a minute ago.
MR. WARREN: He did. Okay. I'm sorry. My apology.
THE COURT: Thank you, sir.
MR. WARREN: We'll drop it.
BY MR. BRING:
Q Now, you said you confronted Ms. Johnson about this; is that your testimony, that you got mad at her about this --
A Confronted about?
Q This blue lip incident?
A I didn't confront her. I just made a statement after the EMS people got the lady stabilized. I mean, all the other CANS, it was a big crowd of people. I just made a statement that she was incompetent, she needed to be fired because this lady almost died. I meant that.
Q Ms. Johnson didn't write you up, right?

A No, she didn't write me up. She ignored it.
Q Ms. Johnson was just business with you; right?
A Say again?
Q Ms. Johnson was just business with you; right?
A She was my supervisor.
Q She would say, good evening, this is your assignment and not say much after that; right?
A That's about it.
Q That's about it.
A We didn't have no -- we wasn't connected to the nursing home. You know, we didn't really talk.
Q I want to make sure I heard that. She would say, good evening this is your assignment?
A On occasion.
Q Let me finish my question for the court reporter and the jury.
A Okay.
Q She would say good evening, this is your assignment and not much beyond that; right?
A On occasion.
Q And your impression is if a woman stops talking to you there's something on her mind; right?
A Say that again?
Q Your impression is that if a woman just stops talking to you there's something on or other in her mind?

Q Now, you testified yesterday that Ms. Henrietta Mayes couldn't even move her hands; is that what you testified to yesterday?

A Yeah. She was paralyzed.

Q So whoever took this note here wrote that the patient had already ripped her diaper off, which she is known to do.

A Right.

Q Would that --

A I mean, it's an impossibility by her being paralyzed, and the state that I was in when -- I was going to a psychiatric ward, so -- so --

Q So is there anyway that, I mean, that statement could be true -- yesterday you said she --

A Yeah. She couldn't feed herself. She couldn't -- she could barely move around, much less rip a pamper off. I mean, she had a stroke, that's why we had to -- me and the other CANS, we had to basically do everything for her, specially like in the morning, we had to get her up, get her dressed to go to the front of the cafeteria to go to breakfast.

Q Right.

A So we had to do everything for her.

Q Okay. Now, I know Mr. Bring talked about 1970s and the '80s. Is there anything Mr. Bring stated about what happened in that room that's different from your former

testimony?

A No.

Q Now, let's go back over this -- in this room, resident's Room 39A --

A Uh-huh. (Affirmative response.)

Q -- to the night in question, June 21, 2010?

A Right.

Q Talk to me about the description, as you can recall, I know it was about five years ago --

A Right.

Q -- but as best you can recall can you describe the room?

A Okay, you walk in -- Okay, her room. When you walk in the room there is a bed, and she had like a chifferobe, you know, like you've got a home to keep your clothes in. She had that but she had a TV on top of it. Chair, chifferobe and this little night stand over in the corner. Typical room, just -- you know -- the room looked more familiar to the first picture I saw than the other one with the high backboard. That didn't look like her room.

MR. WARREN: Could you mark this, please?

COURT REPORTER: What number, please?

MR. FOSTER: 48 would be our highest number. Just mark it 50. I know we don't have anything --

THE COURT: Okay.

MR. FOSTER: There may be a 48 or a 49 already, but I know there wasn't a 50.

(Plaintiff's Exhibit No. 50, hand-drawn diagram was marked for ID only.)

MR. WARREN: Thank you.

COURT REPORTER: Plaintiff's 50, Judge.

THE COURT: Would you mind?

MR. WARREN: I'm sorry.

MR. BRING: Oh, I've got one.

THE COURT: Okay, I just wanted to make sure.

MR. WARREN: Yes, sir.

THE COURT: Okay. Thanks.

MR. WARREN: Yes, sir, Your Honor.

BY MR. WARREN:

Q I'm showing you what's been marked for identification as Plaintiff's Exhibit No. 50. Do you recognize that?

A That's my handwriting.

Q Okay, and what is that a description of?

A It's a description of when you walk into the door, all right, the chest, like I said, and the little night stand, the night light over the bed, the panic button on the wall right over this little night stand, and then the call button, which is on sort of like a cord that can wrap around the railing of the bed so they can punch it, you know, if they can.

married?
A May 5, 1988.
Q Uh-huh. (Affirmative response.) Okay. And during the course of your marriage, I guess you know this question, did y'all have some problems?
A Yes, we had some problems.
Q And when was the last -- You said problems, I guess you mean an affair?
A He had an affair about 20 years ago.
Q Okay. Let's talk to the jury about that, 20 years ago, what happened?
A Ralph, apparently Ralph called Ms. Ann Hardy and she was calling him back and I answered the phone. She was saying did somebody call me and I said, yes, I called you. I asked her who she was. She explained that she was a friend of my husband and explained to me what was going on. So initially I went to her house to ask and confront her about what was going on. When I came home and I got Ralph and I took him over there and the three of us talked about it. She told me what was going on. Ralph denied it. He was saying that he was going over there and he was saying that he was not having sex with her, he was saying he was just going over there drinking beer and doing just some things, but he continued to say he wasn't having sex with her. And we talked about it. I said more than sexual

Mr. Williams had some 'splaining to do -- not explaining, but 'splaining to do when he gets home.

A Yes, it's been an on-going debate with me and him about whether or not he had sex with her or not. He was saying he would go over there and talk with her. They were just friends. But eventually he did admit they did have sexual relations and we worked through that.

Q And he --

A I was just thinking today sitting in here, he just didn't want to say it in front of me. But this is something that we had discussed over and over again.

Q And I guess last time, I guess, y'all did was 20 years ago?

A Right.

Q And I guess y'all don't like to discuss what happened 20 years ago?

A No. No.

Q Okay.

A We have a very loving relationship now. We have our ups and downs like anybody -- a very good marriage. I love him and I know he loves me. So he just didn't want to go into that again today.

Q Did you think that y'all would be talking about the affair that happened in 1991 or something here in 2014?

A No.

A 2009, 2009.

Q Okay.

A So they opened a space at Kmart for Ralph to come in there so the customers and employees wouldn't have to go next door to Reed's, for Ralph to be able to provide services, food services for their employees on site, also. So this time Ralph was going to CNA, working at Reed's and trying to go to Kmart too much. Then it got to be too much for him and so he had to let Kmart go.

Q And was he still catering as well?

A He was still catering.

Q And now this -- you know, he's doing all this at the same time?

A He's doing this all the time. He's doing all these jobs. Ralph had an excellent reputation in the Orangeburg community as a cook. People would say -- well, can't say hearsay. There was a great command for his talents. He could do all kind of cooking and he was fast. People know if you call Ralph to do a job and he's not going to hang around sitting on the clock. He's going to get the job done and he will do the job well.

So when he -- at Reed's -- when he first got the job at UniHealth he was still at Reed's also. Then they started calling him at UniHealth for overtime because he had such a great report with the clients at UniHealth. Ralph said, I

A Right. We have -- we have lots of catering supplies.
Q So his plan, as I understand it, y'all were going to do the catering business during the day and work at night?
A Right.
Q So his plan was to work two jobs?
A That was his plan. That was his plan.
Q Now, how was he when he got the CNA certificate; how did the accomplishment feel to him?
A Ralph was on top of the world. So was I, because that's a major accomplishment to take that CNA course and pass that test on the first time. I know many of our clients would go through the course, but they couldn't pass the test. So I was extremely proud of him. He was extremely proud, too. He was on top of the world.
Q Uh-huh. (Affirmative response.) Go back to school in his 50s?
A In his 50s and pass the test on the first time. So I was ecstatic about it and he was also.
Q So talk to me about prior to June 21, while he was working at UniHealth were there any phone calls or conversations from anybody that you had?
A Well, I don't know the exact date, but one night Ralph and I had an argument. I remember taking him to work. He got out the car and he was mad and I was mad. So he called me that evening probably like 3:00 o'clock in the morning to

tell me that he was sorry and that he loved me. Hung the phone up. Couple minutes later the phone rang back. So I thought that was Ralph calling me back. I was on the phone going Ralph, Ralph, Ralph. I could just hear breathing on the phone. So the person hung the phone up. I hit the start 69 or whatever, the redial to call the number back.

Q Now, do you know --

A -- 534-7036.

Q Could you repeat that number?

A 534-7036. So I called -- I called the number several times and the person at -- who was at the desk was not answering the phone. So I kept calling until the person answered the phone and said, Patricia Johnson and hung the phone back up.

Q You called about three time?

A About three times. At least three times until the person answered the phone. Eventually somebody answered the phone, they said Patricia Johnson. I thought it was strange. So that's when I picked Ralph up the next morning I asked him, who was at the nurses desk when you called me last night, and he said Patricia Johnson. I said, why was she calling to check to see who you was calling. He said, I don't even know what you are talking about. He said, I don't even -- I don't know what you're talking about. I said, because called back to our house to find out who you

were talking to. He was saying -- first he got indignant with me because he thought I was blowing it out of proportion, because I didn't let it go. I told my sister, I told another co-worker, Madelyn Sally. I said, there's a problem here. There's a problem here as to why the middle of the night somebody would be calling my house to see who my husband was calling. So I did research. All I knew was the name was Patricia Johnson. Went back in my files to see if it was somebody I know or something was going on. Matter of fact, I think I irritated Ralph with it, because I kept asking him was anything going on. No, it's just a co-worker. Nothing going on. He said he had absolutely no explanation as to why this person would be calling back to our house to see who he was calling.

Q Now, talk to me about the events on or about June 21, 2010.

A That night -- well, really that morning, I got a phone call and I was told that Ralph was arrested and the bond hearing would be 9:00 the next morning and for me to be there. And I asked what the charges were and I was told the charges were intent to commit assault. I said assault about what? That's all I was told. That I needed to be a the bond hearing the next morning. So that next morning went to the bond hearing by myself. And they told us that whenever they call your person to go up there and stand beside them

when they call you person. So I went up there and stood by Ralph and I looked over on the warrant and I saw something about intent to commit criminal sexual conduct, and something about his pants around his knees or whatever, and I just got -- I was just upset. It was unbelievable to me. So I just left out -- when they got finished with him I just left out the courtroom.

Q Uh-huh. (Affirmative response.)

A And I went home. By the time I got home the phone was ringing. Ralph was on the phone. I guess he -- he knew that I was irritated and upset. He said that I didn't do anything, Linda. I was doing my job. I was doing my job, that's what he said. He said what are you going to do about it. I said, at this point I don't know what I'm going to do about it, because prior to that week Ralph daughter and his grandchild came for Father's Day and his birthday. And the money we had we had to get a hot water heater, we had to get some -- we got a new couch and we had put some money into the house so we could get things ready for is daughter and grandchild. So I didn't have many resources on hand.

So I called my sister, we talked about it. We went to place the bond. I went out to the complex, waited for him to come out. I went about 3:00 o'clock and I stayed until about 6:00 o'clock waiting for him to come out. So I called the bondsman to see what was going on. So he told me to go

inside. When I went inside that's when they told me the charge had been upgraded to committing sexual conduct, three and they added on the charge of abuse of a vulnerable adult, and I was -- I was livid. What was going on here.

Q What was your understanding of why those charges were upgraded?

A At that time I didn't know why the charges were upgraded. I called the bondsman and he told me to meet the detective, Latisha Coakley at the complex or something the next morning so she could tell me.

Q What was your understanding of why the charges were upgraded?

A Because they found semen. The officer told me they had a hit, they had a DNA hit on Ralph.

Q And this was --

A That was on Wednesday --

Q Two days after the incident?

A Right. Tuesday, that was the second bond hearing.

Q Now, talk to me about how this has changed -- one more thing about y'all catering. What else did y'all purchase anything?

A We have a '92 Toyota Camry station wagon that we bought to be able to transport the food in the back, and that's still parked in our backyard. The tires have rotted by now, because we have no catering business now. So it's just

sitting there.
Q But y'all had bought that --
A Yeah, for the catering business.
Q Now, talk to me about the effect that this has had on -- first describe Ralph after this incident, did you notice any significant change in Mr. Williams?
A Oh, yes. He was depressed. He stayed in the house. He didn't want to come out the house. He was really concerned about what people would think about him. He was just erratic in his thinking. He was just scared. Only place he would go -- only place he would go would be to go to church. And we would leave church -- before we would go to the grocery store, you know, to pick up something that we're going to cook for dinner. But then he didn't even want to go inside the grocery store with me any more. He was too ashamed. He didn't want anybody to see him any more, especially at Reed's. So when I finally convinced him to go into the grocery store with me at Reed's he came inside with me and we went to the back toward the meat department and this man yelled out -- man --
MR. BRING: Your Honor --
BY MR. WARREN:
Q You can't say, you can't say --
A Oh, I can't say what I heard. What I heard. Okay.
Q You can describe --

A Okay. Well, we went in, in my opinion, when we went inside --

THE COURT: One second, Ms. Williams. Just -- when your attorney asks you a questions you need to answer the question.

MS. WILLIAMS: Okay.

THE COURT: And remember you can't say anything about what somebody else said.

MS. WILLIAMS: Thank you, sir.

BY MR. WARREN:

Q Remember just what we talked about.

A Yes, sir.

THE COURT: Go ahead.

BY MR. WARREN:

Q Continue. If you could describe your observations and things of that nature?

A My observation was that people were treating him in a negative manner. That's my observation. So he went and got back in the car.

Q Talk to me about more type of things, your descriptions and observations of Mr. Williams after June 21, 2010.

A He was embarrassed. He was humiliated. He was depressed, which brought back on a problem which I thought was gone, that was the alcohol and drug abuse. He relapsed and went back to doing that. He was ashamed and upset. He

thought his life was over. He thought about, you know, if he had to go to prison, what his family, what his children, what everybody thought about him. He was extremely depressed.

Q He talked about his grand kids?

A Right, his grandchildren. He had two grandchildren that he had never seen. He had another grandchild that had sickle cell, I guess sickle cell anemia, because -- we couldn't leave to go check on his grandchild. He was extremely depressed. He felt like his life was over.

Q Now, these are kids from his first marriage?

A Right, right.

Q Do you know when that first marriage was?

A Yeah, 1984.

Q So talk to me, have y'all went to St. Louis at any time?

A We went -- we went in 1989, first time. I went to St. Louis -- then we went in 2004 when Ralph Jr., and (inaudible) got married. We went again in 2012 to check on Ralph Jr's son. He had --

Q Is that his grandson?

A Yeah, Ralph Jr's son is Ralph's grandson. He had sickle cell anemia and he had a bone marrow transplant, and he was in the hospital. So we went to check on him.

Q So now talk to me about how this has effected you and

your marriage to Mr. Williams?

A Initially, it effected our marriage very extreme manner. When he first came home we were in different rooms, but then eventually we did get into the same room but we were in different beds. We were in a room with twin beds. We had absolutely no sex life. That is something -- I just could not do that after those charges. To have your husband charged with a serious charge, the charge that Ralph had on him was something really hard to deal with.

Q And then afer they told you they found -- what were you told again; what had they found?

A Semen.

Q Two days after the incident?

A Right. They found semen, but he told me over and over again that he didn't do it. That he didn't do it. He kept saying it and saying it.

Q Now, one thing we're going to -- that may come out in later examinations, was -- I know it's 20 years ago, but you what's the difference between now and then, so what's your answer? The difference between now and 20 years ago.

A 20 years ago he was young, he was drinking and he was a different man than the man he was today. He told me that he realized the value of the wife that he had and that he wouldn't do anything of that nature again. It took him a while to get the wisdom to appreciate the woman that he has.

afternoon. That's why we were out longer than we normally would have been.

We're going to now continue with Ms. Williams examination.

Mr. Warren.

MR. WARREN: Yes, sir, thank Your Honor.

THE COURT: Thank you.

BY MR. WARREN:

Q Ms. Williams, during the time when Mr. Williams worked at UniHealth was any time you picked him up from work and you observed that he was upset?

A Yes. One morning I picked him up from work and he came -- no, I picked him up he was --

Q Let me just caution you don't say anything he told you.

A Right. He extremely upset because of an incident when a patient almost died, and he was extremely upset because that's the first time he said -- the first time that he experienced anything of that nature, in my opinion.

Q Okay. Now, also, can you talk to me about the effect, in terms this has had, June 21, 2010, on catering jobs and just on his ability to work in the community?

A Well, the catering jobs --

Q Also don't say what somebody said, but just describe your observations and understandings.

A Okay.

Q Go ahead.
A The catering business is gone. He doesn't do any catering jobs any more unless his aunt try to help him find some jobs. Before people was calling him all the time to do different events. He has a whole box of cards that's just there. He's given them out. He has no catering business now.
Q Now, talk to me about your observations, you indicated people avoided him, shunned him, hated him. Talk to me about your observations of his emotional state and any observations you have that you saw and observed of your husband?
A He's depressed. He doesn't sleep at night. He takes a depression medication to go to sleep, because he feels that his life is over as far as working.
Q Talk to me about his ability to try to obtain work outside of his catering because he did both, he did both at the same time. Tell us about your observations about his ability to get work, your observations and your understanding?
A He's not be able to secure employment. One particular job they told him he had the job but due to the SLED background check, and once that came back he didn't get that job.
Q And this was -- go ahead.

A That job, that was Four Moons. That's a job that he thought -- he thought he had that job. They actually told him he had the job and he was waiting for the SLED background check to come back. Once that came back he didn't get the job. He did get some other jobs after the -- but he wasn't able to sustain those jobs. He lost -- we have already mentioned the Crab Pit that somebody put something on the desk and he lost that job because of the allegations. He had a job at Brown Derby in my opinion was effected by the allegations. He got the job at Senior Catering, in my opinion it was effected by the allegations. He had a job at Waffle House, but he stopped that job because he went back to OC Tech in May of 2013, he went back to try to get another job in the medical field, but he wasn't able -- he started taking the classes, but he wasn't able -- he couldn't focus on the classes. So he left on academic probation and he just didn't go back.

Q This was to advance his --

A Right. He was trying to -- he was seeing if he could go back and get another job in the medical field other than CNA.

Q All right. Talk to me about your pain, I'll ask about your pain and what things you went through?

A I was very emotionally upset. A lot of crying and I had a lot of sleepless nights. Just not knowing what was

going on and seeing my husband and seeing what he was going through. Ralph has an outstanding personality, a real out-going person. After this he -- he's depressed all the time. Some days he'll stay in the house all day. Some days he'll go in the room and just stay in the room. He don't want to be bothered with anybody and if he does come out he wants to drink. So -- the drinking has had an extreme effect on our marriage. Previous to this it was under control. So it's just a very, very, stressful time in my life. The stress of knowing we're shunned in society because of the allegations, some people think I'm stupid -- in my opinion some people think I'm stupid for still being with him, and you just have to watch the continual depression that he goes through. He takes a depression medication every day.

Q Now, you've been with him 25 years; have you ever know him to be like this in 25 years?

A No. Ralph was a very out-going person. Life of the party, happy person.

Q You said life of the party?

A Life of the party. Right.

Q Always joking?

A Always joking. That's why he looked like -- when he was at the nursing home, in my opinion the patients enjoyed him. Like being around -- he'd joke and he took time with them. This has changed him totally from the person that he

was before.

MR. WARREN: No further questions.

THE COURT: All right. Mr. Bring.

MR. BRING: Thank you, Your Honor.

LINDA WILLIAMS - CROSS-EXAMINATION

BY MR. BRING:

Q Good afternoon, Ms. Williams.

A Good afternoon, sir.

Q I just have a few questions for you. Hopefully we can keep this short.

A Yes, sir.

Q Since you and Mr. Williams have been married you've been the primary bread-winner; right?

A Yes, sir.

Q And Mr. Williams does not drive; right?

A He does not drive. He does not drive because he drinks. He made a conscious decision which I agreed with and I have encouraged him many times to get his license back. It's hard to transport a person back and forth to work all the time. He says, he still drinks, he still want to drink. He does not want to kill hisself or anybody else. He says 'till he gets to that point in his life where he doesn't want to drink, he says he doesn't want to get his driver's license back. So I have to take him where he wants -- where he has to go, back and forth -- when he was working

Q But usually in life it's better to tell folks?
A Yes, sir. Yes, sir.
Q And part of your job is to try to help people get work; right?
A Yes, sir.
Q That's what you do on a daily basis?
A I am a food stamp and a family independence worker at the Department of Social Services. I'm not -- my job is not specifically involved in getting work for our clients.
Q Okay, but you don't think anybody should lie on a job application like that, do you?
A No, sir.
Q Now, regarding the night shift. I guess when he got arrested you went up for the charge hearing; correct?
A Yes, sir.
Q And you heard the charges against your husband and you just got up and walked out; right?
A I got up and walked out when they got finished with him.
Q You were made when you heard those allegations right?
A Yes, sir.
Q And part of that -- the reason for that is you knew he had been unfaithful before; right?
A No, sir. I was just shocked of those charges.
Q Okay.

A He had been unfaithful 20-something years ago. Infidelity did not even cross my mind.
Q Okay.
A Those charges of themself shocking to me.
Q All right. You were here this morning, obviously, you knew before this morning that your husband had been unfaithful before; right?
A Yes, sir.
Q And it came up at your deposition; right?
A Yes, sir.
Q And it came up at his deposition, too?
A Yes, sir.
Q So it wasn't a surprise in that sense; right?
A No, sir.
Q And so Mr. Williams didn't have any reason to lie to the jury this morning; right?
A I think he just didn't want to say it in front of me.
Q Okay.
A In my opinion.
Q Has he admitted in front of you?
A Not in front of other people he hadn't.
Q Okay. Now, you --
A He has admitted it to me but not in front of other people he hasn't admitted it.
Q And it took him years to admit it to you; years of

badgering; right?
A Yes, sir.
Q Now, you put the quality of your marriage at issue in this case --
A Yes, sir.
Q -- as part of your lawsuit; right?
A Yes, sir.
Q So now first reaction you were angry, obviously?
A Yes.
Q And you said the charges got upgraded; right?
A Yes, sir.
Q Okay. And that was based entirely on what the police said; right?
A Yes, sir.
Q Because the police said; right?
A Yes, sir.
Q Okay. The police had said there was semen, right?
A Yes, sir.
Q It was the police that said there was DNA; right?
A Yes, sir. Based on what they were told. Right. It was police. Right.
Q These nurses weren't investigating this; right?
A No, sir.
Q Now, you attended the bond hearing; right?
A Yes, sir.

Q That carried over for a second day. You went to the first hearing so you could pick your husband up and take him home; right?

A I went to the bond hearing to find out what the charges were?

Q Okay.

A And after that hearing I went to the detention center to pick him up and he didn't come out.

Q Okay. You were there to take him home; right?

A Yes, sir. And I stayed there three hours waiting for him to come out, and he didn't come out.

Q And he didn't get out?

A Right. So I called the bondsman, and he told me to go inside and that's how I found out the charges had changed. He directed me to go to the bond hearing the next morning and contact the detective Ms. Latisha Coakley to find out what was going on.

Q So you went on to work and you waited for Mr. Williams to call you so you could go back and pick him up when he needed to get home; right?

A That day; the second day?

Q Yes, ma'am.

A No, sir. After I left the bond hearing I went to work?

Q Yes.

A I went to work.

Q And you waited for him to call you back?
A Right, right, right.
Q You were going to go pick him up?
A I was going to pick him up. Right.
Q You weren't leaving him stranded?
A Right, sir. I was going to pick him up.
Q Okay. And it was just a 10 minutes walk for Mr. Williams to get home from the bonds place; right?
A Yes.
Q But if you can called him that next day -- you heard him talk in his testimony about he had to walk home and he was embarrassed, but if he had called you you would have gone and gotten him; right?
A Yes, sir.
Q But he just didn't call you; right?
A He didn't call me. He was -- he was anxious.
Q Let's talk about this prank call --
A Yes, sir.
Q -- or this call in the middle of the night. You and your husband having a fight; right?
A Yes, sir.
Q So he goes to work -- he doesn't start work at the nursing home until, what, 11:00 o'clock?
A Yes, sir.
Q So you had to run him up there after you had worked all

day; right?
A Yes, sir.
Q And then you go on to bed; right?
A No.
Q No?
A No. Most nights when he -- most nights I would up or asleep on the -- in the den. I was not sleep. Before he went to work he had to get his clothes out, I got to put his medicine out for his legs, got his food ready and most nights I stayed up. I was not asleep.
Q But you dropped him off at work?
A Yes, sir.
Q And you've got to get up the next morning and get him at 7:00 o'clock; right?
A Yes.
Q So at some point you're going to bed; right?
A During that time I wasn't going to bed, I was sleeping in the den.
Q Okay, but you were sleeping?
A Yeah. I was going in the den.
Q Okay. That's what I meant by bed.
A Yes, sir.
Q Somebody -- you've got to sleep sometime.
A I wasn't sleep when he called me. I was still awake.
Q That was like 2:00 or 3:00 in the morning; right?

A Yes, sir.
Q So you get this call, you say he wanted to call in the middle of the night. And then at some point the phone rings again?
A Yes, and I thought that was him calling me back.
Q So he didn't have a cell phone, he was just calling from the nursing home.
A He was calling from the nurses desk, because part of their rules is he couldn't have his cell phone. So he started leaving his cell phone at home.
Q So he called from the nurses desk, if he was going to call?
A Yes, sir.
Q And then you say somebody called you back and they were breathing heavy into the phone?
A I didn't thought it was her breathing. I thought it was Ralph calling me back again. I was going, Ralph, Ralph, Ralph, Ralph. Ralph, Ralph, Ralph. I thought it was Ralph on the phone. So I called back.
Q You called back several times; correct?
A Yes, sir.
Q Several times; right?
A Yes, sir.
Q It took several times before someone answered the phone?

A Yes.
Q Okay. And the person who finally answered the phone after all these calls answered and said her name, Patricia Johnson; right?
A Yes, sir.
Q She didn't try to hide her name did she?
A No, no she didn't.
Q And it took you several times of calling back before someone answered the phone; right?
A Yes, sir.
Q And your immediate presumption was that this prank caller, Patricia Johnson, was having something to do with your husband?
A No. My -- no. My immediate response was I waited to the next morning to confront Ralph to ask him who was at the nurses desk when he made that phone call. Then he told me Patricia Johnson. Then my immediate response was why was this person calling back to see who you had called on the phone and said that you loved them. I didn't -- I didn't know what the reason was. I didn't immediately think something was going on. I just didn't know what was the reason for the call.
Q You said earlier -- Mr. Williams said -- you know, you were confronting him about that?
A I did. For a while.

Q Okay.
A Just asking him why somebody was calling the house. He kept saying he didn't know why. There was no reason. He was just doing his job. As a matter of fact he got irritated with me about asking him about it. He didn't have a problem with the phone call, I did.
Q And you weren't up at the nursing home when this phone call was placed, this alleged phone call?
A No, sir.
Q So you don't know who placed this phone call, do you?
A I do not. I asked him who was at the nursing station when you called me. I have absolutely have no idea.
Q And you don't have an idea as you sit here today?
A No, I don't.
Q Because it could have been somebody else and then Patricia happened to be walking by?
A That is perfectly -- that is correct.
Q Okay.
A That's right.
Q And you never went up to Ms. Johnson and said why did you call me?
A I'm not going to do that and my husband just started this job.
Q Okay.
A I'm not going to have any kind of a confrontation on a

job he just started so he could lose the job.
Q She didn't know anything about this, did she?
A Now that I cannot say.
Q You never went up and said --
A No, I did not. I did not.
Q -- you didn't talk to her boss?
A No, I didn't. I confronted Ralph.
Q She doesn't know anything about it, then?
A That I cannot answer.
Q Okay.
A I can't answer whether or not she called my house or not.
Q Okay.
A I'm just asking -- I asked Ralph who was at the nurses desk when he made that phone call. That's when I confronted him as to why somebody was calling. I can't say 100 percent who made that phone call.
Q That's exactly -- that's exactly what I'm getting to. Now, you and Mr. Williams haven't had any marriage counseling; correct?
A No, sir.
Q Okay. Now, you sister, I guess, she testified one of her first reactions was you need to leave him; right?
A Yes, sir.
Q Now, I hate to get in this, but one of your claims is

for loss of consortium and that has to do with your sex life and stuff; right?

A Yes.

Q Okay. And you said you had a normal sex life before this happen; right?

A Yes, sir.

Q And to you that meant having sex at least once a day; right?

A Yes, sir.

Q Okay. And you say you sex with Mr. Williams almost every day for 20 years unless he was sick or something; right?

A Yes, sir.

Q Okay. He obviously had a strong libido; right?

A Yes, sir. Prior to the incident he had a very strong libido.

Q And you heard him say he's not able to perform any more, he thinks it due to old age; right?

A That could be part of it.

Q Okay. Now, you're not alleging that any of the defendants here went to the newspaper and told them to publish anything; right?

A I'm alleging that the statements that they gave to the arresting officers, that the arresting officers and law enforcement, said they give to law enforcement, say they

give to law enforcement was given to the papers.
Q The paper went and got it. You're not saying anybody here went and ran to the newspaper?
A No, sir.
Q After all this you said Mr. Williams has had few opportunities to work; right?
A Right.
Q One of those is Brown Derby; right?
A Yes, sir.
Q Crab Pit?
A Yes, sir.
Q Senor Catering?
A Yes, sir.
Q Senior Catering, he got let go; right. All of those I just mentioned he got let go, right?
A Yes, sir.
Q And when we deposed you back in 2013 he was working at the Waffle House; right?
A Yes, sir.
Q Doing the cooking; right?
A Yes.
Q But he stopped voluntarily in 2013, on his own; right?
A To go to school.
Q Okay.
A He got into a VA program.

MR. WARREN: Maybe just one question.

THE COURT: Go ahead with your one question.

LINDA WILLIAMS - REDIRECT EXAMINATION

BY MR. WARREN:

Q About Waffle House, were there any observations or understandings that you have why he didn't want to continue working for Waffle House?

A Because the same things from the other jobs. He said he felt that --

Q Not what he said.

A No. My understanding is he felt people was looking at him, identified him as the person who did the crime at the nursing home and he --

Q The alleged --

A -- the alleged, the alleged, right. The alleged at the nursing home. He felt the same thing was going on as with the other jobs.

Q Could you describe that?

A No. He just felt that -- he felt that people was staring at him, making him feel uncomfortable. He felt humiliated.

MR. WARREN: No further questions.

THE COURT: Anything on re-cross?

MR. BRING: Nothing further, Your Honor.

THE COURT: Ms. Williams, you may step down.

evidence to overcome the presumption, legal presumption under the statute of good faith on behalf of these care-givers. If there's not any teeth to enforce it, Your Honor, it's really a statute without meaning. It doesn't send a message, it doesn't protect the care-givers as it was intended. There has to be something more than innuendo and the like. The plaintiffs certainly have not shown that, Your Honor, and we think, therefore, the entire case should be dismissed. If you dismiss the individuals are fulfilling their duties then likewise UniHealth has to be dismissed.

Your Honor, to the extent that the whole case isn't thrown out then certainly elements of it should be. Punitive damages, Your Honor, requires clear and convincing evidence of clear and wanton or reckless conduct, as we've concluded in the charges that we sent you, but also I'll give you a couple of citations. The South Carolina Courts have acquainted recklessness as being the equal to wantonness and willfulness. Couple citations on that, Your Honor. Burbarge verses Jack, 292 SC 278, a 2011 case. Fairchild verses South Carolina Department of Transportation from 2012, do not have a citation on that, Your Honor, I apologize. Then, Marcum, M-a-r-c-u-m, v. Bowden at 372 SC 452, a 2007 case, Your Honor.

THE COURT: The Fairchild case is Fairchild verses what?

MR. BRING: SCDOT. South Carolina DOT.

They said reckless indifference to the rights of Mr. Williams. That is not the standard of punitive damages claims in South Carolina. It's recklessness, willfulness, wantonness. It's a higher standard than mere negligence itself and that's what those cases that I talked about said, and it has to be proven by clear and convincing evidence. There is no evidence. There's no evidence here of willful, wanton or the equivalent, as the South Carolina courts have said, reckless behavior by these nurses in reporting their suspicions. That's all they're required to do under the law is report their suspicions of sexual abuse.

As I told the jury in the opening, if there's no other suspicion than walking in on him in the middle of the night with his pants down they should have and enjoy that immunity so that other folks are able to do similar reporting.

THE COURT: All right.

MR. BRING: Thank you.

THE COURT: And the way -- and you know directed verdict, the only thing I look at is whether somebody testified to something not whether I believe it will carry the day or not. It's, you know, whether there is some kind of evidence, not weighted evidence.

I think -- you know, the question of fact as to what they saw, that's a question of fact for the jury. I think it's a question of fact whether they were operating in good

faith, and so I'm going to deny your motion for directed verdict with the exception as to what I was going to grant as to lost wages. I know you'll bring this up at the close of your case, again, but at this time the only thing that we're not going to go into is lost wages at all. That is not going to be an element of damages that I charge.

MR. WARREN: Yes, sir.

THE COURT: Okay. Now, is there another motion?

MR. BRING: No, sir. That was all.

THE COURT: Okay. Now, is it ten to four?

MR. BRING: Yes, sir.

THE COURT: All right. How --

MR. BRING: Just to give everyone a preview, I think we have three witnesses. I think we can get them in in an hour and a half. One of whom has traveled down here. I think we can get them done within that time frame. Mr. Arnold being the operative person to do that. I may go retrieve them and --

THE COURT: And I'll let everybody stretch their legs, okay?

MR. BRING: Thank Your Honor.

THE COURT: And we'll go forward.

MR. BRING: We will be very -- at least from our standpoint --

THE COURT: Yeah. Okay. Sounds good. Thank y'all.

them?

A And prior to July 14, 2010, have you ever heard about or been in or otherwise know of the UniHealth facility on Whitman Street?

A No.

Q Did you know anyone that worked there?

A No.

Q Did you know anything about any of the residents there?

A No.

Q And so the first time you learned anything about that facility or its residents is from who?

A Well, this interview.

Q Okay. I'd like you to turn to the third page --

A All right.

Q -- with is Page 171, at the bottom. Item No. 7?

A Uh-huh. (Affirmative response.)

Q What is Item No. 7?

A That's where I'm asking the person their legal history.

Q Okay, and looking at that what did Mr. Ralph Williams explain to you about his legal history?

A Well, what I documented that day that I heard from him is that his current charge -- You want me to read the whole thing?

Q Sure.

A Criminal sexual conduct with his court date being July

23, he had roll call. He's willing to talk about the situation that caused the arrest. He states he was trying to change pad under patient and that patient -- I meant to say had already ripped off her diaper -- I was grammatically incorrect, or a pad. Ripped off her diaper, which she is known to do, and vet was positioned on her bed with knee on bed to better be able to roll her body over. Curtains and door were closed for patient's privacy and another staff member walked in and reported that vet had his pants down to his ankles/knees. This other staff member immediately left room and called police. Vet was able to be released from jail after paying a bond and he had hired an attorney. The alleged victim was to be tested for what appeared to be semen on her.

Q And when you refer to he and vet, that was to refer --

A Mr. Williams.

Q Okay. And you noted the grammatical error that you had, but other than that, does this reflect what Ralph Williams said to you?

A Yes.

Q And if he had mentioned anything about opening a diaper and feces, would you have written that down?

A Yes.

Q What about feces on the resident?

A Yes.

Q But based upon what you see here and what you recall about that interview he never mentioned any of that; correct?

A No.

Q And as far as the resident, did you know anything about the resident?

A No.

Q Do you know anything today about the resident?

A No.

Q Do you know anything about her abilities one way or another?

A No.

Q Because all you know is what Ralph Williams told you; correct?

A Correct.

MR. ARNOLD: No further questions, Your Honor.

If you'll answer any questions from plaintiff's counsel.

THE COURT: Mr. Warren, your witness.

MR. WARREN: Yes, sir, Your Honor.

MARY ROGERS - CROSS-EXAMINATION

BY MR. WARREN:

Q Good afternoon, ma'am, how are you?

A I'm fine.

Q Now, you just indicated you made an error on this

A Yes.

MR. ARNOLD: Your Honor, defendants move to admit in evidence Exhibit No. 25B. Defendant's Exhibit 25B.

MR. WARREN: No objection.

THE COURT: No objection. In evidence without objection.

(Defendant's Exhibit No. 25B, textbook pages 9, 10, 11 and 12, were marked and entered.)

BY MR. ARNOLD:

Q Now, you also taught about changing diapers --

A Yes.

Q -- correct? Brief, adult briefs?

A Yes.

Q And are there proper procedures for that?

A Certainly.

Q And as part of those procedures is there anything that requires a CNA or health officials to prop themselves up on a bed?

A No, sir.

Q And why is that?

A It would be difficult to do propped on the bed. I always teach them to -- to use the right kind of body mechanics, have the bed at a proper working height, feet shoulder width apart, you know, stance where they're going to save their back and be able to get good leverage if

they're pulling or helping the resident come towards them by way of draw sheet or what have you. Not on the bed.

Q Okay. If you were having difficult with a resident, a large resident what would you instruct your students to do?

A Probably get some help.

Q Okay. Is there a proper way to manoeuver a resident in a bed?

A Yes, there's positioning and how you can roll them over. You can do that by yourself and then sometimes if you need help you get help.

Q And is there a particular section in the book where you teach that particular area, who to manoeuver the resident in the bed?

A Chapter 5.

Q And what page is that?

A Well, the part about positioning is Section 8 of Chapter 5, and it begins on 107, 108, 109 and 10, 11 -- there's different parts about positioning there.

Q And I'm going to hand you what we've marked as Defendant's Exhibit 25A; what is that?

A That's the cover of the textbook again. It's about the same area that I just mentioned, 109 through 111.

Q So you said 109 --

A Through 111 is what you just handed me.

Q Okay. If you'll step down --

MR. ARNOLD: Your Honor, may she step down to confirm that these are accurate copies of Pages 109, 110 and 111 from that textbook?

THE COURT: Yes.

A It's the same. This is 110, the same. 111, yes.

Q And this is 109?

A I'm sorry. Yes. Yes, it's the same thing.

MR. ARNOLD: Defendant's would move to introduce into evidence Defendant's Exhibit 25A.

THE COURT: Any objection?

MR. WARREN: No objection.

THE COURT: 25A is in without objection.

(Defendant's Exhibit No. 25A, textbook copy pages 109, 110 and 111, was marked and entered.)

BY MR. ARNOLD:

Q On Pages 109, 110 and 111, which talk about maneuvering a patient, is that what you would expect your students to refer to if they have a large resident and they're trying to remove a diaper?

A Yes, and repositioning, and if you're doing personal care this would be the procedure they should do as far as turning.

Q And in any of the text or any of the pictures found on Pages 109, 110 or 111, does it involve or otherwise instruct

the student or CNA to prop themself up on the bed?

A It does not.

MR. ARNOLD: Two quick things. Your Honor, we move to introduce into evidence the entire book, which is Defendant's 25.

MR. WARREN: No objection.

THE COURT: Plaintiff's 25 (sic) is in evidence without objection.

(Defendant's Exhibit No. 25, text book, was marked and entered.)

BY MR. ARNOLD:

Q One final question. With regard to the beds, do those beds typically go up and down?

A In most facilities that I've been in and when I've instructed there is a way of raising the bed up and down.

Q And what's the significance of the bed going up and down with regard to changing a resident's briefs?

A Well, as I've always taught it, it's good to get it at a good working height for you so that you -- for good body mechanics for yourself. That would be the significance. So that it would be at a good height so you could do your job.

MR. ARNOLD: No further questions at this time.

If you'll answer any questions that Mr. Warren may have.

THE COURT: Mr. Warren, any questions on cross.

of them, but for this one, I'm going through it step by step.

Now, any objection to the verdict form we've got before us from the plaintiff?

MR. FOSTER: We object, based on our discussions in chambers, to the charge -- the verdict form No. 3, because we believe there is no question of fact as to whether or not the nurses were outside the scope of their employment and we intend to make a motion to that effect.

THE COURT: Essentially, Okay. I'm jumping ahead a little? You want to make your directed verdict motion on that issue and then --

MR. FOSTER: I want to announce that we have no reply, first.

THE COURT: -- Right. Okay. All right.

