

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III

Case No. 2017-CP-26-1571
Appellate Case No. 2019-001665

RECEIVED

Oct 26 2020

SC Court of Appeals

David L. Scheer, as Personal Representative of the
Estate of Matthew J. Scheer,.....Respondent,

v.

Southern Myrtle Inpatient Services, LLC, Nirlep A.
Patel, M.D. and Rachel Ash-Bernal M.D. Defendants,

Of which
Southern Myrtle Inpatients Services, LLC is.....Appellant.

RECORD ON APPEAL
VOLUME IV
Pages 1370-1675

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IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA, COUNTY OF HORRY

DAVID L. SCHEER, as Personal
Representative of the Estate
of Matthew J. Scheer,

Plaintiff,

Vs. Case No. 2017-CP-26-1571

SOUTHERN MYRTLE INPATIENT
SERVICES, LLC, NIRLEP A. PATEL,
M.D., RACHEL ASH-BERNAL, M.D.,
AND GRAND STRAND REGIONAL MEDICAL
CENTER, LLC,

Defendants.

30b6 DEPOSITION OF MATTHEW SHANE CALDWELL
DECEMBER 5, 2018
12:11 p.m.

LOCATION: OFFICES OF ALPHA REPORTING
NASHVILLE, TENNESSEE

BY: PATRICIA A. NILSEN, RMR, CRR, CRC

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The deposition of SHANE CALDWELL,
taken on behalf of the Plaintiff, pursuant to
Notice on DECEMBER 5, 2018, beginning at
approximately 12:11 p.m. in the offices of Alpha
Reporting.

This deposition is taken in
accordance with the terms and provisions of the
South Carolina Rules of Civil Procedure. All
objections are reserved except as to form.

The signature of the witness is
reserved.

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18 Reported By:

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20 TN Certified Court Reporter
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22 One Vantage Way, Suite D-115
23 Nashville, Tennessee 37228
24 (615) 244-4812
25

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1 MATTHEW SHANE CALDWELL,
2 having been first duly sworn, was examined
3 and testified as follows:

4 EXAMINATION

5 BY MR. HINSON:

6 Q. Mr. Caldwell, will you please state your
7 full name.

8 A. Matthew Shane Caldwell.

9 Q. And what is your work address?

10 A. 1A Burton Hills Boulevard, Nashville,
11 Tennessee 37215.

12 Q. And what is the business that operates at
13 that address?

14 A. Envision Healthcare.

15 Q. And, Mr. Caldwell, what is your position
16 with Envision Healthcare?

17 A. Director of insurance and corporate risk
18 management.

19 Q. And, Mr. Caldwell, what's your home
20 address?

21 A. It's 1229 Habersham Way, Franklin,
22 Tennessee 37067.

23 MR. HINSON: All right. And, Madam
24 Court Reporter, if you would, I'd like to mark as
25 Exhibit 1 the notice of deposition, which should be

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1 tab one, or otherwise marked as number one, in the
2 documents we sent earlier this week.

3 (EXHIBIT NO. 1, notice of
4 deposition, was marked for identification and
5 attached hereto.)

6 BY MR. HINSON:

7 Q. Mr. Caldwell, the court reporter has
8 provided you what's been marked as Exhibit 1, which
9 is the notice of deposition of defendant Southern
10 Myrtle Inpatient Services, LLC, to be taken
11 pursuant to Rule 30(b)(6) of the South Carolina
12 rules of civil procedure.

13 Do you have that in front of you?

14 A. I do.

15 Q. Okay. And have you seen that document
16 before?

17 A. Yes.

18 Q. And this document lists 16 topics of
19 testimony to be provided by Southern Myrtle
20 Inpatient Services, LLC. And it's my understanding
21 that you are the designee for the corporation to
22 answer those questions and speak on behalf of the
23 corporation. Is that your understanding?

24 A. Yes.

25 Q. And are you the best person to answer

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1 questions regarding the topics listed on Exhibit 1?

2 A. Yes.

3 Q. Mr. Caldwell, tell me, what is Envision
4 Healthcare?

5 A. We are a physician services company. We
6 provide services to physician companies;
7 administrative services to physician companies.

8 Q. What type of services are administrative
9 services? Help me and the jury understand what you
10 mean by that.

11 A. Payroll, insurance, the administrative
12 services such as those.

13 Q. Does Envision Healthcare have an ownership
14 interest in Southern Myrtle Inpatient Services?

15 A. No. We have a managed service contract.

16 Q. So there is some sort of document setting
17 forth the contractual relationship between Envision
18 Healthcare and Southern Myrtle Inpatient Services,
19 is that correct?

20 A. I do not know the specifics of that
21 contract. But, yes. I'm not sure if it's directly
22 with Envision Healthcare or not.

23 Q. There is some sort of written contractual
24 relationship between the two; is that your
25 understanding?

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1 A. Yes.

2 Q. How many physicians groups does Envision
3 provide services for?

4 A. I do not know that exact number.

5 Q. Approximately. Are we talking dozens,
6 hundreds, thousands?

7 A. I do not know that exact number.

8 Q. So you can't state whether or not your
9 company provides services for a dozen physician
10 groups or thousands of physician groups; is that
11 your testimony?

12 A. I do not know the exact number, no. I do
13 not.

14 Q. But again, I'm not asking Mr. Caldwell for
15 an exact number. I'm asking for your best
16 estimate.

17 Is it your position that Envision
18 Healthcare is unaware and cannot even estimate the
19 number of physician groups that they provide
20 services for?

21 MR. MCKAY: Object to the form.

22 Go ahead and answer.

23 THE WITNESS: I'm sorry?

24 MR. MCKAY: Go ahead and answer, if
25 you can.

A | W | R

1 A. There is -- it would be somewhere between
2 the two. It's more than a dozen. I'm not sure if
3 it's 1,000.

4 Q. Mr. Caldwell, let me take just a second.
5 Have you ever given a deposition before?

6 A. I have.

7 Q. Okay. And you -- would you feel that
8 you're relatively familiar with this process?

9 A. I am.

10 Q. And while you may be familiar with it, let
11 me -- before we get further into the -- before we
12 get into the topics noticed in this deposition, if
13 at any point, Mr. Caldwell, you need to take a
14 break, please let me know. This is not an
15 endurance test by any means. If I have to take a
16 break, I may ask you to finish the topic of
17 questions we're on, but I'll certainly do my best
18 to accommodate any request promptly.

19 Is that okay? Do you understand?

20 A. I do.

21 Q. Okay. And there may be from time to time
22 objections to my questions. I'm sure that will
23 occur at some point during the day. Unless you're
24 instructed not to answer, if you would please
25 answer the question in spite of the objection.

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1 A. Yes.

2 Q. Okay.

3 A. Okay.

4 Q. And, Mr. Caldwell, if at any point you
5 don't understand my question -- I'm sure there will
6 be a poorly worded question at some point through
7 today's deposition. If you just let me know, I'll
8 be happy to repeat it or rephrase it, do whatever
9 is necessary to make sure you understand the
10 question asked. So please know that if there's any
11 questions about the questions I had asked, you just
12 direct them to me and explain to me why it wasn't
13 clear, and I'll be happy to rephrase or repeat.

14 A. Okay.

15 MR. HINSON: Madam Court Reporter, if
16 you would please provide and mark as Exhibit 2 the
17 amended complaint, which I believe should be the
18 second tab of the documents provided to you, as
19 well as the answer to plaintiff's amended complaint
20 on behalf of the defendant Southern Myrtle
21 Inpatient Services, LLC, which should be provided
22 as tab three to the documents that were sent
23 earlier.

24 (EXHIBIT NO. 2, amended
25 complaint, was marked for identification and

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1 attached hereto.)

2 (EXHIBIT NO. 3, answer to
3 plaintiff's amended complaint on behalf of the
4 defendant Southern Myrtle Inpatient Services
5 LLC, was marked for identification and
6 attached hereto.)

7 BY MR. HINSON:

8 Q. Mr. Caldwell, I've provided you with the
9 amended complaint and your answer in that, or your
10 company's answer to that complaint. Have you seen
11 Exhibit 1 and Exhibit -- excuse me, Exhibit 2 and
12 Exhibit 3 before?

13 A. I have not.

14 Q. You have not seen those documents prior to
15 just now, is that correct?

16 A. That's correct.

17 Q. Mr. Caldwell, if you would, please turn to
18 Exhibit 1, the notice of deposition. And read for
19 me topic number one.

20 A. "The factual basis for defendants' denials
21 and affirmative defenses pleaded in defendants'
22 answer."

23 Q. And it's your testimony that you have not
24 seen defendants' answer prior to just a few minutes
25 ago, is that correct?

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1 A. No, I have not seen these.

2 Q. If you would turn in Exhibit 2 to page 6.
3 And I'm looking at paragraph 47.

4 A. In Exhibit 2?

5 Q. Yes, sir.

6 A. You said 47?

7 Q. Paragraph 47 on page 6.

8 A. Yes.

9 Q. Mr. Caldwell, paragraph 47 of the amended
10 complaint reads, "Regardless of the circumstances
11 through which a patient comes to a hospital, if a
12 physician believes that the patient, because of
13 mental illness/instability, has the likelihood of
14 causing injury to himself or others, then the
15 physician has the ability to temporarily detain the
16 patient against his will."

17 Do you see that?

18 A. I do.

19 Q. And if you would turn to the answer, which
20 is Exhibit 3, turn to paragraph 32. Paragraph 32
21 reads, "Defendant denies the allegations of
22 paragraphs 47 and 48 of the amended complaint."

23 Do you see that?

24 A. I do.

25 Q. What is the factual basis of Southern

A | W | R

1 Myrtle Inpatient Services denying paragraph 47 of
2 the amended complaint?

3 MR. MCKAY: Object to the form.

4 A. We do not get involved in the -- "we"
5 being Southern Myrtle, do not get involved in the
6 practice of medicine and the clinicians' practice
7 of medicine.

8 Q. What in your understanding does paragraph
9 47 have to do with the involvement of Southern
10 Myrtle Inpatient Services with the physicians'
11 practice of medicine?

12 MR. MCKAY: Object to the form.

13 A. We believe these physicians are highly
14 trained and going to operate on the basis of their
15 knowledge. We don't allow them -- we don't
16 instruct them on their practice of medicine.

17 Q. Okay. Mr. Caldwell, paragraph 47 just
18 asks if the physician has the ability to
19 temporarily detain the patient against his will.
20 Has Southern Myrtle Inpatient Services done any
21 research into the legal rights of a physician to
22 detain a patient if the patient may cause injury to
23 himself or to others?

24 MR. MCKAY: Object to the form.

25 A. The training is done by the hospital and

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1 by the physicians themselves in the course of their
2 education.

3 Q. Mr. Caldwell, has Southern Myrtle
4 Inpatient Services done any research into a
5 physician's ability to temporarily detain a patient
6 against his or her will if the patient may cause
7 injury to himself or to others?

8 MR. MCKAY: Object to the form.

9 A. No.

10 Q. If Southern Myrtle Inpatient Services has
11 not done any research into that topic, what is the
12 basis of the denial of paragraph 47?

13 MR. MCKAY: Object to the form.

14 A. Can you repeat your question, please.

15 MR. HINSON: Madam Court Reporter,
16 could you please repeat the question in its
17 entirety.

18 (Record read)

19 MR. MCKAY: There's an objection to
20 the form on that.

21 A. We have answered this question to the best
22 of our knowledge in good faith.

23 BY MR. HINSON:

24 Q. What effort does Southern Myrtle Inpatient
25 Services take to research the topic of a patient --

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1 of a doctor's ability to temporarily detain a
2 patient?

3 MR. McKAY: Object to the form.

4 A. The physicians operate out of their
5 education, and they're highly trained individuals
6 to practice medicine.

7 Q. What efforts did Southern Myrtle Inpatient
8 Services take to research the topic of the
9 physician's ability to temporarily detain a patient
10 against his will?

11 MR. McKAY: Object to the form.

12 Asked and answered.

13 A. We do not take that stance. Southern
14 Myrtle does not take that stance.

15 Q. Would you agree -- would Southern Myrtle
16 Inpatient Services agree that regardless of the
17 circumstances through which a patient comes to the
18 hospital, if a physician believes that the patient,
19 because of mental illness or instability, has the
20 likelihood of causing injury to himself or others,
21 the physician has the ability to temporarily detain
22 the patient against his will?

23 MR. McKAY: Object to the form.

24 A. The physician has -- has the right. We
25 don't get involved in the practice of medicine.

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1 The physicians have -- have the right to practice
2 medicine.

3 Q. Okay. And part of that right to practice
4 medicine includes the ability to temporarily detain
5 a patient if the patient, because of mental
6 illness, has the likelihood of causing injury to
7 himself, does it not?

8 MR. MCKAY: Object to the form.

9 A. I'm not a clinician. I cannot
10 specifically answer that question.

11 Q. So you are unable to tell me the basis of
12 the denial of paragraph 47?

13 MR. MCKAY: Object to the form.

14 A. I am not.

15 Q. And you have not done any research into
16 the legal rights and ability of a physician to
17 temporarily detain a patient against his will if
18 the patient may harm himself because of mental
19 illness, is that correct?

20 A. I have not, no.

21 Q. And you are representing, or the designee
22 of Southern Myrtle Inpatient Services here today,
23 correct?

24 A. Correct.

25 Q. Mr. Caldwell, please turn to paragraph 48

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1 of the complaint, which is Exhibit 2. Paragraph 48
2 reads "Regardless of the circumstances through
3 which a patient comes to a hospital, if a physician
4 believes that the patient, because of mental
5 illness/instability, has the likelihood of causing
6 injury to himself or to others, then the standard
7 of care requires the physician to temporarily
8 detain the patient against his will."

9 Do you see that?

10 A. I do.

11 Q. All right. And if you'll turn to
12 Exhibit 3 to your deposition, paragraph 32, it
13 reads, "Defendant denies the allegations in
14 paragraphs 47 and 48 of the amended complaint."

15 Do you see that?

16 A. I do.

17 Q. What is the factual basis for Southern
18 Myrtle Inpatient Services denying paragraph 48 of
19 plaintiff's amended complaint?

20 MR. MCKAY: Object to the form.

21 A. I do not know.

22 Q. How many physicians are employed with
23 Southern Myrtle Inpatient Services?

24 A. Currently there are none.

25 Q. Currently there are none?

A | W | R

1 A. Yes.

2 Q. How long has that been the case?

3 A. I'm not sure of -- of the exact date.

4 Q. Has the entity, is it essentially defunct?
5 Is it ceasing to operate? What's the -- what's the
6 current plan with -- go ahead.

7 A. The entity is active, due to billing and
8 ongoing billings -- billings through that entity.
9 However, there are no clinicians employed.

10 Q. So southern -- Southern Myrtle Inpatient
11 Services no longer employs Dr. Nirlep Patel or
12 Dr. Rachel Ash-Bernal, is that correct?

13 A. That's correct.

14 Q. Are you aware of the circumstances by
15 which they came to no longer work for Southern
16 Myrtle Inpatient Services?

17 A. No, I am not.

18 Q. So you can't say whether they were
19 released involuntarily, if they were -- if they
20 resigned or what the circumstances were of their
21 departure from Southern Myrtle Inpatient Services?

22 A. No.

23 Q. When a patient is treated at Grand Strand
24 Regional Medical Center by one of the physicians
25 employed through Southern Myrtle Inpatient

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1 Services, will they get a bill for that treatment?

2 A. Yes.

3 Q. What entity will that bill come from?

4 A. Southern Myrtle Inpatient Services.

5 Q. So for the treatment rendered to Matthew
6 Scheer in October 2nd and 3rd of 2015, Southern
7 Myrtle would have sent a bill for that treatment,
8 correct?