MR. FOSTER: The plaintiffs make a motion for a directed verdict on the course and scope of the nurses employment for UniHealth in making the reports at issue. We believe we are entitled to a ruling that the nurses were agents of UniHealth. Taking the facts most favorable to the defendants there was no evidence that was presented from which a finding of no agency -- a no agency relationship could be made. The evidence is controverted and clear that both were working for UniHealth and on the job when the operative facts occurred, that they were following company policy,

that they were furthering the interest of the master, and there's been no argument made here or otherwise that they were acting outside the course and scope of their employment.

Under South Carolina law they were in the course and scope of their employment and the plaintiffs are entitled to a ruling to that effect.

THE COURT: Okay. All right. Mr. Bring.

MR. BRING: Yes, Your Honor. Thank you.

The plaintiffs have alleged, Your Honor, that the defendants were more than acting intentionally and maliciously and with that therefore creates a jury question of whether they were acting within the scope of their employment. Obviously, we maintain there was no intentional or malicious act on behalf of any of the defendants, however if the jury finds that, which is within their prerogative, that they need to go into that issue.

So that's the basis of our response.

MR. FOSTER: Your Honor, in response to his statements. The plaintiffs are not contending that the nurses acted intentionally, have not so stated to the jury in opening or in any way in this case. We are maintaining that the conduct at issue is reckless and that degree is less than intentional and so we don't believe there's an issue for the jury to resolve as to the scope of the employment.

Thank you.

THE COURT: All right. I'm going -- it seems to me that the way the case has been tried there is inherently an issue about whether or not they were acting inside or outside the scope of their employment, and that's a question of fact, I think, for the jury to determine. So I'm going to deny your directed verdict motion as to that aspect of it. Okay. I will note your objection to my ruling, so that is preserved on the record, and how that reflects on Questions 3 and 4 on the verdict form, okay?

MR. FOSTER: Okay.

THE COURT: Thank you, sir.

Mr. Bring, you needed to renew your directed verdict motion?

MR. BRING: Yes, sir, Your Honor. First of all, with that ruling we have no objection to the verdict form as now tendered on behalf of the Court. We do renew on behalf of all defendants our motion for directed verdict for the entire case, basically reincorporating my arguments from Friday, under the Adult Protective Act under South Carolina law all the defendants enjoy immunity, as well as, our separate motions for or on the punitive damages issue in the sense that they've not shown intentionality or willful or wanton conduct. And then finally, Your Honor, as we mentioned in chambers and just to clarify for the record, we

THE COURT: Oh, okay. I'm sorry.

MR. FOSTER: This is with respect to the charges, the defendant's proposed charges. We had, in chambers, noted our objection to the portion of the Omnibus Act that related to the criminal penalties --

THE COURT: Okay.

MR. FOSTER: -- that should not be read to the jury --

THE COURT: -- Okay.

MR. FOSTER: -- for the same reason that the Court doesn't read to the jury the criminal penalties on a running a red light case in an auto accident trial.

THE COURT: Right.

MR. FOSTER: And the second was your failure to charge our No. 4 jury charge on continuing publication. We believe that the South Carolina Court of Appeals in Moosally verses Norton sufficiently embraced the continuing publication rule or concept in South Carolina. I would like to be protected on the record with that objection.

THE COURT: Oh, yeah. Thank you, sir. Appreciate it.

MR. FOSTER: I think that concludes ours.

THE COURT: Mr. Bring, any comments about the charges?

MR. BRING: Well, with regard to the final charges as charged we might have some comments, but at this point, no. Just responding to theirs. Moosally is a long arm statute case and therefore does not address that issue and it has

not been determined under South Carolina law.

THE COURT: Okay. And Mr. Foster, I am going to note your objection to my charges, but with regard to the criminal penalties I did modify that to put in anything about the amount of money. I just fined and rather than leave it open-ended about how much time -- which I thought would be worse, I did put -- I am leaving that in because that is part of the act. I'm just charging the law in South Carolina with that modification.

MR. FOSTER: Okay.

THE COURT: So with regarding the objection to not charging continuing publication -- I understand, and I had the opportunity to review the case you cited. I'm not convinced that that case actually addresses that issue, because I believe it was a jurisdictional issue case rather than whether there's continuing publication. I will note your objection, again, to my rulings, so we can get a decision on that somewhere else, but I am going to deny that request, as well. And if I didn't put it on the record, I am denying your directed verdict motions again for the same reason. Okay.

MR. FOSTER: I have a housekeeping thing or two?

THE COURT: Sure.

MR. FOSTER: Jova is going to do the closing for the plaintiff.

any written form. The defamatory statement can also be spoken words, written defamation liable. Spoken defamation is slander.

On this particular occasion on June 21, 2010, as a result of a culmination of events that led up to June 21, 2010, Patricia Johnson and Josette Peppers, now Josette Davis, made false defamatory statements regarding Mr. Williams. What is a defamatory statement? A defamatory statement is a statement that subjects you to public hatred, causes you to be shunned, causes you to be avoided.

What I want to talk to you about is the falsity of those statements so it will be clear as well as convincing.

To begin with let's go over -- one more thing. The statements made is not privileged. You'll hear something about Omnibus Act, saying that they are immune from liability if it was not made in good faith. Okay. Recklessness is not good faith. We established that these statements were recklessly made. It's is not good faith. Just briefly go over reckless -- this is not wrecking a car. Recklessness equals actual malice. Destruction of critical material is what we'll show. Deliberate alterations. stating opinions as facts and internal inconsistencies. These are evidence of recklessness. That what led to this. If they're reckless they are not protected by a privilege. There is no protection. The statute that was made

requires good faith when you're stating the facts. Just stating the facts.

If you are the police or anyone, the management or anyone, you're looking at this and saying, he's hiding out. And she's a supervisor. This is a supervisor. They are required to accurately document things. She continued on. She says, I observed Ralph Williams with his pants down climbing on top of the resident. Now, she states his pants were down to his ankles. I'll demonstrate that. His pants to his ankles climbing on top of the resident. Not only that, he's in the bed with the resident. That's what her testimony was, with his pants around his ankles. He's in the bed. I can see his butt. In the bed with his pants to his ankles. And I said, Ms. Johnson -- I didn't want to confront him with his pants to his ankles. He's climbing up -- I mean, this is climbing on the bed with his pants to his ankles or her testimony is in the bed. That's deliberate alterations.

Now, she states, I stated, what are you doing? She stated CNA Ralph Williams stated, please shut the door. You heard her testimony and her lawyer's testimony, it was choreographed. Shut the door, shut the door. Not one of them said, please -- that is deliberate alteration, omission of the facts. If you're following the law why do you have to omit anything? He was in the room right outside of where

sounds like it's good faith. She's moving her story. Moving her story. All she had to do was say that's what happened. She doesn't want -- she knows the deliberate intention for which she wrote this. She can't stand on her own words. I didn't write everything down. Why didn't she say, I saw him naked. That would be a pretty big fact to see a naked man in the bed of a resident. that would be a major fact. She doesn't say it. She doesn't state I see his buttocks or his butt. That would be a major fact. I don't write everything down. You don't see his butt and you specifically leave this out? When I walked into Ms. Mayes room I observed CNA Ralph Williams with his pants down climbing up on the resident and I stated what are you doing? First of all, it doesn't talk about Mr. Williams in the case he was on the opposite side of the bed. Looked at her and said, from this point of view, please shut the door. Please shut the door. Because their policy states they are required to have this door closed and the curtain all the way around the bed when they are doing the perineal policy, which you all are familiar with.

Mr. Williams recollection of the room was, you walk in the door, there was a chest and he believes the call button was on this wall. They believe the call button is on this wall. It doesn't matter. You've got a person on top of a person -- a patient that's helpless naked and if you hit

residents room by another nurse, Patricia Johnson. She stated that an employee, Ralph, was in a room with his pants down. This nurse observed Ralph fixing up his clothes, then he sat in a chair in the room and started talking to her. The curtain was pulled around the bed, which is required pursuant to the policy. The covers was messed up, thrown sloppily on the bed and the room was dark. Ralph was going to have sex with the resident if he didn't got caught. There is no doubt in my mind if I had not walked in the room he would have had sex with resident. Problem is, Ms. Peppers didn't see anything. How do you make the exact same statement -- that is a deliberate alteration. You're stating things deliberately. She didn't even see them. Just like when we're talking about Ms. Johnson, how she's saying I'm looking for him on that back hallway, I'm trying to find him. And I can't find him no where. And, you know, not the fact that I went in the room that I assigned to Mr. Williams, Room 39. His cart was outside the room. The door was unlocked. Those are facts. You can't dispute that and when I walked in he was having sex. And I don't -- you don't press the panic button and he's in the bed naked with his pants to his ankles? And you leave and go all the way -- Josette Peppers testimony, to the snack machine on the other end of the building and you've got five people. You notice UniHealth didn't bring those witnesses in from that

So the policy -- and I'm not going to read the policy what he's required to do to females. He's doing his job. He's four hours into the shift. And he's working to change these rooms, to change these diapers. Mr. Williams said he believed -- the patients was all of them, in all these rooms. Ms. Johnson, no, no, no. Patients weren't in all these rooms. Well, you see how the truth works. Patients were in all these rooms why you checking all the rooms. Why didn't you just go to the room two doors down from your desk? She left her station because she heard a buzzer to go to a room. The first thing you're going to do is -- where is that cart at. I'm looking for his cart. I'm not going through checking for all the rooms. That statement was made with a deliberate purpose.

Let's get into these three altercations between Ms. Johnson and Mr. Williams. First there's the lady is turning blue. She's at her desk. He goes there and asks her to help. She looks at him, no, you must be wrong go check again. He goes back to her desk and says this lady needs help. I'm not sure he was here, but we know he was at her desk. He was outside of the room. Outside of the room asking for her help. Then he goes to get help, okay. He's outside of the room. So they want to say, well, Mr. Williams ran down the hallway, he didn't go back into the room and press the panic button, so it's legitimate for Ms.

How do you value being accused and I know she said sex, but that's rape. It takes a sick and demented person to even call that sex. That's rape. Prior run-ins with a lady turning blue, calling breathing on the phone to his wife. Hanging up. Ms. Patricia Johnson. Wickedness. That's the only way you have these allegations made. Just wickedness. How do you value that? Well, if you have 40,000 in households and you have another 100,000 individuals, and this is population of person. You've got about 500,000 persons. 500,000. That doesn't even include that publication where Ralph Jr. came to testify about he's in St. Louis, Missouri and a school bus driver, typed in Ralph Williams and that comes up. Mr. Williams had no reputation for being a rapist. Did he commit adultery 20 plus years ago. Sex with consensual adults is not rape with an incompetent person. It's a sick and demented person who wants to equate the two. That is not the same thing.

So if you take -- and then you take about average of two people per household -- and we said this number was about 40,000 WIS coverage and said 100,000 coverage in terms of Orangeburg County in terms of circulation of newspapers, and we also have Internet publication and you add about two people average per household. Let's say it was published to approximately one million individuals, one of the most horrific, disgusting -- when I think of feces and urine and

people. If I think of something that's just so valuable to me and it's just taken from me. Not only taken from me, implicate my wife. She's on the sidelines. This is her husband on the news and the newspapers. It's her husband on the 5:00 o'clock news at dinner time. Then when I think of feces, the smell -- this case don't just have words, it has a smell to it. This smells of feces and urine. There's a smell to it. It's not ugly, but think about the smell. That's why he's fighting. Changing diapers for a living to try to do a catering business in the day. That's why he's fighting. There was a dirty diaper in there. I didn't finish changing her. I know that's going to be in there.

Destruction of evidence. It's not good faith. It's not good -- it's worthlessness. It's malice, it's actual malice. Mr. Williams is a fighter. He is a fighter. Mr. Williams is a fighter. He's been working the same job for 30 years. Came out of South Carolina State, been working two jobs and been here ever since. Mr. Williams is a fighter, like many members of this community, fighters. Fighters. Fighters. You hit me with some allegations and I'm going to fight back. I'm going to fight back. You insult my wife. I'm going to fight back. She was the youngest resident of the facility. Well, what is Ms. Williams. What is she?

You think of the smell at dinner time, you may think that $10 a household ain't enough, but the jury have the

power. They have the power to set a precedent that us lawyers look to. The power. Mr. Williams, the lowest man on the totem pole speaking to power. He's speaking to power right here in this courtroom. He didn't lay down. He fought. He didn't lay down her fought. He's fighting right now. Accused me of this feces and urine. I'm smelling this. Thou shall not bear false witness, thou shall not bear false witness against thy neighbor. The truth -- and this is a police officer's report. Not a twisting of facts, these are their statements. Their statements, Johnson's statements, nurses statements. What did Patricia Johnson say, we changed her. I was talking about that wet gown, that stuff was wet gown, not feces and urine. She knew no one would believe that.

I'm married for 15 years, married my high school sweetheart and two daughters and myself. And I got a son. And I can tell you, women and girls they think a little bit on another level than us guys. They can be a lot more calculating, a lot more calculating. When he told Ms. Johnson, you're incompetent. Well, she could write him up. What's she going to write him up for when she almost let a patient die. She going to write him up for that, really? How you know she didn't write him up? How does he know she didn't write him up? How does he know she didn't write him up? No, she wasn't going to write him up when the patient

She ran for help. Josette Davis -- informs her of what she sees, Josette Davis runs to the room so quickly that Ralph doesn't even have time to turn on the lights. Barely gets off the bed to pull up his pants. He's there adjusting his pants, sits down and says, what? Suspicion. Suspected abuse. As the Judge will instruct you in this case the law requires persons required to report, a nurse. Johnson and Peppers are nurses. They believed or suspect abuse or neglect is going to happen with a vulnerable adult. There is no question that Ms. Mayes was a vulnerable adult. Especially cases of suspected sexual assault they must contact the authorities immediately.

This is very important, so very important that the law provides immunity for those acting in good faith, and if they don't report and an abuse has occurred, it's so important that the law says that they could go to jail for up to a year or face a fine of up to $2500, not to mention lose their license, be terminated from employment.

Ms. Johnson and Ms. Peppers, now Ms. Davis, reported in good faith. At that time, Ms. Davis was the mother of a two-year-old. She was married, just working hard. Ms. Johnson, 48-year-old mother of three, grandmother of two. Complying with the law. It's further supported in Exhibit 25B, the nurses assisting handbook that was used to teach Mr. Williams at OC Tech, on Page 12. If you see or suspect

and convincing, find punitive damages to punish. Punitive damages.

Thank you ladies and gentlemen, for your time and your service.

THE COURT: Thank you, Mr. Warren.

All right, ladies and gentlemen, y'all have heard all the evidence in this case. You've heard closing arguments of the attorneys representing both parties. It is now my duty to tell you the law that applies in this case.

Ralph C. Williams, Sr and Linda Williams, the plaintiffs claimed that they were injured by the actions of Patricia A. Johnson, Josette Peppers Davis and UniHealth Post-Acute Care, Orangeburg, LLC. Those are the defendants.

In bring this lawsuit the plaintiffs claim that the defendants should compensate them for their injuries. The defendants have denied these claims, which is the reason we are in this trial today.

During this trial you and I have certain duties to perform. As the trial judge is it my responsibility to preside over the trial of this case and to rule on the admissibility of the evidence offered during this trial. You are to consider only the evidence before you. If there was any testimony ordered stricken from the record of this trial you are to disregard that testimony. You are to consider only the testimony which has been presented from

this witness stand and any exhibits which have been made a part of the record. It is my duty to charge you the law applicable to this case and it is your duty as jurors to accept and apply this law as I now state it to you. If you think you have any idea what the law is or what the law ought to be and it does not agree with what I tell the law is you must forget that idea, because you are sworn to accept the law and apply the law exactly as I now state it to you.

In every case tried before a jury the jury is the sole and exclusive judge of the facts. A trial judge cannot comment on or make any statement about the facts. Since you are the sole -- make sure he's all right. Are you okay?

(Juror coughing/choking. Given water by the bailiff.)

THE COURT: Okay. You get comfortable. All right.

THE JUROR: Thank you.

THE COURT: All right, sir.

COURT'S CHARGE

A trial judge cannot comment on or make any statement about the facts in a case. Since you are the sole judges of the facts, do not think by anything I have said during this trial that I have any opinion about the facts. The law does not allow me to have an opinion about the facts. The burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means a greater

weight of the evidence. It is evidence, which as a whole, shows the facts sought to be proved is more likely true than not true. As I mentioned at the very beginning, this can be illustrated by imaging an old fashioned set of scales. Y'all see that and you've see that every time you've seen the scales of justice. When the case begins these scales are even. After all of the testimony has been presented, if the scales remain even or if they tip even slightly in favor of the defendants, then the plaintiffs have failed to meet their burden of proof and would not be entitled to recover in this case. On the other hand, if the scales tip even slightly in favor of the plaintiffs, the plaintiff's will have met their burden of proof and you should return a verdict for the plaintiffs.

The preponderance of the evidence of the evidence is not determined by the number of witnesses. Instead it must be determined by the greater weight of all the evidence.

There are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral

facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that asserts or describes something else from which you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the fact is true. For circumstantial evidence to be sufficient to warrant the finding of a fact the circumstances must lead to that fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact cannot be based on speculation, surmise or conjecture. The law makes absolutely no distinction in the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

Necessarily, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It is your duty as jurors to evaluate the evidence and determine which evidence convinces you it is true. In determining the believability of witnesses who have testified in this case you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a

witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudice toward either the plaintiff or the defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art, science or profession may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for the opinion. You should consider any expert opinion given by a witness and like other witnesses give it the weight that you believe it deserves. If you decide that an expert witnesses's opinion is not based on sufficient education and experience or if you decide that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely. Any expert witnesses testimony is to be given no greater weight than that of other witnesses simply because the witness is an

expert. You do not have to accept an expert's opinion even though it is uncontradicted.

In our court no distinction is made between corporations and individuals. A corporation is a person in the eyes of the law. A corporation is entitled to the same fair and impartial consideration and to justice by the same legal standards as an individual.

The plaintiff claims that the defendants communicated a defamatory statement about the plaintiff to another person. Liable is a written defamatory statement or one accomplished by actions or conduct. Slander is a spoken defamatory statement. This action is based on the alleged violation of the plaintiffs right to enjoy a good reputation without false or defamatory attacks. Defamatory language is language that tends to adversely effect the plaintiff's reputation. In order to recover in this case, the plaintiff must first prove that defamatory language was communicated by the defendant about the plaintiff. A defamatory statement is one which tends to attack the honesty, integrity, virtue or reputation of a person and exposes a person to disgrace, public hatred, avoidance, contempt or ridicule. A defamatory statement does not have to be a direct, open or positive attack. It may be merely a suggestion or hint, which is false and malicious as long as the meaning is plain.

In deciding whether the statement was defamatory you must interpret the words used in their ordinary and popular meaning. The meaning and intent of the words must be determined from the words themselves and the context in which they were used. All parts of the statement must be considered together to determine the statement's true meaning. Individual words should not be singled out as defamatory.

In addition, the statement must be considered in light of the facts known to the person to whom the statement was made and not in light of the facts known to the parties. The defendant must prove that the statement was substantially true. A statement is not defamatory if substantially true even if the defendant made the statement for no good purpose, was inspired ill will toward the plaintiff and made the statement solely for the purpose of harming the plaintiff. If the statement is true the plaintiff cannot recover for defamation. The plaintiff must also prove that the defendant made the statement knowingly or reasonably expecting to reach a third person.

The defamatory meaning of a message or statement may be obvious on the face of the statement in which case the statement is defamatory per se. A statement is defamatory per se or on it's face if it's defamatory meaning is apparent from the language itself, it must be susceptible to

only one meaning, that being a defamatory one. If an innocent construction can fairly be made of the statement it cannot be defamatory per se.

A principle may be held liable for the defamatory statements made by an agent acting within the scope of his employment or was in the scope of his apparent authority. Under the Doctrine of Respondeat Superior, an employer may be held liable for defamatory statements made by an employee if the employee was acting within the scope of his or her employment. The liability of an employer for defamatory statements made by an employee arises only if the employee is acting about the employer's business within the scope of his employment. The primary test to determine an employer's liability for his employee's acts is whether the employee committed the act within the scope and purpose of the employers business judged by the character of the employment. If an employee upon his or her own interest or purpose and therefore acting outside his or her employment then the employer is not liable for injuries resulting from the servants actions. Thus, if an employee steps aside from the employer's business for some purpose, wholly disconnected with his or her employment, and for the employees independent interest or purpose the relationship of employer and employee is temporarily suspended no matter how short the time. In that case, the employee alone is

liable for the injuries resulting from his or her actions. An employees act to effect some independent purpose of his own without reference to the service in which he or she is employed is not within the scope of his employment in the sense of rendering the employer liable for such act. For the employer to be liable it is generally necessary that the injury arise out of activities within the scope of employment.

The conduct of a servant is within the scope of employment if it is the kind of employment he or she is employed to perform, it occurs substantially within the authorized time and space limit, it is actuated, at least in part, by a purpose to serve the master and if force is intentionally used against the employee against another and the use of force is not unexpected by the employer.

Even if you find the defendant employees made a false and defamatory statement about the plaintiff and published it to a third party while in the course and scope of their employment, the published defamatory statement may not be actionable. The law recognizes that certain types of statements and communications are on certain subjects are privileged and may be made regardless of their truth or falsity.

A privilege is an immunity granted to some person or group of person which is not enjoyed by others. As the term

is used in this case, a privileged communication is one in which is made on such an occasion that the speaker and or publisher will not be held responsible in an action slander and or liable. A privileged communication under defamation law is a communication which except for the occasion of which or the circumstances under which it is made would be defamatory and actionable. Privileged communications are either absolute or qualified, which is also referred to as a conditional privilege. What is a qualified or conditional privilege? It is a communication made in good faith on any subject matter in which the person communicating has an interest or in reference to which he has a duty. A qualified privilege if made to a person having a corresponding interest or duty even though it contains matter which without this privilege would be actionable and although the duty is not a legal one but only a moral or social duty of imperfect obligation. The essential elements of a qualified privilege communication are good faith and interest to be upheld, a statement limited to its scope to this purpose, a proper occasion and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or a duty.

In determining whether the statements made by the

defendants were qualified privileged due regard must be hand for the occasion and the relationship of the parties.

In this case, the defendant employees assert the affirmative defense of qualified privilege pursuant to the South Carolina Adult Protection Act. The Adult Protection Act was enacted in South Carolina in 1993, and was designed to address the needs of vulnerable adults by defining abuse in a uniform manner, clarifying mandatory reporting requirements, defining the Court's role in adult protection and providing civil and criminal penalties of both perpetrators of the abuse of vulnerable adults and for those who fail to report actual or suspected abuse. The Act imposing a duty on certain individuals to report if they have reason to believe that a vulnerable adult has been or is likely to be abused, neglected or exploited. Individuals designated as mandated reporters under the Act includes physicians, nurses and other medical, mental health or allied health professionals, care givers, staff or volunteers of an adult daycare center or facility and law enforcement officers.

The two nurse defendants in this case, Patricia Johnson and Josette Davis are mandated reporters. Mandated reporters are obligated to report suspected abusive conduct within 24 hours or the following working day. If a mandated reporter knowingly and willfully fails to report his or her

knowledge or suspicion that abuse, neglect or exploitation to a vulnerable adult has occurred or is likely to occur then he or she is guilty of a misdemeanor and upon conviction may be fined or imprisoned for up to one year. A person is also subject to discipline action by the appropriate licensing board. The Adult Protection Act provides qualified immunity for individuals who report suspected or actual abuse from civil and criminal liability that could otherwise arise from the act of reporting.

Specifically, the Act states: A person acting in good faith reports, pursuant to this Chapter, or who participates in an investigation or a judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action.

In this case there is a rebuttable presumption that Patricia Johnson and Josette Davis acted in good faith with their oral and written statements regarding the plaintiff. A rebuttable presumption is a presumption made by the Court and the jury that a fact or issue is taken to be true unless someone comes forward to contest it and prove otherwise.

In this case the rebuttable presumption is that the defendants acted and reported in good faith when they made their oral and written statements and the jury must assume that to be true unless the plaintiffs prove otherwise. The plaintiffs have the burden of proof and must establish by a

preponderance of the evidence that the defendants did not act in good faith. If you find that the defendants acted in good faith when they reported a suspected abuse, then they cannot be held liable and your verdict must be in favor of the defendants.

In this case the truth of a statement is a complete or absolutely defense to an action for both slander and liable. Accordingly, the defendants may also prove that their statements were substantially true. A statement is not defamatory if it is substantially true. Even if the defendants made statements for no good purpose, were inspired by ill will toward the plaintiff and made statements solely for the purpose of harming the plaintiff, if the statement was substantially true the plaintiff cannot recover for defamation. If you find the defendants have proven their statements were substantially true, then your verdict must be for the defendants.

Plaintiff Linda Williams has asserted a loss of consortium claim. South Carolina permits any person to maintain an action for damages arising from an intentional or torturous violation of the right to companionship, aid, society and services of her spouse. Provided that such action shall not include any damages recovered prior thereto by the injured spouse. To prevail in an action for loss of consortium the plaintiff must prove the liability of the

defendant for the spouse's injuries and damages to the plaintiff resulting from the spouse's injury. South Carolina law mandates that in order for the plaintiff, Linda Williams, to prevail on her loss of consortium claim the jury must first find in the plaintiff, Ralph Williams. In other words, if you find that Ralph Williams is not entitled to recover then Linda Williams's loss of consortium claim fails as well.

The burden of proof is on the plaintiffs to prove by a preponderance of the evidence or greater weight of the evidence that action of the defendants caused their damages. If the real cause of the damages is left in doubt by the testimony the plaintiffs have not met this burden. If the cause of the plaintiff's damages may just as reasonably be attributed to an act for which the defendants are not liable the verdict must be for the defendants. Therefore, in this particular case, if you find there are several possible causes for plaintiffs damages and there have been no showing that the damages most probably resulted from a cause from which the defendants are responsible the plaintiff have failed to carry their burden and the verdict must be for the defendants.

I charge you that damages must be susceptible or ascertained with a reasonable degree of certainty and that uncertain, contingent or speculative damages cannot be

recovered in an action such as this one.

I charge you that actual damages are those intended to make the plaintiffs whole or put them in the same position that they were prior to the alleged injury or damage. Such actual damages are not intended to put the plaintiffs in a better position than they were prior to alleged injury or damage.

In essence causation or the amount of damages cannot be left to conjecture, guess work or speculation. However, proof of the amount of loss with absolute or mathematical certainty is not required. Damages must be proved with a reasonable degree of certainty. The evidence presented by the plaintiffs must enable you, the jury, to determine what amount is fair and just and reasonable. The plaintiff bears the burden of proving by preponderance of the evidence that that are entitled to compensatory damages. The plaintiff must prove that his reputation was damaged by defamatory statements. The plaintiff must prove that the damages naturally and proximally resulted from the defendant's statement. General damages include humiliation, hurt feeling, mental suffering, injury to reputation and other types of injuries on which you cannot place any monetary value. The plaintiff must also prove any special damages resulting from the defamatory statement.

Special damages are monetary damages with respect to

property, business, profession or occupation of the plaintiff such as loss of customers or loss of a business relationship as a result of an injury to the plaintiff's reputation. The words recklessness and willfulness and wantonness are synonymous. These terms are used to describe a conscious failure to exercise and observe reasonable or due care. Recklessness implies the doing of a negligent act knowingly. When a person acts negligently and he realizes that he is acting negligently the law says he is reckless, willful and or wanton, whichever term you prefer, they all mean the same thing, that is the conscious failure to exercise due care.

Reckless is distinguished from negligence. Negligence is the failure to use due care. Negligence is carelessness. Negligence is failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances.

Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness is a conscious indifference to the rights of the plaintiff or a reckless disregard of the rights of the plaintiff. Recklessness is an awareness of wrongful conduct and a continuation to act regardless of the consequences. In other words, while a negligent person is one who acts carelessly a person who's

behavior is reckless, willful or wanton is not only careless in his actions, but is also aware that he is careless. The test for determining whether a tort may be deemed reckless willful or wanton is whether or not it has been committed in such a manner and under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the rights of the injured party.

If you find the defendant is entitled to actual damages you must consider whether the defendant should be required to pay punitive damages to the plaintiff. In certain cases where the jury finds for the plaintiffs there may be aggravating circumstances that may warrant the awarding of additional damages called punitive damages. Punitive damages are to punish the defendants and to attempt to insure that neither the defendants nor anyone else commits similar conduct in the future. In order to conduct punitive damages the plaintiff must prove by clear and convincing evidence that the defendant acted with actual malice in making the defamatory statement. Clear and convincing evidence is more than a preponderance of the evidence or greater weight of the evidence. Before you impose punitive damages the plaintiff must prove by clear and convincing evidence that his harm was a result of the defendants willful, wanton or reckless conduct. To award punitive damages the plaintiffs must prove that the defendants are

liable by a higher standard than that of proof for other damages by clear and convincing evidence. This is a different and higher burden of prove than a mere preponderance of the evidence. Clear and convincing evidence is that degree of proof which will produce in the jury a firm belief as to the allegation sought to be established. Such measure of proof is intermediate, more than a mere preponderance, but less than is required for proof beyond a reasonable doubt. Mere negligence will not authorize an imposition of punitive damages. Punitive damages when authorized are imposed not as compensation but solely to punish, penalize or deter a defendant. In your verdict you should specify whether you do or do not decide to impose punitive damages.

Now, I have declared the law to you through these instructions to help guide you to a just and lawful verdict. Whether some of these instructions apply will depend on what you find to be the facts. The fact that I have instructed you on various subjects in this case must not be taken as indicating an opinion of this court as to what you should find to be the facts or as to which party is entitled to your verdict. Your verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each one of you agree. Your verdict must be unanimous. All 12 of you must agree on the verdict. Your

verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration not in evidence in this case. Remember at all times you are not favoring one party over another. You are the judges of the facts. Your sole interest is to seek the truth from the evidence in this case, and now -- we're getting down to the wire, ladies and gentlemen.

I'm going to go over with you, Madam Forelady, if you don't mind. This is the verdict form that you're going to have to fill out after y'all have discussed what's going on in this case and make your decision. The verdict form has -- this is where we are, Orangeburg. This is the case number. Okay. This is the way the case is styled, the plaintiffs names and the defendants names. And this is important, right here. The very first line says, we the jury by unanimous consent find -- this has to be a unanimous decision. Question number one; Patricia Johnson acted in good faith when she reported her suspicions about Ralph Williams, Sr's actions on June 21, 2010. You either answer yes or no to that. Question number two; Josette Davis acted in good faith when she reported her suspicions about Ralph Williams Sr's actions on June 21, 2010. Again, you've got to decide either yes or not. Now, after that you follow the instructions on this sheet. If your answers to question number one and two are yes, then you go to the final page.

You stop. Do not deliberate further. Do not answer any additional questions. Go to the end and sign the verdict form. If your answers to questions one or two were yes, -- I mean, questions one or two were no, then proceed to questions three through six, and three through six begin on the second page. Question three; if your answer to question one is no, then answer the following question. Do you find that Patricia Johnson acted outside the scope of her employment when she made her reports regarding Ralph Williams Sr on June 21, 2010. Again, it's a yes or no question. Quest four is just like question three, only it applies to Josette Davis. Again, you've got to decide yes or no. Now, question five; please state the total amount of actual damages sustained by the plaintiff, Ralph Williams, Sr. And there -- you will fill in an amount of actual damages. Question six, is similar to question seven and deals with Linda Williams and it says; please state the total amount of actual damages, if any, sustained by the plaintiff, Linda Williams. Now, question seven; if you entered an amount in response to questions five and or six, do you find by clear and convincing evidence that any harm done to the plaintiff was the result of the willful, wanton and reckless conduct of, and then we list the three defendants, Patricia Johnson, Josette Davis and the nursing home. Again, you will respond yes or no as to each one of

those. Okay. Now, question number eight; if you responded yes to any of the questions 7A, 7B or 7C, okay, then enter the amount of punitive damages if any that should be imposed to punish one or more of the defendants and the corresponding, Ms. Johnson, Ms. Davis and the nursing home. Put that amount there. And then once you have done all this, Madam Forelady. You sign this. After you have done that you can let the bailiff know.

Now, I'm not giving you this, yet, okay. You're probably thinking what else? Well, right now I just got through reading the law to y'all essentially. That's what I've got to do, I've got to charge you the law. I've got to give it to you and just as it's written. Now, we're going to take a break. I'm going to let y'all go back into the jury room for a minute, okay. While y'all are in the jury room the attorneys are going to tell me if I misread something, if I left something out or if I should correct something. Every now and then, I know you would find it hard to believe that I would make a mistake, and -- but they are listening really well, and if that's the case and I've got to correct something, I will bring you back in here and correct whatever I read inappropriately to you.

Now, if everything has been done and is fine and we're ready to do, then the bailiff, Ms. D is going to give you the verdict form and you can begin your deliberations.

qualified privilege and the actual malice to overcome it being mentioned in connection with reckless indifference?

THE COURT: Okay. I'll look through here. I don't see it right here. What do you need for me to --

MR. FOSTER: It was in that shorter version of the charges that we had that talked about actual malice as a way to overcome qualified privilege and defined that to be a reckless indifference.

THE COURT: Bear with me. I'm looking.

MR. FOSTER: We talked about reckless, but that was in connection with --

THE COURT: I don't have the last two pages. I must have left those downstairs.

MR. FOSTER: You want me to get mine out?

THE COURT: If you've got them handy. She's got it. Hold on, she might be able to pull that up.

COURT REPORTER: Actual malice as a way to overcome qualified privilege --

MR. FOSTER: Right.

COURT REPORTER: -- reckless indifference --

MR. FOSTER: Okay.

COURT REPORTER: It's here.

THE COURT: Oh, it's there?

COURT REPORTER: Yes, sir.

MR. FOSTER: I couldn't remember as we ended up.

THE COURT: That's all right. Okay.

MR. FOSTER: And then --

THE COURT: Isn't she better than a machine?

MR. FOSTER: She's better than anything.

THE COURT: All right. Anything else?

MR. FOSTER: We have nothing other than what we've already taken exception to before we started.

THE COURT: Right. Right. Now, preserving those objections that y'all made before we started on the record, and I'm going to note your objection to those, okay. Anything else, anything else from the plaintiffs?

MR. FOSTER: Nothing else.

THE COURT: Okay. Anything else from the defendants?

MR. BRING: Your Honor, we had two small comments. I guess one's small, one's bigger regarding loss of customers etcetera, the damages portion covered that. I thought our directed verdict on Friday would have prevented any claim to charge for lost damages and wages and the like, and I think the charges we discussed earlier this morning just goes beyond that direct verdict ruling that you were kind enough to give us Friday. So we take exception to that. Just wanted to note that for the record.

THE COURT: Well, I -- I didn't charge lost wages in there, which I think went along with that, buy I think there was plenty of testimony about his lost job opportunities and

THE COURT: Thank you, ma'am. Y'all can sit down.

All right. Ladies and gentlemen, in the case of Ralph C. Williams, Sr., and Linda Williams, Plaintiffs, verses Patricia A. Johnson and Josette Peppers and UniHealth Post-Acute Care, Orangeburg, LLC., Defendants, the jury has reached a verdict.

We the jury by unanimous consent find Number One, Patricia Johnson acted in good faith when she reported her suspicions about Ralph Williams Sr's actions on June 21, 2010? Jury answered no. Question Number Two, Josette Davis acted in good faith when she reported her suspicions about Ralph Williams, Sr's actions on June 21, 2010. The jury answered no.

Following the directions on the verdict form we proceed to question three. If your answer to Number One is no, then answer the following question. Do you find that Patricia Johnson acted outside the scope of employment when she made her reports regarding Ralph Williams, Sr., on June 21, 2010. The jury answered yes.

Number Four. If your answer to question two is no, then answer the following question. Do you find that Josette Davis acted outside the scope of employment when she made her reports regarding Ralph C. Williams, Sr., on June 21, 2010. The jury answered yes.

Question Number Five. Please state the total amount of

actual damages, if any, sustained by the Plaintiff, Ralph Williams, Sr. The amount is $102,500.

Question Number Six. Please state the total amount of actual damages, if any, sustained by the Plaintiff, Linda Williams. The jury found zero dollars.

Question Number Seven. If you entered an amount in response to Question Five and/or Six, do you find by clear and convincing evidence that any harm done to the Plaintiff was the result of the willful, wanton and/or reckless conduct of A) Patricia Johnson. The jury answered yes. B) Josette Davis. The jury answered yes. C) UniHealth Post-Acute Care, Orangeburg, LLC. The jury found yes.

Question Number Eight. If you responded yes to Question 7A, 7B or 7C enter the amount of punitive damages, if any that should be imposed to punish one or more of the defendants. A) Patricia Johnson, the jury found $200,000 in punitive damages. B) Defendant Josette Davis, the jury found $97,500. Defendant C, UniHealth Post-Acute Care, Orangeburg, LLC, the jury found $600,000.

Madam Forelady, again, this is the unanimous verdict of the jury?

MADAM FORELADY: Yes, sir.

THE COURT: Okay. Thank you, ma'am.

All right. Any questions from the jury or anything for the jury before I release them, from the plaintiff?

MR. WARREN: No, sir, Your Honor.

THE COURT: Anything from the defendant before --

MR. BRING: We'd ask you to poll the jury.

THE COURT: Okay. Ladies and gentlemen of the jury, it has been requested that I poll the jurors concerning this verdict. Now, what that means is I'm going to call your name out. Then when I call your name I'm going to ask you to stand and I will ask you if this is your verdict and if it is still your verdict. And that's -- those are the questions I'm going to ask you and you will need to respond to those questions, okay. So if y'all will please bear with me while I do this.

William Keitt.

MR. KEITT: That's my verdict.

THE COURT: Okay. Well, let me ask the questions first, Mr. Keitt. No, no, please stand up, please sir.

Mr. Keitt, this is your verdict?

MR. KEITT: Yes, sir.

THE COURT: Is it still your verdict?

MR. KEITT: Yes, sir.

THE COURT: Okay. Thank you, sir.

All right. Carl Mitchell. Mr. Mitchell, is this your verdict?

MR. MITCHELL: Yes, Your Honor.

THE COURT: Is it still your verdict?

MR. MITCHELL: Yes, Your Honor.

THE COURT: All right. Thank you, sir.

Charles Glover.

MR. GLOVER: Yes, Your Honor.

THE COURT: Mr. Glover, is this your verdict?

MR. GLOVER: Yes, sir.

THE COURT: Is it still your verdict?

MR. GLOVER: Yes, sir.

THE COURT: All right. Thank you, sir.

Miranda Johnson.

MS. JOHNSON: Yes, Your Honor.

THE COURT: Ms. Johnson, is this your verdict?

MS. JOHNSON: Yes, Your Honor.

THE COURT: Is it still your verdict?

MS. JOHNSON: Yes.

THE COURT: Thank you, ma'am.

Jahrell Griffin-Harrison?

MR. GRIFFIN-HARRISON: Yes, sir.

THE COURT: Is this your verdict?

MR. GRIFFIN-HARRISON: Yes, sir.

THE COURT: Is it still your verdict?

MR. GRIFFIN-HARRISON: Yes, sir.

THE COURT: Thank you, sir.

Suwanna Wright or Baxter-Wright? Ms. Wright, is this your verdict?

MS. BAXTER-WRIGHT: Yes, sir.

THE COURT: Is it still your verdict?

MS. BAXTER-WRIGHT: Yes, sir.

THE COURT: Thank you, ma'am.

Kenneth Britt. Mr. Britt, is this your verdict?

MR. BRITT: Yes.

THE COURT: Is it still your verdict?

MR. BRITT: Yes, sir.

THE COURT: Thank you, sir.

Keenan Jones. Mr. Jones, is this your verdict?

MR. JONES: Yes, sir.

THE COURT: Is it still your verdict?

MR. JONES: Yes, sir.

THE COURT: Thank you, sir.

Ed Loller. Mr. Loller, is this your verdict?

MR. LOLLER: Yes, sir.

THE COURT: Is it still your verdict?

MR. LOLLER: Yes, sir.

THE COURT: Thank you, sir.

Sammie Battle. Mr. Battle, is this your verdict?

MR. BATTLE: Yes, sir, Your Honor.

THE COURT: Is it still your verdict?

MR. BATTLE: Yes, sir, Your Honor.

THE COURT: Thank you, sir.

Benjamin Ford. Mr. Ford, is this your verdict?

MR. FORD: Yes, Your Honor.

THE COURT: Is it still your verdict?

MR. FORD: Yes, Your Honor.

THE COURT: Thank you, sir.

Brian Ouzts. Is this your verdict?

MR. OUZTS: Yes, Your Honor.

THE COURT: Is it still your verdict?

MR. OUZTS: Yes, Your Honor.

THE COURT: Thank you, sir.

Anything further from the defense?

MR. BRING: Not for the jury, Your Honor.

THE COURT: All right.

Ladies and gentlemen of the jury, I've got to tell you I appreciate y'all patience in working with us through -- now going into the -- one day over and coming back over the weekend. Y'all paid attention and I appreciate that, and y'all deliberated, which is another thing which I appreciate. You know, we can't do the court system unless we have people willing to serve as jurors. I want to thank you again for your service, and aside from the wonderful lunch that you were given today, you get a huge check from the county that will be in the mail.

So thank y'all, and y'all have a wonderful week. Thank you very much.

(Jury excused at 7:54 p.m.)

COPY

ORANGEBURG DEPARTMENT OF PUBLIC SAFETY

10-01414

PROPERTY REPORT

1. Status: ☒ Evidence ☐ Found ☐ Recovered ☐ Other | 2. Case No. 10-01414

3. Date & Time Impounded: 6-21-10 | 4. Laboratory Examination Requested: ☐ Yes - Submit Lab Request Form ☐ No | For Prop - Room Use | 5. Case Type: ATTEMPTED CSC

6. Found or Recovered From: ☒ Person ☐ Place
Name: WILLIAMS, RALPH / MAYES, HENRIETTA

7. Where property was found or recovered: 755 WHITMAN ST (WJ HEALTH)

8. Owner's Name | 9. Owner's Address | 10. Owner's Phone #

11. Item #	12. Quantity	13. Description	14. NCIC Hit: Yes	No
J1	2	1 GREEN SCRUB TOP, 1 GREEN SCRUB BOTTOM (SUBJECT CLOTHING)		(D2)
J2	1	1 MEDICAL GOWN WORN BY VICTIM (22)		
J3	1	1 RED SHIRT FROM BED UNDER VICTIM. DM 22		
J4	1	1 GREEN BLANKET FROM VICTIM'S BED (10)		
J5	1	1 WHITE SHEET FROM VICTIMS BED (22)		
J6	1	1 PINK MATRESS PROTECTOR FROM VICTIM'S BED (22)		
J7	1	1 WHITE FITTED SHEET FROM VICTIMS BED (22)		
J8	2	1 PAGES OF WRITTEN VOLUNTARY STATEMENTS FROM WITNESSES (D2)		
J9	1	1 CD CONTAINING 1 PHOTO OF VICTIM (P1)		

15. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.
Signature X _____

16. Impounding Officer (Print Full Name): WARRINGTON-ROBERT W. | 17. Badge No: 906

18. Signature: Robert W Warrington Jr.

19. Item #	20. Received By	21. Reason	22. Date and Time Received
1-9	Debbie Byrd	Placed in evid	6-21-10 429pm
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received

AUTHORIZATION FOR DISPOSITION

☐ CLEARED FOR DISPOSAL: Items _____

☐ PHOTO Items _____

☐ RELEASE TO: _____ Items _____

ADDRESS: _____

☐ OWNER NOTIFIED, RELEASE AUTHORIZED

AUTHORIZING OFFICER: _____

DATE: _____

WHITE - SUBMIT/DROP WITH EVIDENCE — YELLOW - ATTACH TO ORIGINAL INCIDENT REPORT
PINK - OWNER OR PERSON PROPERTY RECOVERED FROM — GOLD - IMPOUNDING OFFICER

PLAINTIFF'S EXHIBIT
Z-A
9/2/14 ZD

COPY

ORANGEBURG DEPARTMENT OF PUBLIC SAFETY

PROPERTY REPORT

1. Status ☑ Evidence ☐ Found ☐ Recovered ☐ Other
2. Case No. 10-01414
3. Date & Time Impounded 06/21/10 1617
4. Laboratory Examination Requested ☑ Yes - Submit Lab Request Form ☐ No
For Prop - Room Use
5. Case Type CSC
6. Found or Recovered From ☐ Person ☐ Place
Name (TRMC)
7. Where property was found or recovered 3000 St. Matthews Rd.
8. Owner's Name
9. Owner's Address
10. Owner's Phone #

11. Item #	12. Quantity	13. Description	14. NCIC Hit: Yes	No
10	1	CSC Kit of Victim (Fridge)		
11	1	Victim's briefs (removed by Trmc nurse) (Bin 10)		
12	1	12 Page Forensic Examination Report of Victim Exam	Bin	10
13	1	Box with 2 "Buccal" Swabs from Suspect	Bin	10

15. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.
Signature X
16. Impounding Officer (Print Full Name) C.W. Shultz
17. Badge No. 628
18. Signature

19. Item #	20. Received By	21. Reason	22. Date and Time Received
10		Transfer to ODPS	06/21/10 12:55
10-13	Debbie Byrd	Placed in evidence	6-22-10 847 AM
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received

AUTHORIZATION FOR DISPOSITION

☐ CLEARED FOR DISPOSAL: Items _____

☐ PHOTO Items _____

☐ RELEASE TO: _____ Items _____

ADDRESS: _____

☐ OWNER NOTIFIED, RELEASE AUTHORIZED

AUTHORIZING OFFICER: _____

DATE: _____

WHITE - SUBMIT/DROP WITH EVIDENCE — YELLOW - ATTACH TO ORIGINAL INCIDENT REPORT
PINK - OWNER OR PERSON PROPERT... ...D IMPOUNDING OFFICER

PLAINTIFF'S EXHIBIT
Exhibit 6493
9/2/14 2:29

COPY

ORANGEBURG DEPARTMENT OF PUBLIC SAFETY

PROPERTY REPORT

3

1. Status: ☒ Evidence ☐ Found ☐ Recovered ☐ Other — 2. Case No. 18-044
For Prop - Room Use: — 5. Case Type: SC
3. Date & Time Impounded: 3-5-18 / 3pm — 4. Laboratory Examination Requested: ☐ Yes - Submit Lab Request ☐ No
6. Found or Recovered From: ☐ Person ☐ Place — 7. Where property was found or recovered
Name — 9. Owner's Address — 10. Owner's Phone #
8. Owner's Name — 12. Description — 14. NCIC Hit: Yes / No

11. Item #	12. Quantity	
1	1	Sealed envelope containing hair collected from victim's breasts (Collected & Sealed) (Bm IN)

DB

17. Badge No.: 878

15. I hereby acknowledge that the above items represent all property taken from my possession and that I have received a copy of this report.
Signature X
16. Impounding Officer (Print Full Name): Debbie Byrd
18. Signature: Debbie Byrd

19. Item #	20. Received By	21. Reason	22. Date and Time Received
1	Debbie Byrd	Placed in evid	3-5-18 3pm
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received
	Received By	Reason	Date and Time Received

AUTHORIZED FOR DISPOSITION
☐ CLEARED FOR DISPOSAL: Items:
☐ PHOTO: Items:
☐ RELEASED TO:
ADDRESS:
☐ OWNER NOTIFIED, RELEASED AUTHORIZED

AUTHORIZED OFFICER:
DATE:

WHITE - SUBMIT/DROP WITH EVIDENCE – YELLOW - ATTACH TO ORIGINAL INCIDENT REPORT
PINK – OWNER OR PERSON PROPERTY RECOVERED FROM – GOLD - IMPOUNDING OFFICER

PLAINTIFF'S EXHIBIT
650 2 - C
9/2/14 2:29

PLAINTIFF'S EXHIBIT 3 9/21/14 JD

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

REGINALD I. LLOYD
Director

CSI Carl W. Shultz
Orangeburg Department of Public Safety
P.O. Box 1425
Orangeburg, SC 29116-1425

DNA ANALYSIS
April 12, 2011
SLED LAB: L10-06982
Your Case No: 1001414
Incident Date: 6/21/2010
[V] Henretta Mayes
[S] Ralph Williams

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:		Results of Examinations:	
1	Sexual Assault Evidence Collection Kit from Henretta Mayes		
1.1	Buccal swabs from Henretta Mayes	1.1	See DNA analysis.
1.2	Vaginal swabs	1.2	No semen identified. ✓
1.3	Vaginal smear	1.3	No spermatozoa identified. ✓
1.4	Suspected saliva swabs	1.4	Saliva indicated. See DNA analysis.
1.5	Suspected body fluid swabs	1.5	No semen identified. ✓

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Items Submitted:		Results of Examinations:	
1.6	Fingernail scrapings		
1.6.1	Fingernail scrapings-right hand	1.6.1	See DNA analysis.
1.6.2	Fingernail scrapings-left hand	1.6.2	See DNA analysis.
2	Briefs from victim		
2.1	Debris from briefs	2.1	No hair found.
3	Buccal swabs from Ralph Williams	3	See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

1.1 Buccal swabs from Henretta Mayes
3 Buccal swabs from Suspect Ralph Williams

1.4 Suspected saliva swabs
1.6.1 Fingernail scrapings-right hand
1.6.2 Fingernail scrapings-left hand

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA obtained from item 1.4 is a mixture of at least two individuals. The DNA profile of the major contributor to this mixture is consistent with the DNA profile of Henretta Mayes. Ralph Williams cannot be excluded as a possible minor contributor to this mixture.

No DNA profile foreign to the victim (Henretta Mayes) was developed from items 1.6.1 and 1.6.2.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	THO1	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo-genin
1.1 Henretta Mayes	14,15	29	9,10	11,13	14,15	8	12	9,12	16,23	13,14	16,17	8,9	15,19	12,13	21,22	X
3 Ralph Williams	14,17	27,31	9	11	15,17	7	12	11,13	18,19	12,13	16,19	8,11	17,20	11,12	19,27	XY
1.4 Saliva swabs	14,15 (17)	(27),29 (31)	9,10	11,13	14,15 (17)	7,8	12	9,(11) 12	16,23	12,13 14	16,17 (19)	8,9 (11)	15,19	11,12 13	21,22	X
1.6.1 Right hand	14,15	29	(9),10	(11,13)	14,15	8	12	9,12	16	13,14	16,17	8,9	15,(19)	(12,13)	21,(22)	X
1.6.2 Left hand	14,15	29	9,10	11,13	14,15	(7),8	12	9,12	16,23	13,14	16,17	8,9	15,19	12,13	21,22	X

( ) = alleles between 75 and 149 rfu Bold = major contributor

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

653

RWilliamsSupplemental00428

Note:

- Any remaining evidence and/or packaging will be returned to the requesting agency.

Lilly S. Gallman
Forensic Scientist

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

PLAINTIFF'S EXHIBIT 3-A
Date 4/2/14

Chain Of Custody

L10-06982

Item 1: One(1) sealed heat sealed pouch containing CSC Kit described as Henrietta Mayes

Submissions

Date	Time	Submitted by
6/23/10	15:03	Debbie Byrd of the Orangeburg Department of Public Safety

Debbie Byrd

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
6/23/10	15:03		Forensic Technician	Doris Yarbrough
6/23/10	15:04		Evidence Room (150)	DNA evidence intake storage
6/24/10	9:17		Forensic Technician	Patricia H. Crooks
6/24/10	9:19		Forensic Technician	Sheree T. Brown
6/24/10	12:35		DNA Department	DNA Storage Drawer 14 B
10/12/10	10:41		Forensic Scientist	Elly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3

Printed: 01/27/2012 11:13

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 1: One (1) sealed heat sealed pouch containing CSC kit described as Buccal swabs from Henretta Mayes

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:20		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31		Forensic Technician	Patricia H. Crooks
5/5/11	11:33		Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 2: One (1) sealed heat sealed pouch containing CSC kit described as Vaginal swabs

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:21		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31		Forensic Technician	Patricia H. Crooks
5/5/11	11:33		Evidence Disposition	Returned to Agency in person
			Debbie Byrd - Orangeburg DPS	Debbie Byrd

Item 1.3: One(1) sealed heat sealed pouch containing CSC kit described as Vaginal smear

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:21		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

3/22/11	9:08	Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34	Forensic Technician	Patricia H. Crooks
3/22/11	9:45	Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 1.4: One(1) sealed hem sealed pouch containing CSG kit described as Suspected saliva

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:21		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 1.5: One(1) sealed heat sealed pouch containing CSC kit described as Suspected body fluid

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:21		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31		Forensic Technician	Patricia H. Crooks
5/5/11	11:33		Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

1.6: One(1) sealed heat sealed pouch containing CSC kit described as Fingernail scrapings

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/12/10	11:22		Forensic Scientist	Lilly S. Gellman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31		Forensic Technician	Patricia H. Crooks
5/5/11	11:33		Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 1.6.1: One(1) sealed heat sealed pouch containing CSC kit described as Fingernail scrapings-right hand

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/26/10	15:19		Forensic Scientist	Lilly S. Gellman
3/21/11	14:29		DNA Department	DNA Return

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

3/22/11	9:08	Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34	Forensic Technician	Patricia H. Crooks
3/22/11	9:45	Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency in person
		Debbie Byrd - Orangeburg DPS	Debbie Byrd

Item 1.6.2: One(1) sealed heat sealed pouch containing CSC kit described as Fingernail scrapings-left hand

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/26/10	15:19		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34		Forensic Technician	Patricia H. Crooks
3/22/11	9:45		Evidence Room (150)	Heat Sealed Pouch Shelf 3

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency In person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 2: One(1) sealed heat sealed pouch containing Clothing described as Briefs of Victim.

Submissions

Date	Time	Submitted by
6/23/10	15:03	Debbie Byrd of the Orangeburg Department of Public Safety

Debbie Byrd

Chain of Custody

Date	Time	Container	Custody Of	Location / Person
6/23/10	15:03		Forensic Technician	Doris Yarbrough
6/23/10	15:23		Evidence Room (150)	EP Intake Shelf 103
2/15/11	13:30		Forensic Technician	Patricia H. Crooks
2/15/11	13:30		Forensic Technician	Janice S. Bryson
2/17/11	9:55		Forensic Technician	Patricia H. Crooks
2/17/11	10:00		Evidence Room (150)	Bin 9 Shelf D
5/5/11	11:31		Forensic Technician	Patricia H. Crooks

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

5/5/11	11:33		Evidence Disposition	Returned to Agency In person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 2.1: One(1) sealed heat sealed pouch containing Debris described as from briefs of Victim

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
2/15/11	15:03		Forensic Technician	Janice S. Bryson
2/15/11	15:03	A	Forensic Technician	Janice S. Bryson
2/16/11	15:40	A	DNA Department	DNA Storage Drawer 6 D
2/25/11	9:58	A	Forensic Scientist	Lilly S. Gallman
3/21/11	16:19	A	DNA Department	DNA Return
3/22/11	9:08	A	Forensic Technician	Jennifer L. Stainbrook
3/22/11	9:34	A	Forensic Technician	Patricia H. Crooks
3/22/11	9:45	A	Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31	A	Forensic Technician	Patricia H. Crooks

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

L10-06982

5/5/11	11:33	A	Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

Item 3 One (1) sealed red sealed pouch containing Buccal swab described as Buccal swabs from Suspect Ralph Williams

Submissions

Date	Time	Submitted by
6/23/10	15:03	Debbie Byrd of the Orangeburg Department of Public Safety

Debbie Byrd

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
6/23/10	15:03		Forensic Technician	Doris Yarbrough
6/23/10	15:04		Evidence Room (150)	DNA evidence intake storage
6/24/10	9:17		Forensic Technician	Patricia H. Crooks
6/24/10	9:19		Forensic Technician	Sheree J. Brown
6/24/10	12:35		DNA Department	DNA Storage Drawer 14 B
10/12/10	10:41		Forensic Scientist	Lilly S. Gallman
3/21/11	14:29		DNA Department	DNA Return
3/22/11	9:08		Forensic Technician	Jennifer L. Stalnbrook

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Chain Of Custody

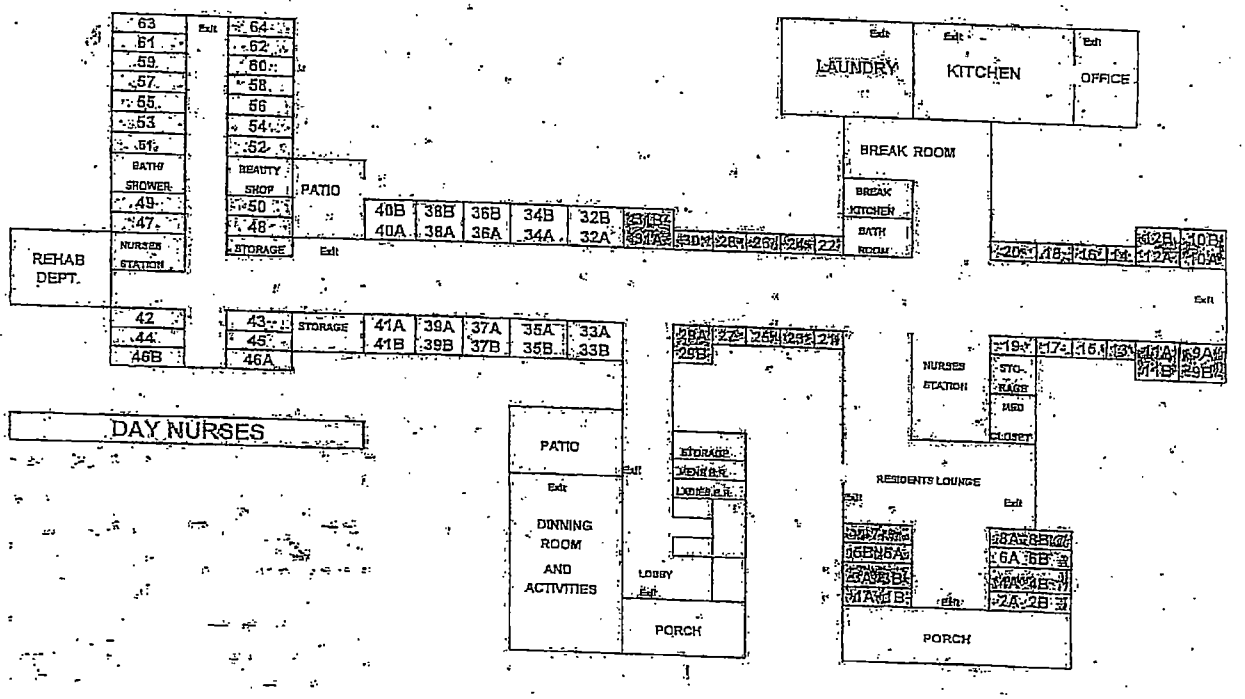
L10-06982

3/22/11	9:34	Forensic Technician	Patricia H. Crooks
3/22/11	9:45	Evidence Room (150)	Heat Sealed Pouch Shelf 3
5/5/11	11:31	Forensic Technician	Patricia H. Crooks
5/5/11	11:33	Evidence Disposition	Returned to Agency in person

Debbie Byrd

Debbie Byrd - Orangeburg DPS

PLAINTIFF'S EXHIBIT
4
9/21/14 JW



666

UPAC-ORANGEBURG 000199

6/21/10 2526 This Nurse making rounds and I was looking for (CNA) RALPH Williams to check on another Res. I checked all the rooms on the back Hall, and couldn't find him. This Nurse then started checking the rooms on the Middle Hall. When I walked into Henrietta Mays room. I observed CNA Ralph Williams c his pants down climbing on top of Res. I stated "What are you doing?" CNA Ralph Williams stated "Please Shut the Door." At this point I went to get the other Nurse Josette Pepper to witness. When we walked back in the room, he was fixing up his clothes. The room was dark & dover was messed up on bed. @ 3:00 A Management notified @ 3:25 Police Dept notified. @ 4:00 A RP Bertha Tyler (Sister) notified. "Stated she will be in facility this AM. @ 4:30 A Dr. Smoak notified. "Stated send to TRMC for Evaluation. VS. BP. 119/63, P-80, R-20, T-98.3

Resident/Patient Name: Mays Henrietta | ID #: | Room #: 29 A | Physician:

Reorder From: MED-P

PLAINTIFFS EXHIBIT 8

FENDAD 800-631-6989

XFM 011697

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DEPARTMENT OF PUBLIC SAFETY
ORANGEBURG, SOUTH CAROLINA

10-01414
I8

VOLUNTARY STATEMENT
(Not Under Arrest)

I, Patricia Johnson, am not under arrest, nor am I being detained for any criminal offences concerning the events I am about to make known to ODPS

Without being accused of or questioned about any criminal offences regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 46 years of age, my address is, 130 Alvarez ct Cordova SC 29039 This Nurse making rounds, and was looking for CNA Ralph Williams to Check on another Res. I checked all the rooms on the back Hall and couldn't find him. This Nurse then started checking the rooms on the middle Hall. When I walked in Henrietta Mays room I observed CNA Ralph Williams his pants down Climbing on top of Res. I stated what are you doing? CNA Ralph Williams stated. "Please Shut the Door" At this Point I went to get the Other Nurse Josette Pepper to Witness. When we walked back in the Room, he was fixing up his Clothes. The room was dark & Covers was messed up on Bed. There is no doubt in my mind. If I had not walk in room he would have had Sex with Res.

Nothing Else follows

Patricia Johnson

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 755 WHITMAN ST. this 21 day of June 2010.

WITNESS: BOT C.O.

WITNESS: C/A Williams

Patricia Johnson
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

PLAINTIFF'S EXHIBIT
368
9/21/11

PLAINTIFF'S EXHIBIT
9/2/14

Issued:
Revised: 5/06; 4/07

NURSING: PERINEAL CARE

POLICY:

Perineal care will be provided to:

- Provide cleanliness and comfort to the patient/resident.
- Prevent odor.
- Prevent infections.
- Observe patient/resident's skin condition.

EQUIPMENT:

- Bedpan, if necessary
- Wash basin
- Incontinent care supplies as provided by the healthcare cener (i.e. washcloth, soap, wipes, periwash, towel)
- Towel
- Disposable gown (if needed)
- Gloves

GENERAL INFORMATION:

1. Provide for privacy.
2. Perineal care is given during the daily bath and/or after voiding or bowel movement.
3. Cleanse perineal area from front to back. (See procedures for male/female cleansing)
4. If patient/resident has a Foley catheter, give perineal care before performing daily catheter care.

PROCEDURE:

1. Wash hands.
2. Assemble necessary equipment and take to patient/resident's room.

3. Knock before entering the room. Identify yourself and explain to the patient/resident what you are going to do.

4. Provide privacy by closing the door to the room then pulling the cubicle curtain all the way around the bed.

5. Assemble equipment on overbed table.

6. Put on gloves.

7. Have patient/resident use the bedpan or go to the bathroom before performing perineal care.

8. Position the patient/resident then drape so patient/resident is exposed as little as possible.

9. Talk to the patient/resident while you are performing the procedure.

10. For females:

- Separate labia then clean downward from front to back with one stroke.
- Repeat using a clean part of the washcloth/wipe for each stroke. More than one washcloth/wipe may need to be used.
- Rinse with clean washcloth, if applicable.
- Pat area dry with towel.
- Position patient/resident on side.
- Clean rectal area from vagina to the anus with one stroke.
- Repeat until area is clean using a clean part of the washcloth/wipe with each stroke. More than once washcloth/wipe may need to be used.
- Pat dry with towel.

11. For males:

- If uncircumcised, retract foreskin.
- Grasp penis.
- Clean the tip using a circular motion. Start at the urethra and work outward. Repeat as needed, using a clean part of the washcloth/wipe each time.
- Rinse the area with another clean washcloth/wipe, if applicable.
- Return the foreskin to its natural position.
- Clean the shaft of the penis and top of the scrotal sack. Use firm downward strokes. Rinse the area with a clean washcloth/wipe, if applicable.

- Turn patient/resident onto side and cleanse rectal area and bottom of scrotal sack. Clean from front to back with one stroke.
- Repeat until area is clean using a clean part of the washcloth/wipe with each stroke. More than one washcloth/wipe may need to be used.
- Pat dry with towel.

12. Apply moisture barrier cream, if applicable.

13. Remove gloves.

14. Wash hands and apply new gloves.

15. Check pad or drawsheet and replace if damp/wet or soiled.

16. Dress patient/resident in briefs or underwear.

17. Remove gloves and assist patient/resident with dressing and make comfortable.

18. Place call light within reach.

19. Wash hands thoroughly.

20. Report to Charge Nurse signs of skin irritation, rashes, broken areas and any complaints voiced by the patient/resident.

21. Chart procedure completed.

PLAINTIFF'S EXHIBIT
12
9/2/14 JMG

COPY

DEPARTMENT OF PUBLIC SAFETY
ORANGEBURG, SOUTH CAROLINA

10-01474
I8

VOLUNTARY STATEMENT
(Not Under Arrest)

I, Josette Peppers, am not under arrest, nor am I being detained for any criminal offences concerning the events I am about to make known to ODPS

Without being accused of or questioned about any criminal offences regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 24 years of age, my address is, 3910 Charleston Hwy, Orangeburg SC 29115

I was called to a resident room by another nurse Patricia Johnson, She stated that an employee Ralph was in a room with his pants down. This nurse observed resident fixing up his clothes then he sat in a chair in room & started talking to her. Curtain was pulled around bed, covers was thrown sloppy on bed, & room was dark. ~~Resident~~ Ralph was going to have Sex with resident if he didn't got caught

Nothing else follows Josette Peppers(pl)

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at ~~Ote~~ 755 WHITMAN ST., this 21 day of June 20 10.

WITNESS: Bell C.O.'s

WITNESS: Cpl Attaway

Josette Peppers
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

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PLAINTIFF'S EXHIBIT 15-A 9/2/14 NCD

Care employee accused of trying to rape woman

By RICHARD WALKER, T&D Staff Writer (4) Comments

An Orangeburg assisted living employee was charged early Monday with attempting to rape a mentally handicapped woman.

Just hours after the alleged attempt, Orangeburg city judge Barney Houser set bond at $25,000 surety on Ralph C. Williams, Sr., of 950 Spring St., Orangeburg.

Williams has been charged with assault with intent to commit criminal sexual conduct. He turned 54 on Sunday.

"This individual was discovered by employees of the business, who took immediate action by calling law enforcement," said Capt. Mike Adams of the Orangeburg Department of Public Safety. "They have cooperated fully and continue to cooperate with law enforcement."

Messages left with officials of the former Orangeburg Nursing Home care facility were not returned.

Adams said Williams was working his shift Monday at UniHealth on Whitman Street when police were notified.

Around 3:05 a.m. employees of the post acute care facility called police of a possible incident of inappropriate conduct by a fellow employee.

When officers arrived, they were told the suspect was still on the premises. He was taken into custody and given his rights until officers could sort out what was going on.

One employee told investigators that around 3 a.m. she was looking for the subject. When she could not find the co-worker, she went into the room of a 42-year-old female patient.

When the employee entered the room, she saw a co-worker "on the bed that (the patient) was in," according to the report. "She saw Mr. Williams climbing on top of (the patient) as she lay on her back in her bed."

The employee told police that Williams had his "scrub pants down and appeared to be starting to have sex with (the patient)," the report states.

When she asked him what he was doing, the subject told her to shut the door. She left to find another employee.

The two employees returned to find the subject straightening out his clothes.

Investigators tried communicating with the victim, who they were told is both mentally and physically handicapped. When they asked her age, she replied, "Five."

Adams said Williams had been with the care facility for four or five months.

"Charges may be upgraded based upon further investigation," Adams said.

Contact the writer: rwalker@timesanddemocrat.com or 803-533-5516.

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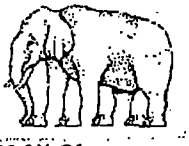
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PLAINTIFF'S EXHIBIT
DOCS
15-13
9/2/14 249

Assault charges against care worker amended

By RICHARD WALKER, T&D Staff Writer (2) Comments

Charges were amended Tuesday against an Orangeburg care facility worker accused of abusing a mentally handicapped woman.

Ralph C. Williams Sr. of 950 Spring St. now faces charges of third-degree criminal sexual conduct and abuse of a vulnerable adult.

Williams, who turned 54 Sunday, was originally charged on Monday with assault with intent to commit criminal sexual conduct. That charge has been dropped.

The amended charge of criminal sexual conduct came after a rape kit was completed and DNA allegedly retrieved, according to a warrant.

In a second hearing in as many days, Orangeburg city Judge Barney Houser continued Williams' $25,000 surety bond.

Williams could be facing 10 years in prison if convicted of third-degree criminal sexual conduct. Abuse of a vulnerable adult carries a maximum sentence of five years in prison if he's convicted.

Orangeburg Department of Public Safety Capt. Mike Adams said employees of the UniHealth facility, "have cooperated fully and continue to cooperate with law enforcement."

The nurses on station told investigators they were searching for a co-worker when they went into the 42-year-old victim's room.

Investigators were told by the employees the subject was found, "in the victim's room in or near her bed with his pants down around his ankles," according to the amended warrants. Police said UniHealth employees contacted law enforcement immediately.

The warrants further state the subject had knowledge that the victim is both "mentally incapacitated and physically helpless."

Police asked the victim how old she is. She replied she was 5.

-- Contact the writer: rwalker@timesanddemocrat.com or 803-533-5516.

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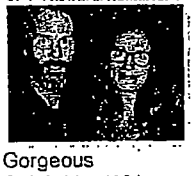


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TUESDAY · JU

Back to polls today

INSIDE

- S.C. voters decide Tuesday whether Republicans have their first woman nominee for governor as eight statewide candidates and eight U.S. House candidates head into a primary runoff election. A4
- Polling places for today's Republican primary. A5
- Anti-tax group backs

T&D Staff Report

Many local voters return to the polls Tuesday for the Republican Party runoff that will determine candidates for four statewide offices, as well as a local congressional seat.

Voters who cast ballots in the June 8 Republican primary -- and those who didn't vote at all -- are eligible to return to the polls Tuesday for the GOP runoff election.

Only those voters who participated in the Democratic primary will not be eligible to vote. There

ONLINE

well as the GOP nominee to
eran Democratic incumbent
Rep. James Clyburn in the N
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Some 8,542 Orangeburg
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Some 1,687 Calhoun Co
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with about 1,049 Democra

In Bamberg County, appr
Democrats voted in the pri
to about 850 Republicans.

677

687

T&D Staff Writer

An Orangeburg assisted living employee was charged early Monday with attempting to rape a mentally handicapped woman.

Just hours after the alleged attempt, Orangeburg City Judge Barney Houser set bond at $25,000 surety on Ralph C. Williams Sr., of 950 Spring St., Orangeburg.

Williams has been charged with assault with intent to commit criminal sexual conduct. He turned 54 on Sunday.

"This individual was discovered by employees of the business, who took immediate action by calling law enforcement," said Capt. Mike Adams of the Orangeburg Department of Public Safety. "They have cooperated fully and continue to cooperate with law enforcement."

Messages left with officials of the former Orangeburg Nursing Home care facility were not returned.

Adams said Williams was working his shift Monday at UniHealth on Whitman Street when police were notified.

Around 3:05 a.m. employees of the post acute care facility called police of a possible incident of inappropriate conduct by a fellow employee.

When officers arrived, they were told the suspect was still on the premises. He was taken into custody and given his rights until officers could sort out what was going on.

One employee told investigators that around 3 a.m. she was looking for the subject. When she could not find the co-worker, she went into the room of a 42-year-old female patient.

When the employee entered the room, she saw a co-worker "on the bed that (the patient) was in," according to the report. "She saw Mr. Wil-



Jay Anthony Carter covers his face before pleading guilty Monda
Charleston Highway home invasion. Two seniors were robbed at g

25-year sentenc
seniors 'faith in the

By RICHARD WALKER
T&D Staff Writer

Bobby Arant reached over and held his wife's hand as their attacker walked before the bench.

ONLINE
@TheTandD.com
View raw video footage from the hearing.
TheTandD.com/gallery

On Monday, 20-year-old Jay Anthony Carter was sentenced to 25 years in prison for the home invasion that ripped the security from the seniors' lives.

"I just want to praise the solicitor and the sheriff's office for everything they did," s
failing him.
system."

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2 shot in Edisto Dr. incid

By RICHARD WALKER
T&D Staff Writer

Two men were shot Sunday at the same Edisto Drive pool hall where a confrontation with authorities turned deadly in March, Orangeburg County Sheriff Larry Williams said.

Two Orangeburg men were treated for gunshot wounds after this weekend's altercation.

"I will do everything I can to protect the people and property of Edisto Drive, even if it takes shutting the club down," Williams said. "These people have the r
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688



PLAINTIFF'S EXHIBIT
20
9/2/14 2:29

Orangeburg-Calhoun Technical College

Career Training and Development

Certificate of Completion

is hereby granted to:

Ralph Williams

who has completed to satisfaction

the SC DHHS approved

Nurse Aide Training Program

96 Contact Hours

Orangeburg-Calhoun Technical College

Dean, Continuing Education

Deborah Pigott
Instructor

President

September 18, 2009
Date

LIPAC-ORANGEBURG 000043

679

689



[redacted] ORANGEBURG, SC 29115
PHONE [redacted] E-MAIL [redacted]

RALPH CLAYTON WILLIAMS SR

OBJECTIVE

To obtain employment with an organization that will allow for advancement while enhancing my career skills and abilities.

SUMMARY OF QUALIFICATIONS

Capable of preparing fine dining, soul food and international meals.
Possess excellent food presentation skills. Have great nursing assistant skills.
Reliable, dependable and capable of multi-tasking

WORK EXPERIENCE

December 2008-Present Reid's — Orangeburg, SC
Deli Cook
- Developed menus
- Prepared meals for deli and catering
- Organized inventory and cleaning

November 2006-July 2009 Mr. J's Café — Orangeburg, SC
Cook/Caterer
- Employed for special events

March 2007-February 2008 Sodexho(Claflin University) — Orangeburg, SC
Cook/Caterer
- Prepared meals for The Club 1869 Room
- Prepared meals for the College President

September 2004-April 2006 Sodexho(SCSU) — Orangeburg, SC
Second Cook
- Prepared meals and catering
- Responsible for food safety
- Special cook for football team and coach

October 2003-July 2006 Joe Fox's — Orangeburg, SC
Souf Chef
- Prepared meals and catering
- Specialized in gourmet cooking and fine dining

SPECIAL EXPERIENCE

July 2008-September 2008 Dorn VA — Columbia, SC
Aide
- Assisted with the care of veterans

EDUCATION

Orangeburg Calhoun Technical College — Orangeburg,SC
- Certified Nursing Assistant License

Sumner High School — St. Louis, MS
- High School Diploma

REFERENCES WILL BE AVAILABLE UPON REQUEST

Report Date:9/2/2014

THE SOUTH CAROLINA Nurse Aide Registry

PLAINTIFF'S EXHIBIT 25 9/2/14 JWD

Search Results
South Carolina Nurse Aides

- Submit a New Search

Search Criteria: WILLIAMS RALPH

Number of records found: 1

Printing Hint: When printing this page, we recommend changing the page setup orientation to print in 'landscape' format.

Click on the Certification number to view details and print a copy.

Certification Number	Name	Certification/ Expiration	Origination	Notes
301497	WILLIAMS, RALPH	11/10/2009 03/31/2016	Examination	NOTE: This is not a guarantee that this nurse aide had continuous certification from the certification date to the current expiration date. This nurse aide has no substantiated findings of abuse, neglect or misappropriation of property on file with the South Carolina Nurse Aide Registry.

For further options, return to the South Carolina Nurse Aide landing page.

This search was generated on 9/2/2014 at 7:56:13 PM.

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South Carolina Nurse Aide Registry Verification

THE SOUTH CAROLINA Nurse Aide Registry

Report Date: 09/02/2014

INQUIRY RESULTS

DEMOGRAPHICS

Name: WILLIAMS, RALPH

CERTIFICATION

Certification #: 301497

Certification Date: 11/10/2009

Expiration Date: 03/31/2016

Basis: Examination

NOTE: This is not a guarantee that this nurse aide had continuous certification from the above certification date to the current expiration date.

SUBSTANTIATED FINDINGS

This nurse aide has no substantiated findings of abuse, neglect or misappropriation of property on file with the South Carolina Nurse Aide Registry.

Return to the list of selected nurse aides.

Print Page

PLAINTIFF'S EXHIBIT
28
9/2/14 JLO

11-7pm

EMPLOYMENT APPLICATION

PLEASE NOTE THAT APPLICANTS ARE TO RECEIVE ORIGINAL PRODUCTIONS (NO COPIES) OF THIS FORM FOR COMPLETION.

Date 11/12/09	Location Name

We are an equal opportunity employer and do not discriminate against otherwise qualified applicants on the basis of age, ancestry, color, creed, disability, gender, handicap, marital status, national origin, race, religion, or veteran status. Please print all information requested except your signature. Applications over 30 days will not be considered. The acronym "NA" represents the words "Not Applicable" and should only be used to signify a question cannot be applied. "NA" is limited as listed and must be accurate for application consideration. INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED FOR ANY PURPOSE.

Last Name	First Name	Middle Name
Williams	Ralph	Clayton

Social Security Number	Telephone Number / Cell Phone Number	Email Address
[redacted]	[redacted]	[redacted]

Street Address (Required)	Mailing Address
[redacted]	[redacted]

City	State	Zip Code
Orangeburg	SC	29115

How long have you resided at your current address? 20 yr

Have you ever been employed by the location or an affiliated company? Yes (No)

Do you have family members (including in-laws) currently employed at the location? Yes (No)

If you have been employed by the location or an affiliated company, when and where? (NA)

What was the reason for your termination of employment from the location? (NA)

What position are you seeking with the location? Circle only one position. Complete the blank as appropriate. APPLICATIONS NOT SPECIFYING THE POSITION SOUGHT OR APPLICATIONS SPECIFYING MORE THAN ONE POSITION WILL NOT BE CONSIDERED FOR ANY PURPOSE.

Accountant	Assistant Administrator	Consultant _____	Manager _____
Accounts Payable Clerk	Assistant Director of Nursing	Cook	Nurse Practitioner
Accounts Receivable Clerk	Bookkeeper	Dietician	Other _____
Activity Director	Case Manager	Director _____	Payroll Clerk
Administrative Assistant	Case Mix Director	Education Coordinator	Pharmacist
Administrator	Certified Nurse Assistant	Environmental Services Consultant	Pharmacy Technician
Admissions Coordinator	Chaplain	Financial Analyst	Physical Therapist
Admissions Specialist	Collections Specialist	Healthcare Services Representative	Regional Director
		Housekeeping Aide	Registered Nurse
		Information Services Technician	Rehabilitation Coordinator
		Laundry Aide	Risk Manager
		Licensed Practical Nurse	Staff Development Coordinator
		Maintenance Assistant	Vice-President _____

Describe your most significant accomplishment?
Finishing school

Are you lawfully employable in the United States either by virtue of citizenship or by having authorization from the Bureau of Citizenship and Immigration Services and the United States Labor Department? (Yes) No

Are you able to perform the essential functions of the job for which you are applying with or without reasonable accommodations? (Yes) No

Are you over the age of eighteen? (Yes) No

Do you require any reasonable accommodation to assist you in completing the application process?
Yes (No) If yes, please describe the reasonable accommodation required.

Have you ever been convicted of a crime other than a minor traffic infraction? Yes (No)

Please note a DUI is a criminal offense and a plea bargain or a plea of *no lo contendre* to any crime is considered a guilty disposition. Any "first offender" or "youth" court conviction, plea bargain or a plea of *no lo contendre* to any crime is considered a guilty disposition. If you have been convicted of a crime, please tell what, when, where, and the disposition of the case. Every criminal conviction must be accurately and completely disclosed below. Please request an additional sheet if necessary. Failure to disclose all criminal convictions on this form could determine an employment decision.

What	When (Year)	Where (City, State)	Disposition

Have you ever been discharged from employment or been asked to resign? Yes (No)
If yes, please explain.

Have you ever been known by or worked by another name? Yes (No)
If yes, please list your other names for employment reference checks.

Do you have personal responsibilities that will interfere with your ability to meet the job requirements, including regular and punctual attendance, if offered a job with the location? Yes (No)
If yes, please explain.