9 A. To my knowledge, yes.

10 Q. And so for any treatment that Dr. Rachel
11 Ash-Bernal rendered to other patients in the early
12 morning hours of October 3, 2015, Southern Myrtle
13 Inpatient Services would have information and
14 knowledge on the work she did that was billed to
15 those patients, correct?

16 MR. MCKAY: Object to the form.

17 A. To -- to my knowledge, I would believe so.

18 Q. Who handles billing for Southern Myrtle
19 Inpatient Services?

20 A. I -- I'm not certain. I believe Southern
21 Myrtle Inpatient Services, but I -- I do not know
22 the exact answer to that.

23 Q. Okay. So part of the services that
24 Envision Healthcare provided or provides to SMIS --
25 let me back up a second.

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1 If at times today you or I say SMIS, can
2 we agree we're talking about Southern Myrtle
3 Inpatient Services, LLC?

4 A. Yes.

5 Q. So with regard to the services that
6 Envision Healthcare provides to SMIS, billing of
7 patient care provided is not among those services,
8 is that correct?

9 A. I'm not certain. I don't believe so.

10 Q. So you don't --

11 A. I do not believe so.

12 Q. Okay. And it's your belief that SMIS
13 likely did their own billing?

14 A. Yes.

15 Q. All right. Let's -- topic two of the
16 deposition notice reads, "The factual basis for
17 defendants' compilation of responses and answers to
18 plaintiff's discovery requests, including
19 interrogatories, requests for production, and
20 requests for admission."

21 Do you see that?

22 A. Yes.

23 MR. HINSON: Madam Court Reporter, if
24 you could please provide what was marked as tab
25 five, which should read Answers to Plaintiff's

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1 First Set of Interrogatories on Behalf of the
2 Defendant Nirlep A. Patel, MD, and Southern Myrtle
3 Inpatient Services, LLC.

4 (EXHIBIT NO. 5, answers to
5 plaintiff's first set of interrogatories on
6 behalf of the defendant Nirep A. Patel MD and
7 Southern Myrtle Inpatient Services, LLC., was
8 marked for identification and attached
9 hereto.)

10 BY MR. HINSON:

11 Q. Mr. Caldwell, have you ever seen this
12 document that's been provided, before just now?
13 Have you ever seen the document that's been marked
14 as Exhibit 5?

15 A. Yes, I have.

16 Q. And if you would, turn to S4, which stands
17 for standard interrogatory number four. It should
18 be on the third page of Exhibit 5.

19 A. Yes.

20 Q. And the question, standard interrogatory,
21 which is set forth in our rules of civil procedure,
22 states: "Set forth names and addresses of all
23 insurance companies which have liability insurance
24 coverage relating to the claim and set forth the
25 number or numbers of the policies involved and the

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1 amount or amounts of liability coverage provided in
2 each policy."

3 Do you see that?

4 A. Yes.

5 Q. Okay. And then the answer provides one
6 policy with Continental Casualty Insurance, and it
7 gives one -- one policy number.

8 Do you see that?

9 A. Yes.

10 Q. Is there a -- is there separate coverage
11 provided to Southern Myrtle Inpatient Services,
12 Dr. Nirlep Patel and Dr. Rachel Ash-Bernal?

13 A. Can you clarify your question, please.

14 Q. Sure. The interrogatory states that
15 there's 1 million, 3 million in coverage. Do you
16 see that?

17 A. Yes.

18 Q. My question essentially asks, is there
19 \$1 million of coverage available to Dr. Patel, a
20 separate million-dollar policy or coverage
21 available to Dr. Ash-Bernal, and separate
22 million-dollar policy or coverage available to
23 Southern Myrtle Inpatient Services?

24 A. No. There is a shared limit policy for --
25 for this.

A | W | R

1 Q. Tell me what you mean by that.

2 A. There's a shared policy for the
3 clinicians. It is -- it is all under the same
4 policy. There is a million dollars in coverage for
5 the clinicians, shared. And there is a million
6 dollars in coverage for SMIS, as you referred to
7 them.

8 Q. Okay. So there is a single policy that
9 Drs. Patel and Ash-Bernal share?

10 A. There -- to further clarify, there is a
11 shared policy for all three. It is on the same
12 policy as it's listed here.

13 Q. How much coverage is available in this
14 lawsuit against the defendants SMIS, Patel and
15 Ash-Bernal total?

16 A. \$2 million.

17 Q. Are you aware of policies at Grand Strand
18 Regional Medical Center that requires each
19 physician to have their own \$1 million policy to
20 practice at Grand Strand?

21 A. No, I am not.

22 Q. Has anybody ever addressed that topic to
23 you?

24 A. No.

25 Q. If each physician at Grand Strand is

A | W | R

1 required to carry their own million-dollar policy,
2 the circumstances of the policy you just described
3 that is shared by Ash-Bernal and Patel wouldn't
4 meet that requirement; is that correct?

5 MR. McKAY: Object to the form.

6 A. If the contract states so, yes.

7 Q. Yes, it wouldn't meet that requirement?

8 A. Yes.

9 Q. Who prepared the policy at issue in this
10 case, this HAZ1040025381-14?

11 A. EmCare.

12 Q. EmCare?

13 A. Yes.

14 Q. What is EmCare?

15 A. It is a physicians' administrative company
16 that helps with the administrative services.

17 Q. Who retained EmCare?

18 A. Can you clarify your question, please?

19 Q. Sure. So the procurement of the policy at
20 issue -- well, the policy at issue is held by CNA.
21 CNA is the issuer of the policy, is that correct?

22 A. That's correct.

23 Q. Okay. And we'll go ahead -- we can mark
24 as Exhibit 4 what I provided as Tab 4, which is the
25 declaration page from the policy.

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1 (EXHIBIT NO. 4, declaration page
2 from CNA policy, was marked for identification
3 and attached hereto.)

4 BY MR. HINSON:

5 Q. Mr. Caldwell, the court reporter has
6 handed you what's been marked as Exhibit 4. Have
7 you seen this document before?

8 A. I have.

9 Q. Identify the document for us, please.

10 A. It is the -- as you stated, the
11 declarations page of the Continental Casualty CNA
12 policy for Envision Healthcare.

13 Q. And who set out to procure this policy?

14 A. Envision Healthcare.

15 Q. Okay. I'm sorry. I thought you said a
16 different company, EmCare, a few minutes ago.

17 A. EmCare is a subsidiary of Envision
18 Healthcare.

19 Q. Is it a wholly-owned subsidiary of
20 Envision Healthcare?

21 A. They're -- there are divisions, entities
22 between the two. I'm not exactly familiar with --
23 with the structure in between.

24 But, yes, it is a wholly-owned subsidiary.

25 Q. What -- the policy we're looking at here

A | W | R

1 marked in Exhibit 4 and addressed in Exhibit 5, why
2 wouldn't Southern Myrtle Inpatient Services simply
3 go procure the insurance themselves?

4 A. As I stated earlier, there is an
5 administrative services contract between the two,
6 and part of that is procuring the insurance.

7 Q. The named insured under this policy does
8 not say that it's Southern Myrtle Inpatient
9 Services, does it?

10 A. It does not.

11 Q. Explain for me and the jury how it is that
12 this would -- that this policy covers an entity
13 that's not listed as the insured?

14 A. Envision Healthcare is the master program,
15 as named as the first named insured, as is typical
16 on insurance policies. Southern Myrtle Inpatient
17 Services is an insured entity under this policy,
18 via a list that's kept on file in our legal
19 department.

20 Q. And then that list would also include
21 Drs. Patel and Dr. Ash-Bernal?

22 A. The list specifically lists entities, not
23 individual physicians. The individual physicians
24 are insured by being employed by SMIS.

25 Q. This policy would have to be provided to

A | W | R

1 Grand Strand Regional at some point, would it not,
2 proofs of insurance?

3 A. A proof of insurance is separate from an
4 insurance policy.

5 Q. Hospitals typically require contract
6 physicians to provide proof of insurance, do they
7 not?

8 A. They do.

9 Q. And some sort of proof of insurance would
10 have had to have been provided to Grand Strand
11 Regional in order for Drs. Patel and Ash-Bernal to
12 have privileges to practice at Grand Strand,
13 correct?

14 A. Correct.

15 Q. Do you know if it was represented to Grand
16 Strand Regional that there was a separate
17 \$1 million policy for Ash-Bernal that was distinct
18 and separate from \$1 million worth of coverage for
19 Dr. Patel?

20 MR. MCKAY: Object to the form.

21 A. I -- I do not have knowledge of this.

22 Q. Who would have knowledge of that?

23 A. The person that was working in my position
24 prior to myself is no longer with the company.

25 Q. What is his or her name?

A | W | R

1 A. I -- I'm not certain of her name.

2 Q. Who would be aware of his or her name?

3 A. That would be in our legal department,
4 Julie Mederos.

5 Q. How do you spell her last name?

6 A. I'm not 100 percent certain. I believe
7 it's M-E-D-E-R-O-S. I'm not a hundred percent
8 certain of the spelling.

9 Q. And what is Julie Mederos's position
10 within your company?

11 A. She is a legal representative for medical
12 professional coverage.

13 Q. How long have you held your position with
14 your corporation?

15 A. For a little over a year.

16 Q. And you are unaware of the name of the
17 person who you replaced?

18 A. Yes. I'm not certain. I know it was a
19 lady, but I -- I'm not familiar with her name.

20 Q. Prior to your current position, were you
21 working with Envision Healthcare in some other
22 capacity?

23 A. I was not.

24 Q. Where were you working?

25 A. Vanderbilt University.

A | W | R

1 Q. And what did you do at Vanderbilt?

2 A. Insurance and risk management.

3 Q. Not as a professor but as -- for the
4 university itself, is that correct?

5 A. That's correct.

6 Q. And how long were you -- did you work with
7 Vanderbilt?

8 A. Just shy of two years.

9 Q. And prior to your time at Vanderbilt where
10 did you work?

11 A. For an insurance broker firm, Arthur J.
12 Gallagher.

13 Q. How long were you with Arthur J.
14 Gallagher?

15 A. Eleven years.

16 Q. What did you do with them?

17 A. I was an account executive for the
18 insurance brokerage.

19 Q. What were your duties as an account
20 executive?

21 A. Risk management and insurance
22 consultation.

23 Q. Did it have a sales aspect to it?

24 A. Not in my capacity.

25 Q. And before Arthur J. Gallagher, where were

A | W | R

1 you?

2 A. I joined Arthur J. Gallagher out of
3 college.

4 Q. Tell me a little bit about your
5 educational background. Where did you go to
6 school, and what did you major in?

7 A. Went to Middle Tennessee State University.
8 I majored in finance and insurance.

9 Q. And what year did you finish there?

10 A. 2004.

11 Q. Any further degrees or certificates after
12 your bachelor's?

13 A. I -- I gained my certification in an
14 insurance designation of certified insurance
15 counselor.

16 Q. When did you obtain that designation?

17 A. I believe it was 2016.

18 Q. And what entity or organization issues
19 that certification?

20 A. The national alliance -- I believe it's
21 national alliance of insurance. I'm not
22 100 percent certain of the full name.

23 Q. Before attending Middle Tennessee State
24 what did you do, Mr. Caldwell?

25 A. I was a high school student.

A | W | R

1 Q. Going to topic eleven as noticed in the
2 deposition, the subpoena and deposition notice.
3 Topic eleven states, "Details relating to the
4 corporate structure and ownership of Southern
5 Myrtle Inpatient Services, LLC."

6 Do you see that?

7 A. I do.

8 Q. Who was the owner or owners of Southern
9 Myrtle Inpatient Services, LLC?

10 A. The owner is Inpatient Services of
11 South Carolina. I do have a structure to share
12 with you.

13 Q. Okay. And what -- tell me what that is
14 exactly, when you say you have a structure?

15 A. It is the corporate structure document of
16 the relation between the entities.

17 Q. Between which entities?

18 A. Between Southern Myrtle Inpatient
19 Services, EmCare, Envision, and the hospital.

20 Q. And what -- is that a document that you
21 created? Where did this document come from?

22 A. The document came from our legal
23 department.

24 Q. Okay. And since I'm not there in person
25 today -- we're obviously doing this over telephone

A | W | R

1 and video -- tell me generally what that document
2 conveys.

3 A. Conveys the --

4 Q. What is the relationship?

5 A. Sure. Can you be more specific of what
6 relationship you're referring to?

7 Q. What's the relationship between Southern
8 Myrtle Inpatient Services, LLC, and Inpatient
9 Services of South Carolina?

10 A. Southern Myrtle Inpatient Services is a
11 sole member of Inpatient Services of
12 South Carolina.

13 Q. So 100 percent of the stock of SMIS is
14 owned by Inpatient Services of South Carolina?

15 A. Yes.

16 Q. And then is there a third entity mentioned
17 on that document you brought with you?

18 A. Inpatient Services of South Carolina rolls
19 up to South Carolina EM1.

20 Q. To EM1?

21 A. Correct.

22 Q. What is that?

23 A. It is a physician's entity.

24 Q. A physicians' entity similar to SMIS?

25 A. Yes.

A | W | R

1 Q. So Inpatient Services of South Carolina is
2 wholly owned by South Carolina EM1?

3 A. Correct.

4 Q. Who owns South Carolina EM1?

5 A. There is a physician owner for
6 South Carolina EM1.

7 Q. A single physician?

8 A. Correct.

9 Q. Who is that?

10 A. I do not have his or her name.

11 Q. Is South Carolina EM1, is that an LLC, an
12 INC? What type of structure is it?

13 A. I would have -- I would have to dig
14 further. I'm not certain. I believe it's LLC.
15 But I would have to check into that.

16 Q. Okay. So as I understand, Southern Myrtle
17 Inpatient Services, LLC, is wholly owned by
18 Inpatient Services of South Carolina, which is
19 wholly owned by South Carolina EM1, which is wholly
20 owned by a single physician owner; is that correct?

21 A. That is correct.

22 Q. All right. Can we mark that document that
23 you provided, or that you have in front of you that
24 you've brought with you -- let's mark that as --
25 let's mark that as 7A.

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1 (EXHIBIT NO. 7A, organizational
2 chart, was marked for identification and
3 attached hereto.)

4 BY MR. HINSON:

5 Q. Mr. Caldwell, is there any other
6 information on 7A, other than what you relayed to
7 me?

8 A. There is also a relationship structure as
9 I mentioned previously with EmCare, Inc., which
10 provides that that there's administrative services
11 contract with Inpatient Services of South Carolina.
12 And EmCare rolls up as a remote -- Envision is a
13 remote parent of EmCare, Incorporated.

14 Q. What other documents did you bring with
15 you -- other documents did you bring with you
16 today?

17 A. None.

18 Q. Mr. Caldwell, topic 10 listed in the
19 notice of deposition reads, "Details related to
20 management and administration of Southern Myrtle
21 Inpatient Services, LLC."

22 Do you see that?

23 A. Yes.

24 Q. In October of 2015 how was SMIS being
25 managed?

A | W | R

1 A. From -- can you clarify? Managed in what
2 way?

3 Q. Well, the day-to-day operations, let's
4 start with that; the day-to-day operations of the
5 company. The decision to hire and fire, the
6 decision on payroll and how much to pay physicians,
7 who was managing -- how was the company being
8 managed?

9 A. We -- Southern Myrtle Inpatient Services
10 does not decide who to employ at the hospital.
11 The -- that's -- that decision is made by the
12 hospital.

13 Q. So the hospital decides to -- who they're
14 going to employ, and then they tell Southern Myrtle
15 that they're going to hire them, that Southern
16 Myrtle has to hire that person?