Please list your available hours. →	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		11 PM 7 AM	11 PM 7 AM	11 PM 7 AM	11 PM 7 AM		11 PM 7 AM

Please note work schedules are based upon the needs of the location.

What is the wage or salary you are expecting? Open	What wage or salary are you currently earning or did you most recently earn? 8.00 pr hour
If selected for hire, what date are you available to begin duties with the location? 11-16-09	What is the name of your most recent employer? Reid's Food Stores
What is the address of your most recent employer? Chestnut ave. Bemberg,	What is the telephone number of your most recent employer? 531-3163
What were your job duties with your most recent employer? Cook, Baker, Dishwasher, Meat Cutter	

Please check (✓) the reason for the employment termination from your most recent employer?

_____ Voluntary Resignation _____ Resignation In Lieu of Termination
_____ Job Performance ✓ Still Employed _____ Reduction In Workforce

Who was your supervisor with your most recent employer?

Steve Kelly

Please list the following information for your two most recent employers prior to your last employer.

Employer: Main College	Employer: Mr. J. Cafe
Position: Cook	Position: Cook
Service: 1 Years 3 Months	Service: 2 Years 8 Months
Salary/Wage: 7.00	Salary/Wage: 9.50
Year Employment Began: 2001	Year Employment Began: 2003
Reason for Termination: _____	Reason for Termination: went out of Bus.
Supervisor: Paula Patton	Supervisor: Koyen Jenkins
Telephone Number: _____	Telephone Number: 707-0506

We contact past employers as part of our reference checking process. Is there anything you want to disclose prior to our contacting any prior employer? ~~Yes~~ (No) If yes, please explain.

Please list *all* languages you are able to speak, read and write fluently.

English

Do you have a high school diploma or equivalent? (Yes) No	What was your favorite high school subject? Cooking, History
Do you have a college or university degree? Yes (No)	What kind of college or university degree did you earn? (NA)
What college or university major did you study? NA Harris Stowe Teching College	What college or university did you attend? NA Harris Stowe College
Do you have a graduate school degree? Yes (No)	What kind of graduate degree did you earn? (NA)
What graduate school did you attend? (NA)	How many academic years and credit hours was the graduate school degree program? (NA)

Do you have any professional certifications or licenses? (Yes) No
If yes, please list. The information will be validated if there is an offer of employment.

C.N.A.

Do you have military education, training or experience? (Yes) No	In what branch of the Uniformed Services of the United States did you serve? NA U.S. Navy
Were you honorably discharged from your military service? (Yes) No NA	What was your military rank at discharge? NA E-4

List four professional references. The location will not consider applicants who list personal friends or family as professional references for job openings. If you are unable to list professional references, place state why.

Name: Liz Zimmerman Kelly
Relationship: Friend
Time Known: 20 years ✓ months
Telephone Number: [redacted]

Name: Harvey Dunant V
Relationship: Friend
Time Known: ____ years ____ months
Telephone Number: [redacted]

Name: Julia Page
Relationship: Friend
Time Known: 20 years ✓ months
Telephone Number: [redacted]

Name: Miss James
Relationship: Friend
Time Known: 20 years ✓ months
Telephone Number: [redacted]

I hereby authorize the location to investigate all information given in this application and specifically to obtain information concerning me from prior employers and from any person listed as a reference. I certify the information given on this application is correct. I understand any misrepresentation or omission of facts called for in this or any other location document completed either prior to or during the employment relationship, will be cause for immediate dismissal without notice. I release the location and all representatives, employees and agents thereof from any and all liability or damages in connection with efforts to verify or investigate such information. I release all third parties and all persons providing information to the location in connection with this application for employment from any and all liability or damage on account of having obtained or furnished the same.

The location may require job applicants to undergo testing for the presence of illegal drugs as a condition of employment. Any applicant with a confirmed positive test will be denied employment. Applicants who refuse to submit to the location's substance abuse testing procedures will not be considered for employment. By signing this application form, the applicant hereby consents to the administration of any drug tests and hereby releases the location from any and all liability and damage related thereto.

I understand and agree if the location extends a conditional offer of employment, I will be required to undergo a physical examination. I understand a job offer can be rescinded if it is determined I cannot perform the essential functions of the job with or without reasonable accommodation, or that I pose a direct threat to the health or safety of others or myself in the workplace. This physical examination will be used only in a manner consistent with job relatedness and business necessity and consistent with all applicable laws. I further understand the location will make reasonable efforts to accommodate a covered disability to the full extent of the law. I also understand all medical or disability related information supplied by or concerning me will be held in strict confidence by the location, subject to certain disclosures permitted by applicable law.

I understand and agree if the location extends a conditional offer of employment, investigative background inquiries will be conducted. The background inquires may include but are not limited to the following: previous employment verifications, education verifications, professional certification verifications, criminal background checks, Social Security Number trace reports, and OIG/GSA sanctioned searches. I understand a job offer can be rescinded or employment terminated based upon the results of the investigative background inquiries. I understand the location or its authorized agent requests information from various federal, state, and other agencies that maintain records concerning my past activities relating to my driving, criminal, civil, and other experiences.

If employed, I agree to comply with all the rules and regulations of the location in effect now and any others that may be instituted at a later date.

I understand if employed, I will be employed on an at-will basis and my employment may be terminated for any reason or no reason at the option of the location or myself. I understand no management representative or other person has any authority to enter into any agreement for employment for any specific period of time or to make any agreement contrary to the foregoing, or to enter into any oral contracts concerning my wages or any other term or condition of employment. I further understand no written policy statements, handbooks, memoranda or any other materials provided to me by the location are intended to serve as written or implied contracts of employment.

Signature of Applicant [signature]

Date of Signature 11-12-09

COMPLETED BY LOCATION'S HIRING MANAGER

I have personally conducted professional certification verifications and required registry checks on this applicant prior to offering conditional employment. All questions on the application form have been completed. Yes No

Signature of Hiring Manager _____ Date of Signature _____

PLAINTIFF'S EXHIBIT 29 9/2/14 2nd

EMPLOYMENT APPLICATION

PLEASE NOTE THAT APPLICANTS ARE TO RECEIVE ORIGINAL PRODUCTIONS (NO COPIES) OF THIS FORM FOR COMPLETION.

Date	Location Name
9-17-09	Unihealth Post Acute Care

We are an equal opportunity employer and do not discriminate against otherwise qualified applicants on the basis of age, ancestry, color, creed, disability, gender, handicap, marital status, national origin, race, religion, or veteran status. Please print all information requested except your signature. Applications over 30 days will not be considered. The acronym "NA" represents the words "Not Applicable" and should only be used to signify a question cannot be applied. "NA" is limited as listed and must be accurate for application consideration. INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED FOR ANY PURPOSE.

Last Name	First Name	Middle Name
Johnson	Patricia	Ann

Social Security Number	Telephone Number	Email Address
[redacted]		
	Cell Phone Number: 803 [redacted]	

Street Address (Required)	Mailing Address
[redacted]	Same

City	State	Zip Code	How long have you resided at your current address?
Cordova	SC	29039	11 yrs

Have you ever been employed by the location or an affiliated company?	Do you have family members (including in-laws) currently employed at the location?
(Yes) No	Yes (No)
If you have been employed by the location or an affiliated company, when and where? (NA)	What was the reason for your termination of employment from the location? (NA)

What position are you seeking with the location? Circle only one position. Complete the blank as appropriate. APPLICATIONS NOT SPECIFYING THE POSITION SOUGHT OR APPLICATIONS SPECIFYING MORE THAN ONE POSITION WILL NOT BE CONSIDERED FOR ANY PURPOSE.

Accountant	Assistant Administrator	Consultant _____	Manager _____
Accounts Payable Clerk	Assistant Director of Nursing	Cook	Nurse Practitioner
Accounts Receivable Clerk	Bookkeeper	Dietician	Other _____
Activity Director	Case Manager	Director _____	Payroll Clerk
Administrative Assistant	Case Mix Director	Education Coordinator	Pharmacist
Administrator	Certified Nurse Assistant	Environmental Services Consultant	Pharmacy Technician
Admissions Coordinator	Chaplain	Financial Analyst	Physical Therapist
Admissions Specialist	Collections Specialist	Healthcare Services Representative	Regional Director
		Housekeeping Aide	Registered Nurse
		Information Services Technician	Rehabilitation Coordinator
		Laundry Aide	Risk Manager
		(Licensed Practical Nurse)	Staff Development Coordinator
		Maintenance Assistant	Vice-President _____

Describe your most significant accomplishment? Completing the Practical Nursing Program at Orangeburg Calhoun Technical College

Are you lawfully employable in the United States either by virtue of citizenship or by having authorization from the Bureau of Citizenship and Immigration Services and the United States Labor Department? (Yes) No	Are you able to perform the essential functions of the job for which you are applying with or without reasonable accommodations? (Yes) No
	Are you over the age of eighteen? (Yes) No

Do you require any reasonable accommodation to assist you in completing the application process? Yes (No) If yes, please describe the reasonable accommodation required.

Have you ever been convicted of a crime other than a minor traffic infraction? Yes (No)

Please note a DUI is a criminal offense and a plea bargain or a plea of *no lo contendre* to any crime is considered a guilty disposition. Any "first offender" or "youth" court conviction, plea bargain or a plea of *no lo contendre* to any crime is considered a guilty disposition. If you have been convicted of a crime, please tell what, when, where, and the disposition of the case. Every criminal conviction must be accurately and completely disclosed below. Please request an additional sheet if necessary. Failure to disclose all criminal convictions on this form could determine an employment decision.

What	When (Year)	Where (City, State)	Disposition
	N/A		

Have you ever been discharged from employment or been asked to resign? Yes (No)
If yes, please explain.

Have you ever been known by or worked by another name? (Yes) No
If yes, please list your other names for employment reference checks:
Patricia A. Davis

Do you have personal responsibilities that will interfere with your ability to meet the job requirements, including regular and punctual attendance, if offered a job with the location? Yes (No)
If yes, please explain.

Please list your available hours. →	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		OPEN	Availability				

Please note work schedules are based upon the needs of the location.

What is the wage or salary you are expecting? Negotiable	What wage or salary are you currently earning or did you most recently earn? As a CNA
If selected for hire, what date are you available to begin duties with the location?	What is the name of your most recent employer? Unihealth Postacute Care Oburg
What is the address of your most recent employer? 755 Whitman Street Oburg SC 29111	What is the telephone number of your most recent employer? 803-534-7036
What were your job duties with your most recent employer? Certified Nursing Assistants - Patient Care	

Please check (✓) the reas[illegible] or the employment termination from your [illegible]st recent employer?

✓ Voluntary Resignation ____ Resignation in Lieu of Termination
____ Job Performance ____ Still Employed ____ Reduction in Workforce

Who was your supervisor with your most recent employer?

Please list the following information for your two most recent employers prior to your last employer.

Employer: Orangeburg Nursing Home
Position: CNA
Service: 4 Years ____ Months
Salary/Wage: $10.5 hr
Year Employment Began: 2005
Reason for Termination: Resign to finish college.
Supervisor: [illegible]
Telephone Number: 803-534-1036

Employer: New Beginnings
Position: CNA
Service: 2 Years ____ Months
Salary/Wage: $10.4 hr
Year Employment Began: 2003
Reason for Termination: Resign to attend college.
Supervisor: ____
Telephone Number: ____

We contact past employers as part of our reference checking process. Is there anything you want to disclose prior to our contacting any prior employer? Yes (No) If yes, please explain.

Please list *all* languages you are able to speak, read and write fluently.

English

Do you have a high school diploma or equivalent? (Yes) No	What was your favorite high school subject? Biology
Do you have a college or university degree? Yes (No)	What kind of college or university degree did you earn? (NA)
What college or university major did you study? NA Practical Nursing	What college or university did you attend? NA Orangeburg-Calhoun Tech.
Do you have a graduate school degree? Yes (No)	What kind of graduate degree did you earn? NA Diploma Practical Nursing
What graduate school did you attend? (NA)	How many academic years and credit hours was the graduate school degree program? (NA)

Do you have any professional certifications or licenses? (Yes) No
If yes, please list. The information will be validated if there is an offer of employment.

Licensed Practical Nursing

Do you have military education, training or experience? Yes (No)	In what branch of the Uniformed Services of the United States did you serve? (NA)
Were you honorably discharged from your military service? Yes No (NA)	What was your military rank at discharge? (NA)

List four professional refer[illegible]s. The location will not consider applicat[illegible] who list personal friends or family as professional references for job openings. If you are unable to list professional references, place state why.

Name: Ms. Alayah Clifton
Relationship: Advisor
Time Known: 3 years — months
Telephone Number: [redacted]

Name: Ms. Carrie Jimison
Relationship: Instructor
Time Known: 2 years — months
Telephone Number: [redacted]

Name: Ms. Annie Johnson Bowman
Relationship: Instructor
Time Known: 3 years — months
Telephone Number: [redacted]

Name: Ms. Eunice Tomb
Relationship: Instructor
Time Known: 2 years — months
Telephone Number: [redacted]

I hereby authorize the location to investigate all information given in this application and specifically to obtain information concerning me from prior employers and from any person listed as a reference. I certify the information given on this application is correct. I understand any misrepresentation or omission of facts called for in this or any other location document completed either prior to or during the employment relationship, will be cause for immediate dismissal without notice. I release the location and all representatives, employees and agents thereof from any and all liability or damages in connection with efforts to verify or investigate such information. I release all third parties and all persons providing information to the location in connection with this application for employment from any and all liability or damage on account of having obtained or furnished the same.

The location may require job applicants to undergo testing for the presence of illegal drugs as a condition of employment. Any applicant with a confirmed positive test will be denied employment. Applicants who refuse to submit to the location's substance abuse testing procedures will not be considered for employment. By signing this application form, the applicant hereby consents to the administration of any drug tests and hereby releases the location from any and all liability and damage related thereto.

I understand and agree if the location extends a conditional offer of employment, I will be required to undergo a physical examination. I understand a job offer can be rescinded if it is determined I cannot perform the essential functions of the job with or without reasonable accommodation, or that I pose a direct threat to the health or safety of others or myself in the workplace. This physical examination will be used only in a manner consistent with job relatedness and business necessity and consistent with all applicable laws. I further understand the location will make reasonable efforts to accommodate a covered disability to the full extent of the law. I also understand all medical or disability related information supplied by or concerning me will be held in strict confidence by the location, subject to certain disclosures permitted by applicable law.

I understand and agree if the location extends a conditional offer of employment, investigative background inquiries will be conducted. The background inquires may include but are not limited to the following: previous employment verifications, education verifications, professional certification verifications, criminal background checks, Social Security Number trace reports, and OIG/GSA sanctioned searches. I understand a job offer can be rescinded or employment terminated based upon the results of the investigative background inquiries. I understand the location or its authorized agent requests information from various federal, state, and other agencies that maintain records concerning my past activities relating to my driving, criminal, civil, and other experiences.

If employed, I agree to comply with all the rules and regulations of the location in effect now and any others that may be instituted at a later date.

I understand if employed, I will be employed on an at-will basis and my employment may be terminated for any reason or no reason at the option of the location or myself. I understand no management representative or other person has any authority to enter into any agreement for employment for any specific period of time or to make any agreement contrary to the foregoing, or to enter into any oral contracts concerning my wages or any other term or condition of employment. I further understand no written policy statements, handbooks, memoranda or any other materials provided to me by the location are intended to serve as written or implied contracts of employment.

Signature of Applicant: Tatiana Atkinson

Date of Signature: 9-17-09

COMPLETED BY LOCATION'S HIRING MANAGER

I have personally conducted professional certification verifications and required registry checks on this applicant prior to offering conditional employment. All questions on the application form have been completed. Yes No

Signature of Hiring Manager _____ Date of Signature _____



CNA ASSIGNMENT SHEET NURS A 115.00b

Issued:
Revised: 1/99

CNA ASSIGNMENT SHEET

Supervisor: _____

LPN: Josues LPN: Brenna Date: 6/20/10 Shift: 11-7

CNA	Rooms	Breaks	Lunches	Baths	MD Appt.	Dining Room Duty	Special Assignment
Alicia	1-10		2:30 am				√ dirty UR
Brady	11-28		3am				√ lg BR
Patricia	29-38						√ dirty UR
~~Bridget~~ Hud 5:21am	39-64						√ internet cafe
Lisett 3:27am Tea							

Vital Signs: _____

Residents/Patients with Special Needs: ~~RN Assessment Report~~ T+P q 2° / Foley bath & oral care + water

691

UPAC-ORANGEBURG 000203

701



RWilliamsSupplemental00354

STATE OF SOUTH CAROLINA

City of ORANGEBURG

Search Warrant

DATE 06/21/2010
OFFICER Inv. Latisha G. Coldiev

STATE OF SOUTH CAROLINA

SEARCH WARRANT

CITY OF ORANGEBURG

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF: ORANGEBURG :

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-23-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING TO BE SEARCHED)

SEE AFFIDAVIT

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

SEE AFFIDAVIT

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persons as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Orangeburg City S.C

June 21, 2010

(L.S.)

SIGNATURE OF JUDGE

STATE OF SOUTH CAROLINA

AFFIDAVIT

CITY OF ORANGEBURG

Personally appeared before me, one Inv. Latisha G. Cokley who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

The following but not limited to Blood, Saliva, Hair. Or what ever specific body fluid or article is being sought for DNA analysis

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING) TO BE SEARCHED

Ralph C. Williams Sr., Date of Birth ([redacted], 1956) Social Security Number ([redacted]). Present location Orangeburg County Detention Center.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECTS PREMISES

The affiant has been a law enforcement officer for approximately 12 years and an investigator for 9 years. I am presently investigating: A Criminal Sexual Conduct case that occurred at UniHealth Post-Acute Care facility located at 755 Whitman Street located in the City of Orangeburg. The victim is a mentally and physically incapacitated resident of the facility, and the defendant is a nurse who was seen by co-workers alone in the room with the victim, with his pants and underwear down around his ankles, near the victims bed. I have reason to believe that DNA the DNA evidence sought is pertinent to the case, in that a White milky substance believed to be semen was retrieved from the victims vagina during the sexual assault examination.

Sworn to and Subscribed before me
This 21 day of June, 2010

(L.S)
SIGNATURE OF JUDGE

Affiant
Address 1320 Middleton Street
Orangeburg, SC 29115
Phone (803) 533-5940

RETURN

I received the attached Search Warrant June 21, 2010 and have executed it as follows:

June 21, 2010 at 3:30 o'clock P M, I searched (the person) described in the warrant and (the premises) of Defendant Ralph Williams

I left a copy of the warrant with Ralph Williams & OCDC
Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:
Buccal Swabs from the right + Left Side of Defendant, Robert Williams Mouth (06/21/1941).

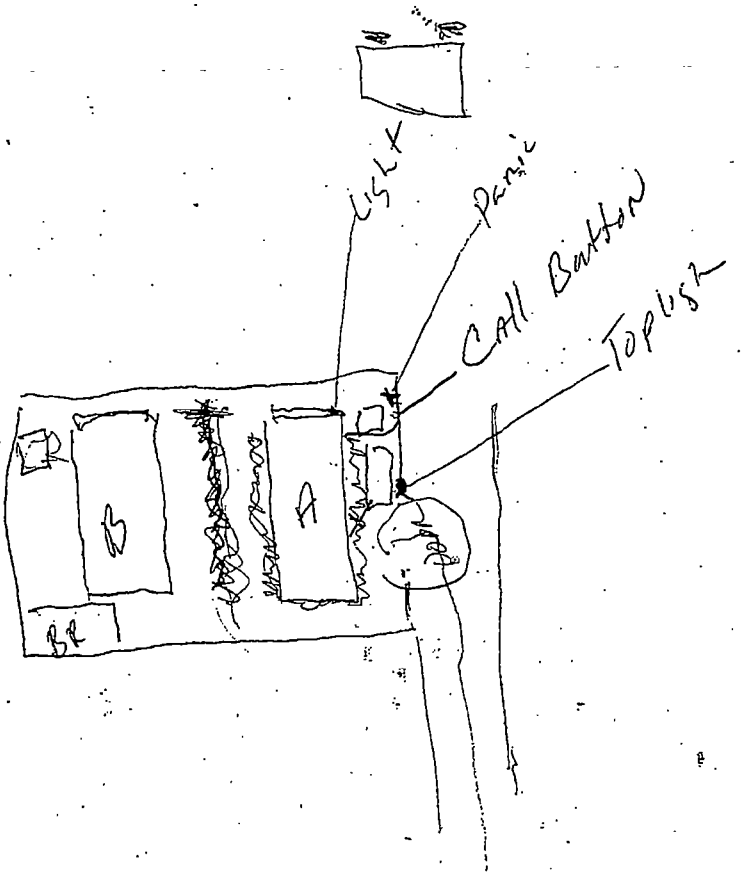
This inventory was made in the presence of Cpl Gibson
AND Cpl Shreke

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this
Day of 6/28, 2010

Signature of Judge, (L.S)

(Signature of Officer Executing Warrant)



PLAINTIFF'S EXHIBIT
50
12/2/14 ND

Exhibit
77
706

Problem: Problem of substance abuse-alcohol, cocaine, marijuana
Goal: Long term sobriety .
Objective: Withdrawal process will be safe and tolerable to patient
Intervention:Medications evaluated and adjusted daily
Intervention:Staff observation and monitoring for withdrawal symptoms
Objective: Patient agrees to attend sobriety program aimed at total abstinence
Objective: Patient agrees to attend AA/NA
Intervention:Counseling/education on the negative effects of substance abuse on pt.'s mood/behavior/health
Intervention:SATP consult

/es/ TOM MINOR,PH.D.
CLINICAL PSYCHOLOGIST
Signed: 07/14/2010 14:10

Receipt Acknowledged By:

07/15/2010 14:27	/es/	VERNETTA H JACOBS ATTENDING PSYCHIATRIST
07/15/2010 07:41	/es/	RAYNIA MCGEE MD
07/14/2010 14:54	/es/	MARY ROGERS Social Worker

LOCAL TITLE: MH CLINICAL SOCIAL WORK INPATIENT ASSESSMENT
STANDARD TITLE: SOCIAL WORK HOME HEALTH INITIAL EVALUATION NOTE
DATE OF NOTE: JUL 14, 2010@13:00 ENTRY DATE: JUL 14, 2010@13:00:34
AUTHOR: ROGERS,MARY EXP.COSIGNER:
URGENCY: STATUS: COMPLETED

MH Clinical Social Work Inpatient Assessment:

1. Identifying Information: Ralph Williams is a 54 y.o. AA Male

2. Reason for Referral (High Risk Potential-Suicidal/Homicidal), Presenting Problem, Current Stressors, Signs & Symptoms:

suicidal ideation - vet lost his job in June due to allegations that he was attempting to rape one of the residents of home

3. Patient's Current Strengths and Support System (observed and described, include coping strategies):

wife, brothers, church members are supportive of patient; he has a long history of working in restaurants; wife has good income to support them; strong faith in God

4. Lifestyle Considerations (homeless, abused, neglected, exploited, legal issues, sexual abuse, sexual orientation, estranged from family, living situation, leisure/recreation):

HOUSING: lives in house with wife. Has 5 outdoor pets - cats 'Boo', 'Twin', 'Twin', and 'Calico' and dog 'Bumper' who is a mix of German Shepherd and pit bull. House is within city limits.

EARLY YEARS: Born and raised in St. Louis. Mother and father both worked for postal service. Vet was middle child of 6 boys. Father is described as a 'functional alcoholic' - he died at age 59 of heart attack. Mother died of pancreatic cancer at age 75. Of note, mother remarried a couple of years after father's death, and children got along with stepfather.

Oldest brother has died - he had seizures since childhood (forceps used during birth process allegedly 'messed him up'). Vet reports normal childhood - no sexual abuse, and only physical abuse was coporal punishment for doing things wrong. Parents were from Orangeburg, which is reason vet ended up back in this area.

Vet talks regularly with one of his brothers, Robert; however, he is less friendly with brothers Charles and Carl, whom he felt tried to take mother's possessions after her death.

LEISURE: Active with church, enjoys cooking/being creative with recipes

FAMILY: Patient was first married to his high school girlfriend that became pregnant - they married in '75 and were married for 9 years. They lived in St. Louis after he returned from 2 year Navy stint. They have 3 children - son, age 35, and two dtrs ages 33 and 31. All three kids live in St. Louis area, and all have children. Vet has 4 grandchildren, ages 12, 4, 4, 6. Vet owes $30,000 in back child support.

Vet met his second wife when he was applying for Food Stamps at Orangeburg County DSS and wife took his application. They have been married for 27 years - no children. Wife loves her job at DSS.

Referral to HCHV: No

5. Substance Use/Abuse [include current and prior history of alcohol use - beer, wine, liquor and amount, drug use (marijuana, cocaine, crack, methamphetamine, heroine, opiates, prescription drug abuse, other), tobacco use, caffeine intake]:

Vet recognizes that he has a problem with alcohol and is receptive to help that VA can provide. Has been drinking since age 16. Pint of liquor daily, and has also been using marijuana and crack cocaine in recent past (since losing his job).

Referral to SATP: Yes
Patient willing to attend: Yes

6. History of Past Problems, Past Treatment: no past treatment mentioned

7. Legal History (Past & Present):

Current charge is Criminal Sexual Conduct, with his court date being 7/23 (roll call). He is willing to talk about situation that caused arrest. He states that he was trying to change pad under patient, and that patient have already ripped off her diaper, which she is known to do, and vet was positioned on her bed with knee on bed to better be able to roll her body over. Curtains and door were closed for patient's privacy, and another staff member walked in and reported that vet had his pants down to his ankles/knees. This other staff member immediately left room and called the police. Vet was able to be released from jail after paying a bond, and he has hired an attorney. The alleged victim was to be tested for what appeared to be semen on her.

Other charges from vet's background include shoplifting charge, loitering, possession of drug paraphernalia. In early 80's he got angry at wife and was arrested then..unsure of legal charge.

8. Cultural/Spiritual Beliefs:

Active with church - State Holy Temple in Orangeburg - non-denominational

9. Family of Origin/Mental Health History (include family psychiatric/substance use history)

father - 'functional alcoholic'

10. Military Service: (Branch, Combat, POW, SC/NSC, PTSD)

Branch of Service: BRANCH OF SERVICE: NAVY
Period of Service: POST-VIETNAM
Service Dates: SEP 9,1975 to APR 22,1977
MOS/Rank: 'I was a glorified janitor' - Boatswain mate
Service Discharge Type: SERVICE DISCHARGE TYPE: HONORABLE
Combat/Operational Trauma:no
Military Sexual Trauma:no

11. Income/Financial issues (source): was making $8.11/hr as CNA; has interview for unemployment (by phone) with Orangeburg DSS on 7/15/10
VA Benefits (application/eligibility):none
Social Security/SSI (status):none
Legal Guardian/Power of Attorney (Name):na
Representative Payee (Name):na

Wife makes approximately $31K with State of SC

12. Insurance: (status) unknown - wife works for State of SC

13. Employment History: (status/need for referral to VR)

30 years of restaurant experience as a cook, manager, chef. Longest he was at a job was 5 years at SC State. Primary reason he went back to school to get his CNA was because he was tired of having his paycheck completely taken by child support. He knew that if he worked for a company who's headquarters/payroll were out of state, he would not be forced to have deductions taken out of his check for child support. He considers child support unwarranted at this time b/c his children are grown. Last job was with Unihealth in Orangeburg, and he was there for 6 months before being fired.

14. Educational History and/or Needs:

HS graduate (St. Louis); also took CNA classes at Orangeburg Tech

15. Education Summary & Comments:

Vet is educated on various services that may be able to help him at this time: Voc Rehab (which he went through in order to get CNA job), and Substance Abuse Treatment program, which is at VA

16. Summary & Discharge Plan - Summarize Problems for Individual/Family Dynamics, Patient's Functioning Problems, Maladaptive Behaviors; Patient's Motivation for Change & Conditions Necessary for Change Process to Occur:

Patient very outgoing/engaging during interview process. He admits that events of being fired have caused him great stress - feels that others are talking about him, worries that this will affect his ability to be hired, and he also recognizes that legal event has caused him to drink more heavily. Vet is willing to engage in outpatient therapy for his adjustment concerns; he is already linked to a lawyer to help with his legal concerns; and he is willing to be helped by Voc Rehab and SATP. He is less enthused about AA meetings, feeling that Orangeburg is a small town and that he feels that those in AA are very judgmental

17. Patient educated about the following:

[X] Plan of Care/illness & condition
[ ] Medications
[ ] Pain Management
[ ] Tests/procedures
[ ] Basic health practices (smoking, exercise, alcohol use, diet, immunizations, etc.)
[ ] Other (specify):

Education Summary & Comments: see above

Recipient of education: [X]Patient [ ]Family/caregiver [ ]Other

Teaching method: [ ]Verbal [X]Demonstration/doing [ ]Printed material
[ ]Audiovisual

Outcome: [X]Verbalizes understanding [ ]Needs reinforcement
[ ]Able to demonstrate

Mental Health Intensive Case Management Screen: (MHICM)

1. Does the veteran have one of the following diagnoses? No

Schizophrenia or Schizoaffective disorder
Bipolar Disorder
Major Depression with psychotic features
Psychosis NOS

Shared Psychotic Disorders
Brief Psychotic Disorder

2. Has the veteran had a psychiatric hospitalization for 30 days or longer during the past year, or has the veteran had three or more psychiatric hospitalizations during the previous year? No

3. Does the veteran live within 50 miles of Dorn VAMC? Yes

4. Does the veteran have severe functional impairment? (He/She is not capable of stable self-maintenance in the community). No

If the answer to ALL FOUR questions above is YES, add Queen Flowers as additional
signer.

[ ] Patient already enrolled in the program.

/es/ MARY ROGERS
Social Worker
Signed: 07/14/2010 13:38

Receipt Acknowledged By:
07/15/2010 14:25 /es/ VERNETTA H JACOBS
ATTENDING PSYCHIATRIST
07/15/2010 07:45 /es/ RAYNIA MCGEE
MD
07/14/2010 13:55 /es/ TOM MINOR,PH.D.
CLINICAL PSYCHOLOGIST

LOCAL TITLE: MH HISTORY & PHYSICAL (FY07) - TL
STANDARD TITLE: MENTAL HEALTH H & P NOTE
DATE OF NOTE: JUL 14, 2010@10:35 ENTRY DATE: JUL 14, 2010@10:35:55
AUTHOR: MCGEE,RAYNIA EXP COSIGNER: JACOBS,VERNETTA H
URGENCY: STATUS: COMPLETED

*** MH HISTORY & PHYSICAL (FY07) - TL Has ADDENDA ***

MENTAL HEALTH ADMISSION HISTORY AND PHYSICAL

Copy from MH Attending note 7/14/10:
II: 54 YO married, unemployed, NSC male that voluntarily admitted due to report of suicidal ideations.

Exhibit 1
Complaint and
Excerpts from Answers

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	Civil Action No. 12-CP-38-845
Ralph C. Williams, Sr., and Linda Williams, Plaintiffs, vs. Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care-Orangeburg, LLC Defendants.	**COMPLAINT** *(Jury Trial Demanded)*

FILED
CLERK OF COURT
ORANGEBURG, S.C.
2012 JUN 21 PM 3:23

Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams, complaining of Defendants Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care-Orangeburg, LLC named above would allege and show unto this Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ralph C. Williams, Sr. (hereinafter referred to as "Plaintiff Ralph Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

2. Plaintiff Linda Williams (hereinafter referred to as "Plaintiff Linda Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

ATTEST: TRUE COPY

168. Defendant Johnson published the defamatory statements in her Nursing Notes to other persons employed by Defendant UniHealth. Upon information and belief, the statements were read by Defendant UniHealth employees, including Defendant Peppers and Defendant Johnson's superiors at Defendant's UniHealth facility in Orangeburg.

169. Defendant Johnson's statements in the Nursing Notes were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

170. Defendant Johnson made the statements in the Nursing Notes, individually and/or collectively, intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff was a sexually deviant and dishonest person.

171. The defamatory statements made by Defendant Johnson in her Nursing Notes, individually and/or collectively, about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

172. Defendant Johnson published the defamatory statements with actual malice.

173. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Johnson's malice is implied.

174. Defendant Johnson's statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Johnson's

Submitted this 21st day of June, 2012.

The Law Office Of Javá O. Warren

Richard W. Turner, Jr., Esq.
Attorney for Plaintiff
4919 Albemarle Rd., Ste 106
Charlotte, North Carolina 28205
S.C. State Bar No. 73593
Tel: 704/568-8439
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rwturnernc@gmail.com

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **DEFENDANT PATRICIA A. JOHNSON'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Patricia A. Johnson (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

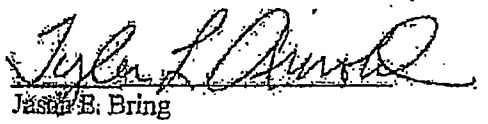
184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.



Jason E. Bring
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Tyler L. Arnold
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Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	**DEFENDANT UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant UniHealth Post-Acute Care – Orangeburg, LLC (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

RECEIVED DATE 8/6/12 BY RW

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A SEVENTEENTH DEFENSE

292. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR AN EIGHTEENTH DEFENSE

293. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.

Jason E. Bring
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tyler.arnold@agg.com

Attorney for Defendant Unihealth Post-Acute Care – Orangeburg, LLC

Atlanta, Georgia
August 2, 2012

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **DEFENDANT JOSETTER PEPPERS' ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Josette Peppers (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.

169. Defendant denies the allegations contained in Paragraph 168 of the Compaint.

170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.

171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.

172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.

173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.

174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.

175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.

176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.

177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.

178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.

179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.

182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.

183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.

184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.

185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.

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tyler.arnold@agg.com

Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

Exhibit 2
Excerpt of Defendant UPAC's Brief in Support of Summary Judgment

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **DEFENDANT UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC'S MEMORADMUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Unihealth Post-Acute Care – Orangeburg, LLC ("UPAC-Orangeburg") hereby submits its Memorandum of Law in Support of its Motion for Summary Judgment, showing the Court as follows:

I. INTRODUCTION

Plaintiffs' Complaint alleges that UPAC-Orangeburg is vicariously liable for the acts of two nurse employees, Ms. Patricia Johnson and Ms. Josette Peppers ("Johnson and Peppers"), who Plaintiffs claim intentionally made false written and oral reports that Plaintiff Ralph Williams, Sr. attempted to sexually assault a resident at a nursing home. South Carolina's Omnibus Adult Protection Act provides immunity for nurses who, in good faith, report sexual abuse, and there is a rebuttable presumption that reporting nurses act in good faith. S.C. Code Ann. § 43-35-75(A). Plaintiffs must therefore overcome the good faith presumption by showing that Johnson and Peppers intentionally and in bad faith made false reports regarding Plaintiff Ralph Williams, Sr. Even if there is sufficient evidence to rebut this statutory presumption, Plaintiffs' claims still fail because under South Carolina law, employers are not liable for the

and a resident of a facility. It is also undisputed that Johnson and Peppers were "mandated reporters" under the Act and had a duty to report to proper authorities if they had "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited." S.C. Code Ann. § 43-35-25. Johnson and Peppers are therefore immune from civil liability as long as they were reporting in good faith, which is presumed under the law. S.C. Code Ann. § 43-35-75(A). In order to prevail on their claims, Plaintiffs must overcome the Act's good faith presumption by proving that Johnson and Peppers acted in bad faith and intentionally made false reports regarding Plaintiff Ralph Williams, Sr.

B. Under the Doctrine of *Respondeat Superior*, employers are not liable for an employee's intentional acts that fall outside the scope of employment.

In Jones v. Elbert, 211 S.C. 553 (1945), the South Carolina Supreme Court held:

> Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.

Id. at 559. More specifically, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment. Id. at 301. An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business. Id. at 305; Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006).

The act of a servant done to affect some independent purpose of his own and not with reference to the service in which he is employed is not within the scope of his employment so as to render the master liable therefor. Lane, 244 S.C. at 305; see also Crittenden v. Thompson-

341 S.E.2d 385

Walker Co., Inc., 288 S.C. 112, 116 (Ct. App. 1986) (holding "if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.") Under these circumstances the servant alone is liable for the injuries inflicted. Lane, 244 S.C. at 305. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended. Id. at 306. Accordingly, actions during even a short detour from the master's business for the purpose of purely individual interests fall outside the scope of employment. Armstrong, 371 S.C. at 276.

South Carolina Appellate Courts have reviewed multiple cases wherein an employee, while on duty, abandons the employer's business for some purpose wholly disconnected with his employment. In Lane, the South Carolina Supreme Court held that an employer was not liable for injuries to a customer arising out of employee's horseplay, which involved use of a cage – approximately two feet long and a foot high, one-half of the top being covered with wire and the other half being solid, and on which was painted the words, "Snake Killer", "Danger", "Mongoose" – to play a practical joke on a customer. Lane, 244 S.C. at 303. Similarly, in Armstrong, the South Carolina Supreme Court upheld a directed verdict in favor of the employer in a case involving an assault with box cutters by two grocery store employees on a customer where "the only reasonable inference . . . was that [the employees] attacked [the customer] for their own personal reasons and not for any reason related to their employment." Id. at 276-77.

707 S.E.2d 456

In Kase v. Ebert, 392 S.C. 57, 62 (Ct. App. 2011), the Court of Appeals held that Ebert, an on-duty truck driver, was acting outside the course and scope of his employment when he assaulted Kase, a truck driver for a competitor, after Kase wrecked into Ebert's truck.[3] Finally, in

[3] Ebert even testified at his deposition that forceful action was necessary at times to protect

Hamilton v. J.D. Davis, 300 S.C. 411 (Ct. App. 1990), the Court of Appeals held that a rental property manager was not acting within the scope of his employment, even though present at the rental property to perform a job, when he engaged in a "dumb stunt" that "smeared" the renter along the side of a car. Id. at 417.

Three older South Carolina cases specifically examined the *respondeat superior* doctrine in the context of claims for defamation. Each of these cases held that the alleged defamation fell outside the scope of employment because the statements at issue were not made with any purpose to serve the employer, even though some were made during the work day while the employee was otherwise performing work. See Johnson v. Life Insurance Co. of Georgia, 227 S.C. 351 (1955) (finding insurance agent's comment to one insured about why another insured's claim was denied was made outside the scope of his employment); Bosdell v. Dixie Stores Co., 168 S.C. 520 (1933) (finding employee was not acting within the scope of his authority in making a defamatory statement); Courtney v. American Ry Express Co., 120 S.C. 511 (1922) (finding casual comment by one railroad employee to another about why an employee was "let go" fell outside the scope of employment because the employee was not "engaged in the discharge of any duty committed to him" by the employer when the allegedly defamatory comment was made).

C. **Intentional false reports of sexual assault made in bad faith do not serve a business purpose and are not within the scope of employment for a nurse in a nursing facility.**

Plaintiffs' claims against UPAC-Orangeburg are based entirely upon a *respondeat superior* theory that the employer is liable for the actions of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

---

company property. Kase, 392 S.C. at 62.

However, as explained above, Johnson and Peppers are presumed to have acted in good faith and have civil immunity from all of Plaintiffs' claims. This immunity is defeated only if Plaintiffs allege and then prove that Johnson and Peppers acted intentionally and in bad faith. Plaintiffs recognize and concede as much in each one of their causes of action in the Complaint.

- In the First Cause of Action (*Defamation (Nursing Notes) against Johnson and UPAC-Orangeburg*), Plaintiffs allege that Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they were ***not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 169 and 172 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 170 (emphasis added).)
- In the Second Cause of Action (*Defamation (Slander-Verbal Statement) against Johnson and UPAC-Orangeburg*),[4] Plaintiffs allege that Johnson's oral statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 187 and 190 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident and/or abuse upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 188 (emphasis added).)

[4] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 179.)

- In the Third Cause of Action (*Defamation (Voluntary Statement) against Johnson and UPAC-Orangeburg*),[5] Plaintiffs allege Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 204 and 207 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 205 (emphasis added).)
- In the Fourth Cause of Action (*Defamation (Voluntary Statement) against Peppers and UPAC-Orangeburg*),[6] Plaintiffs allege Peppers' written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they ***were not made in good faith***," and were "published . . . with ***actual malice***." (Complaint, ¶¶ 221 and 224 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "***intending to charge the Plaintiff Ralph Williams had committed a criminal sexual act*** upon a resident and/or abuse upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 222 (emphasis added).)
- In the Fifth Cause of Action (*Defamation (Abuse of Process) against Johnson and UPAC-Orangeburg*),[7] Plaintiffs allege Johnson's written statements that Ralph

[5] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 197.)
[6] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 214.)
[7] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim

Williams were actions "primarily ***taken for an ulterior purpose to injure Plaintiff Ralph Williams*** and to ensure the dismissal of Plaintiff Ralph Williams from his employment with Defendant [UPAC-Orangeburg]." (Complaint, ¶ 236 (emphasis added).) Plaintiffs allege Johnson was "***willful***" in making her statements that "***caused the initiation of criminal proceedings against Plaintiff Ralph Williams*** on the charges of third degree criminal sexual conduct and abuse of a vulnerable adult." (Complaint, ¶ 235 (emphasis added).)

- In the Sixth Cause of Action (*Abuse of Process against Pepper and UPAC-Orangeburg*),[8] Plaintiffs allege Peppers' statements that Ralph Williams were "***willful***" actions "with an ***ulterior purpose***" and were "***improperly aimed at the primary illegitimate or collateral effort of securing the dismissal of Plaintiff Ralph Williams*** from his employment with Defendant [UPAC-Orangeburg]." (Complaint, ¶¶ 245-247 (emphasis added).)
- In the Seventh[9] Cause of Action (*Loss of Consortium against Johnson and UPAC-Orangeburg*),[10] Plaintiff alleges Johnson "***intentionally and tortuously violated*** Plaintiff Linda Williams' right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct." (Complaint, ¶ 257 (emphasis added).)

herein." (Complaint, ¶ 231.)
[8] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 240.)
[9] Plaintiffs label this claim as Plaintiff Linda Williams' First Cause of Action.
[10] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 251.)

- In the Eighth[11] Cause of Action (*Loss of Consortium against Peppers and UPAC-Orangeburg*),[12] Plaintiff alleges Peppers "***intentionally and tortuously violated*** Plaintiff Linda Williams' right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct." (Complaint, ¶ 269 (emphasis added).)

Plaintiffs' efforts to circumvent the civil immunity provided under the Act necessitate these allegations and will also require proof that Johnson and Peppers were in fact acting intentionally and with malice. Assuming *arguendo* that all of Plaintiffs' factual allegations are true,[13] the facts show Johnson and Peppers clearly abandoned UPAC-Orangeburg's business purpose and interests to pursue strictly individual interests when they made reports that Ralph Williams attempted to sexually assault a resident. (See Id., ¶ 170 ("intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act"), ¶ 188 (same), ¶ 205 (same), ¶ 222 (same), ¶ 235 ("cause[] the initiation of criminal proceedings against Plaintiff Ralph Williams"), ¶ 245 ("ulterior purpose"), ¶ 247 ("aimed at the primary illegitimate or collateral objective"), ¶ 257 ("intentionally and tortiously"), ¶ 269 (same).) Such false reports of sexual abuse and malicious efforts to have criminal charges filed are not in furtherance of UPAC-Orangeburg's business purpose and interests and are wholly disconnected from employment as a nurse at a nursing facility. Moreover, the alleged defamatory statements which Johnson and Peppers allegedly made fall outside the scope of employment under South Carolina law. See

[11] Plaintiffs label this claim as Plaintiff Linda Williams' Second Cause of Action.
[12] Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 264.)
[13] This assumption obviously excludes Plaintiffs' legal conclusion that UPAC-Orangeburg is vicariously liable for the acts of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

supra Johnson; Bosdell; Courtney. Accordingly, Johnson and Peppers' intentional acts fall outside the scope of their employment with UPAC-Orangeburg.

V. CONCLUSION

For the reasons set forth above, UPAC-Orangeburg is entitled to judgment as a matter of law because it cannot be held liable for the alleged intentional acts of Johnson and Peppers. Accordingly, the Court should grant UPAC-Orangeburg's Motion for Summary Judgment.

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Attorney for Defendant Unihealth Post-Acute Care – Orangeburg, LLC

August 27th 2013

Exhibit 3
Excerpt of Plaintiffs' Brief in Opposition to Summary Judgment

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)
) CIVIL ACTION NO. 2012-CP-38-845

RALPH C. WILLIAMS, SR, and LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE PEPPERS and UNIHEALTH POST-ACUTE CARE-ORANGEBURG, LLC,

Defendants

MEMORANDUM OF LAW IN OPPOSITON TO DEFENDANT UNIHEALTH POST-ACUTE CARE LLC'S MOTION FOR SUMMARY JUDGMENT

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The Plaintiffs, Ralph Williams and Linda Williams, by and through counsel, respectfully submit this Memorandum of Law in Opposition to Defendant UniHealth Post-Acute Care LLC's Motion for Summary Judgment.

INTRODUCTION

Plaintiffs Ralph Williams, Sr. (*hereinafter* Mr. Williams) and Linda Williams' (*hereinafter* Mrs. Williams) Complaint alleges six counts of Defamation, Abuse of Process and Loss of Consortium against Defendants Josette Peppers (*hereinafter Peppers*), Patricia Johnson (*hereinafter Johnson*), and UniHealth (*hereinafter UniHealth*). The Abuse of Process claim only, has or will be dismissed by motion and amendment of the complaint. Plaintiffs' claims are based on written and oral defamatory statements that Plaintiff Ralph Williams attempted to sexually assault a resident at UniHealth's nursing home facility. The Plaintiffs contend that the statements were made with a reckless indifference to the Plaintiffs' rights. The Defendants are all represented by the same attorney. However, UniHealth brings its motion for summary judgment based on defenses in direct conflict with the interests of Defendants Johnson and Peppers. Specifically, UniHealth asserts that the South Carolina Omnibus Adult Protection Act codified at 43-35-5, et. seq. provides a basis for immunity in that statements were made in good faith. In the alternative, UniHealth asserts interests in conflict with the individual Defendants in asserting that those Defendants acted intentionally and allegedly were outside the scope of their employment such that UniHealth should be excluded from vicarious liability. Plaintiffs assert that the Omnibus statute relied upon by Defendants expressly states the good faith presumption is rebuttable. Accordingly, Plaintiffs offer criminal trial transcript, document evidence and deposition testimony on raising the inferenee of malice intended to rebut said presumption. Plaintiffs also assert that the individual Defendants were acting squarely within the course and scope of their employment because they were acting furtherance of the employer's interests pursuant to company policies and the defamatory statements complained of touch

Indeed, in the Complaint Plaintiffs allege several allegations of Johnson's reckless conduct (Complaint ¶ 104, 111-119) and Peppers reckless conduct (Complaint ¶ 104, 119, 138, 139). Moreover, the plaintiff's remind the Court that Defendant UniHealth is represented by the same counsel as the individual Defendant Johnson and Defendant Peppers (see signatures on back of Defendant's Answer to Plaintiff's Complaint) In light of this, despite Defendant Johnson and Defendant Peppers specifically denying any intentional conduct, same is now being asserted by the same counsel on behalf of counsel's corporate client UniHealth in an attempt to extract the corporation from responsibility of its employees discharging their job duties in this matter. (¶ 171 Defendant Johnson's Answer to Plaintiff's Complaint and ¶171 Defendant Pepper's Answer to Plaintiff's Complaint.)

Furthermore, in the Complaint Plaintiffs specifically allege that Johnson and Peppers "acted in a manner to rebut the presumption of good faith afforded by the Omnibus Adult Protection Act with numerous allegations that allege that each of the actionable statements "were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege." (Complaint ¶¶ 169, 172, 187, 190, 204, 207, 221, 224). Defendant's statements that Plaintiffs' claims allege that Johnson and Peppers acted with an "ulterior purpose" when published statements that asserted that R. Williams was in the process of committing a sexual act. Note that the only paragraphs that actually reference "willful" or "intentionally" are as follows: (Complaint ¶¶ 235, 246, 257, 269) which fall under the abuse of process and loss of consortium claims. The abuse of process claims have, or are being dismissed, leaving defamation and consortium claims for trial. Motion to remove the word "intentionally" from the consortium cause is pending.

With regard to Plaintiff's defamation and consortium causes of action, the Defendant UniHealth cites to the Plaintiff's complaint, specifically (Complaint, ¶¶ 169 and 172, 187, 190, 204, 207, 221, 224), indicating that the statements "were not subject to conditional or qualified privilege because they were not made in good faith," and "published . . . with actual malice." However, in quoting the Plaintiff's

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December 30 2013
Greenville, South Carolina

SUMMARY JUDGEMENT EXHIBITS

1. South Carolina Statutes

S.C. Code Ann. §42-35-10 p. 5
S.C. Code Ann. §43-35-75(A) p. 5
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2. Minnesota Vulnerable Adults Act

MINN. STAT. § 626.556 (2013)

3. Minnesota Supreme Court

J.E.B.v Danks, 785 N.W.2d 741, (2010)

4. Affidavits

Ralph Williams Affidavit
Linda Williams Affidavit

5. Transcript Excerpts

Ralph Williams Criminal Trial Transcript

Ralph Williams Deposition Transcript

Linda Williams Deposition Transcript

6. UniHealth Policies/Job Descriptions/Nursing Perenial Care

Bates Stamp Nos. UPAC-ORANGEBURG- (Job Description)-000002, 000008

Exhibit 4
Excerpt of Defendants' Motion in Limine

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR., and LINDA WILLIAMS,	)	
	)	**DEFENDANTS' MOTION IN LIMINE**
Plaintiffs,	)	
	)	
v.	)	
	)	
PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC,	)	
	)	
Defendants.	)	

Defendants Patricia A. Johnson, Josette Davis, and UniHealth Post-Acute Care – Orangeburg, LLC ("Defendant UPAC-Orangeburg" or "Facility") (collectively referred to as "Defendants") hereby file these Motions in Limine and Citations in Support Thereof as follows:

I. MOTIONS IN LIMINE

Defendants move this Court *in limine* for an Order to exclude or limit, as specified below, the following items:

1. Any reference, suggestion, evidence or testimony relating to the jury's verdict of not guilty in the matter of State of South Carolina v. Williams, Orangeburg County Court of General Sessions, Case Nos. 2010-GS-38-1389 and -1390);

2. Any reference, suggestion, evidence or testimony regarding the written counseling statements (and subject matter therein) from Johnson and Pepper's employment files.

3. Any reference, suggestion, evidence or testimony from Debra Morehead regarding the estimated cost of Plaintiff Ralph Williams's stay at the Dorn VA Medical Center;

4. Any reference, suggestion, evidence or testimony relating to DNA evidence from Lilly Smalls, an expert that Plaintiffs did not disclose;

interrogatory, (4) the importance of the witness's testimony, and (5) the degree of surprise to the other party. Id.

As explained above, Plaintiffs never identified Lilly Smalls as an expert during the course of discovery in this case. The only expert the Plaintiffs ever identified was Debra Morehead. The Court should prevent Plaintiffs from identifying someone under the cloak of a "lay witness" in the Pretrial Brief (*or a person with information regarding the facts of the case in discovery responses*) and then attempting to introduce them as an expert witness at the time of trial. Any testimony regarding DNA evidence is highly technical and requires an expert, but the Plaintiffs never identified an expert and lack any explanation for their failure to do the same. Furthermore, the evidence collection, review and analysis by the State and its employees, who took over the scene and investigation after the nurses reported the incident, are not relevant to this defamation case. There is no allegation by any of the Defendants that Plaintiff Ralph Williams had sex with the disabled resident, and there is no issue or question as to the identity of the person who was in Room 39 and on the bed with resident in bed A on the night of June 21, 2010 – it was Plaintiff Ralph Williams. Regarding the factual issue of whether or not Mr. Williams's pants were down and naked butt exposed, the DNA evidence is irrelevant. In summary, Plaintiffs failed to properly identify Lilly Small as a DNA expert and the DNA evidence is not relevant to the issues in this defamation case; and therefore, the Court should prevent Plaintiffs from introducing testimony from Lilly Small.

F. The Court should preclude any reference, suggestion, evidence or testimony relating to legal arguments made by Counsel on behalf of Defendant UPAC-Orangeburg as to whether South Carolina law permits Plaintiffs to recover under a *respondeat superior* theory against the Facility in this action.

Defendants also anticipate that Plaintiff may attempt to present arguments, evidence, or testimony at trial relating to legal arguments made by Counsel on behalf of Defendant UPAC-

Orangeburg as to whether South Carolina law permits Plaintiffs to recover under a *respondeat superior* theory against the Facility in this action. More specifically, Plaintiffs may attempt to present evidence or testimony that Defendant UPAC-Orangeburg maintains or takes the position that Defendants Johnson and Davis either acted in good faith or acted intentionally and in bad faith when the two nurses made their written and oral statements to authorities on June 21, 2010. However, Plaintiffs have misconstrued and twisted the legal arguments made by counsel for UPAC-Orangeburg regarding the applicable law in South Carolina for this case. The brief in support of Defendant UPAC-Orangeburg's Motion for Summary Judgment provides legal analysis and arguments regarding *respondeat superior* case law in South Carolina and makes certain assumptions *arguendo* regarding what Plaintiffs must prove in order to recover against the Facility. Those arguments and analysis in support thereof do not concede, suggest or intimate that Defendant UPAC-Orangeburg asserts or takes the position that Defendants Johnson and Davis acted intentionally, recklessly or with malice. Any evidence regarding briefing and arguments made by attorneys on issues of law should not be presented to the jury because such evidence is highly prejudicial, irrelevant, not probative, and will confuse the jury. Accordingly, the Court should not permit any reference, suggestion, evidence or testimony relating to legal arguments made by Counsel on behalf of Defendant UPAC-Orangeburg as to whether South Carolina law permits Plaintiffs to recover under a respondeat superior theory against the Facility in this case.

G. The Court should preclude any reference, suggestion, evidence or testimony relating to Robert Smith; Ferguson, Missouri; or the tragedy and events ongoing in that part of the country.

Defendants anticipate that Plaintiffs may attempt to present evidence or testimony relating to Robert Smith; Ferguson, Missouri; or the tragedy and events ongoing in that part of

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court grant their Motions in Limine and issue an Order as reflected above.

This the 27th day of August, 2014.

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Exhibit 5
Request to Charge # 12

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **DEFENDANTS' REQUESTS TO CHARGE**

COME NOW Defendants Patricia A. Johnson, Josette Peppers, and Unihealth Post-Acute Care – Orangeburg, LLC ("Defendants") and hereby respectfully submits the attached Requests to Charge for this Court's consideration.

This the ____ day of September, 2014.

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Counsel for Defendants

6754106v1

DEFENDANTS' REQUEST TO CHARGE NO. 12
(Defamation –Employer's Potential Liability)

Under the doctrine of respondeat superior doctrine, an employer may be held liable for defamatory statements made by an employee if the employee was acting within the scope of his or her employment. The liability of an employer for defamatory statement made by an employee arises only if the employee is acting about the employer's business, within the scope of his employment. The primary test to determine an employer's liability for his employee's act is whether the employee committed the act within the scope and purpose of the employer's business, judged by the character of the employment.

If an employee is upon his or her own interest and purpose and therefore acting outside of his or her employment, then the employer is not liable for injuries resulting from the servant's actions. Thus, if an employee steps aside from the employer's business for some purpose wholly disconnected with his or her employment and for the employee's independent interest or purpose, the relationship of employer and employee is temporarily suspended, no matter how short the time. In that case, the employee alone is liable for injuries resulting from his or her actions. An employee's act to affect some independent purpose of his own, without reference to the service in which he or she is employed, is not within the scope of his employment in the sense of rendering the employer liable for such act.

For the employer to be liable, it is generally necessary that the injury arise out of activities within the scope of employment. The conduct of a servant is within the scope of employment if:

(1) it is the kind of employment he or she is employed to perform;

(2) it occurs substantially within the authorized time and space limits;

(3) it is actuated at least in part by a purpose to serve the master; and

(4) if force is intentionally used by the employee against another, and the use of force is not unexpected by the employer.

See Standard Oil Co. v. Anderson, 212 U.S. 215, 29 S.Ct. 252, 53 L.Ed. 480 (1909); *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 639 S.E.2d 50 (2006); *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); Restatement (Second) of Agency § 247 (1965)(master is subject to liability for defamatory statements made by servant acting within scope of his employment, or, as to those hearing or reading the statement, within his apparent authority); 50 Am. Jur. 2d *Libel and Slander* § 240 (1995)(defamatory communications made by agent do not bind principal as a publication unless agent, in making communications, was acting within scope of his agency or employment).

Exhibit 6
Proposed Verdict Form

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG RALPH C. WILLIAMS, SR., and LINDA WILLIAMS, Plaintiffs, v. PATRICIA A. JOHNSON, JOSETTE PEPPERS, and UNIHEALTH POST-ACUTE CARE – ORANGEBURG, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2012-CP-38-845 **VERDICT FORM**

1. South Carolina law states that caregivers who report abuse, neglect, exploitation, or suspected sexual assault are presumed to have acted in good faith. Do you find that the Plaintiffs overcame that presumption by proving by a preponderance of the evidence that Patricia Johnson did not act in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

_____ YES

_____ NO

2. South Carolina law states that caregivers who report abuse, neglect, exploitation, or suspected sexual assault are presumed to have acted in good faith. Do you find that the Plaintiffs overcame that presumption by proving by a preponderance of the evidence that Josette Davis did not act in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

_____ YES

_____ NO

If your answers to Question Nos. 1 and 2 are NO, STOP, DO NOT DELIBERATE FURTHER, AND DO NOT ANSWER ANY ADDITIONAL QUESTIONS. GO TO THE END AND SIGN THE VERDICT FORM.

If your answer to Question Nos. 1 or 2 is YES, PROCEED TO QUESTIONS 3-6.

3. If your answer to Question No. 1 is YES, then answer the following question: Do you find that Patricia Johnson acted for her own personal reasons rather than within her scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

_____ YES

_____ NO

4. If your answer to Question No. 2 is YES, then answer the following question: Do you find that Josette Davis acted for her own personal reasons rather than within her scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

_____ YES

_____ NO

5. Please state the total amount of actual damages, if any, sustained by Plaintiff Ralph Williams, Sr.

$_____

6. Please state the total amount of actual damages, if any, sustained by Plaintiff Linda Williams.

$_____

7. If you entered an amount in response to Question Number 5 and/or 6, do you find by clear and convincing evidence that any harm done to the Plaintiff was the result of the willful, wanton, or reckless conduct of:

a. Patricia Johnson: _____ YES _____ NO

b. Josette Davis: _____ YES _____ NO

c. Unihealth Post-Acute Care – Orangeburg, LLC _____ YES _____ NO

8. If you responded YES to question 7a, 7b, or 7c, enter the amount of punitive damages, if any, that should be imposed to punish one ore more of the defendants.

a. Patricia Johnson: _____

b. Josette Davis: _____

c. Unihealth Post-Acute Care – Orangeburg, LLC _____

_____
FOREPERSON

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

Ralph C. Williams, Sr., and Linda Williams,. . . . . Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC. . . . . Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. Note, however, four exhibits designated by Appellants for inclusion could not be located by the circuit court or the clerk's office after an exhaustive search. Those four exhibits have not been included. These exhibits are: Exhibit 4A (Booking Report), Exhibit 6 (Photos), Exhibit 14B (WIS Website Screen Shot), Exhibit 19 (OC Tech Letter).

Respectfully Submitted,

April 3, 2018

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Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

Ralph C. Williams, Sr., and Linda Williams,. . . . . Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC. . . . . Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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Trial Transcript excerpt. 1

Plaintiff's Trial Exhibits

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Exhibit 19 - OC Tech Letter. 13

Certificate of Counsel. 14

to be changed or not. Then they go in and they go back to their cart, supposed to be outside the room, get the necessary supplies that they need to change them. Then they walk back in the room. Mr. Williams, when he goes back into the hallway he said he sees Patricia Johnson and nurses, others, congregating at the nurses station. He walks back in the room -- to get the necessary supplies to change her.

Now, there's evidence Ms. Johnson, as a nurse, she is his boss, his supervisor. Doesn't like to be instructed by her superior, an inferior person on what to do.

Now, that's 2:50 a.m. in the morning. At 3:25 a.m., as it states in this exhibit, the police department is notified. So from 2:50 to 3:25 a.m. they get Mr. Williams and they tell him to go outside, and he had somebody to stay with him. So he didn't take off running. You would think when somebody sees somebody molesting a person they are trying to get away, doing something, but he's supposed to have his pants to his ankles, climbing on the bed and raping this person.

Now, this is the police station and there's a -- pay close attention, there's a very important deliberate statement that was inserted into this police report. I Patricia -- it's a voluntary statement, not under arrest. I Patricia Johnson am not under arrest, nor am I being detained for any criminal offenses concerning the events I'm about to make -- without being accused or questioned about the facts I am about to

Exhibit 4A
Booking Report

BOOKING REPORT

AGENCY I.D.	DATE/TIME OF ARREST	CASE NUMBER
SC0380100	6-21-10/0400	I.O.-0.1.4.1.4.

PERSONAL DATA

DEFENDANT NAME (LAST, FIRST, MIDDLE)							RACE	SEX	DATE OF BIRTH	DOCKET NUMBER
WILLIAMS, RALPH CLAYTON							B	M	[redacted]-56	
AGE	ETH.	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER	VISIBLE SCARS AND MARKS		NCIC	I.D. NUMBER
54	N	5-6	165	BLK	BRO	[redacted]	N/A			
ADDRESS (INCLUDE APT. NUMBER)				CITY		STATE	ZIP CODE	RESIDENT (Y/N)	PHONE NUMBER	
[redacted]				ORANGEBURG		SC	[redacted]		[redacted]	
ALIAS			PLACE OF BIRTH			DRIVER'S LICENSE NUMBER			STATE	
N/A			ST LOUIS, MO			[redacted]			SC	
EMPLOYER OR OCCUPATION			NEXT OF KIN			ADDRESS (CITY AND STATE)				
UNIHEALTH			WILLIAMS, LINDA			SAME				
BOOKING OFFICER'S NAME			NUMBER	ARRESTING OFFICER		AGENCY	NUMBER			
WARRINGTON-R			906	WARRINGTON-R		OPPS	906			

ARRESTEE ARMED ☐ YES ☑ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO ☑ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFFERED TO OTHER AUTHORITY *J—This Jurisdiction, S—State, O—Out of State, U—Unknown

ADDITIONAL CASE NUMBERS

BOND / CHARGES

IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C

CHARGE I.D.	A	B	C
CHARGE	ASSAULT W/ INTENT TO KILL (ASC		
STATUTE	16-3-656		
BOND AMOUNT	G/S		
BOND TYPE	G/S		
REL. DATE			
DISPOSITION			

Exhibit 6
Photos

762

5

R.WillimasSupplemental000579

763

6

R.WillimasSupplemental000575

764

7

R.WillimasSupplemental000576


765



Exhibit 14B
WIS Website Screen Shot

« Back
SITE SEARCH WEB SEARCH BY Google Go

Assisted living employee charged with attempted rape at facility

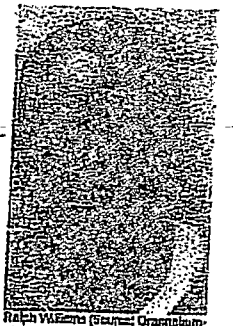
Recommend Be the first of your friends to recommend this.

Posted: Jan 22, 2010 1:01 PM EDT
Updated: Jan 27, 2010 11:50 AM EDT

ORANGEBURG, SC (WIS) - An employee of an assisted living facility in Orangeburg has been charged with trying to rape a mentally handicapped resident.

An Orangeburg city judge set bond at $25,000 on charges of criminal sexual assault for 64-year-old Ralph C. Williams, Sr. of Orangeburg.

Capt. Mike Adams of the Orangeburg Department of Public Safety said officials at UniHealth on Whitman Street have cooperated with law enforcement.


Ralph Williams (Source: Orangeburg-Calhoun Regional Detention Center)

When officers arrived, they took Williams into custody.

An employee told investigators that she could not find Williams. According to the police report, around 3 a.m. she went into the room of a 42-year-old female patient and saw Williams "on the bed that (the patient) was in, she saw Mr. Williams climbing on top of (the patient) as she lay on her back in her bed."

According to the report, Williams has his "scrub pants down and appeared to be starting to have sex with (the patient)."

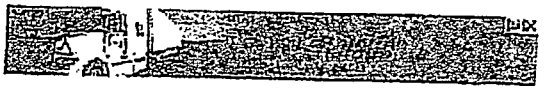
When she asked Williams what he was doing, he told her to shut the door.

She found another employee and went back to the room. The two employees found Williams straightening out his clothes.

Investigators tried communicating with the mentally and physically handicapped victim, but did not get very detailed information. When asked how old she was, the victim said, "Five."

The investigation is ongoing.

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Exhibit 19
OC Tech Letter

OCtech

Orangeburg-Calhoun
Technical College

January 26, 2019

To whom it may concern,

Ralph Williams successfully completed the Certified Nursing Assistant curriculum at Orangeburg-Calhoun Technical College in the 2009 fall term. Mr. Williams was a dedicated student who worked hard to earn the credentials of Certified Nursing Assistant.

I feel that Mr. Williams will be a valuable asset to the healthcare field and a worthwhile addition to any facility that enlists hi employment. Please feel free to contact me at (803)535-1237.

Respectfully,

Sandra Moore
Career Training & Development Director

3250 St. Matthews Road ¤ Orangeburg, SC 29118-0299 ¤ (803) 536-0311 ¤ 800-813-6519 ¤ FAX (803) 535-1300 ¤ www.octech.edu

President:
Anne S. Crank, Ph.D.

Commission:
Larry W. Patrick, Chairman ¤ Markay R. Harris ¤ Leroy Marant ¤ G. Herbert Pauling ¤ David K. Rickenbaker ¤ John K. Shuler ¤ Margaret Felder Wilson, Ph.D.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

Ralph C. Williams, Sr., and Linda Williams,. . . . . Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC. . . . . Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

April 30 2018

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Attorney for Appellants

THE STATE OF SOUTH CAROLINA
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BRIEF OF APPELLANTS

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court judge abuse his discretion in granting the Defendants a new trial under the Thirteenth Juror Doctrine because the decision is controlled by an error of law?

II. Did the circuit court judge err in overruling Plaintiff's objection to the verdict form and in denying Plaintiff's motions for directed verdict and for JNOV as to the issue of whether the individual defendant nurses were acting within the course and scope of their employment?

III. Did the circuit court judge err in permitting the Defendants to present an alleged joint defense when the employer Defendant sought to relieve its liability by deflecting fault upon its own employees, who were also Defendants, by arguing these employees were of acting outside the scope of their employment?

STATEMENT OF THE CASE

On June 21, 2012, Mr. Williams (Plaintiff) and his wife filed an action against Plaintiff's former employer, UniHealth Post-Acute Care-Orangeburg, LLC (UniHealth) and two of its nurses/employees, Patricia A. Johnson and Josette Peppers. Plaintiff asserted claims against the nurses for defamation and abuse of process, and against UniHealth under a theory of respondeat superior. Mrs. Williams asserted a claim for loss of consortium.

On August 2, 2012, the same law firm filed separate but nearly identical answers on behalf of each defendant. Each answer denied that the nurses were acting within the course and scope of their employment with UniHealth or that UniHealth had *respondeat superior* liability. (R.pp.14-43, ¶¶ 165, 166, 182, 183, 200, 201, 217, 218, 234, 235, 243, 244, 254, 255, 268, 269; R.pp.44-73, ¶¶ 165, 166, 182, 183, 200, 201, 217, 218, 234, 235, 243, 244, 254, 255, 268, 269; R.pp.74-103, ¶¶ 165, 166, 182, 183, 200, 201, 217, 218, 234, 235, 243, 244, 254, 255, 268, 269). UniHealth also separately alleged the nurses' actions were "not in furtherance of [UniHealth's] business." (R.p.42, ¶ 285). That defense, however, was not included in the answers filed on behalf of Nurse Johnson or Nurse Peppers.

On August 27, 2013, UniHealth moved for summary judgment. UniHealth argued in part that "employers are not liable for the intentional acts of their employees which fall outside the scope of employment." (R.pp. 104-105, 109-116). On January 6, 2014, the circuit court denied UniHealth's motion for summary judgment on the basis that triable issues of fact existed as to (1) whether the Plaintiffs had overcome the rebuttable presumption of good faith under the Omnibus Adult Protection Act and (2) whether the nurses acted outside the scope of their employment with UniHealth. The court also entered a scheduling order. On January 13, 2014, Plaintiff filed

an amended complaint.

The case was tried from September 4 through September 8, 2014. Each side moved for directed verdict at the close of all of the evidence. Plaintiff sought a directed verdict as to UniHealth's argument that the nurses acted outside the scope of their employment so as to relieve UniHealth of any liability. UniHealth moved for directed verdict as to all aspects of the case. The trial court denied both motions.

The jury returned verdicts finding the nurses did not act in good faith when they reported suspicions that Plaintiff had abused a patient. The jury also found both nurses acted outside the scope of their employment when they made the reports regarding Plaintiff. The jury awarded Plaintiff $102,500 actual damages and awarded Mrs. Williams $0 on her consortium claim.

The jury next found by clear and convincing evidence that each defendant, including UniHealth, engaged in willful, wanton or reckless conduct in harming Plaintiff. The jury then awarded punitive damages as follows: $200,000 against Nurse Johnson; $97,000 against Nurse Davis (Peppers); and $600,000 against UniHealth.

All defendants filed a joint motion for JNOV or, alternatively, for a new trial absolute. Defendants contended alternatively the trial court should grant a new trial under the "thirteenth juror" doctrine. Defendants also filed a joint motion to reduce the amount of the punitive damages award.

UniHealth filed a separate motion for JNOV or new trial "consistent with special interrogatory answers." UniHealth asserted that the jury specifically found that Nurse Johnson and Nurse Davis (formerly Peppers) did not act in good faith or in the course and scope of their employment so that UniHealth should be exonerated as a matter of law. Again, the same law firm

represented all defendants throughout the proceedings.

Plaintiff moved for JNOV as to the scope of employment questions. Plaintiff also raised the issue of the conflict of interest of the attorneys representing all defendants as a basis to preclude UniHealth from arguing the nurses acted outside the scope of their employment.

On January 14, 2016, the trial judge entered an order granting Defendants' motion for new trial under the Thirteenth Juror Doctrine. The trial judge gave as a reason that the facts did not justify the verdict in light of the "good faith" provisions under the South Carolina Omnibus Adult Protection Act. The judge ruled the remaining post-trial motions were dismissed as moot.

Plaintiff received written notice of the entry of the order on January 25, 2016. On February 2, 2016, Plaintiff filed a motion for reconsideration and to alter or amend the judgment pursuant to Rule 59, SCRCP, contending the order was controlled by an error of law such that the trial judge abused his discretion in granting the Defendants' motion. Plaintiff also requested a ruling on each of his post-trial motions.

On March 16, 2016, Defendants jointly filed a return to Plaintiff's motion. The return essentially mirrored the order the trial judge entered.

On April 14, 2016, Plaintiff filed a supplemental brief in support of his Rule 59 motion. On August 1, 2016, Defendants filed a response to the supplemental brief, requesting the judge strike the supplemental brief and arguing Plaintiff's contentions did not have merit. On August 11, 2016, Plaintiff filed a response to these assertions.

On March 10, 2017, the trial judge entered an order denying Plaintiff's Rule 59 motion. The judge stated he was "concerned that the jury improperly handled the issue of the Defendant [nurses'] immunity under the South Carolina Omnibus Adult Protection Act. See S.C. Code Ann.

§§ 43-35-25(A) & (G)." (R.p.13).

Plaintiff thereafter appealed.

FACTS

The trial court granted Defendants' motion for a new trial under the Thirteenth Juror Doctrine. The trial judge gave as the reason that the facts did not justify the verdict in light of the "good faith" provisions under the South Carolina Omnibus Adult Protection Act. In denying Plaintiff's motion for reconsideration the judge stated he was "concerned that the jury improperly handled the issue of the Defendant [nurses'] immunity under the South Carolina Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43-35-25(A) & (G)." These statements demonstrate the judge's belief that "good faith" under the Act was not an issue for the jury because there was no evidence to overcome the permissive presumption under the Act. The record, however, contains evidence which permitted the jury to find a lack of good faith so as to overcome the presumption under the Act so that the nurses did not enjoy qualified immunity. The following testimony was presented at trial.

Defendant Patricia Johnson testified she has been employed as a licensed practical nurse (LPN) with UniHealth since 2005. (R. p. 272, l. 24 - p. 273, l. 5; p. 298, ll. 1-5). She worked at a nurse's station on the "rehab hall." (R. p. 274, ll. 10-20; p. 666).

Plaintiff was a Certified Nurse's Assistant (CNA). (R. p. 331, ll. 7-8; p. 341, ll. 11-12). A CNA is required to answer the call light and make rounds every two hours. (R. p. 299, ll. 20-21). Rounds means the CNA checks on patients, turns and repositions the patients, changes their diapers, and attends to basic patient needs. (R. p. 299, ll. 20-23; p. 342, ll. 11-17).

On September 20, 2010, Ms. Johnson was working with Plaintiff, Pat Bruce, Alicia and Brady. (R. p. 275, ll. 11-15; p. 276, ll. 2-4; p. 691). Plaintiff was assigned to rooms 39 through 64, although some of them were empty. (R. p. 276, ll. 7-15; p. 277, ll. 2-9).

Ms. Johnson identified photographs of the patient's room and her bed. (R. p. 278, l. 17 - p. 279, l. 2). The room has two separate alarms including a panic button. (R. p. 284, ll. 13-15; p. 327, l. 7 - p. 328, l. 2).

Ms. Johnson agreed that the first item on the perineal policy stated "provide for privacy." (R. p. 281, 5-14; p. 669). The policy added "perineal care is given during the daily bath and after voiding or bowel movement." (R. p. 281, ll. 15-18). The procedure required the employee to (1) wash hands, (2) assemble necessary equipment (kept on the cart), (3) identify yourself before entering the room and explain to the patient what you are doing, and (4) provide privacy by closing the door to the room and pulling the cubicle curtain all the way around the bed. (R. p. 281, l. 19 - p. 282, l. 24). The policy also spelled out how to clean a female patient. (R. p. 332, ll. 11-20). She agreed that Plaintiff had a right to be where he was in the room, and while Plaintiff was in the room he was supposed to have the door closed and provide privacy. (R. p. 283, ll. 6-18; p. 333, ll. 4-6).

Around 3:00 a.m. on June 21, 2010, Ms. Johnson heard a bed alarm and found a resident in Room 50 who needed assistance, including the need to be changed. (R. p. 300, ll. 3-9; p. 301, ll. 5-19; p. 334, ll. 2-3). The patient was soiled and Ms. Johnson began looking for Plaintiff to take care of this. (R. p. 300, ll. 8-10; p. 301, ll. 20-22).

Plaintiff's CNA cart was outside of Room 39A on the night of the alleged incident. (R. p. 279, ll. 6-14; p. 300, ll. 12-14; p. 302, ll. 14-20). There were two residents in the room. (R. p. 302, ll. 21-25). The other resident was a dementia patient. (R. p. 303, ll. 1-5; p. 315, ll. 18-21; p. 344, ll. 12-19). Plaintiff regularly cared for the patients in Room 39A. (R. p. 303, ll. 11-13).

Ms. Johnson knocked on the door and pushed the door open. (R. p. 300, ll. 14-15). Ms.

Johnson stated that when she walked into the room, the lights were off and the curtains were pulled mostly around the bed, but she could still see Plaintiff. (R. p. 284, ll. 4-7, ll. 18-19; p. 295, ll. 2-4; p. 306, ll. 5-7; p. 326, ll. 4-10). She stated Plaintiff was climbing on top of the patient and his pants were down. (R. p. 300, ll. 15-16; p. 304, ll. 1-2). Plaintiff asked her to "please shut the door." (R. p. 285, l. 13; p. 293, ll. 7-10). Ms. Johnson claimed the resident's breast was exposed. (R. p. 290, ll. 20-22; p. 330, ll. 3-5; p. 334, ll. 4-5). Ms. Johnson claimed Plaintiff "froze." (R. p. 293, ll. 2-3; p. 297, ll. 9-10; p. 306, ll. 24-25; p. 307, ll. 6-8; p. 311, ll. 8-9). He did not ask her for help with the resident. (R. p. 293, ll. 4-5; p. 300, ll. 17-18; p. 306, ll. 14-16). She asked him what he was doing and he yelled and told her to please shut the door. (R. p. 301, ll. 2-4; p. 306, ll. 13-14). The resident was lying on her back and Ms. Johnson claimed the resident's gown was pushed up over her breasts so that her breast was exposed. (R. p. 304, ll. 17-23). Ms. Johnson did not think the resident knew what was happening. (R. p. 304, ll. 19-20; p. 315, l. 25 - p. 316, l. 5). Ms. Johnson claimed she had no doubt that Plaintiff would have raped the patient if Ms. Johnson had not walked into the room. (R. p. 284, l. 22 - p. 285, l. 1; p. 307, ll. 11-15).

Ms. Johnson did not pull the room's alarm. (R. p. 284, ll. 16-17; p. 310, ll. 5-6). Had she done so a light would flash outside the door and all employees in the facility would have been required to respond. (R. p. 297, ll. 16-23). Instead, she left the room and went down the hallway to get a witness. (R. p. 285, ll. 10-16; p. 291, ll. 13-19). She saw Defendant Josette Peppers. (R. p. 285, ll. 15-19, 24-25; p. 307, ll. 1-5; p. 309, ll. 1-12; p. 311, ll. 17-18). Ms. Johnson did not yell for Ms. Peppers. (R. p. 285, ll. 10-23; p. 310, ll. 3-4). She claimed she did not tell Ms. Peppers that Plaintiff was having sex with the resident. (R. p. 291, ll. 9-12). Later, however, she testified she said to her to hurry and come on because Plaintiff was trying to have sex with the

resident. (R. p. 300, ll. 20-21; p. 308, ll. 11-13; p. 311, ll. 20-21).

Ms. Johnson and Ms. Peppers then went back into the room. (R. p. 291, ll. 20-25; p. 300, ll. 22-24; p. 313, ll. 1-4). She claimed Plaintiff was fixing his pants and he sat down in the chair and put his head down. (R. p. 292, ll. 3-10; p. 300, ll. 23-24; p. 308, ll. 5-6; p. 314, ll. 5-6; p. 315, ll. 14-15). Plaintiff did not run but waited until the police came. (R. p. 292, ll. 11-14; p. 329, ll. 17-22). Ms. Peppers asked Plaintiff to leave the room. (R. p. 316, ll. 11-14).

Ms. Johnson did not call the police but Ms. Peppers did. (R. p. 278, ll. 12-16; p. 317, ll. 11-13). The police came and Ms. Johnson made a statement. (R. p. 286, ll. 1-3; p. 305, ll. 15-17; p. 668). Ms. Johnson stated that Plaintiff's pants were down and he was climbing on top of the resident. (R. p. 296, ll. 4-5). In that statement she stated "there is no doubt in my mind if I had not walked in the room he would have had sex with resident." (R. p. 286, ll. 8-11; p. 294, ll. 15-16; p. 325, ll. 21-24).

Ms. Johnson agreed she wrote a statement alleging Plaintiff sexually assaulted a resident in Room 39A. (R. p. 277, l. 10 - p. 278, l. 15). The statement read as follows:

> This nurse making rounds and looking for CNA Ralph Williams to check on another resident and I checked all the rooms on the back hall and couldn't find him. This nurse then started checking the rooms on the middle hall and when I walked into Ms. Mayes room I see CNA Ralph Williams with his pants down climbing up on the resident. I stated, what are you doing. CNA Ralph Williams stated, please shut the door. At this point, I went to get the other nurse, Josette Peppers to witness. When we walked back in the room he was fixing up his clothes and the room was dark and the covers was messed up on the bed. And I got at 3:00 a.m. manager notified and at 3:25 police department notified. At 4:00 a.m. responsible party, Bertha Tyler, sister, was notified.

(R. p. 278, l. 24 - p. 279, l. 11; p. 280, ll. 20-23; p. 667).