17 A. No. The credentials and approval is at
18 the hospital level. Once a clinician has been
19 approved by the hospital, an employment contract is
20 extended to them by Southern Myrtle.

21 Q. So at some point obviously Dr. Patel and
22 Dr. Ash-Bernal came to work for -- as employees of
23 Southern Myrtle Inpatient Services, is that
24 correct?

25 A. That is correct.

A | W | R

1 Q. Okay. And if I understand what you said
2 just then, they didn't -- Southern Myrtle Inpatient
3 Services didn't have any decision-making authority
4 on the decision to hire those two physicians; Grand
5 Strand decided to hire them, and then they would be
6 employed through SMIS as a result?

7 A. Grand Strand approves and credentials the
8 clinicians, and they're employed by Southern
9 Myrtle.

10 Q. Okay. But if Dr. Patel and Dr. Ash-Bernal
11 wanted to work for Southern Myrtle Inpatient
12 Services, do they not have to apply to say, hey,
13 I'd like to work for you?

14 A. Yes. They are -- they are credentialed by
15 Southern Myrtle Inpatient Services as well.

16 Q. Okay. So who managed -- who in 2015 would
17 have managed that?

18 A. Southern Myrtle Inpatient Services.

19 Q. Who? What individual?

20 A. I -- I do not know the individual's name.
21 It would be -- I do not know an individual's name.

22 Q. Who was managing Southern Myrtle Inpatient
23 Services in October of 2015?

24 A. It would roll up ultimately to the
25 physician owner as the structure I mentioned

A | W | R

1 earlier.

2 Q. Sorry?

3 A. Through the structure I mentioned earlier,
4 it would roll up to the physician owner.

5 Q. Okay. And what is that individual's name?

6 A. I do not know.

7 Q. Okay. So topic 10 asks for details
8 relating to management and administration of
9 Southern Myrtle Inpatient Services, LLC, and you as
10 the designee of SMIS cannot tell me the name of the
11 individual who was managing the company; is that
12 correct?

13 A. I cannot give you an individual's name,
14 that's correct.

15 Q. Okay. You cannot give me the name of the
16 person who was administering the day-to-day
17 operations of Southern Myrtle Inpatient Services,
18 LLC, correct?

19 A. Correct.

20 Q. How many people work in management at SMIS
21 in October of 2015?

22 A. I do not know.

23 Q. How many people worked in administration
24 at SMIS in October of 2015?

25 A. I do not know.

A | W | R

1 Q. How many people work in management at SMIS
2 currently?

3 A. I do not know.

4 Q. How many people work in administration at
5 SMIS currently?

6 A. I do not know.

7 Q. When a physician applied to work for SMIS,
8 he or she would have to be credentialed by both
9 SMIS and the hospital that he or she was working
10 at, correct?

11 A. Correct.

12 Q. Who at SMIS would make the management
13 decision to hire that physician?

14 A. Please further clarify. In what relation?

15 Q. The decision to make that person, that
16 physician, an employee of SMIS, to say, we will
17 credential you and allow you to work for us
18 pursuant to you gaining credentials at the
19 hospital. Who at SMIS made the hiring decision to
20 hire physicians?

21 A. SMIS is solely tied to Grand Strand
22 Regional Medical Center, so the hospital would have
23 to make the decision to approve this physician --
24 any physician to be employed.

25 Q. I understand. In order to be employed at

A | W | R

1 the hospital as a hospitalist, a physician has to
2 gain credentials at the hospital. Fair?

3 A. Yes.

4 Q. But SMIS also had the power to -- and
5 ability to say, we're not going to employ this
6 doctor as our physician, did they not?

7 A. Yes.

8 Q. Who at SMIS in October of 2015 had that
9 decision-making authority?

10 A. I do not know.

11 Q. Who at SMIS today has the decision-making
12 authority to hire or fire a physician?

13 A. As I -- as I mentioned previously, there
14 are no employees and no intention of any future
15 employees.

16 Q. Are you aware if there's another
17 corporation or legal entity providing hospitalist
18 services to Grand Strand Regional Medical Center.

19 A. Not -- not that I'm aware of.

20 Q. Does Inpatient Services of South Carolina
21 have other legal entities that it is the owner of
22 besides SMIS?

23 A. I do not know for certain.

24 Q. Based off of the structure you relayed to
25 me earlier, this physician owner whose name you do

A | W | R

1 not know would have the sole decision-making power
2 for Southern Myrtle Inpatient Services, LLC,
3 correct?

4 MR. McKAY: Object to the form.

5 A. I'm not certain.

6 Q. So who makes decision for SMIS, you can't
7 testify to today, correct?

8 A. That's correct.

9 Q. Details relating to who at SMIS made the
10 decision to hire Dr. Patel and the decision to hire
11 Dr. Ash-Bernal you cannot testify to today,
12 correct?

13 A. The decision of approval at Grand Strand
14 Regional Medical Center is held at the hospital
15 level. And as I mentioned earlier, Southern Myrtle
16 Inpatient Services was solely providing services to
17 Grand Strand Regional Medical Center.

18 Q. I understand. But as we discussed
19 earlier, a physician had to be credentialed from
20 both entities, correct? A physician would have to
21 be approved by Grand Strand, and then Southern
22 Myrtle would also have to make the decision to hire
23 them? Let me take a step back.

24 In order to practice law, the bar of
25 South Carolina had to approve me to practice. But

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1 then my firm had to make the decision to retain me
2 as a lawyer here. In order to practice, at Grand
3 Strand, a physician had to be credentialed by the
4 credentialing committee at Grand Strand, but then
5 in order to become an employee of SMIS, SMIS had to
6 make the decision to hire them.

7 MR. McKAY: Object to the form.

8 A. I'm not certain.

9 Q. Topic number 12 on the notice of
10 deposition reads, "Details relating to Southern
11 Myrtle Inpatient Services, LLC's hiring of Rachel
12 Ash-Bernal."

13 Do you see that?

14 A. Yes.

15 Q. Can you tell me when Rachel Ash-Bernal
16 applied to work with Southern Myrtle Inpatient
17 Services?

18 A. I'm not certain of when she applied to
19 work at Southern Myrtle Inpatient Services.

20 Q. Can you tell me who she interviewed with?

21 A. No, I cannot.

22 Q. Can you tell me who reviewed her
23 application to become an employee of Southern
24 Myrtle Inpatient Services?

25 A. I cannot.

A | W | R

1 Q. Would she have to interview with somebody
2 at SMIS in order to become an employee at SMIS?

3 A. I'm not certain.

4 Q. Would she have to submit an application
5 for employment to SMIS in order to become an
6 employee of SMIS?

7 A. I'm not certain.

8 Q. Topic 13 on the notice of deposition
9 reads, Details related -- it should say
10 capitalization, but it reads, "Details relating to
11 the undercapitalization of Southern Myrtle
12 Inpatient Services, LLC."

13 Do you see that?

14 A. Yes.

15 Q. Does Southern Myrtle Inpatient Services
16 currently hold any assets?

17 A. I'm not certain.

18 Q. As the designee of SMIS you cannot answer
19 whether or not the corporation holds any assets
20 today, is that correct?

21 A. I -- I know they are -- as I mentioned
22 earlier, there is still outstanding billing
23 associated with SMIS. As far as the exact assets,
24 I do not know.

25 Q. So you cannot answer whether or not SMIS

A | W | R

1 is capitalized or undercapitalized; is that fair?

2 MR. McKAY: Object to the form.

3 A. It -- it's capitalized as the billing runs
4 through this entity, and as I mentioned earlier,
5 there are no employees.

6 Q. Does Southern Myrtle Inpatient Services
7 have any outstanding debt?

8 A. I'm not certain.

9 Q. What is the approximate accounts
10 receivable value of the outstanding billing you
11 mentioned?

12 MR. McKAY: Object to the form.

13 A. I would not know the answer to that.

14 Q. So as you're unaware whether or not SMIS
15 has any outstanding debt, and you're unaware what
16 the current accounts receivables are, you're unable
17 to state whether or not SMIS has a positive or
18 negative net worth at present, correct?

19 A. Correct.

20 Q. Topic number 14 reads, "Details relating
21 to the corporate formalities observed by Southern
22 Myrtle Inpatient Services, LLC."

23 Do you see that?

24 A. I do.

25 Q. How often would the management or board of

A | W | R

1 Southern Myrtle Inpatient Services meet?

2 A. I'm not certain. As I mentioned earlier,
3 there is a sole physician owner.

4 Q. Did the sole physician owner have any
5 members -- did he or she create a board for the
6 operations of SMIS?

7 A. I'm not certain.

8 Q. Did SMIS hold an annual meeting for the
9 company?

10 A. I'm not certain.

11 Q. Did SMIS create meeting minutes for the
12 board -- for decisions made by the board of
13 directors and discussions by the board of
14 directors?

15 A. I'm not certain.

16 Q. What, if any, corporate formalities can
17 you testify to were observed by Southern Myrtle
18 Inpatient Services in 2015?

19 A. That the only structure and formalities
20 that I can provide you are those that I -- I
21 provided on Exhibit 7A.

22 Q. Okay. But as far as corporate formalities
23 observed, do you have anything further to add?

24 A. I do not.

25 Q. Topic 15 states -- this is topic 15 of the

A | W | R

1 deposition notice, "Details relating to the
2 corporate records kept by Southern Myrtle Inpatient
3 Services, LLC."

4 Do you see that?

5 A. Yes.

6 Q. Who kept corporate records for Southern
7 Myrtle Inpatient Services?

8 A. I'm not certain.

9 Q. Are you aware if corporate records were
10 maintained for SMIS?

11 A. No, I'm not aware.

12 Q. Topic 16 of the deposition notice states,
13 "Details relating to any dividends paid by Southern
14 Myrtle Inpatient Services, LLC."

15 Do you see that?

16 A. I do.

17 Q. Did Southern Myrtle Inpatient Services pay
18 dividends in 2015?

19 A. No. It's an LLC. There were no
20 dividends.

21 Q. Were there any sort of payment made to
22 this sole owner whose identity you're unaware of --
23 strike that question. Let me ask that again.

24 The corporate owner that you mentioned
25 earlier, whose identity of which you're unsure, do

A | W | R

1 you know if there was any payments made to him or
2 her from Southern Myrtle Inpatient Services in
3 2015?

4 A. I -- I'm not certain.

5 Q. Same question with regard to 16. Do you
6 know if there were any payments made to the
7 corporate owner?

8 A. Typically -- typically profits go to --
9 I'm sorry. Can you clarify that?

10 Q. Sure. Well, what I'm asking, though, if
11 there was profits made or realized in 2016, if they
12 were taken out of the company, if they were paid to
13 this physician owner.

14 A. I do not know the specifics. Typically
15 earnings roll up to the parent, but I do not know
16 the specifics.

17 Q. Okay. Is it fair to say whether or not
18 any earnings were paid to the parent company or to
19 the -- to the physician owner in 2015, '16, '17, or
20 this year, 2018, you were unaware of whether or not
21 they were paid?

22 MR. MCKAY: Object to the form.

23 A. I -- I am not certain.

24 Q. Topic number four of the deposition notice
25 states, "Details relating to policies and

A | W | R

1 procedures applicable to Drs. Patel and Ash-Bernal,
2 whether promulgated by Southern Myrtle Inpatient
3 Services, Grand Strand Regional Medical Center or
4 some other entity, organization, individual."

5 Do you see that?

6 A. Yes.

7 Q. Did SMIS have any policies or procedures
8 in 2015 that it promulgated that would be
9 applicable to Drs. Rachel Ash-Bernal and Patel?

10 A. No.

11 Q. What efforts, if any, did SMIS take to
12 ensure that its physicians, particularly Patel and
13 Ash-Bernal, were knowledgeable on the policies and
14 procedures applicable to Grand Strand Regional
15 Medical Center?

16 MR. McKAY: Object to the form.

17 A. These are highly trained and educated
18 clinicians. Rely on their education and their
19 actions as a professional. And again, they're
20 credentialed to be approved to act in that way.

21 Q. Southern Myrtle Inpatient Services took no
22 specific action to determine whether or not
23 Dr. Patel and Dr. Ash-Bernal were adequately
24 knowledgeable on the policies and procedures of
25 Grand Strand; is that fair?

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1 A. Yes.

2 Q. Topic five reads, "Details relating to
3 defendants' position regarding disclosures allowed
4 under the Health Insurance Portability and
5 Accountability Act of 1996, hereinafter HIPAA."

6 Do you see that?

7 A. Yes.

8 Q. Generally speaking, what is HIPAA?

9 MR. McKAY: Object to the form.

10 A. It's a protection of health information.
11 And privacy.

12 Q. Generally speaking, there are certain
13 circumstances that allow for limited disclosures of
14 a patient's personal health information. Does
15 Southern Myrtle agree with that statement?

16 MR. McKAY: Object to the form.

17 A. Can you repeat, please?

18 Q. Sure.

19 Do you agree that there are exceptions in
20 HIPAA that in certain circumstances would allow for
21 limited disclosures of a patient's personal health
22 information?

23 MR. McKAY: Object to form.

24 A. I believe so.

25 Q. Is there an exception in HIPAA that would

A | W | R

1 allow for a limited disclosure of a patient's
2 personal health information when the disclosure is
3 needed to lessen a serious threat to the safety of
4 a patient?

5 MR. MCKAY: Object to the form.

6 A. I believe so.

7 MR. HINSON: Madam Court Reporter,
8 could you please provide the witness with the
9 document that was tabbed 6.

10 (EXHIBIT NO. 6, notice of
11 privacy practices, was marked for
12 identification and attached hereto.)

13 BY MR. HINSON:

14 Q. Mr. Caldwell, we just provided you what's
15 been marked as Exhibit 6. And this is the notice
16 of privacy practices issued by Grand Strand
17 Regional Medical Center. Do you see that?

18 A. I do.

19 Q. And what you have right there is a
20 printout from the website, which is also a little
21 bulleted or brochure that was produced in discovery
22 from the hospital that has the same information on
23 it. And I represent to you this is the privacy
24 practices, the notice of privacy practices that
25 patients are given at the hospital. Are you

A | W | R

1 generally familiar with those documents?

2 MR. McKAY: Object to the form.

3 A. Please clarify.

4 Q. Well, you're aware, as Southern Myrtle
5 Inpatient Services is aware, that there are notices
6 of privacy practices that are provided to patients
7 in hospitals, correct?

8 MR. McKAY: Object to form.

9 A. I -- I would think so.

10 Q. If you would look at page four. About a
11 third down the page there is a paragraph that
12 begins, "As permitted by law, we may also use and
13 disclose health information for the following types
14 of entities, included but not limited to."

15 Do you see that section?

16 A. Yes.

17 Q. And then there's a number of bullet
18 points. And the last one listed, where a person's
19 health information may be disclosed, will you read
20 that last bullet point?

21 A. "A person or persons able to prevent or
22 lessen a serious threat to health or safety."

23 Q. So would you agree with me that according
24 to Grand Strand's own notice of privacy practices,
25 if the disclosure of a patient's personal health

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1 information could serve to prevent or lessen a
2 serious threat to health or safety, health
3 information can in those circumstances be
4 disclosed?

5 MR. McKAY: Object to form.

6 A. According to this document, yes.

7 Q. And you would, and Southern Myrtle
8 Inpatient Services would, expect its physicians
9 working at Grand Strand to generally be familiar
10 with the notice of privacy practices document?

11 MR. McKAY: Object to form.

12 A. To my knowledge, yes. They -- they follow
13 the policies and procedures of the hospital.

14 Q. Is there an exception in HIPAA that would
15 allow for a limited disclosure of a patient's
16 personal health information when the patient is
17 suffering from mental incapacity and disclosing
18 health information would be in the patient's best
19 interest?