Ms. Johnson claimed she did not change the resident before the police arrived. (R. p. 287,

ll. 2-4). She agreed that in a prior deposition she testified she had changed the resident's diaper. (R. p. 288, ll. 1-4). She explained that they did not change the resident until the police came to the facility. (R. p. 288, ll. 12-16; p. 289, ll. 17-22; p. 318, ll. 2-5; p. 319, ll. 2-12; p. 320, ll. 15-17; p. 321, ll. 1-6).

Ms. Johnson agreed she did not include anything in her statement to the police that the resident's breasts were exposed or that she had seen Plaintiff's "naked butt." (R. p. 290, l. 23 - p. 291, l. 8; p. 295, ll. 11-15; p. 296, ll. 22-25; p. 305, ll. 8-14). She also did not include in the statement that she had knocked on the door. (R. p. 294, ll. 6-11).

Ms. Johnson was asked if she had legal obligations regarding reporting abuse or suspected abuse and she pointed to the Act. (R. p. 324, ll. 2-7). She stated this required her to report even a suspicion. (R. p. 324, ll. 11-13). If she failed to report she could go to jail, be fined lose her nursing certificate, and be fired. (R. p. 324, l. 14 - p. 325, l. 9).

Ms. Johnson stated that she suspected abuse was occurring when she saw Plaintiff on the resident's bed. (R. p. 325, ll. 10-12). That is why she reported it. (R. p. 325, ll. 13-14). She denied she made up the allegations so as to get Plaintiff in trouble. (R. p. 325, ll. 15-20).

Defendant Josette Peppers[1] was employed by UniHealth as an LPN. (R. p. 335, l. 24 - p. 336, l. 2). She was working on June 21, 2010. (R. p. 336, ll. 9-10). She was headed to the snack machine in the break room when Ms. Johnson rushed up to her and said to come on because Plaintiff was in the resident's room with his pants down, and she said something about sex. (R. p. 337, ll. 8-24; p. 338, ll. 5-10; p. 343, l. 12 - p. 344, l. 7; p. 344, l. 23 - p. 345, l. 23; p. 355, ll. 15-

[1] Ms. Peppers was married after the case began and now has the surname "Davis." (R. p. 335, ll. 18-23; p. 340, ll. 5-10). Plaintiff refers to her in this brief as "Peppers" for consistency with the pleadings and exhibits.

18). She agreed that in earlier testimony she had stated that Ms. Johnson had told her Plaintiff was having sex with the resident. (R. p. 339, ll. 16-21; p. 356, l. 22 - p. 357, l. 3; p. 358, ll. 4-6). Ms. Peppers rushed into the room and saw Plaintiff adjusting his pants. (R. p. 346, l. 2 - p. 347, l. 22). Ms. Peppers told him to leave the room. (R. p. 348, ll. 3-4; p. 359, ll. 12-13). Plaintiff did not protest or ask why he had to leave the room. (R. p. 348, ll. 5-8). She claimed Ms. Johnson stopped Plaintiff from having sex with the resident. (R. p. 360, ll. 20-21; p. 361, ll. 7-9). She agreed that based upon what Ms. Johnson said to her in the hallway she "expected to see something happen" when they went back into the room. (R. p. 362, ll. 10-16).

Ms. Peppers contacted the Director of Nursing (DON) who told her to call the police. (R. p. 348, l. 23 - p. 349, l. 14; p. 358, l. 24 - p. 359, l. 3; p. 359, ll. 14-21). Ms. Peppers called the police immediately. (R. p. 349, ll. 18-22). She told the police they suspected abuse and needed someone there. (R. p. 349, ll. 23-25). Ms. Peppers also gave the police a written statement. (R. p. 350, ll. 16-17). She claimed she had nothing against Plaintiff that would cause her to lie. (R. p. 351, ll. 2-4). Ms. Peppers never heard of any rift between Plaintiff and Ms. Johnson. (R. p. 351, l. 25 - p. 352, l. 7).

Ms. Peppers stated that she had an obligation to report suspected abuse and could get in trouble if she fails to do so. (R. p. 353, ll. 14-18). This included being "fired, terminated, [and] go to jail." (R. p. 353, ll. 18-19; p. 353, ll. 22-24). She claimed she suspected that abuse had occurred and that is why she reported it. (R. p. 353, l. 25 - p. 354, l. 12). She denied she made up false allegations against Plaintiff. (R. p. 354, ll. 13-17).

Deputy Robert Warrington was working on June 21, 2010. (R. p. 363, ll. 13-18). He responded to the call at 3:20 a.m. from UniHealth with PSO Stephanie Scott, Officer O'Cain and

Corporal Hanes. (R. p. 364, ll. 1-90). Officer Warrington spoke with Ms. Johnson and Ms. Peppers. (R. p. 364, ll. 21-25; p. 365, ll. 11-16; p. 366, l. 23 - p. 367, l. 2). Officer Warrington advised Plaintiff he would be placed in investigative detention and placed him in handcuffs. (R. p. 366, ll. 6-17).

Ms. Johnson told Deputy Warrington that it appeared Plaintiff was trying to initiate sex with a resident. (R. p. 367, ll. 4-11). Both Ms. Johnson and Ms. Peppers told him that the resident's gown was pulled up over her but she had been covered up by the nurses. (R. p. 368, ll. 2-5). Deputy Scott, a female, attempted to communicate with the resident but the resident had "a mental incapacity." (R. p. 370, ll. 11-15). Deputy Warrington left the room to permit Deputy Scott to gather evidence. (R. p. 370, ll. 16-22). Ms. Johnson and Ms. Peppers gave written statements to Deputy Warrington. (R. p. 371, ll. 2-7; pp. 668, 672).

Deputy Warrington collected items of clothing and bedding from the room. (R. p. 372, ll. 16-20; p. 375, ll. 11-15; p. 376, ll. 4-5). The resident was transported to the hospital. (R. p. 372, ll. 23-25). Deputy Warrington placed Plaintiff under arrest and transported him to jail. (R. p. 377, ll. 12-21).

Deputy Scott also responded to the call on June 21, 2010. (R. p. 380, ll. 24-25). She was briefed by the officers on the scene but did not speak with Ms. Johnson, Ms. Peppers or Plaintiff. (R. p. 382, l. 18 - p. 383, l. 8). Deputy Scott entered the room and could see only the resident's feet because the curtain was pulled around. (R. p. 386, ll. 10-19). She introduced herself to the resident but had been advised that the resident was mentally incapacitated. (R. p. 384, ll. 7-12). Deputy Scott confirmed the resident was incompetent. (R. p. 384, ll. 13-15). Deputy Scott took photographs of the resident and gathered the clothing and linens. (R. p. 388, l. 18 - p. 390, l. 10).

She also collected the clothing Plaintiff was wearing. (R. p. 390, ll. 11-15; p. 394, ll. 9-11). She pulled the sheet up and saw the diaper, and the diaper did not have any feces in it. (R. p. 393, l. 20 - p. 394, l. 21). The clothing was not wet nor did it have any waste product on it. (R. p. 395, l. 16 - p. 396, l. 4). The workers at the facility had to change the patient since the clothing she was wearing was being collected as evidence. (R. p. 394, ll. 1-9).

Deputy Scott met the ambulance at the hospital and got a CSC kit. (R. p. 391, ll. 16-19). The kit is to test for DNA. (R. p. 391, ll. 23-24). She requested a SAME nurse, and then gave the kit to Jamie Smoak, the SAME nurse who responded. (R. p. 392, ll. 7-16; p. 392, l. 22 - p. 393, l. 3).

Ms. Smoak testified she is the nurse manager of the emergency room at the Regional Medical Center and the coordinator of the Nurse's Sexual Assault Examiner Program. (R. p. 397, ll. 6-10). Ms. Smoak performed the exam on the patient who Plaintiff allegedly assaulted. (R. p. 398, ll. 1-11). An officer had accompanied the patient to the examination room but did not stay in the room during the exam. (R. p. 398, l. 23 - p. 399, l. 5).

Ms. Smoak found the patient had "mental deficits." (R. p. 399, ll. 6-7). The officer left a CSC kit for Ms. Smoak to use to collect evidence for DNA purposes. (R. p. 399, ll. 8-13). Ms. Smoak examined the patient's skin and vaginal area and found no evidence of physical trauma or bleading. (R. p. 400, ll. 1-19; p. 311, ll. 9-11). She also took swabs from the patient's mouth, genitals and anus and scrapings under her fingernails (R. p. 399, l. 14 - p. 403, l. 8). She prepared the samples and delivered them to an officer from the Orangeburg Police Department. (R. p. 403, l. 12 - p. 404, l. 11). Ms. Smoak has never heard of the police cleaning up a CSC victim before bringing the victim to the hospital. (R. p. 404, ll. 19-25). She would expect the patient to arrive

the way they were. (R. p. 405, ll. 1-3).

Brian Queen is the news director at WIS TV in Columbia. (R. p. 406, ll. 2-9). WIS serves about 407,000 households in a 10-county demographic audience (DMA). (R. p. 406, ll. 12-17). Mr. Queen described the story WIS ran regarding the alleged incident on June 22, 2010. (R. p. 406, l. 18 - p. 407, l. 18). The text of the story was as follows:

> An Orangeburg man is behind bars this afternoon after police say he tried to rape a handicapped woman. Police have charged 54-year-old Ralph Williams, Sr., with assault with the intent to commit criminal sexual assault. Investigators say several employees at UniHealth on Whitman Street saw Williams trying to have sex with a 42-year-old disabled woman early Monday morning. A judge issued a bond, police say more charges are pending.

(R. p. 407, l. 18 - p. 408, l. 1). Viewers would have seen Plaintiff's mug-shot and a map of the facility in Orangeburg. (R. p. 408, ll. 2-9). WIS would have obtained the photograph along with a press release from the detention center. (R. p. 408, ll. 10-13).

Mr. Queen ran a "Google" search on Plaintiff and the web version of the WIS story was still available on the internet. (R. p. 408, l. 18 - p. 410, l. 12). The search result yields the following number one link: "Assisting living employee charged with attempted rape at the facility." (R. p. 410, ll. 7-9). The story is still available as part of WIS's archives. (R. p. 410, ll. 13-16; p. 411, ll. 8-22; p. 412, ll. 12-15). No one has contacted Plaintiff for a retraction of the story. (R. p. 413, ll. 14-18).

Captain Carl Shultz of Orangeburg Public Safety supervises investigations and forensics, which includes evidence collection. (R. p. 414, l. 1 - p. 415, l. 13). He was a crime scene investigator in June 2010. (R. p. 414, ll. 19-22). Captain Shultz obtained the sealed CSC kit and the patient's clothing from the RMC and placed it in the evidence cooler. (R. p. 415, l. 14 - p.

416, l. 20; p. 649). Captain Shultz did not know whether the patient was changed before she went to the hospital. (R. p. 417, ll. 16-18). Captain Shultz also obtained a buccal swab from Plaintiff under a warrant. (R. p. 418, l. 1 - p. 419, l. 24; p. 692).

All of the evidence was then transported to SLED on June 23, 2010, by Debra Byrd. (R. p. 420, ll. 1-25; p. 423, ll. 4-11; p. 423, ll. 20-25; p. 424, ll. 6-16; pp. 650, 655). Captain Shultz received a report from SLED on April 12, 2011. (R. p. 421, ll. 11-17; p. 423, ll. 18-19; p. 651). Captain Shultz did not obtain any buccal swabs from any other person, including any other UniHealth employee. (R. p. 421, l. 25 - p. 422, l. 4).

Lily Gallman was qualified as an expert as a DNA analyst with SLED. (R. p. 425, ll. 3-5; p. 426, ll. 6-8). She received the items on June 23, 2010. (R. p. 427, l. 19 - p. 428, l. 2). These included buccal swabs from Plaintiff and from the patient, fingernail scrapings from the patient, and vaginal swabs from the patient, . (R. p. 429, l. 23 - p. 430, l. 18). There was no semen present. (R. p. 431, ll. 2-16; p. 437, ll. 1-14). Ms. Gallman's report stated "that no DNA profile foreign to the victim...was developed from" the fingernail scrapings. (R. p. 431, l. 25 - p. 432, l. 7). There was nothing to identify Plaintiff in any of the items. (R. p. 432, ll. 17-20). There was no "Y" chromosome (male) associated with the salivary swabs. (R. p. 433, l. 6 - p. 434, l. 14). Ms. Gallman did not receive any clothing or bed linens to analyze. (R. p. 435, ll. 10-24). She also analyzed a pair of briefs but found no hair or anything from which she could do a DNA analysis. (R. p. 435, l. 25 - p. 436, l. 16; p. 438, ll. 10-19).

Several witnesses testified in support of Plaintiff's claim that the incident impacted his reputation and his relationship with his wife.

Terry Rivers was a stroke victim who knows Plaintiff (Mr. Rivers' wife is Plaintiff's cousin). (R.

p. 439, ll. 14-24; p. 444, ll. 3-11). Mr. Rivers was familiar with the events of June 21, 2010. (R. p. 440, ll. 2-4). He observed an individual attack Plaintiff due to the accusations of attempted rape. (R. p. 441, ll. 6-16; p. 443, ll. 13-15). Mr. Rivers identified a newspaper articles regarding the accusations against Plaintiff. (R. p. 441, l. 20 - p. 442, l. 6; p. 443, ll. 2-10; pp. 673-376).

Cynthia Mack is a Medicaid worker with DHHS. (R. p. 445, l. 23 - p. 446, l. 1; p. 466, l. 23 - p. 467, l. 3). Plaintiff is married to her sister. (R. p. 447, ll. 1-2). She testified in support of Plaintiff's reputation in the community. (R. p. 449, ll. 14-25; p. 455, l. 17 - p. 458, l. 6). She was aware of the events of June 21, 2010, and helped her sister bail Plaintiff out of jail. (R. p. 450, ll. 2-23). She read about the charges in the newspaper the next day. (R. p. 451, ll. 5-8; p. 451, l. 24 - p. 452, l. 3; p. 453, l. 15 - p. 454, l. 2; p. 460, ll. 7-10; p. 461, ll. 4-9; p. 667). She was aware that the nursing home employees suspected Plaintiff was attempting to have sex with the patient. (R. p. 470, ll. 5-11). She did not believe Plaintiff could have done what he was accused of doing. (R. p. 452, l. 24 - p. 453, l. 3; p. 458, ll. 9-18). She was told investigators found semen and she suggested to her sister that she divorce Plaintiff. (R. p. 453, ll. 5-13; p. 454, ll. 5-7; p. 468, l. 18 - p. 469, l. 14; p. 469, ll. 21-22).

Plaintiff never indicated to her that he had done what he was accused of doing. (R. p. 458, ll. 20-24). However, people in the community believed Plaintiff had raped the patient. (R. p. 459, ll. 16-22). She described him as "publicly hated." (R. p. 459, l. 23 - p. 460, l. 2; see also R. p. 462, l. 21 - p. 463, l. 12). The event also affected Plaintiff's marriage. (R. p. 464, l. 25 - p. 465, l. 11).

Plaintiff's son testified he heard about the incident on June 21, 2010, and was "shocked" and "disgusted, because all those things, knowing my father, was not subjective to my father due

to his character." (R. p. 471, ll. 16-20). He looked at the internet and read the newspaper story. (R. p. 471, l. 22 - p. 472, l. 15; p. 472, l. 18 - p. 473, l. 1). Plaintiff's reputation "took a major hit" and he was unable to obtain employment. (R. p. 473, ll. 13-25). Plaintiff was depressed, disappointed, and cried. (R. p. 474, ll. 3-13).

Dr. Earline Sabb, who is a minister and knows Plaintiff, testified regarding the damage to his reputation in the community. (R. p. 475, l. 2 - p. 480, l. 2). She felt in her heart that the allegations against Plaintiff were not true because of how well she knows Plaintiff. (R. p. 477, ll. 12-18). She also testified about how the allegations affected Plaintiff's marriage. (R. p. 480, l. 15 - p. 481, l. 20).

Connie Jackson works with Plaintiff's wife. (R. p. 482, ll. 7-14). She also knows Plaintiff. (R. p. 482, ll. 17-20). She read about the incident in the newspaper. (R. p. 483, ll. 6-16; p. 677). She did not believe Plaintiff did what he was accused of doing because of how well she knows him. (R. p. 483, l. 17 - p. 484, l. 12). Ms. Jackson described how this incident affected Plaintiff's reputation in the community. (R. p. 484, l. 13 - p. 485, l. 23). She also testified about how the incident impacted Plaintiff's marriage. (R. p. 485, l. 24 - p. 486, l. 14).

Plaintiff testified he became a certified nursing assistant (CNA) in 2009. (R. p. 487, l. 21 - p. 488, l. 3). He began working at UniHealth in February 2010. (R. p. 489, ll. 1-2; p. 490, ll. 6-16; p. 533, ll. 2-3; p. 535, ll. 7-12). UniHealth was close to his home and because he did not have a driver's license it was convenient. (R. p. 534, ll. 6-18).

Plaintiff worked the night shift after a few days of training. (R. p. 535, ll. 13-24). Plaintiff initially worked in the rehab wing. (R. p. 491, ll. 9-10; p. 536, ll. 4-8). Plaintiff did not feel comfortable caring for female patients and explained this to Ms. Shriver, his nursing supervisor,

so UniHealth switched him to a section for men. (R. p. 490, l. 20 - p. 491, l. 4; p. 491, ll. 12-16; p. 494, ll. 7-14). He provided perineal care, which involves daily cleanliness and comfort for the patients. (R. p. 492, ll. 9-20; p. 543, ll. 16-20). Ms. Shriver left and Plaintiff got a new supervisor, Defendant Johnson, who put him back to caring for women at night time. (R. p. 494, ll. 14-21).

Plaintiff described the procedure for entering a room and caring for the patients. (R. p. 493, l. 11 - p. 494, l. 6; p. 494, l. 25 - p. 495, l. 19; p. 511, ll. 13-19; p. 537, l. 18 - p. 538, l. 6). This included a specific policy for dealing with female patients. (R. p. 497, l. 18 - p. 498, l. 24; p. 519, ll. 10-19). UniHealth did not have a policy for dealing with a patient who could not speak. (R. p. 495, l. 20 - p. 496, l. 13).

Plaintiff testified regarding difficulties he had with the defendant nurses. It began about one month into Plaintiff's employment and involved mis-communication. (R. p. 498, l. 25 - p. 499, l. 10). He told his supervisor, Defendant Johnson, about a patient whose blood pressure and respiration were too low. (R. p. 499, ll. 12-19). Ms. Johnson told him to check again and when he came back in the patient was turning blue, so he returned to the desk for help. (R. p. 499, l. 21 - p. 500, l. 2; p. 556, l. 16 - p. 557, l. 6; p. 558, ll. 2-4). Ms. Johnson did not respond to him so he ran to the other end of the hallway to get another LPN, who helped stabilize the patient and who called EMS. (R. p. 500, ll. 4-10; p. 558, ll. 5-20; p. 559, ll. 6-15). Plaintiff was shaken and he said Ms. Johnson was incompetent and needed to be fired. (R. p. 500, ll. 11-16; p. 560, ll. 16-24). Thereafter Plaintiff and Ms. Johnson "didn't really have any words." (R. p. 500, ll. 20-21; p. 561, ll. 10-11).

About two weeks later Plaintiff was assisting a large male patient into a wheelchair when

they lost footing. (R. p. 500, l. 21 - p. 501, l. 14; p. 553, l. 14 - p. 555, l. 5). Ms. Johnson was distributing medication two doors down so Plaintiff called out for help. (R. p. 501, ll. 15-18). Plaintiff called out again when nobody came and eventually the janitor came and helped him stabilize the patient. (R. p. 501, ll. 18-20). This upset Plaintiff and he said something under his breath that she probably heard. (R. p. 501, l. 20 - p. 502, l. 1; p. 555, ll. 13-19). He also told his wife what happened. (R. p. 503, l. 7 - p. 504, l. 8).

On another occasion Plaintiff had been arguing with his wife and after he arrived at work and checked on his patients he called her to apologize. (R. p. 502, ll. 7-14; p. 551, ll. 4-20; p. 552, ll. 18-19). He hung up and returned to his duties. (R. p. 502, ll. 14-15). When he got home the next morning his wife asked him "who in the hell is Patricia Johnson?" and "what's going on?" (R. p. 502, ll. 15-18; p. 552, ll. 23-25). When he explained who Ms. Johnson was Plaintiff's wife informed him that Ms. Johnson had called the house at 3:00 a.m. (R. p. 502, l. 18 - p. 503, l. 6).

Plaintiff also described a situation in which he was suspended for a day while the facility investigated an inquiry from a patient's children as to why the patient had a bruise on his head. (R. p. 504, l. 14 - p. 505, l. 4). Plaintiff was not written up and he was able to return to work. (R. p. 505, ll. 8-14). He never heard anything more about the incident. (R. p. 505, ll. 15-20).

Plaintiff described the incident of June 20, 2010, adamantly denying he abused or attempted to abuse anyone. (R. p. 505, l. 21 - p. 525, l. 3). He placed his cart outside the room and knocked on the door. (R. p. 510, l. 20 - p. 511, l. 5). The television was off. (R. p. 515, ll. 5-6). He did not turn the overhead light on to avoid disturbing the patient in the other bed. (R. p. 515, ll. 9-11). He did turn on the light that was over the bed once he provided privacy. (R. p. 515,

ll. 13-15). There was a curtain on a U-shaped rail allowing him to pull it around the bed for privacy. (R. p. 521, ll. 5-23; p. 539, ll. 13-15).

If someone requires assistance in the room a patient or an employee can press a "panic" button on the wall next to the bed. (R. p. 517, ll. 14-19; p. 518, ll. 1-3). This would alert all CNAs and nurses to come assist in the room. (R. p. 517, ll. 20-22). There is also a "call" button on the wall. (R. p. 517, ll. 23-25; p. 518, ll. 7-10). The patient in this situation was not able to press the call button. (R. p. 518, ll. 11-16).

Because of the time he quietly introduced himself and then checked on the patient's pamper by pulling the cover down. (R. p. 511, ll. 5-14; p. 515, ll. 21-22; p. 538, l. 7 - p. 539, l. 3). The patient needed her pamper changed (she had feces and urine) but because she was paralyzed she could not help. (R. p. 506, l. 25 - p. 507, l. 3; p. 511, ll. 13-15; p. 541, ll. 4-12; p. 548, ll. 16-18; p. 562, ll. 1-4, 14-22). Plaintiff returned to his cart to get his supplies and when he entered the hallway he did not recall if he saw anyone at the nurse's station. (R. p. 511, l. 15 - p. 512, l. 13; p. 514, ll. 3-13; p. 516, ll. 1-2; p. 539, ll. 16-17; p. 542, ll. 11-14; p. 548, ll. 18-23). When he returned into the room he closed the door and placed his supplies either in a chair or on the patient's dresser. (R. p. 514, l. 14 - p. 515, l. 4; p. 516, ll. 2-3; p. 542, ll. 17-18; p. 563, ll. 13-18; p. 564, ll. 19-25; p. 696). He pulled the privacy curtain into place and began to change her. (R. p. 539, ll. 18-19; p. 540, ll. 3-7; p. 542, ll. 21-22).

Plaintiff turned to the side of the patient's bed. (R. p. 516, ll. 5-9). The patient was "big boned" and heavy and Plaintiff is "a little light-weight dude," so he had to prop himself on the bed to get the job done. (R. p. 507, ll. 5-7; p. 542, l. 23 - p. 543, l. 7; p. 549, l. 3). Plaintiff was wearing drawstring pants that night (R. p. 547, ll. 9-11) and as he leaned over the bed the ties on

his scrub pants caught and his pants slipped down. (R. p. 508, ll. 11-13).

Plaintiff had to work from one side of the bed and then the other side of the bed. (R. p. 516, l. 5 - p. 517, l. 7; p. 540, l. 13 - p. 541, l. 5). The CNAs had to be careful removing the pamper, and Plaintiff was in the process of doing so when Defendant Johnson entered the room. (R. p. 507, ll. 11-21; p. 544, ll. 21-22). She pulled back the curtain and said "what are you doing?" (R. p. 507, ll. 21-22; p. 518, l. 23- p. 519, l. 1; p. 544, ll. 23-24). Plaintiff replied "would you please shut the door." (R. p. 507, ll. 22-24; p. 518, ll. 20-21; p. 519, l. 3; p. 544, l. 25 - p. 545, l. 13). He asked her twice to shut the door due to privacy concerns. (R. p. 507, l. 25; p. 518, ll. 20-21). He also had to pull his pants back up "so they wouldn't be hanging off [his] behind." (R. p. 508, ll. 13-14). Ms. Johnson did not shut the door; instead, she just walked out. (R. p. 507, l. 25 - 508, l. 1; p. 519, ll. 5-6; p. 545, ll. 14-17). Plaintiff had to stop what he was doing, go shut the door for privacy, and return to removing the pamper, which had feces and urine. (R. p. 508, ll. 2-5; p. 519, ll. 7-9; p. 545, l. 19 - p. 546, l. 4; p. 547, ll. 7-8).

Ms. Johnson returned to the room with Defendant Peppers and they told him to leave the room. (R. p. 508, ll. 5-7, 22-24; p. 546, ll. 17-22; p. 549, ll. 19-21). Plaintiff left the room and stood outside in the hallway. (R. p. 508, ll. 7-8, ll. 14-15; p. 522, ll. 4-8; p. 549, ll. 22-25). Another LPN in training came and stood with him. (R. p. 550, ll. 1-2).

Plaintiff had not been able to finish changing the patient. (R. p. 509, ll. 2-4; p. 547, l. 12 - p. 548, l. 12). He left the dirty diaper in the room, and did not see any red shirt on the bed. (R. p. 509, ll. 5-9; p. 550, ll. 15-21). The patient did have a pad under the patient to catch any overflow, and the pad is usually discarded with the pamper. (R. p. 509, l. 10 - p. 510, l. 12). Plaintiff overheard someone say "you stay with Mr. Williams while we take care of something" so they

stood there for a moment. (R. p. 523, ll. 1-3).

From the hallway, Plaintiff went to the patio to smoke a cigarette and eventually was placed in handcuffs and taken to jail. (R. p. 508, ll. 17-18; p. 522, l. 24 - p. 524, l. 4; p. 550, ll. 9-11). He asked why and they told him he was being charged with attempting to molest the patient. (R. p. 524, ll. 8-18). At the detention center they collected his clothing as evidence. (R. p. 524, ll. 22-24). While he was in jail two detectives collected swabs from his mouth. (R. p. 525, ll. 5-6). The charges were eventually upgraded to sexual conduct with a vulnerable adult. (R. p. 527, ll. 1-15).

Plaintiff eventually was released on bail and when he got home he saw the news report on WIS TV. (R. p. 525, l. 8 - p. 526, l. 12). He described how this impacted him with his wife and in the community. (R. p. 525, l. 17 - p. 526, l. 18). He was also unable to find work for a while but found work for a family friend at The Crab Pit. (R. p. 527, l. 16 - p. 528, l. 4). He lost the job when another worker showed the article about the arrest to Plaintiff's boss. (R. p. 528, l. 11 - p. 529, l. 9). He got a job at another restaurant called the Brown Derby, but lost that job when the owner heard about the allegations. (R. p. 529, ll. 11-22).

Plaintiff's nursing license was suspended although he had gotten it back by the time of the hearing. (R. p. 530, l. 9 - p. 531, l. 1). At one time the CNA registry listed the allegations. (R. p. 532, ll. 4-9). The letter of reinstatement was dated September 2, 2014, and stated, "This nurse's aid has no sustained findings of abuse or neglect or misappropriation of property found in the South Carolina Nurse's Aid Registry." (R. p. 531, ll. 1-4; p. 681). He was reluctant to seek employment as a CNA until some public acknowledgment of his innocence as "there's always going to be a little cloud." (R. p. 531, ll. 12-18).

Plaintiff's wife married Plaintiff in May 1988. (R. p. 565, ll. 1-2). She testified about a day that she picked Plaintiff up from work and he was upset because a patient nearly died. (R. p. 577, ll. 9-18). She also discussed the phone call from Defendant Johnson after Plaintiff had called to apologize following an argument. (R. p. 568, l. 19 - p. 570, l. 14; p. 586, l. 17 - p. 591, l. 17).

Plaintiff's wife testified about the events of the night Plaintiff was arrested. (R. p. 570, l. 17 - p. 572, l. 4; p. 582, l. 13 - 583, l. 4). She stated she was told the charges were upgraded because investigators found semen and "they had a DNA hit on [Plaintiff]." (R. p. 572, ll. 5-14; p. 584, ll. 10-21). She testified as to how the accusations affected Plaintiff's demeanor, their marriage and Plaintiff's reputation. (R. p. 566, ll. 19-22; p. 567, ll. 15-21; p. 573, l. 7 - p. 574, ll. 7-17; p. 574, l. 17 - p. 575, l. 10; p. 575, l. 25 - p. 576, l. 16; p. 578, l. 2 - p. 581, l. 1; p. 594, ll. 5-21). When asked what she was claiming, Plaintiff's wife stated, "I'm alleging that the statements that they gave to the arresting officers, that the arresting officers and law enforcement, said they give to law enforcement, say they give to law enforcement was given to the papers." (R. p. 592, l. 23 - p. 593, l. 1).

JURY INSTRUCTIONS

The trial court gave the following instructions to the jury:

> You are to consider only the evidence before you. If there was any testimony ordered stricken from the record of this trial you are to disregard that testimony. You are to consider only the testimony which has been presented from this witness stand and any exhibits which have been made part of the record. It is my duty to charge you the law applicable to this case and it is your duty as jurors to accept and apply this law as I now state it to you. If you think you have any idea what the law is or what the law ought to be and it does not agree with what I tell [you] the law is you must forget that idea, because you are sworn to accept the law and apply the law exactly as I now state it to you.

> In every case tried before a jury the jury is the sole and exclusive judge of the facts.

(R. p. 619, l. 22 - p. 620, l. 11). The judge charged the jury on the burden of proof (R. p. 620, l. 23 - p. 621, l. 17), circumstantial and direct evidence (R. p. 621, l. 18 - p. 622, l. 17), and credibility (R. p. 622, l. 18 - p. 623, l. 9).

The circuit court then gave the jury case-specific instructions. This included instructions on defamation (R. p. 624, l. 8 - p. 626, l. 3), *respondeat superior* and the liability of a principal for the defamatory statements of an agent "acting within the scope of his employment" or "in the scope of his apparent authority" (R. p. 626, l. 4 - p. 627, l. 15), privileged communications (R. p. 627, l. 16 - p. 629, l. 2; p. 640, ll. 17-20), the Adult Protection Act (R. p. 629, l. 3 - p. 631, l. 5), truth as a defense. (R. p. 631, ll. 6-17) and Plaintiff's burden of proof as to actual and punitive damages. (R. p. 632, l. 9 - p. 636, l. 14). The court then stated:

> Now, I have declared the law to you through these instructions to help guide you to a just and lawful verdict. *Whether some of these instructions apply will depend on what you find to be the facts.* The fact that I have instructed you on various subjects in this case must not be taken as indicating an opinion of this court as to what you should find to be the facts or as to which party is entitled to your verdict. Your verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each one of you agree. Your verdict must be unanimous. All 12 of you must agree on the verdict. *Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration not in evidence in this case.* Remember at all times you are not favoring one party over another. *You are the judges of the facts.* Your sole interest is to seek the truth from the evidence in this case ....

(R. p. 636, l. 15 - p. 637, l. 6) (emphasis added). Finally, the court went over the verdict form with the jury. (R. p. 637, l. 8 - p. 639, l. 8).

Plaintiff renewed his objections he made prior to the charge. (R. p. 641, ll. 5-10).

The Verdict

The jury deliberated for nearly five hours and returned a verdict finding each nurse did not act in good faith in making the report. (R. p. 642, ll. 7-13; p. 3). The jury found, however, that each nurse acted outside the scope of her employment. (R. p. 642, ll. 14-24). The jury awarded actual damages of $102,500 to Plaintiff and punitive damages against each defendant as follows: (1) $200,000 against Defendant Johnson; (2) $97,500 against Defendant Davis (Peppers); and (3) $600,000 against UniHealth. (R. p. 643, ll. 1-19). Defendant requested the jury be polled and each adhered to the verdict. (R. p. 644, l. 3 - p. 647, l. 8).

Each party made post-verdict motions. The trial court granted the Defendants a new trial under the Thirteenth Juror doctrine and denied Plaintiff's motion.

This appeal follows.

ARGUMENTS

The trial court granted the Defendants' motion for a new trial under the Thirteenth Juror Doctrine. The court gave reasons that demonstrate the order was controlled by an error of law. Furthermore, the court improperly permitted the Defendants to proceed with a joint defense although defendant UniHealth took positions during the trial that deflected its liability unto the individual defendants, nurses Patricia A. Johnson and Josette Peppers, despite assurances by UniHealth's counsel that it would not do so.

This Court should reverse the grant of the new trial on the facts. If the Court does not reverse the grant of a new trial, the Court should instruct the circuit court to either require the defendants to truly present a unified front (without deflecting UniHealth's fault) or require each party to obtain new, separate counsel on remand.

SCOPE OF REVIEW

A trial judge's order granting or denying a new trial under the thirteenth juror doctrine will not be disturbed unless the judge's decision is wholly unsupported by the evidence, or the conclusion was controlled by an error of law. *Folkens v. Hunt*, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267 (1990); *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

The trial judge is not required to explain its rationale for granting a new trial under the thirteenth juror doctrine. *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267. However, if the trial court chooses to do so, the appellate court will review the reasons the trial judge provided. *See Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597-600, 681 S.E.2d 879, 883-84 (2009) (reviewing the trial

court's rationale for granting a new trial despite the fact the trial court granted the new trial under the thirteenth juror doctrine and was not required to provide any reasons for the outcome). *Cf. Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 282, 287-88, 670 S.E.2d 1, 10, 13 (Ct. App.2008) (holding that despite the discretion given the trial court by the thirteenth juror doctrine, the trial court could not grant a new trial based on the brevity of the jury deliberations); *id.* at 282, 670 S.E.2d at 10 ("[G]ranting a new trial due to suspicions of deliberation quality is a flagrant deviation from premising a new trial upon the facts.").

Therefore, although a trial judge enjoys a broad level of discretion when ruling upon a motion for new trial on the facts, that decision is subject to review for abuse of that discretion. And where the trial judge gives reasons for granting the motion, the appellate court will review the reasons given. And where those reasons are controlled by an error of law, the appellate court should reverse the decision.

I. THE CIRCUIT COURT JUDGE ABUSED HIS DISCRETION IN GRANTING THE DEFENDANTS A NEW TRIAL UNDER THE THIRTEENTH JUROR DOCTRINE

The trial judge stated he granted the motion for new trial under the Thirteenth Juror doctrine because he was "concerned that the jury improperly handled the issue of the Defendant [nurses'] immunity under the South Carolina Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43-35-25(A) & (G)." (R. p. 12). Thus, the judge believed these Code sections provided immunity from liability under the Act for a reporter as a matter of law and that the jury must have misunderstood this fact. This was an error of law.

In 1993, the General Assembly enacted the Omnibus Adult Protection Act ("the Act") to protect vulnerable adults from abuse, neglect, and exploitation. S.C. Code Ann. §§ 43-35-5 to

43-35-595 (2015). The Act imposes a duty on certain individuals to report if they have "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited..." S.C. Code Ann. § 43-35-25(A) (2015). The individual nurse defendants are among those Individuals designated as "mandated reporters" under the Act. *Id. See also Doe v. South Carolina Department of Social Services*, 407 S.C. 623, 757 S.E.2d 712 (2014) (describing the purpose of workings of the Act).

The report must be made to the agencies enumerated in Section 43-35-25(D). Subsection (G) adds that so long as a person meets the mandatory reporting requirements of the section, the person is not precluded from also "reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately."

Importantly, the Act provides qualified immunity:

> A person who, *acting in good faith*, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal *proceeding good faith is a rebuttable presumption.*

S.C. Code Ann. § 43-35-75(A) (2015) (emphasis added). Thus, a report under the Act is presumably made in "good faith," but that presumption is rebuttable. *Williams v. Watkins*, 379 S.C. 530, 665 S.E.2d 243 (Ct. App. 2008).

Regarding presumptions, the Rules of Evidence provide:

> In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, *but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was*

originally cast.

Rule 301, SCRE (emphasis added). *Compare State Accident Fund v. SC Second Injury Fund*, 409 S.C. 240, 762 S.E.2d 19 (2014) (a presumption is a "legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts; a presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption) (*citing* Black's Law Dictionary 1304 (9th ed. 2009)).

A "rebuttable presumption" is defined as an "inference drawn from certain facts that establish a *prima facie* case, which may be overcome by the introduction of contrary evidence." *Jowers v. SC Dept. of Health and Envir. Ctrl.*, Op. No. 27725 (S.C. Sup. Ct. filed July 19, 2017) (Shearouse Adv. Sh. No. 27 at 28) (slip at 38, n. 12) (*citing* Black's Law Dictionary, *Rebuttable Presumption* (10th ed. 2014)). Thus, so long as there was contrary evidence which served to overcome the presumption of good faith, then it is up to the fact finder to determine whether the nurses were entitled to immunity under Section 43-35-75(A).

In denying directed verdict, the court stated there was a question of fact "as to what" defendants Johnson and Peppers saw and whether they were acting in good faith. (R. p. 596, l. 18 - p. 597, l. 2). In granting the new trial, however, the trial judge expressed his belief that the jury misapplied or "improperly handled" the presumption of good faith under the statute. That reasoning cannot stand in the face of the express language in the statute that the presumption is rebuttable and the jury's finding of the existence of evidence that overcame that presumption. Thus, the trial judge's grant of a new trial under the Thirteenth Juror doctrine is controlled by an error of law and is, therefore, the result of an abuse of discretion.

The trial judge correctly charged the jury regarding the Act, the presumption of good

faith, and that the presumption was rebuttable. Specifically, the judge charged:

> In this case there is a rebuttable presumption that Patricia Johnson and Josette Davis acted in good faith with their oral and written statements regarding the plaintiff. *A rebuttable presumption is a presumption made by the Court and the jury that a fact or issue is taken to be true unless someone comes forward to contest it and prove otherwise.* In this case the rebuttable presumption is that the defendants acted and reported in good faith when they made their oral and written statements and the jury must assume that to be true unless the plaintiffs prove otherwise. *The plaintiffs have the burden of proof and must establish by a preponderance of the evidence that the defendants did not act in good faith.* If you find that the defendants acted in good faith when they reported a suspected abuse, then they cannot be held liable and your verdict must be in favor of the defendants.

(R. p. 630, l. 21 – p. 631, l. 5) (emphasis added). The jury was, therefore, given a correct charge on the operation of the Act. Against the background of the remaining instructions there was nothing to indicate the jury "misapplied" any aspect of the Act.

The jury concluded from the testimony that Defendant Johnson, with the assistance of Defendant Peppers, acted recklessly in reporting that Plaintiff was attempting to have sex with the patient. Plaintiff and his wife testified about several incidents from which the jury could have concluded Plaintiff and Defendant Johnson, his supervisor, were not on good terms. The jury believed Plaintiff's version of events, including his testimony that the patient was soiled, that Plaintiff left the soiled brief on her when he was ordered out of the room, and by the time investigators arrived the soiled clothing was nowhere to be found (inferring that Johnson, Peppers or both of them removed the items to support their assertion that Plaintiff was acting improperly). There was abundant evidence to support the verdict in light of the instructions.

In reviewing the verdict form, the circuit court advised the jury to find whether each nurse acted in good faith when she reported her suspicions about Plaintiff. (R. p. 637, l. 17 - p. 638, l.

6). The jury specifically found each defendant did not act in good faith. There were no questions to the court, nor was there anything else to indicate the jury "misapplied" the law. And when Defendants requested the jury be polled, each reaffirmed his or her verdict.

Although the case law indicates the grant of a new trial under the Thirteenth Juror doctrine is nearly unreviewable, under the circumstances of this case where the trial judge gives a reason and that reason is flawed under the law, the decision should not stand. Defendants received a fair trial (in fact a trial under more favorable instructions than the law permitted) and the jury sorted through the facts and correctly applied the law as instructed. The jury's verdict was not infected by improper motive, and was supported by the testimony and evidence. There is nothing to indicate the jury "misapplied" the Act.

The Court should reverse the trial judge's decision and remand for entry of judgment in accordance with the jury's verdict.