20 MR. McKAY: Object to form.

21 A. I'm not 100 percent certain.

22 Q. So Southern Myrtle Inpatient Services is
23 unsure if there is an exception in HIPAA that would
24 allow for the limited disclosure of a patient's
25 health information when the patient is suffering

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1 from mental incapacity and disclosing the
2 information would be in the patient's best
3 interest?

4 MR. McKAY: Object to form.

5 A. I -- as I mentioned, I'm not 100 percent
6 certain. I believe there is, but I can't speak to
7 the specific.

8 MR. HINSON: If you would, let's look
9 at what was marked as Tab 16, Madam Court Reporter.
10 If you'd please provide that, we can mark it as
11 Exhibit 16.

12 (EXHIBIT NO. 16, Responses to
13 Plaintiff's First Requests for Admission on
14 Behalf of the Defendants Nirlep A. Patel,
15 M.D., Rachel Ash-Bernal, M.D., and Southern
16 Myrtle Inpatient Services, LLC, was marked for
17 identification and attached hereto.)

18 BY MR. HINSON:

19 Q. Mr. Caldwell, if you would, have you ever
20 seen this document before that we've marked as
21 Exhibit 16?

22 A. No, I do not believe so.

23 Q. Okay. If you would turn to the second
24 page of Exhibit 16, and I'm looking at request to
25 admit number five. And it reads "Admit that under

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1 the provisions of HIPAA" -- let me start over. I'm
2 going to not read out the Health Information
3 Portability and Accountability Act.

4 Getting back to my question, it states,
5 "Admit that under the provisions of HIPAA, where a
6 patient is incapacitated due to mental infirmity,
7 impairment, a healthcare provider is permitted to
8 share a patient's health information with family,
9 friends or others involved in the patient's care,
10 or payment for care, so long as the healthcare
11 provider determines, based on his/her professional
12 judgment, that doing so is in the patient's best
13 interest."

14 Do you see that?

15 A. Yes.

16 Q. And the response from Southern Myrtle
17 Inpatient Services was "denied as written."

18 Do you see that?

19 A. Yes.

20 Q. What was the factual basis for Southern
21 Myrtle Inpatient Services' denial of that request
22 to admit?

23 MR. McKAY: Object to form.

24 A. I -- I'm not certain.

25 Q. Does Southern Myrtle Inpatient Services

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1 undertake to research exceptions to HIPAA to see if
2 there was an exception to HIPAA that would allow a
3 healthcare provider to share information of a
4 mentally impaired patient, if doing so was in the
5 patient's best interest?

6 A. We -- we do not get involved in the
7 practice of medicine.

8 Q. I'm not really asking about the practice
9 of medicine. I'm asking about answering this
10 request to admit. In answering this request to
11 admit, did Southern Myrtle Inpatient Services
12 undertake any research to determine if there was an
13 exception under HIPAA as stated in request to admit
14 number five?

15 MR. MCKAY: Object to form.

16 A. To my knowledge, these questions were
17 answered in good faith.

18 Q. Did Southern Myrtle Inpatient Services
19 undertake any effort to research whether or not
20 there was an exception to HIPAA as delineated in
21 request to admit number five?

22 MR. MCKAY: Object to form.

23 A. Again, these questions were answered in
24 good faith. I do not know the specifics on the
25 details of that.

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1 Q. What's your basis of saying that they were
2 answered in good faith?

3 MR. McKAY: Object to form.

4 A. To my knowledge these were answered in
5 good faith.

6 Q. How do you know?

7 MR. McKAY: Object to form.

8 A. That's my understanding, that these
9 were -- these were answered to the best of our
10 knowledge in good faith.

11 Q. Did you undertake any research -- did
12 Southern Myrtle Inpatient Services undertake any
13 research to answer this question in good faith?

14 MR. McKAY: Objection. Asked and
15 answered.

16 A. I'm not certain.

17 Q. Did Southern Myrtle Inpatient Services
18 ever look to the provisions of HIPAA, more
19 specifically, Section 164.510 --

20 MR. McKAY: Objection.

21 Q. -- in answering this request to admit
22 number five?

23 MR. McKAY: Object to form.

24 A. I'm not certain.

25 Q. I'm going to read you a paragraph from

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1 request to admit -- excuse me.

2 I'm going to read you a paragraph from
3 164.510 of CFR. "If the individual is not present
4 or the"-- excuse me. Let me back up for a second.

5 This is under a subsection titled
6 "Permitted Uses in Disclosures." "If the individual
7 is present for or otherwise available prior to use,
8 the use or disclosure permitted in paragraph B1 of
9 this section and has the capacity to make
10 healthcare decisions, the covered entity may use or
11 disclose the protected health information if it,"
12 and then subsection three says, "if the individual
13 is not present or the opportunity to agree or
14 object to the use or disclosure cannot practically
15 be provided because the individual's incapacity or
16 an emergency circumstance, the covered entity may,
17 in the exercise of professional judgment, determine
18 whether the disclosure is in the best interest of
19 the individual, and if so, disclose only the
20 protected health information that is directly
21 relevant to the person's involvement with the
22 individual care or payment related to the
23 individual's healthcare or needed for notification
24 purposes."

25 Did Southern Myrtle Inpatient Services

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1 ever undertake to look and evaluate the meaning of
2 that paragraph within HIPAA?

3 MR. McKAY: Object to form. That's a
4 legal question.

5 Answer it, if you can.

6 A. Yes. I'm not certain.

7 Q. Did Southern Myrtle Inpatient Services
8 undertake to educate their physicians on what HIPAA
9 does and does not allow?

10 A. No. We -- we rely on each individual
11 physician's education as well as the hospital's
12 policies and procedures.

13 Q. Requests to admit number six, and I'm
14 looking at Exhibit 16, whereby it states, "Admit
15 that under the provisions of HIPAA, even though a
16 patient did not suffer from mental infirmity,
17 impairment and has objected to his healthcare
18 information being shared with a family member, a
19 healthcare provider may, in spite of the patient's
20 objection, share the patient's health information
21 with a family member of the patient if the
22 healthcare provider has a good faith belief that
23 the patient poses a threat to his own health or
24 safety and the family member is reasonably able to
25 prevent or lessen that threat."

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1 MR. McKAY: Object to the form.

2 Q. Do you see that?

3 MR. McKAY: That's a clinical and
4 legal question.

5 Answer it, if you can.

6 A. What is your question? I see what you --

7 Q. I read that correctly?

8 A. Yes. You read that correctly.

9 Q. I don't think asking if I read that
10 correctly was a legal question, but apparently
11 Mr. McKay wants to make speaking objections.

12 Did I read that correctly, Mr. Caldwell?

13 A. You read it as written, yes.

14 Q. And what was the response from Southern
15 Myrtle Inpatient Services?

16 A. "Denied as written."

17 Q. What's the basis of Southern Myrtle
18 Inpatient Services, what's the factual basis of
19 having denied that request to admit?

20 MR. McKAY: Object to form.

21 A. I'm not certain.

22 Q. Did Southern Myrtle Inpatient Services
23 undertake any sort of analysis of the dos and
24 don'ts of HIPAA in responding to request to admit
25 number six?

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1 A. I'm not certain.

2 Q. All right. We looked earlier in
3 Exhibit 6, if you have that with you --

4 A. Yes.

5 Q. And this was Notice of Privacy Practices
6 from Grand Strand. And we looked at, on page four
7 of that document, it says, "We may also use and
8 disclose health information for the following types
9 of entities, including but not limited to," then it
10 goes on to say "a person or persons able to prevent
11 or lessen a serious threat to health or safety."

12 That's the privacy practices of the
13 hospital, correct?

14 A. Correct.

15 Q. And the physicians working for Southern
16 Myrtle Inpatient Services are to follow the
17 policies and procedures of the hospital, correct?

18 MR. MCKAY: Object to form.

19 A. Yes.

20 Q. And then looking at request to admit
21 number six in Exhibit 16, it's asking if patient
22 information can be shared if doing so is in
23 patient's best interest and the patient poses a
24 threat to his own health or safety.

25 Given the notices of privacy practices

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1 promulgated with the hospital, would you agree with
2 me that request to admit number six should be
3 admitted by Southern Myrtle Inpatient Services?

4 MR. McKAY: Object to form.

5 A. This is the policy of the hospital, not --
6 we rely on the clinicians to -- as you mentioned
7 and I mentioned, to follow the policies of the
8 hospital.

9 Q. Did Southern Myrtle Inpatient Services
10 today stand behind the denial of request to admit
11 number six --

12 MR. McKAY: Object to form.

13 Q. -- in Exhibit 16?

14 MR. McKAY: Object to form.

15 A. Again, it's the hospital's determination
16 and the clinician's, not Southern Myrtle's.

17 Q. What is their determination; what HIPAA
18 does and doesn't allow?

19 A. Their administration and adherence to.

20 Q. I'm not asking about the adherence to.
21 I'm just asking for the defendants' position on
22 what HIPAA does and doesn't allow.

23 MR. McKAY: Object to form.

24 A. That's -- we don't make the decisions.

25 Q. Southern Myrtle Inpatient Services agrees

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1 that patient information can be shared with a
2 patient's family member if that information will
3 prevent -- could reasonably prevent a threat to the
4 patient's own safety?

5 MR. McKAY: Object to form.

6 A. I do not know that for certain.

7 Q. If you would, let's look at tab 12, or
8 what we sent over as Exhibit 12.

9 (EXHIBIT NO. 12, Answers to
10 Plaintiff's Third Interrogatories on Behalf of
11 the Defendants, Nirlep A. Patel, M.D., Rachel
12 Ash-Bernal, M.D., and Southern Myrtle
13 Inpatient Services, LLC, was marked for
14 identification and attached hereto.)

15 BY MR. HINSON:

16 Q. Mr. Caldwell, have you ever seen the
17 document that we've marked as Exhibit 12 prior to
18 this morning -- or prior to just now?

19 A. Yes.

20 Q. When did you review this document?

21 A. Yesterday afternoon.

22 Q. Prior to yesterday afternoon, had you ever
23 seen the document?

24 A. No.

25 Q. And same for the request to admit that we

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1 just looked at a minute ago. Was yesterday
2 afternoon the first time you had seen those?

3 A. I don't believe I'd seen those.

4 Q. Okay. Sorry. Then the requests to admit
5 we looked at you had not seen until they were
6 handed to you at your deposition; is that fair?

7 A. Yes. Exhibit 16?

8 Q. Yeah. So Exhibit 16 you had not seen
9 until the court reporter provided it to you, is
10 that correct?

11 A. That's correct.

12 Q. All right. Turning back to Exhibit 12.
13 And I'm looking at the response to interrogatory
14 number one, which asks: "List and describe any and
15 all training that Dr. Nirlep Patel and Dr. Rachel
16 Ash-Bernal received under the provisions of HIPAA
17 at any -- in the time" -- little typo there, "at
18 any time in the period spanning in January 1, 1996,
19 through December 31, 2016."

20 And then the answer reads, "Dr. Ash-Bernal
21 and Dr. Patel received training on HIPAA on an
22 ongoing basis throughout their professional
23 careers. To the best of their recollection this
24 includes," and then there's three bullet points.
25 It says, bullet point one, "Hospital-based training

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1 at the places of employment, both in-person and
2 online, to include new physician orientation and
3 annual training."

4 Bullet point two: "Hospital-based notice
5 of privacy practices."

6 And bullet point three: "Training modules
7 conducted online over the years by employers."

8 Do you see that?

9 A. Yes.

10 Q. Does Southern Myrtle Inpatient Services
11 have any specific knowledge of the training
12 provided? And by that I mean would they have
13 received notice, such as on December 2, 2015,
14 Dr. Patel attended such-and-such a seminar provided
15 by XYZ entity?

16 A. I'm not certain.

17 Q. Do the doctors report -- does Dr. Patel
18 and Dr. Rachel Ash-Bernal, when they worked for
19 Southern Myrtle Inpatient Services, did they report
20 any ongoing continuing medical education that they
21 received? Did they report those to SMIS?

22 A. I'm not certain.

23 Q. Who at SMIS could we ask that question to?

24 A. As I mentioned earlier, there's no
25 employees of SMIS. So no one.

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1 Q. If we went to former employees of SMIS,
2 who could we ask that question to?

3 A. I'm not certain.

4 Q. If we wanted to gain a list of former
5 employees for SMIS, who would I direct that to?
6 Who would be asked?

7 A. You're welcome to ask me.

8 Q. Who were the former employees of SMIS?

9 A. I don't have it in front of me.

10 Q. But you could provide that information?

11 A. I could.

12 Q. And it would state the persons' roles or
13 job titles at SMIS?

14 A. Yes.

15 Q. But despite the fact that notice of
16 deposition topic details relating to management and
17 administration of Southern Myrtle Inpatient
18 Services, LLC, was one of the deposition topics,
19 you're not prepared today to tell me who was
20 working in administration and management at SMIS;
21 is that fair?

22 MR. MCKAY: Object to form.

23 A. I -- I'm not certain. No.

24 Q. The list of employees at Southern Myrtle
25 Inpatient Services, is that something you have with

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1 you at your office, in your office?

2 A. Yes. Within our systems, yes.

3 Q. But you didn't come here today prepared to
4 tell me details relating to the management and
5 administration of Southern Myrtle Inpatient
6 Services to tell me the names of the individuals
7 who were managing and administering SMIS in 2015?

8 MR. MCKAY: Object to form.

9 A. I -- I do not have the details, no.

10 Q. Looking back at Exhibit 12, the third
11 bullet point states, "Training modules conducted
12 online over the years by employers."

13 Do you see that?

14 A. Yes.

15 Q. SMIS didn't provide any training to
16 Drs. Ash-Bernal or Dr. Patel, did it?

17 A. I'm not -- I'm not certain. We -- there
18 are online overview compliance training.

19 Q. So SMIS did on occasion provide training
20 to its employees?

21 A. There is a general training, annual
22 training, yes.

23 Q. Who conducted that training to Drs. Patel
24 and Ash-Bernal?

25 A. It's an online course.

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1 Q. It was an online course created by SMIS?

2 A. I'm not certain who it was created by.

3 Q. So my question was, did SMIS as an entity
4 provide training to Drs. Patel and Ash-Bernal?

5 MR. McKAY: Object to form.

6 A. I'm not certain exactly what you're
7 asking.

8 Q. Well, doctors have to get continuing
9 medical education, correct?

10 A. Yes.

11 Q. Did SMIS, as an entity, provide any
12 training to Drs. Ash-Bernal or Patel?

13 A. Not -- not to my knowledge.

14 Q. Okay. Who -- what entity created or
15 promulgated this online training you just spoke of?

16 A. I'm not certain.

17 Q. When did Drs. Ash-Bernal and Patel receive
18 this training you spoke of that was online?

19 MR. McKAY: Object to form.

20 A. I'm not certain.

21 Q. How would -- who would know the answer to
22 that question?

23 A. I would.

24 Q. Okay. How would you gain that
25 information?

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1 A. Within our systems.

2 Q. So you could provide a more detailed
3 answer to number one, stating when Drs. Ash-Bernal
4 and Patel received HIPAA training?

5 A. It -- if they attended the HIPAA training,
6 the corporate HIPAA training, then yes. If not,
7 then no.

8 Q. Have you ever been asked to look in your
9 system and make a determination if the corporate
10 HIPAA training was attended by Drs. Ash-Bernal and
11 Patel?

12 A. I have not. Until just now.

13 Q. Is that corporate HIPAA training, is that
14 something the corporation still has?

15 A. Yes. And to be more specific, it is more
16 compliance-driven and overarching. It doesn't get
17 into detail. It is more from a corporate level and
18 not in the -- the day-to-day practice of medicine
19 aspect of HIPAA.

20 Q. So what types of things, then, would it
21 cover?

22 A. It's covering things such as not -- not
23 sharing patient information, again, at a corporate
24 level, and more compliance driven. It is not
25 HIPAA-specific. It is related to things such as

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1 the Stark Act and Antikickback and those type of
2 things.

3 Q. So SMIS undertook to research certain
4 aspects of HIPAA and provide training to some of
5 its employees on those particular aspects of HIPAA,
6 correct?

7 MR. MCKAY: Object to form.

8 A. Again, as I stated, it is more from an
9 overarching corporate standpoint, not in the
10 practice of medicine. We rely on the individual
11 clinicians and their education, along with the
12 hospital, to provide such trainings.

13 Q. Okay. So am I correct to interpret that
14 as SMIS never took -- undertook to provide any
15 education or training to Drs. Ash-Bernal or Patel
16 regarding exclusions to HIPAA that would permit the
17 disclosure of health information for patient
18 safety?

19 MR. MCKAY: Object to form.

20 A. To my knowledge, correct.

21 Q. But Southern Myrtle Inpatient Services did
22 undertake to provide training to some of its
23 physicians on more corporate aspects of what HIPAA
24 requires and allows, is that correct?

25 A. Yes.

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1 Q. When you came on to work in your current
2 position, was Southern Myrtle Inpatient Services
3 already without any employees, or did it still have
4 employees at that time?

5 A. To my understanding there was no employees
6 at that time.

7 Q. Is your corporation, the one that you work
8 directly for, is it providing any physician
9 services to Grand Strand Regional Medical Center?

10 A. No, not to my knowledge.

11 Q. And so as I understand, somewhere within
12 your office or computer systems or systems, you
13 would anticipate that you have more information
14 regarding the training that Drs. Ash-Bernal and
15 Patel have received from whatever sources that may
16 be?

17 MR. MCKAY: Object to the form.

18 A. If they took the training, I would have --
19 I could gain access to -- yes, they took the
20 training. Is that what you're asking?

21 Q. Sure, okay. Let's make sure we're clear.
22 So the training you're speaking of is just
23 that training with regard to the corporate training
24 that -- the online course you were talking about,
25 correct?

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1 A. Correct.

2 Q. So let's say, for example, Dr. Ash-Bernal
3 went to a CME, a continuing medical education
4 course in Atlanta, and she got four CME credits.
5 Would that information be relayed back to SMIS in
6 any way, that she had received that training in
7 Atlanta?

8 A. I -- I'm not certain.

9 Q. Who would know the answer to that
10 question?

11 A. I would -- I would have to look it up
12 within our systems.

13 Q. Where would you go to look it up?

14 A. Within credentialing.

15 Q. And so -- but you don't know whether --
16 you know, I'm not asking if there are any specifics
17 as to whether or not she received training. I'm
18 just asking if -- if it would be reported to you.
19 Was the structure such that if a physician employed
20 by SMIS received a CME, that SMIS was made aware of
21 the physician having attended that CME?

22 A. Within credentialing, obviously the
23 clinicians have to maintain their license, and
24 depending on that structure and how their
25 continuing license is held, then, yes.

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1 So the answer would be it depends.

2 Q. Depends on what?

3 A. If that information was in their
4 credentialing system. It would have to be within
5 the timing that you're referring to.

6 Q. Okay. And you can't answer -- physicians
7 have to get CMEs, correct?

8 A. Correct.

9 Q. And whether or not SMIS was made aware of
10 the CMEs that Drs. Ash-Bernal and Patel were
11 earning, you don't know?

12 A. No. It would be on the credentialers, on
13 what information that they have regarding their
14 specific license.

15 Q. Who were the credentialers? What do you
16 mean by that?

17 A. Those providing the credential backup
18 information that they are approved to work at this
19 hospital.

20 Q. And those individuals you're speaking of
21 wouldn't be SMIS employees?

22 A. Correct. They would be Grand Strand
23 employees.

24 Q. So SMIS would have no specific knowledge
25 one way or another whether Rachel Ash-Bernal had

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1 received any specific training of the dos and
2 don'ts of HIPAA. Is that fair?

3 A. Through our -- depending on what -- again,
4 we have credentialing systems with -- within SMIS
5 and what is contained there. I cannot speak to the
6 specifics of what is contained there.

7 Q. I don't understand your answer there.

8 So you've testified there's some sort of
9 online training that physicians may take regarding
10 some of the more corporate aspects of HIPAA,
11 correct?

12 A. Yes. So to further clarify your question,
13 there is an option on that, if they want to apply
14 that to CME. If they opted to include that within
15 CME, then, yes, that would be included.

16 Q. It would be included where?

17 A. Within their credentialing file.

18 Q. It would be held by SMIS?

19 A. Yes. And the hospital.

20 Q. Okay. So if SMIS has a credentialing file
21 for Dr. Patel and Dr. Ash-Bernal, would that
22 credentialing file include a list of CMEs that the
23 physician earned in a given year?

24 MR. McKAY: Object to form.

25 A. I'm not certain.

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1 Q. What else would it include, Mr. Caldwell?

2 A. It would include their license, their --
3 I'm not sure. I don't get involved in the
4 specifics of the credentialing process.

5 Q. Who could answer that question on behalf
6 of SMIS?

7 A. I'm not certain.

8 Q. This online training that you mentioned,
9 is it some sort of PowerPoint-type training,
10 slides, things like that?

11 A. Yes.

12 Q. And that's something that still exists
13 today on the computer systems at your company,
14 correct?

15 A. I'm not certain if it's within our
16 computer systems, but, yes, it's -- it's a program
17 that is -- exists today.

18 Q. Okay. And you have access to it; it's
19 something available to you, correct?

20 A. Yes.

21 Q. Is there more than one version of it, or
22 is it just one -- one type -- one training
23 exercise?

24 A. One training exercise.

25 Q. About how long is that training?

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1 A. Approximately --

2 Q. An hour, two-hour course?

3 A. Approximately an hour, maybe a little
4 more.

5 Q. Let's look at Tab -- one second. Let's
6 look at Tab 14.

7 Let's make that Exhibit 14, please. It is
8 Responses to Plaintiff's Third Request for
9 Admission.

10 (EXHIBIT NO. 14, Responses to
11 Plaintiff's Third Request for Admission, was
12 marked for identification and attached
13 hereto.)

14 BY MR. HINSON:

15 Q. Mr. Caldwell, you've been provided
16 Exhibit 14, which is Responses to Plaintiff's Third
17 Requests for Admission on behalf of the Defendant
18 Nirlep Patel, Rachel Ash-Bernal, and Southern
19 Myrtle Inpatient Services, LLC.

20 Have you ever seen this document before?

21 A. No, I don't -- I don't believe so.

22 Q. Requests to admit number one states:
23 "Admit that on October 3, 2015, Grand Strand
24 Regional Medical Center had a system in place by
25 which a healthcare provider could get answers to

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1 questions that he/she might have regarding
2 permissible disclosures under HIPAA."

3 Did I read that correctly?

4 A. Yes.

5 Q. Response states, "Admitted upon
6 information and belief, except these defendants,
7 after reasonable inquiry, lack information or
8 knowledge sufficient to admit or deny whether such
9 system was operated in such a manner that a live
10 person employed by GSRMC for this purpose could be
11 reached at any time, 24 hours per day, seven days
12 per week, and any reference contained in this
13 request as to the immediate availability of such
14 person is therefore denied."

15 Did I read that correctly?

16 A. You did.

17 Q. What is the factual basis for Southern
18 Myrtle Inpatient Services denying whether or not
19 the system at Grand Strand hospital operated in
20 such a way that a person could be reached 24/7 to
21 answer questions about HIPAA?

22 MR. MCKAY: Object to form.

23 A. I'm not certain.

24 Q. Did Southern Myrtle Inpatient Services
25 undertake, to your knowledge, any effort to

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1 determine if Grand Strand's system operated in such
2 a way that an answer to questions about HIPAA could
3 be provided to a physician 24/7?

4 MR. McKAY: Object to form.

5 A. I'm not certain.

6 MR. HINSON: If we could look at Tab
7 11 and make that Exhibit 11, please.

8 (EXHIBIT NO. 11, Grand Strand
9 Regional Medical Center's Responses to
10 plaintiff's fourth requests for admission, was
11 marked for identification and attached
12 hereto.)

13 BY MR. HINSON:

14 Q. And before we get into that, Mr. Caldwell,
15 the question of whether or not the system at Grand
16 Strand Regional Medical Center, the hospital in
17 question in this case, questions about whether or
18 not their system for answers on HIPAA operated
19 24/7, would you agree with me that one way to
20 determine an answer to that would be for Southern
21 Myrtle to simply ask Grand Strand if the system
22 worked 24/7?

23 MR. McKAY: Object to form.

24 A. I'm not -- I'm not certain. I do not know
25 the operations.

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1 Q. And that's my question. If you didn't
2 know the operations, one way that Southern Myrtle
3 Inpatient Services might answer that question would
4 be to ask somebody at the hospital?

5 MR. MCKAY: Object to form.

6 Q. Does that seem reasonable?

7 A. Potentially. I'm not certain of their
8 current operations or -- or what's going on there.

9 Q. Okay. And you have never undertaken to
10 ask anyone at Grand Strand if their system by which
11 a physician could get answers to questions about
12 HIPAA, if that system operated 24/7; you've never
13 undertaken to ask that question?

14 MR. MCKAY: Object to form.

15 A. I have not personally, no.

16 Q. All right. And to your knowledge nobody
17 at Southern Myrtle Inpatient Services has
18 undertaken to ask Grand Strand if that system
19 operated 24/7, is that correct?

20 MR. MCKAY: Object to form.

21 A. I -- I do not know.

22 Q. And now let's look at what we've marked as
23 Exhibit 11. This is a response in discovery from
24 Grand Strand. Grand Strand was asked -- and this
25 is in the early morning hours of October 3, 2015.

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1 Grand Strand Regional Medical Center had a system
2 in place by which Dr. Ash-Bernal could get answers
3 to questions that she might have regarding
4 permissible disclosures under HIPAA, and that
5 access to this system was available to
6 Dr. Ash-Bernal 24 hours a day, 7 days a week.

7 Did I read that correctly?

8 A. Yes.

9 Q. And what was the hospital's response to
10 that question?

11 MR. MCKAY: Object to form.

12 A. Response stated here says "admitted."

13 Q. All right. So do you -- would you agree
14 that a truthful answer to request to admit number
15 one in Exhibit 14 would have simply stated
16 "admitted"?

17 MR. MCKAY: Object to form.

18 A. If -- if that -- if that knowledge was
19 known, then, yes.

20 Q. Do you believe that your organization has
21 an obligation to make reasonable efforts to answer
22 discovery requests?

23 MR. MCKAY: Object to form.

24 Argumentative.

25 A. Yes.

A|W|R

1 Q. What efforts to your knowledge did
2 Southern Myrtle Inpatient Services, LLC, take to
3 answer requests -- to truthfully answer request
4 number one contained in Exhibit 14?

5 MR. McKAY: Object to form.

6 A. I'm not certain.

7 Q. Would SMIS, did it conduct any reviews to
8 determine the performance of its physicians?

9 A. I'm not certain.

10 Q. Who would know the answer to that
11 question?

12 A. I'm not certain.

13 Q. Would SMIS have access, if it so desired,
14 to the charts and the charting conducted by its
15 physicians?

16 A. I'm -- I'm not a clinician. I'm not sure
17 of the -- the procedure there.

18 Q. Let's look at Exhibit 14, please. And I'm
19 looking at request to admit number six,
20 Mr. Caldwell. It reads, "Admit that Grand Strand
21 Regional Medical Center's notice of privacy
22 practices provides that 'as permitted by law, we
23 may also use and disclose health information for
24 the following types of entities, including but not
25 limited to: A person or persons able to prevent or

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1 lessen a serious risk for health and safety.'" "

2 Do you see that?

3 A. Yes.

4 Q. Now let's take a look at the notice of
5 privacy practices that we looked at earlier, which
6 was Exhibit 6 to your deposition. And looking on
7 page four of the privacy practices, it states, "As
8 permitted by law, we may also use and disclose
9 information for the following types of entities,
10 included but not limited to," and then it goes on
11 to say, "a person or persons able to prevent or
12 lessen a serious threat to health or safety."

13 So to request to admit number six, in
14 Exhibit 14, do you agree with me that should be
15 admitted?

16 MR. MCKAY: Object to form. It says
17 "permitted by law." That's a legal question.

18 Q. I'm not asking you, Mr. Caldwell, to make
19 a legal determination. I'm just asking you if it
20 appears that the quoted information is stated in
21 Grand Strand Regional's notice of privacy
22 practices.

23 MR. MCKAY: Object to form.

24 A. Again, I would -- I would agree with the
25 response given here. This is Grand Strand's

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1 policy, and we rely on our clinicians to follow the
2 policies and procedures of the hospital.

3 Q. The requests to admit, Mr. Caldwell,
4 simply asked if that's -- if this is a correct
5 quotation from the notice of privacy practices. It
6 is a correct and accurate quotation for the notice
7 of privacy practices we looked at in Exhibit 6, is
8 it not?

9 MR. McKAY: Object to form.

10 A. It appears to be.

11 Q. What's the factual -- what effort -- well,
12 strike that.

13 The response states, "After reasonable
14 inquiry, these defendants lack information
15 sufficient to admit or deny this request." What
16 reasonable inquiry was made by Southern Myrtle
17 Inpatient Services to determine if Grand Strand
18 Regional's notice of privacy practices stated as we
19 quoted earlier?

20 MR. McKAY: Object to form.

21 A. I'm not certain.

22 Q. Would you agree with me that a reasonable
23 inquiry would simply include looking at the
24 document and seeing if it was correctly quoted?

25 MR. McKAY: Object to form.

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1 A. I'm not certain. I do not know the status
2 of gaining access to the document you're referring.

3 Q. If we could simply Google Grand Strand
4 Regional Medical Center notice of privacy practices
5 and get the document that we've marked as
6 Exhibit 6, do you not agree that a reasonable
7 inquiry into answering this request to admit would
8 include looking at the document online, available
9 to anybody with access to a computer?

10 MR. MCKAY: Object to form.

11 A. I'm not certain. I didn't provide the
12 response.

13 Q. Do you have access to the Internet at
14 work?

15 A. To some degree, yes.

16 Q. Do you believe that if you called up Grand
17 Strand Regional Medical Center and asked them for a
18 copy of their notice of privacy practices, that
19 they would provide it to you?

20 MR. MCKAY: Object to form.

21 Argumentative.

22 A. I'm not certain. It would -- it would
23 depend on the hospital.

24 Q. Do you have any information if Southern
25 Myrtle Inpatient Services employees, Dr. Rachel

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1 Ash-Bernal and Dr. Patel, ever made any effort to
2 see if the quoted statement in request to admit
3 number six was accurate?

4 MR. MCKAY: Object to form.

5 A. I'm not certain.

6 Q. Can you provide any information in any
7 regard as to what reasonable efforts and inquiry
8 Southern Myrtle Inpatient Services undertook to
9 answer requests to admit number six?

10 MR. MCKAY: Object to form.

11 A. I'm not certain.

12 Q. Mr. Caldwell, I may be done. We can go
13 off the record for a minute or, Jay, if you've got
14 any questions, I'll just pass the baton.
15 Otherwise, I'll just read through and make sure I'm
16 done.

17 MR. MCKAY: I've just got a couple of
18 quick questions. I say I do; let me just look real
19 quick.

20 EXAMINATION

21 BY MR. MCKAY:

22 Q. Mr. Caldwell, southern patient -- excuse
23 me, Southern Myrtle Inpatient Services basically is
24 still in corporate existence, but it's not an
25 active corporation; is that a good way to state it?