II. THE CIRCUIT COURT JUDGE ERRED IN SUBMITTING THE ISSUE OF WHETHER THE INDIVIDUAL DEFENDANTS WERE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT TO THE JURY AND IN DENYING PLAINTIFF'S MOTION FOR JNOV

Plaintiff objected to the verdict form on the ground there was no issue "as to whether or not the nurses were outside the scope of their employment...." (R. p. 605, ll. 5-9). Plaintiff also moved for directed verdict "on the course and scope of the nurses' employment for UniHealth in making the reports at issue." (R. p. 605, l. 16 - p. 606, l. 7). Defendants' counsel contended whether his clients, the nurses, were acting within the course and scope of their employment with his other client, UniHealth, was an issue for the jury. (R. p. 606, ll. 9-18). Plaintiff responded that he was not contending they acted intentionally but that they were reckless. (R. p. 606, ll. 19-25). The trial court overruled the objection to the verdict form and denied Plaintiff's motion. (R. p. 607, ll. 2-10; p. 609, ll. 19-21).

Following the verdict Plaintiff moved for JNOV as to the issue of whether the nurses were acting within the course and scope of their employment. (R. pp. 178-187). After granting the Defendants motion for new trial the trial court ruled this motion was moot. This Court should reverse that decision.

SCOPE OF REVIEW

On review from a trial court's denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the trial court and views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Maybank v. BB&T Corporation*, 416 S.C. 541, 787 S.E.2d 498 (2016); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 28, 602 S.E.2d 772, 782 (2004). Motions for directed verdict or JNOV should be denied if the

evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). Further, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

DISCUSSION

Under the doctrine of *respondeat superior*, the master is liable for the wrongful acts of his servant while the servant acting within the scope of his employment. An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business. *Lazar v. Great Atlantic & Pacific Tea Company*, 197 S.C. 74, 14 S.E.2d 560 (1941); *Holder v. Haynes*, 193 S.C. 176, 7 S.E.2d 833 (1940). *See also Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52–53 (2006) (stating to recover from a tortfeasor's employer under the doctrine of *respondeat superior*, a plaintiff must show the tortfeasor was acting in the scope of his employment by furthering his employer's business, otherwise employers are not vicariously liable for the actions of their employees (*citing Lane v. Modern Music, Inc.*, 244 S.C. 299, 304–05, 136 S.E.2d 713, 716 (1964))). As the Supreme Court has instructed:

> The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Under these circumstances the servant alone is liable for the injuries inflicted. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is

> so no matter how short the time, and the master is not liable for his acts during such time.

Armstrong, 371 S.C. at 276, 639 S.E.2d at 53.

In defamation cases an agent of a corporation the employer is liable if the agent is acting within the scope of employment and in the actual performance of the duties of the corporation touching the matter in question. *Johnson v. Life of Ga.*, 227 S.C. 351, 88 S.E.2d 260 (1955).

In this case there was no evidence from which the jury could have concluded that Defendants Johnson and Peppers were acting for some independent purpose of their own completely separate from their duties in support of the business of their master, UniHealth. Not only were the reporting acts of the nurses at issue "reasonably necessary to accomplish the purpose of their employment," these acts were mandated by the employer, and clearly in furtherance of the master's business relating to the care of the resident in Room 39-A. The nurses carried them out in reckless fashion and for that their employer is liable as a matter of law.

The only evidence in this case was that the statements Defendants Johnson and Pepper made were in the actual performance of UniHealth's duties and touched the matter in question (the subject matter the nurses were required to report as to whether Plaintiff was changing diapers per facility policy versus abusing a resident).

Even slight deviations from employment by an agent have been held by our courts to be within the scope of employment as a matter of law. The following is quoted from *Adams v. South Carolina Power Co.*:

> The terms "course of employment" and "scope of authority," are not susceptible of accurate definition. What acts are within the scope of employment can be determined by no fixed rule. The authority from the master is generally to be gathered from all the surrounding and attendant circumstances. In cases where

> the deviation is slight and not unusual the Court may, and often will, as matter of law, determine that the servant was still executing his master's business.

200 S.C. 438, 21 S.E.2d 17, 18 (1942).

In *Miller v. C.P. Chems*, 808 F. Supp. 1238 (DSC 1992), the district court turned to the common law rules of agency and found instructive the Restatement (Second) of Agency, which provides:

> (1) Conduct of a servant is within the scope of employment if, but only if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master.

The Restatement (Second) of Agency § 228 (1958). The court added that the comments to section 229 state that acts incidental to authorized acts may be within the scope of the employment:

> *Acts incidental to authorized acts.* An act may be incidental to an authorized act, although considered separately it is an entirely different kind of an act. To be incidental, however, it must be one which is subordinate to or pertinent to an act which the servant is employed to perform. It must be within the ultimate objective of the principal and an act which it is not unlikely that such a servant might do. The fact that a particular employer has no reason to expect the particular servant to perform the act is not conclusive.

Restatement (Second) of Agency § 229 comment b (1958). *See also* Restatement (Second) of Agency § 235 (1958) ("An act of a servant is not within the scope of employment if it is done with no intention to perform it as a part of or incident to a service on account of which he is employed."); Restatement (Second) of Agency § 236 cmt. b (1958) ("The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment").

The evidence presented at trial included Defendant/Employer UniHealth's policy that all

of its employees were mandated to report possible abuse or neglect of a resident immediately. Both nurses testified they were aware of such policy and were carrying out the employer's policy directives at the time of the reporting events. They also testified as to the consequences of failing to report, including being fired from their jobs with UniHealth. The nurses were both on duty at the employer's facility on the 11:00 p. m. to 7:00 a. m. shift, performing their jobs and were being paid for that work at the time of the relevant events of June 21, 2010. The only evidence was that they were furthering the interests of the master, UniHealth in making these reports, and were attempting to follow the Omnibus reporting law of South Carolina, but they just went about it in a reckless manner. *Compare J.E.B. v Danks*, 785 N.W.2d 741 (Minn. 2010) (under Minnesota's reporting statute filing a report that is knowingly or recklessly false will defeat a showing of good faith).

While Plaintiff did not agree that there was evidence of any personal motive by either nurse to intentionally injure Plaintiff, the Restatement standard cited above holds the conduct at issue inside the scope of employment as long as the conduct "is actuated, *at least in part*, by a purpose to serve the master." (Emphasis added). And the conduct falls outside the scope of employment only if "done with no intention to serve the master." That standard is met in the instant case and, in fact, there was no evidence to the contrary. Both nurses were serving a business purpose of UniHealth at the time of reporting and were acting within the scope of employment under any reasonable view of the evidence. Unfortunately, they reported recklessly and without regard for whether their snap judgments were reasonable or accurate.

There was also no evidence that either of the two nurses were somehow outside their employment when making these reports. There likewise was no argument or suggestion or

request by the defense attorneys during any portion of the trial while in the presence of the jury that either nurse was not working for the facility nor acting outside the course and scope of their employment at the time the statements at issue were made; or that they should find the nurses acted outside the scope of their jobs. And in the motion for directed verdict made at the close of Plaintiff's case, defense counsel argued "if you dismiss [because] the individuals are fulfilling their duties then likewise UniHealth has to be dismissed." (R. p. 595, ll. 9-10). Defendants renewed this motion at the close of all the evidence. (R. p. 607, ll. 15-24).

Plaintiff's counsel maintained in arguments to the jury that the nurses were indeed doing their jobs at the time the statements were made, and that the employer would thus be liable for those acts. Plaintiffs argued reckless indifference by the nurse Defendants, not intentional conduct outside the scope of employment. (R. p. 606, ll. 19-25).

It is true that for purposes of *respondeat superior*, whether an employee was acting in the course of his employment is usually a question for the jury. *Adams v. S.C. Power Co.*, 200 S.C. at 441, 21 S.E.2d at 18-19. However, where the evidence yields but one conclusion, and there is no evidence to the contrary so as to place the inferences from that evidence in doubt, the issue should be decided by the court as a matter of law. *Cf. Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006) (directed verdict motion should be denied where evidence yields more than one inference or inferences are in doubt).

Neither the evidence nor the reasonable inferences that flowed therefrom were in doubt in this case. Both individual defendants were acting in the course of their employment, and there was no evidence they exclusively were serving a personal motive apart from their employment. The trial court should have directed a verdict for Plaintiff on this issue, and should never have

allowed the jury to make an express finding on the verdict form.

The Court should reverse the trial court's denial of Plaintiff's directed verdict and JNOV motions on scope of employment, as well as the trial court's decision to submit this issue to the jury on the verdict form. If the Court affirms the grant of the Thirteenth Juror ruling (and it should not), then the Court should instruct the trial court not to charge this issue absent evidence to support the Defendant UniHealth's contention that it is not liable because its nurses were serving their own agenda unrelated to their employment.

III. THE CIRCUIT COURT JUDGE ERRED IN PERMITTING THE DEFENDANTS TO PRESENT AN ALLEGED JOINT DEFENSE UNDER THE CIRCUMSTANCES OF THIS CASE

Plaintiff contends the circuit court erred in permitting the Defendants to present an alleged "joint defense" in this case because UniHealth asked that the jury determine whether the Defendant nurses acted outside the scope of their employment. This point raised an unwaivable conflict of interest. This Court should address this serious issue on appeal.

The Rules of Professional Conduct provide:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; *and*
>
> (4) each affected client gives informed consent, confirmed in writing.

Rule 1.7, RPC, Rule 407, SCACR (emphasis added).

When an attorney has a conflict of interest, a court has the power to remove the attorney from the action. *See State v. Wilson*, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010) (the circuit court removed an assistant solicitor due to a conflict of interest; Supreme Court found the order was not immediately appealable); *State v. Justus*, 392 S.C. 416, 419-20, 709 S.E.2d 668, 670 (2011) (affirming the circuit court's removal of defense counsel due to a conflict of interest).

In an attempt to avoid the obvious concurrent and intractable conflict of interest prohibited by Rule 1.7, RPC, UniHealth did not offer evidence on the scope of employment issue or argue the issue to the jury. In fact, UniHealth's counsel moved to prevent Plaintiffs from arguing "the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams." (R. p. 267, ll. 10-13). Defense counsel stated, "we do not want it stated that the facility has taken the position that the ladies - acted intentionally. That is not our position." (R. p. 267, ll. 20-24). The Court remarked "if they were acting intentionally then the health care facility would not be liable," (R. p. 268, ll. 1-2) to which Defendants' counsel responded, "it would not be, but we're not going to be arguing that in this case, Your Honor." (R. p. 268, ll. 3-4). When Plaintiffs' counsel sought to verify that Defendants would not later "do an about-face" and ask the Court "for a charge on intentional conduct that relieves UniHealth," Defendants' counsel replied "we're not going to be, you know, dividing the defense in that sense." (R. p. 268, l. 21 - p. 269, l. 8).

Despite these assurances, and despite the lack of any evidence or argument on the point, Defendants' counsel requested a jury instruction and two special verdict questions (#3 and #4) on scope of employment, over Plaintiffs' objections. (R. pp. 605, l. 3 - p. 606, l. 18). The court ruled "the way the case has been tried there is inherently an issue about whether or not they were acting

inside or outside their employment, and that's a question of fact, I think, for the jury to determine." (R. p. 607, ll. 2-3). Of course, it was a jury question only because UniHealth made it one, pointing its finger at the nurses in an attempt to absolve itself.

In the response to Plaintiff's motion for JNOV, purportedly filed on behalf of all the Defendants, UniHealth argued that the evidence showed the nurses were furthering their own agenda, they acted intentionally and outside the scope of their employment, they made "deliberate" false statements and "destroy[ed]" evidence, and are at best on their own in the fault found by the jury. (R. pp. 210-211). This argument is seriously detrimental to these nurses, and will be on retrial, yet the same counsel purports to represent their interests while trying to exonerate their employer by placing all blame on those employees. Such is offensive not only to the spirit of Rule 1. 7 but to the letter of the Rule as well. Had Defendants stuck to their word and faced the jury in a united front, such a concurrent conflict would not have arisen or would have, at best, been waivable.

The trial court should not have permitted the Defendants to whipsaw the Plaintiff in this manner. The jury heard the evidence, heard the arguments, and rendered its verdict, even in the face of UniHealth's attempt to deflect undetached blame onto its own employees. The Defendants then asked the trial court to use their change of position to undercut that verdict. What's rewarded will be repeated. The Court should hold the Defendants to their word, and prevent their lawyers from eviscerating the rules regarding concurrent conflicts of interest.

The Restatement provides guidance on the issue. Section 121 of the Restatement of the Law Governing Lawyers states:

> Unless all affected clients and other necessary persons consent to the

representation under the limitations and conditions provided in § 122, a lawyer may not represent a client if the representation would involve a conflict of interest. *A conflict of interest is involved if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.*

Restatement (Third) of the Law Governing Lawyers § 121 (2000) (emphasis added). The next section adds:

> (1) A lawyer may represent a client notwithstanding a conflict of interest prohibited by § 121 if each affected client or former client gives informed consent to the lawyer's representation. Informed consent requires that the client or former client have reasonably adequate information about the material risks of such representation to that client or former client.
>
> (2) Notwithstanding the informed consent of each affected client or former client, a lawyer may not represent a client if:
>
> (a) the representation is prohibited by law;
>
> (b) one client will assert a claim against the other in the same litigation; or
>
> (c) in the circumstances, it is not reasonably likely that the lawyer will be able to provide adequate representation to one or more of the clients.

Restatement (Third) of the Law Governing Lawyers § 122 (2000).

Next, Section 128 provides:

> Unless all affected clients consent to the representation under the limitations and conditions provided in § 122, a lawyer in civil litigation may not:
>
> (1) represent two or more clients in a matter if there is a substantial risk that the lawyer's representation of one client would be materially and adversely affected by the lawyer's duties to another client in the matter; or
>
> (2) represent one client to assert or defend a claim against or brought by another client currently represented by the lawyer, even if the matters are not related.

Restatement (Third) of the Law Governing Lawyers § 128 (2000).

Lastly, Section 131 states:

> Unless all affected clients consent to the representation under the limitations and conditions provided in § 122, a lawyer may not represent both an organization and a director, officer, employee, shareholder, owner, partner, member, or other individual or organization associated with the organization if there is a substantial risk that the lawyer's representation of either would be materially and adversely affected by the lawyer's duties to the other.

Restatement (Third) of the Law Governing Lawyers § 131 (2000).

These provisions demonstrate that under the circumstances of this case counsel should not have been permitted to proceed as counsel for all defendants. UniHealth asserted a defense that was detrimental to the interests of its employees: It sought a determination that the Defendant nurses were acting outside the course and scope of their employment. That determination served no purpose other than to relieve UniHealth of any liability while leaving the individual defendants exposed to full liability for the judgment. Through its counsel, UniHealth was able to deflect any respondeat superior liability and place all liability on its employees. If this is not a nonwaivable conflict of interest, then such does not exist in the law.

This issue informs Plaintiff's Issue II, above. If the Defendants were truly putting forth a unified front in defense of this case, then there was no basis for submitting to the jury the question of whether the individual nurses were acting outside the scope of their employment. Counsel repeatedly reassured the trial court that there would be no "divided defense," but the denial of Plaintiff's motions for directed verdict and JNOV, and the submission of the questions regarding this issue on the verdict form, belied those assurances.

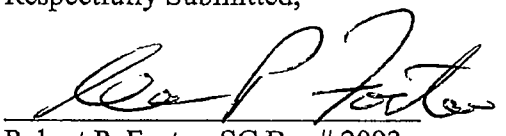
Accordingly, although this Court should reverse the trial court's decision on the

Thirteenth Juror Issue, if the Court affirms the Court should advise the trial court to either refuse to submit this issue to the jury on retrial or require all defendants to obtain separate, and new, counsel.

CONCLUSION

For the reasons stated the Court should reverse the trial court's order and remand for entry of judgment in accordance with the jury's verdict. Alternatively, should the Court affirm the trial court's order then the Court should instruct that the trial court must police the so-called joint defense to preclude UniHealth from attempting to relieve its own liability at the hands of its employees, or require each party to obtain new and separate counsel.

Respectfully Submitted,



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April 19, 2018

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-25-38-0845
South Carolina Court of Appeals No. 2017-000963

Ralph C. Williams, Sr., and Linda Williams, Appellants,

v.

Patricia A. Johnson, Josette Peppers and
UniHealth Post-Acute Care—Orangeburg, LLC, Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. Because ample evidence supports the trial court's decision to grant a new trial under the thirteenth juror doctrine, the standard of review requires that the decision remain undisturbed.

II. As part of the *prima facie* case for his *respondeat superior* claim, Appellant bore the burden of proving that the employees acted within the scope of their employment, but because he argued that they acted intentionally and with malice, the trial court properly denied his motions for directed verdict.

III. Appellant may not raise for the first time on appeal issues and arguments not raised at trial.

STATEMENT OF THE CASE

This appeal stems from the trial court's exercise of its broad authority under South Carolina's well-established "thirteenth juror" doctrine, a vehicle that vests in trial courts veto power to the "Nth degree." When, as here, the trial court finds that the evidence does not justify the verdict, the Judge may exercise the power and grant a new trial. On appeal, as long as there is conflicting evidence, the trial court's grant of a new trial will not be disturbed. And while there is, therefore, no requirement for this Court to evaluate the justification for the decision, the trial court's decision in this case was certainly well justified.

The case involves the reporting of suspected sexual abuse of a young, female nursing home resident in Orangeburg. Two nurses, now defendants in this case, reported a fellow male nursing assistant, the Appellant, for suspected sexual assault on an incapacitated female patient. Walking into the resident's closed-door room

in the dead of night, one of the nurses found the Appellant in bed on top of a younger female resident with his pants down, the resident's pants down, and the lights off. Appellant's naked butt was exposed, and the resident's gown was pushed up so far that her naked breasts were exposed. The first nurse rushed for help and found a second nurse. When they returned, Appellant was adjusting his pants and offered no explanation for his conduct. Appellant admits that he was on the resident's bed, in violation of his training and standard practice. Appellant admits that his pants had come down. Suspecting sexual abuse, the nurses reported the incident to law enforcement, as South Carolina law requires.

One can hardly pick up a paper today without reading about an incident of sexual abuse that went unreported or remained stifled for years. Recognizing the danger of unreported abuse, the State of South Carolina sought to encourage—indeed, require—the affirmative reporting of even *suspected* abuse of the state's vulnerable patients. The Omnibus Adult Protection Act (the "Protection Act") requires nurses to "immediately" report "suspected" sexual abuse. S.C. Code Ann. § 43-35-25(G). To encourage the immediate reporting of suspected sexual abuse, the Protection Act presumes the good faith of reporting nurses and grants them immunity for good faith reporting. S.C. Code Ann. § 43-35-75(A).

On appeal, and contrary to the position he took at trial, Appellant now admits: "*The only evidence was that [the defendant nurses] . . . were attempting to*

follow the Omnibus reporting law of South Carolina [i.e., Protection Act]." (Appellant's Initial Br. at 36 (emphasis added).) He even acknowledges, only now on appeal, that the nurse Defendants were "mandated to report possible abuse or neglect of a resident immediately." (Appellant's Initial Br., p. 36.)

Despite this statutory requirement for the immediate reporting of even suspected abuse and despite Appellant's recent admission that the defendant nurses "were attempting to follow the [Protection Act]," Appellant sued these nurses and their employer, the nursing home. In an attempt to avoid the immunity of the Protection Act, Appellant alleged, on the one hand, that the nurses acted "intentionally" and with "malice" and did not report their suspicions in good faith. But, self-contradicting these allegations of bad faith, Appellant asserted on the other hand that the nurses acted within the scope of their employment.[1]

The Defendants all maintained that the nurses acted in good faith based on what they saw, and they therefore sought the immunity offered by the Protection Act. Further, the nursing home argued that the Appellant could not proceed to trial with two directly conflicting positions. That is, Appellant could not argue on the one hand that the defendant nurses had acted maliciously and reported their suspicions in bad faith in order to avoid the immunity of the Protection Act and simultaneously argue that they were acting within the course and scope of their

[1] Thus, Appellant backtracks from his own "bad faith" allegations in an attempt to support a claim of *respondeat superior* liability against the nursing home.

employment. Appellant would either have to acknowledge that the nurses had not intentionally acted in bad faith, or he would have to abandon his claim of *respondeat superior*. He could not have it both ways.

Nevertheless, despite uncontradicted evidence supporting a good faith suspicion that Appellant had sexually abused a vulnerable nursing home resident, when Appellant sued the nurses and their employer for defamation, the case was allowed to reach the jury. Thus, the statutory immunity afforded the reporting nurses went unenforced. And, unfortunately, Appellant was permitted to advance both of his wildly inconsistent theories at trial, resulting in a wildly inconsistent verdict.

The jury found in favor of the Appellant, indicating on the special verdict that the two nurses did not act in good faith and that they acted outside the scope of their employment when they made their reports. As a result, the jury did not award compensatory damages against the nursing home. But in conflict with these specific findings, the jury sought to impose punitive damages not only against the defendant nurses but also against the nursing home.

This inconsistent verdict resulted in both the Appellant and Defendants seeking JNOV and a new trial. In resolving these post-trial motions, the trial court "exercise[d] its discretion as the thirteenth juror and grant[ed] a new trial." The trial court found that "the evidence did not justify the verdict," and that the

"interests of justice persuade the Court that a new trial is warranted." Rejecting Appellant's motion for reconsideration, the trial court reaffirmed its finding. This appeal followed.

Although Appellant previously fought to have the verdict modified, he now asserts that the trial court's decision to set aside the verdict was improper. Remarkably, he does so with a brand new theory of the case that was never presented below and that is directly contradictory to the theory he pursued at trial. Now, Appellant admits: "The only evidence was that [the defendant nurses] . . . *were attempting to follow the Omnibus reporting law of South Carolina.*" (Appellant's Initial Br. at 36 (emphasis added).) This eleventh-hour pivot appears to be motivated by a desire to avoid the result of pursuing a theory at trial against the nurses (intentional and deceitful misconduct) that was inherently inconsistent with the desire to also impose liability upon their employer. This acknowledgement that "[t]he only evidence was that [the defendant nurses] . . . were attempting to follow the [Protection Act]," of course, establishes the good faith of the nurse defendants and, therefore, the immunity of all defendants. This acknowledgement, by itself, would support why the trial court determined "that the evidence did not justify the verdict" and granted a new trial.

Appellant attacks the trial court's exercise of the thirteenth juror power as a "legal" conclusion, notwithstanding the court's specific finding that the "evidence

did not justify the verdict." On appeal, this Court's inquiry can begin and end with the thirteenth juror analysis, where appellate review is limited to the consideration of whether evidence exists to support the trial court's order. It clearly does. Thus, the Court need not reach the remaining issues raised by Appellant because to do so would result in an advisory opinion without altering the outcome of the appeal.

Nevertheless, turning to Appellant's two additional issues, both are easily dispelled. As his second issue, Appellant argues that the trial court erred in overruling his objection to the verdict form and in denying his motion for directed verdict and for JNOV on whether the nurse defendants were acting within the scope of their employment. As part of his *prima facie* case for *respondeat superior* liability, Appellant bore the burden of proving that the nurses were acting within the scope of their employment. Nevertheless, throughout his complaint, in his opening, and in closing, Appellant argued that the nurses acted "deliberately," "maliciously," and "intentionally." Thus, as framed by Appellant, *his* own arguments advanced *his* own theory that the nurses acted deliberately and with malice. Appellant's own arguments, therefore, conflicted with his motions for JNOV and directed verdict seeking a legal determination that the nurses acted within the scope of their employment. Although Appellant now admits that "[t]he only evidence was that [the defendant nurses] . . . *were attempting to follow the Omnibus reporting law of South Carolina*" (Appellant's Initial Br. at 36 (emphasis

added)), this admission comes too late. Appellant cannot erase his own theory and arguments from the record through this eleventh-hour acknowledgement that his own theory and arguments had no evidentiary support.

For his third issue, Appellant seeks to appeal a motion that he never made and an issue that he did not preserve. Appellant argues that the trial court erred in permitting the individual nurse defendants and their employer to assert a joint defense. Although he does not state this in his issue presented (which, in-and-of-itself, is a failure to preserve), Appellant finally states on page 43 of his brief that "counsel should not have been permitted to proceed as counsel for all defendants."

Appellant appears to be asserting that defense counsel should have been disqualified, but Appellant never brought a motion to disqualify before the trial court. Likewise, Appellant is asserting in his brief, for the first time, alleged violations of the Rules of Professional Conduct. But Appellant never raised these alleged violations before the trial court. In his appellate brief, Appellant asserts a conflict of interest, but he never voiced this issue to the trial court.[2] He points to nothing in the record to support his position. His arguments, therefore, are untimely and are unpreserved. Issues may not be raised in an appeal for the first time.

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[2] This appeal was captioned as if both Plaintiffs (husband and wife) were appealing, but only the husband seeks to have the verdict reinstated. His brief uses the singular "Appellant" throughout. The jury awarded Appellant's wife nothing, so she could potentially benefit from a new trial. These conflicting interests are ironic given the arguments Appellant is advancing in this appeal.

His arguments, moreover, are without merit. The Defendants have always asserted and continue to assert, together and with unanimity, that the nurses acted in good faith in reporting Appellant's highly suspicious activities to authorities as required under the Protection Act. Indeed, as Appellant now admits: "The only evidence was that [the defendant nurses] . . . *were attempting to follow the Omnibus reporting law of South Carolina.*" (Appellant's Initial Br. at 36 (emphasis added).) Appellant's attempt to impugn defense counsel's ethics based on a set of facts that he now admits did not exist is improper.

The trial court, therefore, properly exercised its authority to grant a new trial. That decision should remain undisturbed.

STATEMENT OF FACTS

Appellant, Ralph Williams, and his wife filed this lawsuit alleging that his colleagues, nurses Patricia Johnson and Josette Peppers, defamed Mr. Williams when they reported their suspicion that Mr. Williams was attempting to have sex with an incapacitated female nursing home resident. (R. pp. 143-177) Mr. Williams worked as a certified nursing assistant (CNA) at a nursing home in Orangeburg operated by Defendant UniHealth Post-Acute Care—Orangeburg, LLC ("UniHealth"). (R. p. 490, line 6-p. 491, line 19) Defendants Johnson and Peppers worked at UniHealth with Mr. Williams. The Williamses sued Johnson and Peppers, as well as their employer, UniHealth, asserting causes of action for

defamation and loss of consortium. (See Am. Compl., R. pp. 143-177) Appellant asserted in his Amended Complaint that the nurses acted intentionally and with malice. (See Am. Compl., R. p. 149,¶ 52; R. p. 163, ¶¶ 169, 170, 172; R. p. 165, ¶ 187; R. p. 166, ¶¶ 188, 190; R. p. 168, ¶¶ 204, 205; R. p. 171, ¶¶ 221, 222, 224; R. p. 173, ¶ 257; and R. p. 175, ¶ 269 (repeated use of terms "malignity toward Appellant," "actual malice," "intending to charge," and "intentionally").) Appellant's allegations and theory of liability against UniHealth were limited to the *respondeat superior* doctrine. (See Am. Compl., R. p. 162, ¶¶ 163-165; R. p. 165, ¶¶ 180-182; R. p. 167, ¶¶ 198-200; R. p. 170, ¶¶ 215-217; R. p. 172, ¶ 252; R. p. 173, ¶¶ 253-254; and R p. 174, ¶¶ 265-268.)

The salient facts of the case are not in dispute. During the early morning hours of June 21, 2010, Nurse Johnson found Mr. Williams' supply cart outside of Room 39. (See R. p. 279, lines 12-14 and R. p. 188, line 18; see also R. p. 506, line 15.) When she opened the door to Room 39, Mr. Williams was on the bed of the female resident closest to the door, and his pants were down. (R. p. 304, lines 1-14.)[3] Johnson saw his naked butt. (R. p. 304, lines 10-14; R. p. 295, lines 8-19; and R. p. 296, lines 11-13.) Johnson also saw that the resident's gown was pushed so far up that her naked breasts were exposed. (R. p. 304, lines 21-23.) Mr. Williams admits that he was on top of the resident and that his pants had come

[3] The resident was a "vulnerable adult" as defined under South Carolina's Omnibus Adult Protection Act. S.C. Code Ann. § 43-35-10.

down. (R. p. 507, lines 6-7; R. p. 508, lines 9-15; R. p. 542, lines 23-25.) The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed. (See R. p. 322, line 6-324, line 1; R. p. 352, lines 18-23; R. p. 601, line 10-R. p. 604, line 2; R. p. 537, line 18-R. p. 538, line 6.) The female resident, who was incapacitated, was only 42 years old and thus much younger than a typical nursing home resident. (R. p. 407, lines 24-25.) Mr. Williams was 54 at the time. (R. p. 407, lines 20-21.)

Upon observing Mr. Williams, Johnson exclaimed, "What are you doing!?" (See R. p. 507, lines 21-22.) Mr. Williams responded, "Will you please shut the door." (See R. p. 507, line 22.) Johnson left the door open and ran to get another nurse, Peppers. (See R. p. 508, lines 1-3; R. p. 297, lines 9-10; and R. p. 312, lines 19-25.) The two nurses immediately returned and found Mr. Williams in the corner of the room with the overhead lights off and adjusting his pants, which he admitted were down. (See R. p. 344, lines 1-7; R. p. 361, lines 2-6; R. p. 292, lines 2-4; R. p. 308, lines 4-6; R. p. 508, lines 9-15.) The nurses immediately escorted Mr. Williams out of the room without objection. (See R. p. 316, lines 9-22; see also R. p. 348, lines 3-10.) Meanwhile, Peppers immediately went to alert the facility's Director of Nursing and the local authorities. (See R. p. 348, lines 22-25 and R. p. 349, lines 1-25.) Mr. Williams never questioned why he was escorted out of the room, and he did not offer any explanation to anyone at the facility as to

why he was on the resident's bed or why his pants were down. (R. p. 292, lines 5-25; R. p. 366, lines 6-8.)

Police arrived at the facility and investigated the incident. (See generally Testimony of Officer Warrington, R. p. 363-376 and Officer Scott, R. pp. 381-393.) The police determined that there was sufficient cause to arrest Mr. Williams. (See R. p. 378, lines 23-25 and R. p. 379, line 1.) The arresting officer explained to Mr. Williams why they were at the facility, and Mr. Williams did not protest while being arrested or offer any explanation for why he was in the room, with his pants down, and up on the resident's bed, hovering over her. (See R. p. 366, lines 6-8.) Mr. Williams did not suggest that there was any misunderstanding or that there was anything that might affect the credibility of the nurses' reports. He simply put his head down and said, "I'm sorry." (See R. 379, lines 2-9.)

A detective investigated the matter, and the solicitor sought an indictment. (R. p. 585, line 16; R. 527, lines 1-13.) Shortly after his arrest, Mr. Williams admitted himself to the Dorn VA Medical Center in Columbia, South Carolina. (See R. p. 697-702) During his stay, he explained to a member of the staff, Ms. Mary Rogers, what transpired on the night of June 21, 2010. (See R. 598, line 19-R. p. 600, line 4; see also R. pp. 697-702) He explained to her that the resident had "already ripped off her diaper—which she was known to do" and that he was on the resident's bed in an effort to change the padding under the resident. (See R. pp.

697-702; see also R. p. 599, lines 2-5.) Mr. Williams's statement to Mary Rogers, however, contradicted his trial testimony that the diaper was on the resident when he entered the room, that the resident was covered in feces, and that *he* meticulously attempted to *remove* the diaper. (See R. 539, line 20-R. p. 543, line 7; contra R. pp. 697-702.)

Indeed, one of Appellant's major themes at trial was his assertion that the diaper was covered in feces and that was why he was on the bed meticulously trying to remove the soiled diaper and change the resident. (R. p. 270, lines 21-23; R. p. 540-544.) The nurses and the police, however, all testified that there were no feces and that the diaper was not dirty. (R. p. 288, lines 1-6; R. p. 320, lines 4-23; R. p. 348, lines 9-21; R. p. 393, line 13-R. p. 394, line 25.) Moreover, as indicated above, Mr. Williams gave a conflicting statement to the VA employee, claiming that the resident had already removed the diaper. (R. pp. 697-702; R. p. 599, lines 2-5.)

Contrary to Mr. Williams' claim that he needed to be on the bed to change the resident, his former nursing professor and the nurse Defendants were all adamant that it is never appropriate for a caregiver to climb onto a resident's bed. (R. p. 601-604; R. p. 322-324; R. p. 352, line 15-R. p. 353, line 13.) Mr. Williams agreed that he was not trained to climb onto a resident's bed. (R. p. 543, lines 21-24.)

Prior to trial, Defendant UniHealth brought a motion for summary judgment, asserting as a matter of law that if the nurses acted in good faith, then neither they

nor UniHealth could be liable because of the immunity afforded under the Protection Statute. (Aug. 27, 2013 Motion, R. pp. 104-117.) And on the flip side, UniHealth showed that if the nurses were found not to have acted in good faith, then their actions would be outside of their employment, and UniHealth would not be liable. (Id.)[4] That motion was denied (Jan. 6, 2014 Order, R. P. 1-2), and the case proceeded to trial. At trial, the Defendants remained united in their position that the nurses acted appropriately and in good faith in reporting their suspicions of Mr. Williams' questionable conduct. Indeed, even Appellant now concedes that "[t]he only evidence was that [the defendant nurses] . . . were attempting to follow the Omnibus reporting law of South Carolina [i.e., Protection Act]." (Appellant's Initial Br. at 36.) All Defendants argued at trial and continue to maintain that they are entitled to statutory immunity under the Protection Act. (R. p. 618, lines 5-20.)

During opening argument, Appellant's counsel told the jury "[t]his case, ladies and gentlemen, is about a false statement that was made by Ms. Patricia Johnson, as well as, Ms. Josette Peppers against my client." (R. p. 270, lines 17-19.) He went on to argue that Ms. Johnson's statements were made with an intentional purpose by stating the following: "there's a very important *deliberate*

[4] UniHealth never asserted or even suggested that its nurses had reported their suspicions in bad faith or had acted inappropriately in any regard as Appellant claimed. UniHealth merely explained that, whichever way the facts fell, the only possible logical conclusion was that UniHealth could not be legally liable, as follows: If the nurses acted in good faith, both they and UniHealth were immune; and if the nurses acted in bad faith, UniHealth could not be responsible for their acts under Appellant's respondeat superior theory.

statement that was inserted into this police report." (Tr. p. 115, lines 19-21.) While explaining the Protection Act, Appellant's counsel stated, "Now, what is not good faith? *Intentionally* asserting false information." (R. p. 271, lines 14-15.)

In his closing, and therefore with full knowledge of the content of the Judge's verdict form, Appellant's counsel hammered the same themes that he outlined in his amended complaint and in his opening, i.e., that the nurses acted intentionally, deliberately, and with malice. He argued, among other things, the following:

- "**Destruction of critical material is what we'll show. Deliberate alterations.**" (R. p. 610, lines 13-23.)
- "**That's deliberate alterations.**" (R. p. 611, lines 14-18.)
- "Not one of them said, please -- **that is deliberate alteration, omission of the facts.**" (R. p. 611, lines 22-25.)
- "All she had to do was say that's what happened. She doesn't want -- **she knows the deliberate intention for which she wrote this.**" (R. p. 612, lines 1-5.)
- "How do you make the exact same statement -- **that is a deliberate alteration. You're stating things deliberately.**" (R. p. 613, lines 10-18.)
- "**That statement was made with a deliberate purpose.**" (R. p. 614, lines 11-14.)
- "Ms. Patricia Johnson. **Wickedness.** That's the only way you have these allegations made. **Just wickedness.**" (R. p. 615, lines 2-6.)
- "**It's not good faith. It's not good -- it's worthlessness. It's malice, it's actual malice.**" (R. p. 616, lines 9-15.)

- **"And I can tell you, women and girls they think a little bit on another level than us guys. They can be a lot more calculating, a lot more calculating."** (R. p. 617, line 15-19.)[5]

Using the trial court's verdict form, the jury returned a verdict in favor of Appellant but not his wife. (Verdict, R. pp. 3-5.) Answering the special interrogatories in the verdict form, the jury concluded that the nurse Defendants did not act in good faith. (Id.) Consistent with their finding that the nurses did not act in good faith, the jury found that the nurses were acting outside of their employment. (Id.) But then the jury exhibited some confusion. Although it had found that the nurses acted without good faith and outside their employment, the jury sought to impose punitive damages not only against the nurses but also against their employer, UniHealth. (Id.)

After the trial, *both* sides[6] sought to have the verdict modified or set aside. (Defendants' Post-Trial Motions, R. pp. 188-201; Plaintiffs' Post-Trial Motions, R. pp. 178-187.) Following briefing and oral argument, the trial court exercised its authority as the thirteenth juror and granted a new trial, finding that the evidence did not support the jury's determination and that the interests of justice had not been

[5] In their post-trial motions, Defendants also sought to set aside the verdict because it was the result of passions and prejudices raised by Appellant in his closing, namely that all women are "calculating" by nature. (Defendants' Post-Trial Motions, May 1, 2015, pp. 8-9 and 11, R. pp. 195-196.)

[6] The trial court noted this, stating: "both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforces the Court's view that a new trial is warranted." (Jan. 22, 2016 Order, R. p. 6, n. 14.)

served. (Order of Jan. 22, 2016, R. pp. 6-11_.) Appellant moved for reconsideration, which the trial court denied. (March 10, 2017 Order, R. pp. 12-13.) This appeal followed.

STANDARD OF REVIEW

Under the thirteenth juror doctrine, the trial court may grant a new trial based on its view of the facts. Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The appellate courts' review of a trial court's grant of a new trial is limited to consideration of whether evidence exists to support the trial court's order. Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009). As long as there is conflicting evidence, the trial court's grant of a new trial will not be disturbed. Id. at 597–98, 681 S.E.2d at 883.

ARGUMENTS

I. BECAUSE AMPLE EVIDENCE SUPPORTS THE TRIAL COURT'S DECISION TO GRANT A NEW TRIAL UNDER THE THIRTEENTH JUROR DOCTRINE, THE STANDARD OF REVIEW REQUIRES THAT THE DECISION REMAIN UNDISTURBED.

A. The Thirteenth Juror Doctrine.

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Lane, 383 S.C.

at 597, 681 S.E.2d at 883 (internal quotation marks and citations omitted). As explained by the Supreme Court:

> The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (internal citation omitted); see also Worrell v. South Carolina Power Co., 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938) ("the trial judge is the thirteenth juror, possessing the veto power to the Nth degree").

In Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 551–52, 593 S.E.2d 504, 508 (2004), the Supreme Court reasoned that the grant of a new trial under the thirteenth juror doctrine was warranted because justice was not served by the jury's verdict, and the evidence did not justify the result. Id. at 552, 593 S.E.2d at 508. In this case, the trial court found the exact same factors as in Trivelas: (i) justice was not served by the verdict, and (ii) the evidence did not justify the result.

Likewise, the judge may grant a new trial if the verdict is inconsistent and reflects potential confusion by the jury. Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983); see also Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 453

S.E.2d 908 (Ct. App. 1995) (under "thirteenth juror doctrine," trial court may grant new trial if judge believes verdict is unsupported by evidence and, similarly, new trial may be granted if verdict is inconsistent and reflects jury's confusion). Although, in this case, the trial court did not make a specific finding that the jury was confused, the jury's inconsistent answers on the verdict form weigh in favor of invoking the thirteenth juror doctrine. As case in point, Appellant also sought to modify the verdict.

B. Appellant Mischaracterizes The Trial Court's Order As A Legal Ruling On The Application Of The Protection Act.

In his brief to this Court, Appellant asserts that the trial court included a legal determination in its order invoking the thirteenth juror power. (Appellant's Initial Br., p. 27.) This is inaccurate. The trial court's initial order was specific, stating: "The Court finds that the evidence did not justify the verdict." (Jan. 22, 2016 Order, p. 5, R. p. 10.) Although not required, the trial court then went on to explain, in part, how the evidence conflicted with the verdict. It noted:

> Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed.

(Jan. 22, 2016 Order, p. 5, R. p. 10.) The court concluded by stating: "The facts of the case and the interests of justice persuade the Court that a new trial is warranted." (Id.)