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1 A. Yes. It's still -- there's billing
2 activity, but that -- that's pretty much --

3 Q. It may still have some receivables, but it
4 has no employees at this time?

5 A. That's correct.

6 Q. Okay. I believe you stated you've been in
7 your position for about a year?

8 A. Yes.

9 Q. And it was not an active corporation when
10 you came to work for your company, is that correct?

11 A. That's correct.

12 Q. You're not holding yourself out as having
13 expertise on the interpretation of the HIPAA laws,
14 are you?

15 A. No.

16 MR. McKAY: Okay. Thank you. That's
17 all I've got.

18 EXAMINATION

19 BY MR. HINSON:

20 Q. Mr. Caldwell, topic number seven in
21 your -- in the notice of deposition for Southern
22 Myrtle Inpatient Services reads, "Details relating
23 to training on the topics of a voluntary admission
24 of psychiatric patients provided to or otherwise
25 received by Drs. Patel and Ash-Bernal."

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1 Do you know of any training provided to
2 Dr. Patel and Ash-Bernal on the topic of
3 involuntary admission for patients suffering from
4 psychosis?

5 A. No, I'm not aware of those details, if
6 there are.

7 Q. Do you agree that Southern Myrtle
8 Inpatient Services would expect its physicians to
9 be knowledgeable as to how they would go about
10 committing a patient involuntarily?

11 MR. McKAY: Object to form.

12 A. I would expect through the clinician's
13 education and training for them to act
14 professionally and within the scope of the law.

15 Q. And you would expect them to be
16 knowledgeable as to how to go about the process, if
17 they deemed in their professional judgment
18 necessary, you would expect them to be knowledgeable
19 on the process of involuntarily committing a
20 patient, correct?

21 MR. McKAY: Object to form.

22 A. If -- if that was their professional
23 belief, then, yes.

24 Q. They should be knowledgeable as to how to
25 go about doing it?

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1 MR. McKAY: Object.

2 Q. They should be -- strike that.

3 You would agree with me that the
4 physicians working for Southern Myrtle Inpatient
5 Services should be knowledgeable as to how they
6 would go about involuntarily committing a patient
7 to the hospital?

8 A. I'm -- I'm not a clinician. I cannot
9 speak to the specifics of that.

10 Q. I'm not asking you for the specifics. My
11 question is much more general.

12 You would agree with me that Southern
13 Myrtle Inpatient Services would expect its employee
14 physicians to have knowledge and be knowledgeable
15 about how to go about involuntarily committing a
16 patient?

17 A. I would expect them to operate on their
18 education and training. I'm not certain -- again,
19 because I'm not a clinician -- of the specifics of
20 that training, but I would expect them to operate
21 within those -- their training and education and
22 within the scope of the law.

23 Q. Okay. And part and parcel of that,
24 Southern Myrtle Inpatient Services would have an
25 expectation that they -- that the physicians had an

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1 understanding of how to go about committing --
2 involuntarily committing a psychotic patient?

3 MR. McKAY: Object to the form.

4 A. I do not know the specifics of that.

5 Q. I'm not asking for the specifics,
6 Mr. Called. It's a very general question.

7 I'm just asking -- I'm not asking if
8 Southern Myrtle knows the specifics of how it's
9 done. I'm just asking, is it not true that
10 Southern Myrtle would expect its physicians to know
11 how to involuntarily commit a patient?

12 A. I -- I'm not a clinician. I could not
13 answer that question.

14 Q. You cannot answer the question -- that's
15 fine. You can't answer the question if Southern
16 Myrtle Inpatient Services would expect its
17 physicians to be knowledgeable on the process of
18 involuntarily committing a patient?

19 A. If that is within their scope of medical
20 training, and it acts within the scope of the law,
21 then, yes. But I -- I'm not certain of those
22 specifics.

23 Q. Okay. What do you mean, "those
24 specifics"? What do you mean by that?

25 A. By the specifics of your question of

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1 involuntarily -- however you stated it. I -- I
2 can't speak it verbatim, but the specifics of your
3 question. If it was in -- within the scope of
4 their medical training, and within the scope of the
5 law, then, yes. But I cannot speak to the specific
6 of it.

7 Q. I'm not asking you specifics. Generally
8 speaking, whatever it may be that is necessary to
9 involuntarily commit a patient, you would expect
10 Southern Myrtle Inpatient Services would expect its
11 physicians to be knowledgeable on that?

12 MR. McKAY: Object to form.

13 A. If it's in the scope of their medical
14 training, then, yes. I do not know if it's in the
15 scope of their medical training, because I'm not a
16 clinician.

17 Q. Did -- I'm looking at topic eight, details
18 related to training on the topic of caring for
19 psychiatric patients provided to or otherwise
20 received by Drs. Patel or Ash-Bernal. Did Southern
21 Myrtle Inpatient Services have any knowledge, any
22 specific knowledge, of training provided to
23 Ash-Bernal and Patel on how to care for a patient
24 suffering from psychosis?

25 MR. McKAY: Object to form.

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1 A. I don't know the details. We -- SMIS does
2 not provide such training.

3 Q. Okay. Did SMIS have a means of incident
4 reporting, or would that be solely left to the
5 hospital?

6 A. There is an incident reporting -- that is
7 a capability, yes. Is that your question?

8 Q. Yes. How was that done?

9 A. I'm not certain.

10 Q. How was it maintained?

11 A. I'm not certain.

12 MR. MCKAY: And I've got a late
13 objection, if this is peer review of credentialing
14 stuff, or there's another word; I can't remember
15 what it is.

16 Q. Was there any type of peer review
17 conducted by SMIS of its physicians?

18 MR. MCKAY: Object to form.

19 A. I'm not certain.

20 Q. And you're unsure if there was any
21 interview process with SMIS when a physician
22 applied to work there; is that correct?

23 A. I'm -- I'm uncertain.

24 MR. HINSON: All right, Mr. Caldwell.
25 I think I'm done. I appreciate your time today.

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MR. McKAY: Thank you. I have no further questions.

AND FURTHER DEPONENT SAITH NOT

(Signature reserved.)

THE DEPOSITION CONCLUDED AT 2:36 P.M.

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COURT REPORTER'S CERTIFICATE

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STATE OF TENNESSEE:

I, PATRICIA A. NILSEN, Licensed Reporter for the State of Tennessee, CERTIFY:

1. The foregoing deposition was taken before me at the time and place stated in the foregoing styled cause with the appearances as noted;

2. Being a Court Reporter, I then reported the deposition in Stenotype to the best of my skill and ability, and the foregoing pages contain a full, true and correct transcript of my said Stenotype notes then and there taken;

3. I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

WITNESS MY SIGNATURE, this, the 21st day of December, 2018.

Patricia A. Nilsen

PATRICIA A. NILSEN, RMR, CRR, CRC
TN Licensed Court Reporter
LCR Number: 717
Expiration: 6/30/2020

A | W | R

1 SIGNATURE OF DEPONENT

2 DEPONENT: Matthew Shane Caldwell - 30b6 Inpatient Services, LLC

DEPOSITION DATE: 12/05/2018

3 AWR JOB #: 23381

CASE #: 2017-CP-26-1571

4

5 (Please return both Signature of Deponent pages)

6 I, the undersigned, Matthew Shane Caldwell - 30b6 Inpatient Services, LLC, do hereby
certify that I have read the foregoing deposition

7 and find it to be a true and accurate transcription
of my testimony, with the following corrections, if

8 any:

9	PAGE	LINE	CHANGE	REASON
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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO

A | W | R

1 SIGNATURE OF DEPONENT (CONTINUED)

2 DEPONENT: Matthew Shane Caldwell - 30b6 Inpatient Services, LLC

DEPOSITION DATE: 12/05/2018

3 AWR JOB #: 23381

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4

5	PAGE	LINE	CHANGE	REASON
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12 _____
Matthew Shane Caldwell - 30b6 Inpatient Services, LLCDate

13 I certify, as the Court Reporter and Notary Public
for the State of South Carolina at Large, that the deponent
14 was advised of his or her right to read and sign
said deposition both verbally and in writing.

15 If the deponent fails to execute and return
foregoing Signature of Deponent pages within the
16 thirty (30) days allowed pursuant to the Rules of
Civil Procedure, the original transcript may be filed
17 with the Court.

18

19

20

21

22

23

Patricia A. Nilsen

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Court Reporter

Notary Public

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A | W | R

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF HORRY
4 DAVID L. SCHEER, as Personal
5 Representatives of the Estate
6 Of MATTHEW J. SCHEER,
7 Plaintiffs,
8 Vs. CASE NO. 2017-CP-26-1571
9 SOUTHERN MYRTLE INPATIENT SERVICES,
10 LLC; NIRLEP A. PATEL, M.D.;
11 RACHEL ASH-BERNAL, M.D., AND GRAND
12 STRAND REGIONAL MEDICAL CENTER,
13 Defendants.
14 DEPOSITION OF: 30(b)(6) GRAND STRAND REGIONAL
15 MEDICAL CENTER
16 GINA TRAHEY
17 DATE: June 19, 2018
18 TIME: 11:10 AM
19 LOCATION: A. William Roberts, Jr., &
20 Associates
21 1293 Professional Avenue, Suite 104
22 Myrtle Beach, South Carolina
23 TAKEN BY: Counsel for the Plaintiff
24 REPORTED BY: Jane L. McKillop, Reporter
25

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weldon@basjlaw.com

(Index at rear of transcript)

1 GINA TRAHEY,
2 Being first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. HINSON:
5 Q Ms. Trahey, will you please state your full
6 name?
7 A Gina Marie Trahey.
8 Q And, Ms. Trahey, have you ever had the
9 occasion to give a deposition before today?
10 A Not on behalf of the hospital.
11 Q Okay. But you have given a deposition on
12 some other occasion or occasions?
13 A I have.
14 Q And you may be familiar, very familiar with
15 this process but a few things to go over before we get
16 underway. If at any point you need to take a break
17 let me know. We will be happy to do so. I may ask
18 you to finish the question that's been asked or even
19 maybe a series of a few questions to finish a topic
20 but we can certainly take a break if you need to.
21 A Thank you.
22 Q And if at any point I cut you off that's not
23 my intention. It's important for me to understand
24 your answers today. So if I do please just let me
25 know. I'll be happy to let you finish your answer.

1 A Okay.

2 Q Likewise for the purpose of our court
3 reporter if you will do your best to let me finish my
4 question it will make it easier for her when she types
5 up the transcript, and I know typically people tend to
6 kind of anticipate the question and will start
7 answering before it's completely finished but it makes
8 the court reporter's job more difficult. So if you
9 would, please do your best to kind of break habit in
10 human nature and let the question be completed.

11 A Okay.

12 Q From time to time there you may have
13 questions about what I am asking. Please let me know.
14 I will be happy to repeat, rephrase, do whatever I
15 need to do to make sure you understand the question.

16 A Okay.

17 Q And there also may be objections from time to
18 time to my questions. Unless you've been instructed
19 by your counsel not to answer if you'd please answer
20 the question in spite of the objection.

21 A Okay.

22 Q Ms. Trahey, what's your date of birth?

23 A 8/2/1970.

24 Q And what is your current address?

25 A 112 14th Avenue North, Surfside Beach.

1 Q And how long have you lived at that address?

2 A Three years.

3 Q And you mentioned earlier that you had given
4 depositions before. Tell me about the prior
5 depositions.

6 A Family court.

7 Q Family court, okay. Is that the only time
8 you've given depositions?

9 A Yes.

10 Q You've got to let me finish my question
11 because our court reporter will get fussy with us.

12 And that was in some sort of personal matter?

13 A Yes.

14 Q At no other times besides the family court;
15 is that correct?

16 A Yes.

17 Q Ms. Trahey, if you would, take me through
18 your educational background starting with high school.
19 Where did you go to high school?

20 A I went to North Farmington Redford Union in
21 Emily City.

22 Q And where is that?

23 A Michigan.

24 Q And after you completed high school what's
25 next on your education and work trajectory?

1 A My associates was at Schoolcraft Community
2 College.

3 Q And that's in Michigan?

4 A It is.

5 Q And what was your associates degree in?

6 A HIM, health information management.

7 Q Okay. And what year did you finish that
8 associates degree?

9 A 2005.

10 Q Okay. And so tell me what you did between
11 high school and finishing the associates degree?

12 A Had children.

13 Q Okay. So you were a stay-at-home mom for a
14 few years?

15 A I was.

16 Q So 2005 you finished an associates degree in
17 Michigan. What did you do next as far as education
18 and work?

19 A I was a utilization reviewer for Ford Motor
20 Company.

21 Q And what does that mean utilization reviewer?

22 A I reviewed medical bills for workers' comp
23 claims.

24 Q How long did you do that?

25 A Two and a half years.

1 Q So from '05 to '07, '05 to '08, something
2 like that?

3 A '08.

4 Q Okay. And so that was with Ford?

5 A It was a contract company Bartech.

6 Q Bartech?

7 A Uh-huh. B-A-R-T-E-C-H.

8 Q And so after that work with Bartech what did
9 you do?

10 A During that time I did my bachelors with
11 University of Cincinnati online. When I graduated in
12 2009 I went to work at Marywood Nursing Care Facility.
13 It's a long-term care facility.

14 Q And what did you earn a bachelors degree in?

15 A HIM.

16 Q Okay. You said that was health information
17 management?

18 A Yes, sir.

19 Q All right. And so you earned a bachelors
20 degree you said in '09?

21 A Uh-huh.

22 Q That was BA or BS?

23 A BA.

24 Q And then you went to work you said with a
25 long-term care facility?

1 A I was a medical -- director of medical
2 records.

3 Q And you did that for how long?

4 A Almost four years.

5 Q So '09 to approximately 2013?

6 A '12.

7 Q Okay. And tell me about that facility that
8 you were working as director of medical records, how
9 big of an organization and tell me a little bit about
10 what they did.

11 A It's by the Felician Sisters, which is a huge
12 Catholic group Trinity based, Trinity Health Care in
13 Michigan. It's a 102 bed facility that provides
14 long-term care assistance.

15 Q So as director of medical records if you had
16 to explain to somebody what a director of medical
17 records does at a facility like that how would you
18 explain it?

19 A You make sure the record is complete, the
20 physician signs off and everything because they are
21 basically paper based records. They're treatment
22 plans for a lot of patients are receiving rehab
23 facilities for broken hips, knees, whatnot.

24 Q Okay. And in that capacity am I correct to
25 presume that you dealt with various HIPAA issues?

1 A We didn't have HIPAA -- we didn't have a
2 privacy officer. I was not under the HIPAA rule at
3 that facility.

4 Q Okay. So who dealt with HIPPA at that
5 facility?

6 A Somebody else. I am unclear.

7 Q Okay. And after 2012 tell me what you did
8 next.

9 A I went to work for Detroit Medical Center,
10 DMC, Harper Hospital.

11 Q Okay. And what did you do there at Detroit
12 Medical Center?

13 A I was, my gosh, operations management.

14 Q That was your title operations management?

15 A Uh-huh, operation manager.

16 Q And what did you do? Tell me about Detroit
17 Medical Center and what you did as operations manager
18 there?

19 A Harper Hospital has over 525 beds. We also
20 have a room which is an education center. Harper
21 Hospital, which is a woman's facility with 525 beds,
22 was a rehabilitation institute of Michigan which was a
23 200 -- is 200 beds for rehab. And then we had a
24 cardiac hospital with I think it was 75 beds.

25 As an operations manager I had 46 employees

1 in the health information management department.

2 Q And what did you do as operations manager for
3 those facilities?

4 A I oversaw the operations for scanning, birth
5 registry, physician suspension, scheduling, HR.

6 Q And in that capacity there at Detroit Medical
7 Center did you have any role with HIPPA compliance?

8 A I did not.

9 Q Did you have any role with educating
10 employees on HIPPA requirements?

11 A I had a role of educating employee but it did
12 not involve HIPPA.

13 Q Somebody else did that?

14 A Correct.

15 Q Okay. And how long were you there at Detroit
16 Medical Center?

17 A A little over two -- I was there until 2014.

18 Q Okay.

19 A In between I also taught at Schoolcraft
20 Community College.

21 Q Okay. And what did you teach?

22 A Medical terminology.

23 Q Have you ever worked as a nurse?

24 A No.

25 Q And am I correct then that your involvement

1 with the health care industry has always been in some
2 sort of administrative type position and never in any
3 sort of direct patient care position?

4 A That is correct.

5 Q Okay. So after 2014 tell me what happened
6 next.

7 A I moved here.

8 Q Moved to South Carolina. What brought you to
9 South Carolina?

10 A This position at Grand Strand.

11 Q And how did you hear about this position at
12 Grand Strand?

13 A It was posted on-site, online.

14 Q What website, do you know?

15 A I don't recall.

16 Q Was it one of the various job search
17 websites?

18 A Correct.

19 Q And what position was that that you took at
20 Grand Strand in 2014?

21 A Health information management director slash
22 facility privacy officer.

23 Q Is that the role that you still currently
24 hold?

25 A It is.

1 Q You said health information?

2 A Management director.

3 Q Management director. And so your role as
4 health information management director, was that
5 substantially similar to your prior roles that you
6 discussed at Detroit Medical Center and the other
7 position you held from '09 to '12?

8 A In Marywood to current?

9 Q Yes.

10 A Yes, it is.

11 Q Okay. But the role as privacy officer that
12 was a new role for you; is that correct?

13 A That is correct.

14 Q And tell me when you took the job at Grand
15 Strand Regional Medical Center in 2014 what education,
16 training and experience you had with regard to privacy
17 issues that would qualify you for the job as privacy
18 officer for Grand Strand.

19 A HIPPA training was covered under my degree.
20 So I did take classes for it during my bachelors. And
21 then Grand Strand -- not Grand Strand -- HCA provided
22 training in Nashville, a three-day training in March
23 of 2015.

24 Q So you went to Nashville for more training on
25 HIPPA?

1 A Correct.

2 Q And tell me obviously you went to Nashville
3 but what facility or group? Where did you go in
4 Nashville to learn more about HIPPA?

5 A At their division office.

6 Q Whose division?

7 A HCA.

8 Q HCA's. And how long was that training?

9 A Two and a half days.

10 Q And that was devoted entirely to HIPPA
11 issues?

12 A The privacy officer role.

13 Q Okay. So it was devoted entirely to the dos
14 and don'ts of the privacy laws?

15 A The privacy role including BA's, BAA's,
16 business associates agreements, amendments, not just
17 HIPPA itself.

18 Q Okay. And as the privacy officer at Grand
19 Strand Regional Medical Center are you involved in any
20 way in education of doctors and nurses with regard to
21 compliance with privacy rules?

22 A With nurses and on-boarding staff I am. We
23 have orientation every other Monday with physicians.
24 They receive a different on-boarding education where
25 they have a PowerPoint and health classes they do

1 before they start work.

2 Q Okay. So I will just backup for a second.
3 So you said nurses and on-boarding what staff?

4 A Staff.

5 Q Okay, who would on-boarding staff include?

6 A Anyone outside of a physician role.

7 Q Okay. And so you said every Monday? Every
8 other Monday?

9 A Every other Monday.

10 Q So anybody that's new to the hospital every
11 other Monday has some sort of training they receive?

12 A They have a two-day training they have to
13 receive before they can start.

14 Q Now do you provide all of that two-day
15 training or do you just come in and provide certain
16 segments to these new employees?

17 A It is split between me and the IT director,
18 Mike Pipkins. It's the same presentation and we have
19 a half hour time slot every other Monday to review
20 material.

21 Q Okay. And I am misunderstanding. So there
22 is a half hour time slot for what?

23 A To review the HIPPA slides, the privacy.

24 Q Okay. So the training overall is two days
25 but that's covering other type things, HR issues and

1 whatnot. And in that two-day training there is a half
2 hour related to HIPPA and privacy rules?

3 A Correct.

4 Q Okay. And there is some sort of PowerPoint
5 presentation that's presented?

6 A Correct.

7 Q Okay. Is that a PowerPoint that you
8 developed?

9 A No. Corporate developed it.

10 Q Okay. And how long have you been using that
11 PowerPoint?

12 A That one I believe we have been using for
13 almost two years.

14 Q Was there one prior to that, some sore sort
15 of PowerPoint?

16 A There was.

17 Q And that's a PowerPoint that you have access
18 to on your computer laptop, something like that?

19 A The current one I do. I don't know if I
20 still have the previous one.

21 Q Okay. But it's something you can check to
22 see if it was still there on your computer laptop?

23 A Yes.

24 Q And you said physicians receive different
25 training. Tell me how their training differs.

1 A They have -- everything for them is on
2 HealthStream.

3 Q What is HealthStream? I'm sorry.

4 A It's our education system where they can go
5 on and access from their secured site, their secured
6 land site.

7 Q So tell me if I am correct in understanding
8 this. With new physicians coming to the hospital
9 their training at least with regard to privacy rules
10 is not done in some sort of lecture hall or auditorium
11 but they go online --

12 A Correct.

13 Q -- and go through some sort of training?

14 A I'm sorry. Yes, correct. And the reason
15 being a lot of them are locals or they come from out
16 of state. This way they can have the training before
17 they arrive at the facility and be ready to go here.

18 Q Okay. Are you involved in seeing that they
19 receive that training?

20 A No.

21 Q Who insures new physicians receive that
22 training?

23 A The MSO and Beverly Turner. She is our
24 medical staff office director.

25 Q And I'm sorry. What was her name?

1 A Beverly Turner.

2 Q You said -- MSO was the acronym you used?

3 A Correct.

4 Q Lots of acronyms in medicine. That comes up
5 a lot when you are teaching medical terminology.

6 A Yes, it does.

7 Q Beverly is here in the Myrtle Beach area?

8 A Yes, she is.

9 Q She is not corporate in Tennessee or
10 anything?

11 A She is located at the hospital.

12 Q And to the best of your knowledge this
13 training that the doctors receive is in this you said
14 HealthStream --

15 A Yes.

16 Q -- system?

17 Part of that training covers HIPPA and
18 privacy dos and don'ts; is that fair?

19 A Correct.

20 Q So there is some sort of presentation online
21 that these doctors would see a slide show type
22 presentation that they have to review; is that fair?

23 A Correct.

24 Q Okay. So what we've discussed so far has
25 been about new hires. Is there continuing education

1 required of nurses at Grand Strand with regard to
2 privacy rules?

3 A There is. Every year they have code of
4 conduct and we also have PEACH day.

5 Q PEACH?

6 A I can't remember what the acronym stands for.
7 I apologize but it's education where they -- we
8 actually make boards and they walk around and they
9 have -- they get questions. They get prizes and
10 whatnot but they have to fill out a questionnaire and
11 they can either do it online or attend the day. But
12 there is privacy questions that they have to answer
13 and complete on top of code of conduct, which is due
14 every October.

15 Q Okay. So every year they receive updated or
16 at least additional training and review on privacy
17 rules?

18 A Correct.

19 Q And how is that presented? Is that again
20 some sort of seminars they have to come sit through?
21 Is it just an online course they have to do? How does
22 it work?

23 A It's online at HealthStream. So it's a
24 mandatory that they have to sit down and do it but
25 then they are seeing staff having such different

1 hours.

2 Q And so is that training or review that they
3 have to do that's on HealthStream that would be
4 available too?

5 A It's an automatic assigned to them and they
6 have to complete it by the due dates.

7 Q Okay. Are you involved in insuring that they
8 complete it?

9 A I am not.

10 Q Okay.

11 A I can review to make sure they complete it.
12 Our organizational development assigns it
13 automatically and we get notifications if they do not
14 complete it.

15 Q Okay. Do you know does it change every year
16 or is this the same year after year?

17 A I don't know.

18 Q Okay. The materials that are presented in
19 that HealthStream review, annual review, those would
20 be materials. If I wanted to take a look at those who
21 would be the best person to ask?

22 A I can send them to you. It's supplied to us
23 by corporate.

24 Q Okay. So you do have access to them --

25 A Uh-huh.

1 Q -- even if you're not --

2 A Correct.

3 Q -- in charge of insuring that people complete
4 it?

5 A Correct.

6 Q Okay.

7 A Code of conduct if it's not completed they
8 will turn off their badges. It has to be completed.

9 Q Okay. And what is code of conduct exactly?

10 A Your yearly review of ethics and compliance
11 issues.

12 Q Do physicians also have to do some sort of
13 annual review or training on privacy rules or is that
14 just nurses and staff?

15 A I don't know.

16 Q If somebody working at Grand Strand has a
17 question about what is and isn't allowed under various
18 privacy laws and regulations are you the best person
19 to ask about that?

20 A I am a person that's knowledgeable about it.
21 They can also seek out their supervisor, their
22 manager. We also have online resources for them.

23 Q My understanding there may be other people
24 with knowledge about it. Would you generally be
25 considered to be the person most knowledgeable at the

1 hospital about the dos and don'ts about privacy?

2 A We've all had different education. I'm --
3 I'm knowledgeable about it, but am I the best person
4 knowledgeable about it? I know that's my role. I can
5 refer to policies and guide people to the right
6 education.

7 Q Okay. Who are the other people that would
8 have expertise in that topic of privacy dos and
9 don'ts?

10 A Most all of us that is in an administrative
11 role have the knowledge of HIPPA.

12 Q Okay. Generally speaking what does HIPPA
13 stand for?

14 A Health information portable -- health
15 information portability accountability act.

16 Q Well, let me backup. Passed in 1996; is that
17 correct?

18 A I believe so.

19 Q And as the name implies the act deals with
20 certain issues regarding to health insurance and its
21 transferability or portability. The act also covers
22 patient privacy issues; correct?

23 A Correct.

24 Q And the United States Department of Health
25 and Human Resources has a number of different

1 publications offering guidance and information on how
2 these different privacy practices work and should be
3 interpreted; is that correct?

4 A That is correct.

5 Q And you have on occasion looked through
6 various publications from the U.S. Department of
7 Health and Human Services; is that fair?

8 A I have.

9 Q There is one online summary of HIPPA privacy
10 rules. Have you ever looked at that one?

11 A I don't recall.

12 MR. JOHNSON: Who is that by, Brink?

13 MR. HINSON: That's by HHS. It's the United
14 States Department of Health and Human Services.
15 It's the OCR privacy brief entitled summary of
16 HIPPA privacy rules.

17 MR. JOHNSON: Date?

18 MR. HINSON: Revised 05/2003 and presently
19 available on the HHS website.

20 BY MR. HINSON:

21 Q The introductory paragraph, Ms. Trahey, I
22 want to read to you from the introductory paragraph.
23 And you are welcome to follow along or I'll be happy
24 to slide the laptop over to you.

25 It says the major goal of the privacy rule is

1 to assure that individuals health information is
2 properly protected while allowing the flow of health
3 information needed to provide and promote high quality
4 health care and protect the public's health and
5 well-being. The rules strike a balance that permits
6 important uses of information while protecting the
7 privacy of people who seek care and healing.

8 Do you generally agree with that statement as
9 your understanding of the purpose of the HIPPA privacy
10 rules?

11 A I do.

12 Q And the HIPAA privacy rules are not an all
13 out bar against the disclosure of a patient's health
14 information. It's not a complete bar that they can
15 never be disclosed to other people; is it? There is
16 exceptions?

17 A Correct.

18 Q Okay. Presuming someone has not asked to be
19 excluded from the hospital directory, for instance, I
20 could call up Grand Strand, MUSC, any hospital and say
21 do you have my mother Susan McNeil as a patient and
22 they could answer that question; correct?

23 A Correct.

24 Q And in such a situation they could give some
25 information although very limited about her presence

1 in the hospital; correct?

2 A Un-correct.

3 Q Okay.

4 A All we can do is state that she is there at
5 the facility.

6 Q All you can go is state that she is there,
7 all right.

8 People can authorize others to have access to
9 their health information; is that correct?

10 A It is correct.

11 Q If a patient shows up at Grand Strand and
12 wants to allow someone access to their information --
13 well, let's backup for a second.

14 So a patient is sitting in the room with a
15 family member. Doctor comes in. Doctor can discuss
16 the patient's health information with the patient even
17 in the presence of somebody else provided the patient
18 doesn't object; is that fair?

19 A The physician is required to ask if it's okay
20 to discuss the information in front of the family
21 members.

22 Q Okay. And them presuming the patient says
23 yes, then they can freely speak about the patient's
24 health information?

25 A Correct.

1 Q Okay. If a patient comes to Grand Strand and
2 wants to provide a close family member access or
3 information about their health information is there a
4 form? What mechanism is in place to give that power
5 or that authority to that person?

6 A It's not a form. The patient is given a four
7 digit pass code, an information code. And if a family
8 member is going to call and request information they
9 have to know the four digit code.

10 Q How long has that system been in place?

11 A I am unclear.

12 Q You are unclear as to my question or not sure
13 how long it's been in place?

14 A I am not sure how long it's been in place.

15 Q Has it been in place since at least October
16 1, 2015?

17 A I do not know.

18 Q Okay. Do you know what system was in place
19 prior to that?

20 A I do not know.

21 Q Has that system gone into effect since you
22 started working at Grand Strand in 2014?

23 A I am not sure when that system went into
24 effect.

25 Q Okay. And what was in place before that you

1 are unsure how that worked?

2 A Correct. This may have been in place for
3 years. I am just unclear as to when it went into
4 effect.

5 Q Have you reviewed in any way or looked at
6 Matthew Scheer's medical records in this case?

7 A No.

8 Q Does Grand Strand Regional -- strike that
9 question.

10 At times patients for whatever reason request
11 copies of their records; their medical records;
12 correct?

13 A Yes.

14 Q And when a patient makes that request has
15 Grand Strand -- well, Grand Strand has an obligation
16 under state and federal law to comply and provide the
17 patient or the patient's representative a copy of the
18 medical records; correct?

19 A Correct.

20 Q And that's part of the HIPPA law that the
21 records must be provided to the patient within a
22 certain amount of time?

23 A Correct.

24 Q And the obligation or duty to provide a
25 patient with medical records as requested, does Grand

1 Strand -- has Grand Strand coordinated with some other
2 company or entity to fulfill those requests?

3 A Health Port at that time in 2015.

4 Q And what is Health Port?

5 A A release of information services.

6 Q Where are they based out of, do you know?

7 A I do not know where their home office is.

8 Actually, I'm sorry. I believe it's in Ohio. They do
9 have locations within our HSC divisions so that at
10 that particular time that Health Port office was
11 located in Atlanta.

12 Q So tell me how that works then. So a patient
13 comes in, was seen at Grand Strand some weeks, months
14 ago and they say I want a copy of my records.

15 How does Health Port go about gathering those
16 records?

17 A It depends on how they -- they can
18 automatically -- a patient can send his request
19 directly to Health Port. They can fax it. They can
20 mail it. We also have kiosks in the facilities at the
21 entrances. They can drop off a request there.

22 Q How does Health Port get the records?

23 A Health Port has access to our electronic
24 health records.

25 Q Okay. What about non-electronic records and

1 what about handwritten records, things like that?

2 A Records are all scanned in the system.

3 Q Is there a time by which they need to be
4 scanned like a --

5 A They generally are scanned within 24 hours.

6 Q Okay. Does Grand Strand Regional still use
7 Health Port in order to fulfill its obligation to
8 provide medical records to patients and their
9 representatives?