On Appellant's Motion for Reconsideration, the trial court issued a much shorter order and again reaffirmed its decision to grant a new trial under the thirteenth juror doctrine. (See March 10, 2017 Order, R. pp. 12-13.) The trial court again found that the "evidence did not justify the verdict" and that "the facts of the case and the interests of justice persuade the court, sitting as the thirteenth juror, that a new trial is warranted." (Id., R. p. 13.) Despite these clear statements, Appellant seizes on a single sentence within the Reconsideration Order, which states: "This court is concerned that the jury improperly handled the issue of the Defendant nurses' immunity under South Carolina's Omnibus Adult Protection Act." (Id.) Appellant seeks to construe this sentence about the jury's application of the facts as a legal ruling by the trial court. (Appellant's Initial Br., p. 27.) Appellant's position is without merit.

As a starting point, Appellant's portrayal of the sentence within the Reconsideration Order as a legal ruling on the immunity statute is a far stretch. The trial court repeatedly stated that the evidence did not justify the verdict, which is all that is required to invoke the thirteenth juror doctrine. That the trial court voiced a "concern" that the jury misapplied the facts to the law fits squarely within the ambit of the court's authority under the doctrine.[7]

[7] Indeed, even Appellant concedes, as he must, that "the case law indicates the grant of a new trial under the Thirteenth Juror doctrine is nearly unreviewable . . . ." (Appellant's Br., p. 31.)

To support his position, Appellant cites two cases, Lane v. Gilbert Constr. Co., 383 S.C. 590, 681 S.E.2d 879 (2009) and Youmans v. S.C. Dep't of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008), for the proposition that when the trial court gives a reason for granting a thirteenth juror motion and the reasons are controlled by an error of law, the appellate court can review those reasons. Those cases do not support Appellant's position. First, the trial court did not give any reasons for his decision other than his repeated invocation that the "evidence did not justify the verdict" and "the interests of justice persuade the Court that a new trial is warranted." (Jan. 22, 2016 Order, R. p. 10.) The trial court's voicing of a concern regarding the jury's application of the evidence to the law falls squarely within the thirteenth juror powers.

But going further, the Lane and Youmans cases simply do not apply, other than to support Defendants. In Lane, the Supreme Court *affirmed* the trial court's exercise of the thirteenth juror power, stressing that its role on appeal is limited to ascertaining "whether evidence exists to support the trial court's order." 383 S.C. at 597. The Supreme Court reviewed the evidence cited by the trial court in granting a new trial, but the Supreme Court never construed the trial court's review of the evidence as somehow transmuting into a legal analysis. Id. at 598. Instead, the Supreme Court found that evidence existed to support the trial court's grant of a new trial, and it affirmed that decision. This case therefore mirrors Lane.

In Youmans, the Supreme Court issued a rare reversal of a trial court's exercise of the thirteenth juror doctrine. It did so because the trial court found the exact opposite of what is required under the doctrine: Specifically, instead of finding that the evidence did not support the verdict, the trial court found the exact opposite, stating that "the evidence is sufficient to support the verdict" and "[t]here's no doubt in my mind about that." 380 S.C. at 278. Despite having found that the evidence supported the verdict, the trial court nevertheless exercised the thirteenth juror doctrine because the jury did not deliberate long enough. The Supreme Court reversed, reasoning that granting a new trial based solely on the length of jury deliberations is not the same as granting a new trial on the facts. Id. at 282. Thus, the unique holding of Youmans is limited to the issue of the length of jury deliberations and has no bearing on this appeal, in which the trial court exercised its authority based on the lack of evidence supporting the verdict.

And, finally, it is of no consequence that the trial court previously denied Defendants' motions for a directed verdict on the application of the Protection Act. This is because in exercising its thirteenth juror powers, the court may weigh the evidence even though it is not permitted to do so in considering a directed verdict motion. See Buxton v. Thompson Dental Co., 307 S.C. 523, 528, 415 S.E.2d 844, 848 (Ct. App. 1992) (affirming the trial court's grant of a new trial motion after its denial of a directed verdict motion), overruled on other grounds by Boone v.

Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994). "The granting of a new trial upon the facts is not the equivalent of granting a directed verdict." McEntire v. Mooregard Exterminating Servs., Inc., 353 S.C. 629, 632, 578 S.E.2d 746, 748 (Ct. App. 2003) (citation omitted). And a trial court's refusal to grant a directed verdict is not inconsistent with the grant of a new trial. See RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012) ("The question of whether the evidence is legally sufficient to sustain a verdict, a question of law, is distinguishable from the question of whether a fair preponderance of the evidence supports a verdict, which is a matter involving the exercise of discretion.").

Consistent with Appellant's acknowledgement that "[t]he only evidence was that [the defendant nurses] . . . were attempting to follow the Omnibus reporting law of South Carolina" (Appellant's Initial Br. at 36), the court was justified in concluding that "the evidence did not justify the verdict."

II. AS PART OF THE *PRIMA FACIE* CASE FOR HIS *RESPONDEAT SUPERIOR* CLAIM, APPELLANT BORE THE BURDEN OF PROVING THAT THE EMPLOYEES ACTED WITHIN THE SCOPE OF THEIR EMPLOYMENT, BUT BECAUSE HE ARGUED THAT THEY ACTED INTENTIONALLY AND WITH MALICE, THE TRIAL COURT PROPERLY DENIED HIS MOTIONS FOR DIRECTED VERDICT.

"A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment."

Lane v. Modern Music, Inc., 244 S.C. 299, 301, 136 S.E.2d 713 (1964). Thus, there can be no *respondeat superior* liability without a factual finding that the employee was acting within the scope of her employment. The burden of proof, therefore, is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business. See Vereen v. Liberty Life Insurance Co., 306 S.C. 423, 428, 412 S.E.2d 425, 427 (1991) (holding that burden of production and persuasion are with plaintiff; the defendant "was free to leave the burden of proof on the [plaintiffs] and simply rely for its defense on the cross examination of their witnesses").

In this case, Appellant did not argue that the nurse Defendants were "about [their] master's business," but instead made scathing arguments to the contrary. Appellant argued to the jury that the nurse employees acted intentionally by engaging in "wicked" conduct, making "deliberate" false statements and "destroying" evidence, bearing "false witness against thy neighbor," being "calculating" women, and trying to "set a person up." Appellant had the burden to prove that the nurse Defendants acted within the scope of their employment. His failure to meet that burden was the result of his own arguments and presentation to the jury. Thus, Appellant may not now complain that he was entitled to a judgment as a matter of law. See generally Shearer v. DeShon, 240 S.C. 472, 484,

126 S.E.2d 514, 520 (1962) ("Ordinarily, one cannot complain of an error which his own conduct has induced.").

And in a defamation case such as this, the standard charge is clear: "A principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority." See Abofreka v. Alston Tobacco Co., 288 S.C. 122, 341 S.E.2d 622 (1986); Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001). In this case, the trial court provided specific instructions regarding the *respondeat superior* doctrine and the definition of scope of employment. (See Tr., pp. 827-828.) Thereafter, the Court provided a verdict form that allowed the jury to make multiple factual findings—first, a factual finding regarding whether the nurses acted in good faith and, if not, a second factual determination as to whether the nurses acted outside the scope of their employment at UniHealth. (R. p. 637, line 8-R. p. 639, line 8; Verdict, R. pp. 3-5.)

In summary, Defendants were not required to prove anything with respect to the scope of employment; instead, the burden rested upon Appellant to prove this element as part of his *prima facie* case. See Vereen, 306 S.C. at 428. The jury was required to make that determination as a condition precedent to any legal liability being imposed upon UniHealth under the *respondeat superior* doctrine. Appellant recognized as much, stating that whether the nurse defendants "were acting within

the scope of their employment" raised "an issue of material fact for the jury to decide this issue." (Appellants' Memo in Opposition to MSJ, Dec. 30, 2013, R. p. 138.) Moreover, as the trial court concluded while ruling on Appellants' Motion for Directed Verdict, "the way the case has been tried[,] there is inherently an issue about whether or not [the Nurse Employees] were acting inside or outside the scope of their employment, and that's a question of fact....for the jury to determine." (R. p. 607, lines 3-6.)

On appeal, against everything that he argued at trial, Appellant now seeks to avail himself of the Protection Act and UniHealth's policies implementing that Act. He asserts that the nurse Defendants were "mandated to report possible abuse or neglect of a resident immediately." (Appellant's Initial Br., p. 36.) Appellant further acknowledges that "[t]he only evidence was that [the defendant nurses] . . . were attempting to follow the Omnibus reporting law of South Carolina." (Appellant's Initial Br. at 36.) Okay then. If Appellant now concedes that his conduct constituted "possible abuse or neglect of a resident" that the nurses were required to report and that they "were attempting to follow the Omnibus reporting law of South Carolina" then Defendants—all of the Defendants—are entitled to immunity under the Protection Act. See S.C. Code Ann. § 43-35-75(A). But absent such a concession, Appellant cannot credibly argue, on the one hand, that

the nurses were acting "maliciously" and "wickedly,"[8] while, on the other hand, claiming that they had a duty to report. Appellant bore the burden of proof on the issue, which the jury found that he failed to satisfy. It was a fact question of Appellant's own making. For all of these reasons, Appellant's argument fails.

III. APPELLANT MAY NOT RAISE FOR THE FIRST TIME ON APPEAL ISSUES AND ARGUMENTS NOT RAISED AT TRIAL.

A. Appellants May Not Raise Issues For The First Time On Appeal.

For his third appeal issue, Appellant claims that the trial court erred in permitting Defendants to present a joint defense. (Appellant's Initial Br., p. 39.) Tellingly, Appellant does *not* assert that the trial court erred in denying any motion or objection brought by Appellant. There was none. This argument was neither raised before, nor ruled upon by, the trial court.

To preserve an issue for appeal, specific grounds in support of the objection must be clearly stated. Wilder Corp v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). The objection must be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge. Id.

[8] Ignoring everything that he argued at trial, Appellant now suggests that his theory was not that the defendant nurses acted intentionally or deliberately. He now asserts, for the first time on appeal, a theory that the nurses were required to report their suspicions that Appellant had sexually abused the resident, "but they just went about it in a reckless manner." (Appellant's Initial Br., p. 36.) Setting aside the issue of whether such a theory could override the nurses' immunity (it could not), this was not the theory advanced by Appellant below. And Appellant cannot erase his theory of maliciousness, deceit, and intentional misconduct from the record by imagining a wholly inconsistent theory that he never advanced at trial. That Appellant attempts this maneuver is quite telling.

Thus, it is a well-settled rule that issues must have been raised to, and ruled upon by, the lower court in order to preserve those issues for appellate review. Doe v. Roe, 369 S.C. 351, 631 S.E.2d 317 (Ct. App. 2006). "An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 598 S.E.2d 712 (2004).

It is equally well settled that a party "cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." Kiawah Prop. Owners Group v. Public Serv. Comm'n, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); see also MailSource, LLC v. M.A. Bailey & Assoc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003) ("A party cannot raise issue for first time in Rule 59(e), SCRCP motion which could have been raised at trial.").

Prior to the verdict, Appellant never asserted that defense counsel should be disqualified. The word "disqualify" does not appear anywhere in the entire trial transcript. The word "conflict" appears only once in the entire transcript and was spoken by the Appellant's sister-in-law in her direct testimony. (R. p. 448.) Appellant simply failed to preserve these arguments for appellate review. There are no citations in Appellant's brief indicating that he ever moved to disqualify counsel. That is because he did not. He did not believe it to be an issue during the

entire trial and only raises it afterward in an attempt to salvage a verdict.[9] In fact, Appellant's acknowledgement that "[t]he only evidence was that [the defendant nurses] were furthering the interests of the master, UniHealth in making these reports, and were attempting to follow the Omnibus reporting law of South Carolina" (Appellant's Initial Br. at 36) illustrates that there was no conflict. Having failed to raise any such issue at trial, the law in South Carolina is clear that Appellant may not do so on appeal.

Having failed to object at trial or move to disqualify, Appellant resorts to implying that the trial court, on its own initiative, should have removed defense counsel. (Appellant's Initial Br., p. 40.) Appellant cites only two cases in support of this theory, and both are criminal cases. But the cases do not support Appellant's position. In the first case, State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010), the defendant filed a formal motion to disqualify the state's assistant solicitor because of prior representation of family members. The issue on appeal was whether the trial court's grant of that motion was immediately

[9] Appellant acknowledges as much in his brief, stating: "UniHealth did not offer evidence on the scope of employment issue or argue the issue to the jury." (Appellant's Initial Br., p. 40.) Defendants agree. Moreover, Defense counsel stressed that "we do not want it stated that the facility has taken the position that the ladies – acted intentionally. This is not our position." (Id.; R. p. 267, lines 20-24.) Contrast this with the unsupported assertion on the next page of Appellant's brief that UniHealth made the scope of employment an issue by "pointing its finger at the nurses in an attempt to absolve itself." (Appellant's Initial Br., p. 41.) Appellant's two statements cannot reconcile. There was no finger pointing among the Defendants.

appealable, and the Court of Appeals held it was not.[10] Here, by contrast, Appellant failed to file any motion to disqualify or even raise the issue before the trial court. And the State v. Wilson case certainly does not stand for the notion that a trial court, in a civil case, may disqualify counsel *sua sponte*. Instead, the Supreme Court stressed the heightened scrutiny given to motions to dismiss in civil cases because of, among other things, the importance of the party's right to counsel of his choice. Id. at 601-602; citing Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (reviewing the four-pronged rationale for more immediate review of disqualification orders in civil cases).

B. Appellant Waived Any Objections About The *Respondeat Superior* Jury Charges.

Intermixed with Appellant's third appeal issue is a rehashing of his arguments about the jury charges on his own claim for *respondeat superior* liability. (Appellant's Initial Br., p. 40.) Appellant complains that Defendants requested jury instructions on "scope of employment." (Id.) But as discussed in Section II, *supra*, part of Appellant's *prima facie* case on *respondeat superior* liability required proof, by him, as the plaintiff, of whether the employees were acting within the scope of their employment. See Vereen, 306 S.C. at 428. This is

[10] The second case cited by Appellant, State v. Justus, 392 S.C. 416, 419-420, 709 S.E.2d 668, 670 (2011), provides even less support. There, the solicitor filed a formal motion entitled "Motion to Have the Court Determine Whether Defense Counsel has an Actual Conflict of Interest." Id. at 417. Thus, unlike here, there was no question that the issue had been preserved for appeal.

part of the pattern jury instructions. It was not some novel theory advanced by Defendants.

Moreover, Appellant failed to raise any objections to these charges at trial and therefore waived the opportunity to raise an objection for the first time in this appeal. At trial, Appellant only had two objections to the jury charges: (1) an objection to a portion of the Protection Act related to criminal penalties; and (2) an objection regarding the continuing publication doctrine. (See R. p. 608, lines 2-20.) Thus, having failed to object to the jury charge on *respondeat superior* at any time during the trial, it is axiomatic that Appellant has waived his objection and may not raise it for the first time on appeal. See Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) (it is "axiomatic" that issue cannot be raised for the first time on appeal).

C. Because Appellant's Statement Of Issues Does Not Raise Issues Of Conflict, Disqualification, Or Rules Of Professional Conduct, This Court Should Not Entertain Any Such Arguments.

This Court's rules are clear that no point will be considered that is not set forth in the statement of the issues on appeal. See Rule 208(b)(1)(B), SCACR; Gamble v. International Paper Realty Crop., 323 S.C. 367, 474 S.E.2d 438 (1996) (under SCACR, ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal; State v. Hughes, 346 S.C. 339, 552 S.E.2d 35 (Ct. App. 2001) (same)).

Nothing in the Appellant's Statement of the Issues on Appeal asserts error regarding a legal conflict, a motion to disqualify, or the application of the Rules of Professional Conduct. Instead, Appellant frames his third Issue as if the trial court erred by not, *sua sponte*, intervening and requiring Defendants to abandon their joint defense and pit themselves against one another. For this reason, in addition to Appellant having failed to preserve the issues, the appeal should be denied.

D. Even Assuming Appellant Had Raised The Issue At Trial, He States No Grounds And Has No Standing To Assert A Conflict Or Move To Disqualify.

Even had the Appellant raised a motion or an objection, the allegations are unfounded. The Defendants remained united throughout the trial in their arguments to the jury that the nurses acted in good faith. There was no conflict.[11] Indeed, Appellant concedes that "[t]he only evidence was that [the defendant nurses] . . . were attempting to follow the Omnibus reporting law of South Carolina." (Appellant's Initial Br. at 36.) But, nevertheless, this is not Appellant's issue to raise, and he has no standing to assert a violation of the Rules of Professional Conduct ("RPC) within this appeal or at trial.

[11] Again, having conceded that "UniHealth did not offer evidence on the scope of employment issue or argue the issue to the jury" (Appellant's Initial Br., p. 40), on the next page of his brief, Appellant cites a post-hearing brief, claiming that "UniHealth argued that the evidence showed the nurses were furthering their own agenda, they acted intentionally and outside the scope of their employment . . . ." (Id. at 41.) Appellant's characterization of the brief is false. He quotes nothing from UniHealth's brief except two words "deliberate" and "destroy" that do not even appear on the pages that he cites. This mischaracterization of the brief by Appellant is troubling.

The RPC's Scope states that "[v]iolation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached." Rule 407, SCACR, Scope 7; Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 435–36, 472 S.E.2d 612, 613 (1996). Thus, "the Rules of Professional Conduct do not, in themselves, create a cause of action . . . ." Spence v. Wingate, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011). "A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation." Id. This comports with most other jurisdictions. See Biller Associates v. Peterken, 849 A.2d 847 (Conn. 2004) ("The rules governing the professional conduct of attorneys, without more, do not give rise to a cause of action."); Barsotti v. Merced, 788 A.2d 802 (NJ 2002) (The Rules of Professional Conduct do not create a duty, nor does a violation of the Rules, standing alone, form a basis for a cause of action.).

Thus, Appellant not only failed to raise an issue of conflict or request disqualification during trial or in his post-trial briefs, he lacked standing to assert violations of the Rules of Professional Conduct. But as indicated, there was no conflict among Defendants. Moreover, even to the extent that a conflict had existed (which it did not), Appellant cannot claim any injury as a result. He has not been prejudiced. The standing to assert a conflict rests with the person owed

the legal duty, not an opposing party in litigation. See Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (1986) ("an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client"). Appellant is not attempting to protect any secrets or confidences of his own, as is generally the case with motions to disqualify. Instead, he is seeking to weaponize the Rules of Professional Conduct to drive a wedge between his opponents. This contravenes the RPC's admonition: "[T]he purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons." Rule 407 (Scope), note 7, SCACR.

For all of these reasons, Appellant waived any objections regarding defense counsel, and the Court should reject his third issue on appeal.

CONCLUSION

For the reasons set forth above, the Court of Appeals should affirm the trial court's exercise its power to set aside the verdict under the thirteenth juror doctrine. More than ample evidence supported the trial court's decision.

[Signature on Next Page]

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April 26, 2018

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas
Edgar W. Dickson, Circuit Court Judge

RECEIVED
APR 27 2018
SC Court of Appeals

Case No. 2012-CP-25-38-0845
South Carolina Court of Appeals No. 2017-000963

Ralph C. Williams, Sr., and Linda Williams, Appellants,

v.

Patricia A. Johnson, Josette Peppers and
UniHealth Post-Acute Care—Orangeburg, LLC, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Patricia A. Johnson, Josette Peppers
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ARGUMENTS

I. PLAINTIFF CORRECTLY CHARACTERIZED THE TRIAL COURT'S RULING

Defendants assert Plaintiff mischaracterized the trial court's basis for granting a new trial under the Thirteenth Juror doctrine. (Respondents' Br. pp. 18-22). Defendants contend Plaintiff's argument is a "stretch." (Respondents' Br. p. 19). The Court can judge this for itself.

The trial judge stated he granted the motion for new trial under the Thirteenth Juror doctrine because he was "concerned that the jury improperly handled the issue of the Defendant [nurses'] immunity under the South Carolina Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43-35-25(A) & (G)." (R.p.13). Defendants hope this Court will ignore this statement in the order which is presented as a basis for the ruling, not some unimportant statement of "concern" as Defendants characterize it. (Respondents' Br. p. 19). See R.p.13.

Defendants want this Court to ignore this language in the March 10, 2017, order. However, even though the trial court did not have to set forth his reason for granting the Defendants a new trial, he did so. And that reason demonstrates an erroneous view of the law that applies to this case. This Court should not accept Defendants' invitation to redact that language that Defendants find inconvenient, but should take the judge at his word. At that word reflects a misunderstanding and misapplication of the South Carolina Omnibus Adult Protection Act.

For the reasons stated in his principal brief, this Court should reverse the trial court's decision to grant Defendants a new trial because the trial court was concerned that the jury misapplied the Act.

II. PLAINTIFF PROPERLY RAISED THE ISSUES INVOLVING DEFENDANTS' IMPROPER DEFENSE

Defendants assert that the Court should not address the arguments regarding the conflict created when Unihealth's lawyers, who agreed not to "split the defense," proceeded to attempt to exonerate Unihealth by putting blame on Unhealth's employees, whom they also represented. (Respondents' Brief, p. 26). Defendants contend the issue is not properly raised by Plaintiff's Statement of Issues on Appeal. The Court should reject this argument.

Plaintiff stated the issue as follows:

> Did the circuit court judge err in permitting the Defendants to present an alleged joint defense when the employer Defendant sought to relieve its liability by deflecting fault upon its own employees, who were also Defendants, by arguing these employees were of acting outside the scope of their employment?

(App. Br. p. 1). Not only does this statement expressly raise the issue of the error in permitting the alleged joint defense in light of Unihealth's strategy of blaming its employees, that argument is fairly embraced with this statement of the issue. The statement complies with Rule 208(b)(1)(B), SCACR.

Furthermore, South Carolina's courts have broadly construed the requirements that parties specifically state their issues on appeal where it is reasonably clear from appellant's arguments that the issue is in dispute. *Gibson v. Ameris Bank*, 420 S.C. 536, 542 n. 2, 804 S.E.2d 276, 279 n. 2 (Ct. App. 2017); Jean Hoefer Toal, *et al.*, *Appellate Practice in South Carolina* 208 (3rd ed. 2016) (even if issue not specifically set out in the statement of issues, appellate court may nevertheless consider the issue if it is reasonably clear from the appellant's argument).

The Court should reverse the circuit court's decision to upset the jury's verdict. Even if the Court disagrees with Plaintiff's argument regarding the trial court's error in the reasons it

gave for granting a new trial, the issue will necessarily arise on retrial.

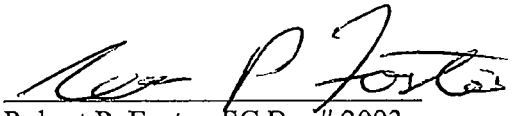
Finally, Defendants' contend that Plaintiff is "attempting to weaponize" the RPC. (Respondents' Brief, pp. 32-33). This is simply not true. What Plaintiff is asking the Court to do is to explain the importance of preventing these Defendants from giving lip service to a joint defense while shielding the company defendant at the hands of its own employees by asserting they have acted outside the scope of their employment. Such behavior is offensive at every level and the Court should not tolerate it. Defendants attempt to bury their behavior in arguments regarding error preservation, and then to deflect by contending it is *Plaintiff* who is disregarding the RPC.

The Court should reject Defendants' contention that this issue is not available for the Court's review. Should the Court affirm the trial court's decision to disturb the jury's verdict on the basis of the trial court's mistaken view over whether the jury appropriately applied statutory law, then the Court should admonish Defendants' counsel and instruct the Defendants to each obtain new representation by lawyers who will, in fact, provide a defense to each.

CONCLUSION

The Court should reject Defendants' attempt to avoid the merits of this appeal by specious arguments regarding preservation. Instead, as previously argued, the Court should reverse the trial court's order and remand for entry of judgment in accordance with the jury's verdict. Alternatively, should the Court affirm the trial court's order then the Court should instruct that the trial court must police the so-called joint defense to preclude UniHealth from attempting to relieve its own liability at the hands of its employees, or require each party to obtain new and separate counsel.

Respectfully Submitted,



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Attorneys for Appellants

April 19, 2018

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ralph C. Williams, Sr. and Linda Williams, Appellants,

v.

Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care - Orangeburg, LLC, Respondents.

Appellate Case No. 2017-000963

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2020-UP-014
Heard December 11, 2019 – Filed January 15, 2020

AFFIRMED

Robert Paul Foster, of Foster Law Firm, LLC, of Greenville, and Java O. Warren, of Charlotte, North Carolina, both for Appellants.

Jason Edward Bring, of Arnall Golden Gregory, LLP, of Atlanta, Georgia, and Tyler Lawrence Arnold, of Norcross, Georgia, for Respondents.

PER CURIAM: This appeal follows a jury trial on Ralph C. Williams Sr. and Linda Williams's (collectively Appellants') claims for defamation and loss of consortium

against Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care - Orangeburg, LLC (collectively Respondents). The jury by special verdict (1) found Johnson and Peppers did not act in good faith in reporting their suspicions about Ralph Williams Sr.'s (Ralph's) alleged sexual abuse of a nursing home patient; (2) found Johnson and Peppers were not acting in the scope of their employment when they reported the alleged sexual abuse; and (3) awarded Ralph $102,500 in actual damages and $897,000 in punitive damages. The circuit court granted Respondents a new trial pursuant to the thirteenth juror doctrine. On appeal, Appellants argue the circuit court (1) abused its discretion in granting Respondents a new trial under the thirteenth juror doctrine, (2) erred in overruling Appellants' objection to the verdict form and in denying their motions for a directed verdict and judgment notwithstanding the verdict (JNOV) on the issue of whether Johnson and Peppers were acting in the scope of their employment when they reported the alleged sexual abuse, and (3) erred in permitting Respondents to present a joint defense when UniHealth tried to remove its liability by pursuing the trial strategy that Johnson and Peppers acted outside of the scope of their employment when they reported Ralph. We affirm.

I.

On June 21, 2010, Ralph, Johnson, and Peppers were working at an Orangeburg nursing home operated by UniHealth. Ralph was a certified nursing assistant (CNA), and Johnson and Peppers were licensed practical nurses (LPNs). During the early morning, Johnson found Ralph's supply cart outside of room thirty-nine, which was occupied by two residents; when she entered the room, she saw Ralph on the bed with a female resident (Victim) with his pants down.[1] Johnson asked Ralph what he was doing, and Ralph asked Johnson to shut the door. Johnson left the room and went to get Peppers. Johnson and Peppers returned to the room and found Ralph in the corner with the overhead lights off adjusting his pants.

Peppers called the police, who determined there was probable cause to arrest Ralph. Ralph was not convicted on any charges related to this incident. Thereafter, Appellants filed an action against Respondents asserting claims for defamation and loss of consortium—for which UniHealth would also be liable under the theory of *respondeat superior*.

[1] Victim was a forty-two year old woman, who was incapacitated and paralyzed after a stroke. Her roommate was a dementia patient.

At the close of Appellants' case, Respondents moved for a directed verdict, arguing Appellants had not met their burden to overcome the presumption of good faith as established by the Omnibus Adult Protection Act[2] (the Act). The circuit court denied the motion for a directed verdict on all issues, except the issue of lost wages.

Following closing arguments, the circuit court reviewed the special verdict form with the jury, explaining (1) questions one and two asked whether Johnson and Peppers acted in good faith in reporting Ralph; (2) the jury should only continue to the other questions if they found Johnson and Peppers acted in bad faith; (3) questions three and four asked if Johnson and Peppers acted outside of the scope of their employment; (4) question five asked the jury to state the amount of Ralph's actual damages, and question six asked the jury to state the amount of Ralph's wife's actual damages; (5) question seven asked if the jury found the harm to Appellants to be due to "willful, wanton, and reckless conduct of" each of the Respondents separately; and (6) question eight asked the jury to enter the amount of any punitive damages that should be imposed on each Respondent.

Using the special verdict form, the jury returned a verdict in favor of Ralph on his claims for defamation. The jury indicated Johnson and Peppers did not act in good faith in reporting Ralph, and they acted outside of the scope of their employment with UniHealth in reporting Ralph. The jury then awarded Ralph $102,500 in actual damages and $200,000 in punitive damages from Johnson; $97,500 in punitive damages from Peppers; and $600,000 in punitive damages from UniHealth.

Both sides made post-verdict motions. Appellants filed a motion for JNOV as to the issue of whether Johnson and Peppers acted in the scope of their employment, arguing the undisputed facts show they were acting in the scope of their employment when they reported the alleged sexual abuse. The Respondents moved for JNOV or in the alternative a new trial absolute, arguing the only inference from the evidence was that Johnson and Peppers acted in good faith when they reported the alleged sexual abuse, and as such, the circuit court should have granted Respondents' motions for directed verdict. They also asked the court to grant a new trial pursuant to the thirteenth juror doctrine because the evidence did not justify the verdict. UniHealth also moved for JNOV or new trial, arguing the circuit court should deny Appellants' post-trial motions and "exercise its power to enter judgment in

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[2] S.C. Code Ann. §§ 43-35-5 to -595 (2015 & Supp. 2019) (providing a system for the protection of adults in South Carolina and clarifying the reporting procedures for abuse, neglect, and exploitation of adults, including that reporters are immune from both civil and criminal liability for reporting if they reported in good faith).

accordance with the jury's interrogatory answers and set aside the punitive damages award against . . . UniHealth."

The circuit court granted Respondents a new trial under the thirteenth juror doctrine, finding the evidence did not justify the verdict. The circuit court dismissed the remaining post-trial motions as moot. Appellants moved for reconsideration, asserting "[a]n error of law occurred because the trial judge related to the parties that he may have made a mistake in charging the immunity statute." The circuit court denied Appellants' motion to reconsider, stating the evidence did not justify the jury's verdict and "[t]his court is concerned that the jury improperly handled the issue of [Johnson's and Peppers'] immunity under the [Act]." This appeal followed.

II. NEW TRIAL

Appellants argue the circuit court abused its discretion in granting Respondents a new trial pursuant to the thirteenth juror doctrine. We disagree.

The thirteenth juror doctrine empowers a trial court that believes the verdict is contrary to the evidence to "hang" the jury, thus necessitating a new trial. *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004) ("The effect is the same as if the jury failed to reach a verdict, and thus, the circuit court is not required to give any reason for granting the new trial."). The doctrine arms the trial court with "the veto power to the Nth degree." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313, 195 S.E. 638, 641 (1938). The trial court is not required to explain or justify its decision to invoke the doctrine, and—because it is obligated to see that justice is done—it is duty-bound to grant a new trial if the evidence does not support the verdict. *Folkens v. Hunt*, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990). We must uphold a trial court's thirteenth juror decision unless it is "wholly unsupported by the evidence." *Worrell*, 186 S.C. at 314, 195 S.E. at 641. And "where . . . the circuit court applied the correct legal standard for granting a new trial, and conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable." *Trivelas*, 357 S.C. at 553, 593 S.E.2d at 508.

First, we find the circuit court's grant of a new trial was not "wholly unsupported by the evidence." *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 271, 670 S.E.2d 1, 4 (Ct. App. 2008) ("[A] trial judge's order granting or denying a new trial will be upheld unless the order is 'wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.'" (quoting *Folkens*, 300 S.C. at 254–55, 387 S.E.2d at 267)). The circuit court found the evidence did not support the jury's verdict. *See Folkens*, 300 S.C. at 254, 387 S.E.2d at 267 ("The thirteenth

juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict."). In particular, the circuit court noted Ralph admitted he was on Victim's bed with his pants at least somewhat down, and it also noted the evidence established nurses were not permitted to be on a resident's bed. The evidence in support of the circuit court's conclusion included (1) Ralph's testimony he was on the bed with Victim, and his pants were at least somewhat down because the ties on his pants got stuck while he attempted to change Victim's diaper and bedding; (2) the nursing home's written policy, which did not instruct nurses to get on a bed with a resident in order to change or move the resident; (3) a nursing teacher's testimony that nursing students were not taught to get on a bed with a resident to change or move the resident; (4) Johnson's testimony she saw Ralph with his pants down on top of Victim; and (5) Johnson's and Peppers' testimonies they saw Ralph adjusting his pants in Victim's room after Johnson saw Ralph on top of the bed with Victim.

Additionally, Appellants argue that by denying Respondents' directed verdict motion, the circuit court made an implicit finding that some evidence existed regarding whether Johnson and Peppers acted in good faith or in the scope of their employment when they reported the alleged sexual abuse. On a directed verdict motion, "if the evidence . . . is susceptible of more than one reasonable inference, the case must be submitted to the jury." *Hurd v. Williamsburg Cty.*, 353 S.C. 596, 609, 579 S.E.2d 136, 142–43 (Ct. App. 2003), *aff'd*, 363 S.C. 421, 611 S.E.2d 488 (2005). However, it does not "follow that because under the law the trial judge is compelled to submit the issues to the jury, he cannot grant a new trial absolute." *Youmans*, 380 S.C. at 271–72, 670 S.E.2d at 5 (quoting *Worrell*, 186 S.C. at 313–14, 195 S.E. at 641). Accordingly, we find evidence exists to support the circuit court's thirteenth juror order. *See id.* at 271, 670 S.E.2d at 4 ("This [c]ourt's 'review is limited to consideration of whether evidence exists to support the trial court's order.'" (quoting *Folkens*, 300 S.C. at 255, 387 S.E.2d at 267)).

As to Appellants' argument the circuit court misapplied the law regarding immunity under the Act and, thus, erred in granting Respondents a new trial, we find the circuit court's exercise of discretion in granting a new trial was not "clearly . . . controlled by a manifest error of law." *Id.* at 271, 670 S.E.2d at 5 ("Further, in an appeal of an order granting a new trial pursuant to the thirteenth juror doctrine, the appellant 'bears the heavy burden of demonstrating to the court that it clearly appeared that the judge's exercise of discretion was controlled by a manifest error of law.'" (quoting *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 36, 431 S.E.2d 596, 598 (Ct. App. 1993))). In its order denying Appellants' motion to reconsider the order granting Respondents a new trial pursuant to the thirteenth juror doctrine, the circuit court

noted the jury may have "improperly handled the issue of [Johnson's and Peppers'] immunity under the . . . Act." Appellants argue the circuit court's statement was an error of law because the court must have "believed [the Act] provided immunity from liability . . . for a reporter as a matter of law," when the immunity actually granted in the Act is qualified. *See* S.C. Code Ann. § 43-35-75(A) (2015) ("A person who, acting in good faith, reports pursuant to this [Act] . . . is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding[,] good faith is a rebuttable presumption."). The circuit court was restating, admittedly in a different and more specific way, its belief that the evidence did not justify the verdict—specifically that the evidence did not justify a finding that Johnson and Peppers acted in bad faith, which would have prevented them from claiming immunity. Thus, while Appellant accurately states immunity under the Act is qualified, *see id.*, nothing about the court's order indicates the circuit court believed immunity was not qualified. In particular, we note the circuit court properly cited to section 43-35-75(A) in both the order granting Respondents a new trial and the order denying Appellants' motion to reconsider, correctly stating immunity under the Act depended on whether a reporter acted in good faith and that good faith was a rebuttable presumption. Therefore, as to Appellants' argument the circuit court erred in finding the jury may have misapplied the law in regards to Johnson's and Peppers' immunity under the Act, we agree with Respondents this argument misinterprets the circuit court's orders, and we find the circuit court's statements fell within its authority under the thirteenth juror doctrine. *See Folkens*, 300 S.C. at 254, 387 S.E.2d at 267 ("The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict.").

Because evidence supports the circuit court's grant of a new trial to Respondents, and the ruling was not controlled by an error of law, we find the circuit court did not err in granting Respondents a new trial. *See Youmans*, 380 S.C. at 271, 670 S.E.2d at 4 ("[A] trial judge's order granting or denying a new trial will be upheld unless the order is 'wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.'" (quoting *Folkens*, 300 S.C. at 254–55, 387 S.E.2d at 267)). Accordingly, we affirm as to this issue.

III. APPELLANTS' MOTION FOR JNOV

Because we affirm the grant of a new trial to Respondents, we need not consider whether the circuit court erred in denying Appellants' motion for a JNOV on the scope of employment issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

IV. CONFLICT OF INTEREST

Appellants argue the circuit court erred in permitting the same lawyers to represent all of the Respondents and present a joint defense. Appellants claim the joint representation became an irreconcilable conflict of interest when Respondents requested a jury interrogatory as to whether Johnson and Peppers acted outside the scope of their employment.

This issue is unpreserved for appellate review because, as conceded by Appellants at oral argument, Appellants never asked the circuit court to disqualify Respondents' counsel, and they did not raise the issue of the potential conflict of interest to the circuit court until they filed their post-trial motion for a JNOV. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."). However, nothing in this opinion shall be construed as prohibiting the circuit court at the new trial from considering whether such joint representation complies with the South Carolina Rules of Professional Conduct and promotes the fair administration of justice, a matter upon which we express no opinion.

AFFIRMED.

LOCKEMY, C.J., and KONDUROS and HILL, JJ., concur.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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January 15, 2020

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Re: Ralph Williams v. Patricia Johnson
Appellate Case No. 2017-000963

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny A. Kitchings (CDS)
CLERK

cc: The Honorable Edgar W. Dickson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

RECEIVED
JAN 30 2020
SC Court of Appeals

Ralph C. Williams, Sr., and Linda Williams, ... Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care – Orangeburg, LLC ..... Respondents.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellants petition this court to rehear the opinion in *Williams v. Johnson*, 2020-UP-014 (S.C. Ct. App. Filed January 15, 2020. For all points: The Court overlooked or misapprehended the following points or arguments from the Appellants:

A. The Order granting a new trial under the Thirteenth Juror Doctrine was in error because it was controlled by an error of law, inasmuch as the trial judge's reasons for the new trial were, in part:

1. that he may have made a mistake in charging the immunity statute and
2. that he was concerned the jury improperly handled the issue of the [nurses] immunity under the Act; and
3. the Judge pointed to nothing which suggested the Jury "misapplied" any

aspect of the Act.

4. Although a trial judge need not give a reason for granting the new trial under the Thirteenth Juror Doctrine, the judge did so here and those reasons were controlled by an error of law.

These mistakes and concerns demonstrate control by an error of law and therefore an abuse of discretion.

B. The trial judge's failure to find that the issue that the nurses' conduct at issue was, as a matter of law, within the scope of employment as to both nurses.

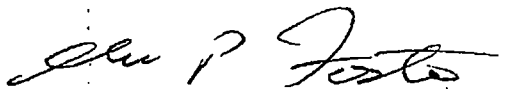
C. The Court of Appeals erroneously held the issue as to the improper joint defense was not preserved for appellate review.

1. The first opportunity to raise the issue occurred only after the defense lawyers violated their agreement not to attempt to exonerate the employer-defendant by pointing to the actions of the employee-defendants.

2. The trial judge's failure to hold, that the defense lawyers created an unwaivable conflict of interest to their client nurses was error, and should have been prevented by defense lawyers from submitting jury instructions and verdict questions in furtherance of the sole interest of their corporate client, over their nurse clients.

3. The Court overlooked or misapprehended Appellants' request for instructions for the new trial to prevent the Defendants from setting forth a supposed and improper "joint defense" as they did in the first trial.

Respectfully Submitted,



January 29, 2020

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The South Carolina Court of Appeals

Ralph C. Williams, Sr. and Linda Williams, Appellants,

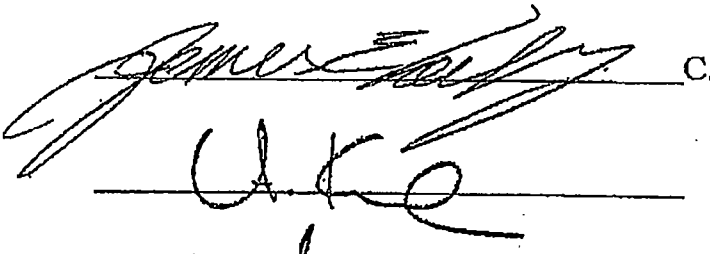
v.

Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care - Orangeburg, LLC, Respondents.

Appellate Case No. 2017-000963

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C. J.

J.

J.

Columbia, South Carolina

cc: Robert Paul Foster, Esquire
Java O. Warren, Esquire
Tyler Lawrence Arnold, Esquire
Jason Edward Bring, Esquire
The Honorable Edgar W. Dickson

FILED
March 27, 2020