10 A Health Port is merging to a company called
11 Ciox.

12 Q Okay. And so is Grand Strand still using
13 Ciox, what's now become Ciox to fulfill its obligation
14 to provide medical records to patients and their
15 representatives?

16 A We are.

17 Q You would agree that Grand Strand or its
18 agent should not provide medical records to a person
19 who has not been authorized to receive those records?

20 A I do.

21 Q Have you seen the records that were provided
22 to David Scheer prior to the initiation of this case?

23 A I do know there was a release that did go
24 out.

25 Q Okay. Excepting the substance of

1 conversations you've had with counsel how did you
2 learn records had gone out to David Scheer?

3 A That is how I learned.

4 Q Okay. So, Ms. Trahey, I'll show you what's
5 been marked as GSRMC to D Scheer 1 through 33.

6 Have you seen these pages before?

7 A I don't recall.

8 Q I turn your attention to page 3, what we are
9 looking at, which is GSRMC to D Scheer 0033.

10 A Uh-huh.

11 Q What are we looking at there? What is that
12 page?

13 A It's the request of information.

14 Q Okay. And looks like David Scheer is
15 requesting Matthew Scheer's medical records; correct?

16 A Correct.

17 Q And Health Port on behalf of Grand Strand
18 Regional should not provide records to David Scheer
19 unless he has been authorized to access his son's
20 patient health information; is that correct?

21 A It is.

22 Q All right. Do you believe or do you have an
23 opinion as to whether Health Port properly provided
24 records to David Scheer?

25 A They did not.

1 Q And why do you say that?

2 A Because they should have been on a list to
3 receive records.

4 Q Do you have an opinion as to why this was
5 allowed to occur?

6 A Error on the Health Port employee, lack of
7 education.

8 Q Have you discussed this matter with Health
9 Port?

10 A Briefly.

11 Q Tell me about that.

12 A I discussed if it went out and why.

13 Q Who did you discuss it with?

14 A Jennifer Lord.

15 Q Who is Jennifer Lord?

16 A Health Port Ciox employee.

17 Q What's her position there?

18 A Supervisor.

19 Q Supervisor of what?

20 A Ciox. I don't -- I am unclear of her full
21 title. I just know she's a supervisor.

22 Q And did Jennifer Lord have an explanation as
23 to how or why David Scheer was provided Matthew's
24 records?

25 A She did not.

1 Q Is anything being done to change the way that
2 process works to your knowledge?

3 A It's discussed in education to the employees.

4 Q And looking at this request I am looking
5 under description. There is a number of boxes there.
6 The box that appears to be checked is all PHI and
7 medical records.

8 Do you see that?

9 A I do.

10 Q That means all patient health information and
11 medical records; correct?

12 A Correct.

13 Q And if you would turn to page 2 in what I
14 handed you, GSRMC to D Scheer 0002, how many pages of
15 records does it appear was provided to David Scheer?

16 A 30.

17 Q Okay. Ms. Trahey, are you aware how many
18 records are in Matthew Scheer's file with Grand
19 Strand?

20 A No.

21 Q Okay. I am going to hand you records that
22 have been Bate stamped Scheer GSRMC med recs 1 through
23 132. And, Ms. Trahey, I represent to you those were
24 the medical records that my office received when we
25 asked for the exact same thing, all patient health

1 information in Matthew's record.

2 If there are over a hundred -- well over a
3 hundred pages in Matthew's health information do you
4 have an understanding or explanation as to why David
5 Scheer was given only limited pages when he requested
6 patient health information?

7 A I do not.

8 Q Have you discussed this matter with anybody
9 at Health Port or Ciox?

10 A No.

11 Q If there are 130, approximately 130 pages in
12 Matthew's record the request for all patient health
13 information wasn't provided; was it?

14 A He has dates down 10/2 -- he has different
15 dates down. He has dates down here he requested. You
16 have a full record from 1989 forward.

17 Q Ms. Trahey, I want you to look through those
18 132 pages if you need to. Do you see any records that
19 take place any dates other than October of 2015?

20 A That is his birth date. I'm sorry. That is
21 his birth date; isn't it?

22 Q Assuming all the records --

23 MR. JOHNSON: She can't look and listen.

24 THE WITNESS: (Perusing)

25 These are dates 10/2 and 10/3 of '15. This

1 is date -- what's this one date -- 10/5/15.

2 Was he through the 5th? No. Through 10/3.

3 This is the 5th.

4 No. Those are the wrong dates. I am not
5 seeing any records outside of 10/2 and 10/3.

6 BY MR. HINSON:

7 Q And so as I understand you don't have an
8 explanation as to why when one party requests all
9 patient health information that approximately 30 pages
10 were provided and another time 130 pages are provided?

11 A No, I don't.

12 Q And you haven't addressed that with Health
13 Port at this time?

14 A I was unclear of it.

15 Q Okay. This hasn't been brought to your
16 attention?

17 A No.

18 Q Ms. Trahey, I will provide you what we can
19 mark as Exhibit 1.

20 (PLF. EXH. 1, Notice of Privacy Practices,
21 was marked for identification.)

22 BY MR. HINSON:

23 Q Could you identify what we are looking at in
24 Exhibit 1?

25 A Notice of privacy practices.

1 Q Generally speaking what's the document we are
2 looking at in layperson's terms?

3 A The notice of privacy practice. It advises
4 patients of their rights, health information rights.

5 Q Okay. And this is the document with regard
6 to Grand Strand Medical Center; correct?

7 A It is.

8 Q Okay. So generally speaking it tells
9 patients what can and can't be done with their health
10 information?

11 A Correct.

12 Q And it looks -- it's hard to read but it
13 looks like it says here at the bottom effective date
14 September 23, 2013; is that right?

15 A It is.

16 Q Is this still the document that's in place
17 and utilized at Grand Strand?

18 A It is.

19 Q Okay. And so this document's creation
20 preceded you; is that fair?

21 A It is.

22 Q Okay. During your employment at Grand Strand
23 you haven't seen any reason to change this document;
24 have you?

25 A No.

1 Q And this document correctly reflects a
2 patient's -- gives an accurate summary of a patient's
3 privacy rights; is that fair?

4 A It is.

5 Q And I'm looking on the second page of this
6 document in the section that says as permitted by law
7 down here in the bottom right-hand corner. It says as
8 permitted by law we may also use and disclose health
9 information for the following types of entities
10 including but not limited to, colon, and then it goes
11 on and lists a number of things. And then the last
12 thing it lists, last bullet point is a person or
13 persons able to prevent or lessen a serious threat to
14 health or safety.

15 Do you see that?

16 A I do.

17 Q Okay. Do you agree with that statement?

18 A I do.

19 Q Okay. So a patient's health information can
20 under certain circumstances be disclosed if the
21 disclosure of that information could prevent or lessen
22 a serious threat to health or human safety?

23 A Correct.

24 Q And, Ms. Trahey, I show you what we can mark
25 as Exhibit 2.

1 (PLF. EXH. 2, Notice of Privacy Practices,
2 was marked for identification.)

3 BY MR. HINSON:

4 Q Could you identify what we are looking at
5 that's been marked as Exhibit 2?

6 A Notice of privacy practices.

7 Q And this is on Grand Strand's website;
8 correct?

9 A It is.

10 Q This is effectively the same document that we
11 looked at as Exhibit 1. It's just the website version
12 of it; correct?

13 A Correct.

14 Q And it contains the same clause here looking
15 on the second page of Exhibit 2. Excuse me, not the
16 second page. I am looking on the fourth page of
17 Exhibit 2. It has the same statement that health
18 information may be disclosed to a person or persons
19 able to prevent or lessen a serious threat to health
20 or safety; correct?

21 A Correct.

22 Q Would you expect doctors and nurses at Grand
23 Strand to have a general basic understanding of the
24 information contained in this document?

25 A Yes.

1 Q If a patient is suffering from some sort of
2 mental illness that's rendered them delusional,
3 psychotic, having hallucinations under privacy rules
4 can a situation like that allow a physician to discuss
5 the patient's health information with close family
6 members?

7 A It's up to --

8 MR. MCKAY: Objection.

9 THE WITNESS: I'm sorry.

10 MR. MCKAY: Go ahead.

11 THE WITNESS: It's up to their discretion.

12 BY MR. HINSON:

13 Q Up to whose discretion?

14 A The physician.

15 Q Okay. If a patient is suffering from mental
16 illness the physician in their discretion would have
17 the power, the authority to discuss the patient's
18 condition with close family members?

19 A If they feel there is a need, yes.

20 Q Okay. If you know, what section of the HIPPA
21 guidelines provide that?

22 A I do not know.

23 (PLF. EXH. 3, DHH Document, was marked for
24 identification.)

25 BY MR. HINSON:

1 Q Ms. Trahey, I will provide you what's been
2 marked a be Exhibit 3 that I got from the Department
3 of Health and Human Services.

4 Can you identify generally what we are
5 looking at? Let me ask you this. Is this certain
6 sections of the HIPPA laws?

7 A It is.

8 Q Okay. And I am looking at 164 dot 510 and I
9 am looking at the second page of what's been marked as
10 Exhibit 3. And it says, looking right here, Ms.
11 Trahey, it says limited uses and disclosures --

12 A What number?

13 MR. JOHNSON: You've got two different
14 highlighted columns. Which is it?

15 MR. HINSON: I'm sorry. Looking right here
16 under the third bullet point or the third
17 section.

18 THE WITNESS: Okay.

19 BY MR. HINSON:

20 Q It says limited uses and disclosures when the
21 individual is not present. If the individual is not
22 present or the opportunity to agree or object or the
23 user disclosure cannot predictably be provided because
24 of the individual's incapacity or an emergency
25 circumstance the covered entity may in exercise of

1 professional judgment determine whether disclosure is
2 in the best interest of the individual, and if so
3 disclose only the protected information that is
4 directly relevant to the person's involvement with the
5 individual's care or payment related to the
6 individual's health care or needed for notification
7 purposes.

8 Do you see that?

9 A I do.

10 Q Okay. Would this provision allow a physician
11 to discuss with a close family member health
12 information related to a person suffering from
13 psychosis if the physician believed it was in the
14 patient's best interest?

15 MR. MCKAY: Object to form.

16 THE WITNESS: If there is a emergency
17 situation or the individual is incapacitated,
18 yes.

19 MR. HINSON: Okay.

20 BY MR. HINSON:

21 Q But not limited only to an emergency. It
22 says in the best interest; correct?

23 A It's the physician's discretion to prove it
24 if he decided it was in the best interest.

25 Q Okay. But if the physician believes it's in

1 the patient's best interest to disclose the
2 information this provision in HIPPA provides a means
3 by which that disclosure can be made; correct?

4 A Correct.

5 Q Okay. If you would I am looking at what's
6 the fifth page of Exhibit 3.

7 A 1057, the number at the bottom?

8 Q I may be a page off. This is page 1061.

9 A Okay.

10 Q We have now moved on to section 164 point
11 512. And I'm looking under section J of the left-hand
12 column and it says standard, colon, uses and
13 disclosures to avert a serious threat to health or
14 safety. One, permitted disclosure, a covered entity
15 may consistent with applicable law and standards of
16 ethical conduct use or disclose protected health
17 information if the covered entity in good faith
18 believes the use or disclosure 1A, is necessary to
19 prevent or lessen a serious and eminent threat to the
20 health and safety of a person or the public and B, is
21 to a person or persons reasonably able to prevent or
22 lessen the threat including the target of the threat.

23 Do you see that?

24 A I do.

25 Q Okay. And do you agree with that statement

1 that in those situations disclosures can be made?

2 A I do.

3 Q Okay. Is this section here that we just read
4 the basis of the part we looked at in Exhibit 1 that
5 said health information may be disclosed to a person
6 or persons able to prevent or lessen a serious threat
7 to health and safety?

8 A I believe so.

9 Q Okay. And then if you would look at the
10 second column there it says presumption of good faith
11 belief.

12 Do you see where I am looking?

13 A No.

14 Yes.

15 Q Okay. A covered entity that uses or
16 discloses protective health information pursuant to
17 paragraph J1 of this section is presumed to have acted
18 in good faith with regard to a belief described in
19 paragraph J1 little I or II of this section if the
20 belief is based upon the covered entity's actual
21 knowledge or reliance on the credible representation
22 by a person with a parent knowledge or authority.

23 Do you see that section?

24 A I do.

25 Q So if a physician discloses health

1 information on a patient because the physician
2 believes it necessary to prevent or lessen a serious
3 or imminent harm the presumption will be according to
4 the law that the doctor or nurse did so in good faith?

5 A Correct.

6 Q When were you made aware that Matthew Scheer
7 had left Grand Strand Regional Medical Center --
8 strike that.

9 Let me rephrase the question. When were you
10 made aware of the general facts of this case?

11 A When Weldon e-mailed me.

12 Q Okay. Approximately how long ago was that?

13 A A month ago, maybe two.

14 Q And you prior to that point were unfamiliar
15 with the circumstances of Matthew Scheer and his
16 discharge from the hospital; is that fair?

17 A That is correct.

18 Q If the physician caring for Matthew Scheer --
19 do you have a general understanding of the allegations
20 in this case?

21 A I do.

22 Q If the physician caring for Matthew Scheer in
23 the early morning hours of October 3, 2015 believed
24 that Matthew due to his psychosis could be a danger to
25 himself did the physician under the privacy law have

1 the ability to pick up the phone, call Matthew's dad
2 and say dad, your son is wanting to leave the
3 hospital?

4 MR. MCKAY: Object to form.

5 THE WITNESS: She did have the ability if she
6 thought he was a threat.

7 MR. HINSON: Okay.

8 BY MR. HINSON:

9 Q Nothing in the law would prevent her assuming
10 she believes he is a threat to himself or others
11 picking up the phone, calling the dad and informing
12 the dad that his son is desiring to leave the
13 hospital?

14 A Correct.

15 Q Okay. Nothing in the law if the nurse was
16 concerned that -- the nurses were concerned that
17 Matthew might be a danger to himself or others would
18 have prevented them from picking up the phone, calling
19 Matthew's dad, saying Mr. Scheer, your son is desiring
20 to leave the hospital?

21 A Correct.

22 Q If a patient comes into the hospital
23 voluntarily but it's later determined that the patient
24 has mental illness and may be a danger to himself or
25 to others, there are means and mechanisms by which the

1 patient can be involuntarily committed; correct?

2 A Correct.

3 Q Are physicians and nurses -- well, let's take
4 them one at a time.

5 Are physicians instructed or taught the
6 hospital's mechanism and means to involuntarily commit
7 a patient?

8 A Yes.

9 Q How are they taught that?

10 A I am unclear exactly how they are taught
11 that. I know there are forms on each unit and each
12 department for involuntarily state forms. There is
13 state forms and the process is described in the form
14 and they follow the form process.

15 (PLF. EXH. 4, Application, was marked for
16 identification.)

17 BY MR. HINSON:

18 Q Ms. Trahey, is what we marked as Exhibit 4,
19 are those the forms by which a physician could
20 involuntarily commit or temporarily -- strike that.

21 Ms. Trahey, the forms I handed you which are
22 Exhibit 4, are those the forms by which an involuntary
23 hold could be placed on a patient for mental illness?

24 A Yes.

25 Q Those forms require only one physician's

1 signature; is that correct?

2 A Yes.

3 Q And those forms would be available to the
4 doctors and nurses at Grand Strand Regional Medical
5 Center in October 2015; correct?

6 A I don't know. I don't know the process of
7 them. I know this is what they use currently.

8 Q Okay. Currently those would be available to
9 the doctors and nurses; correct?

10 A Yes.

11 Q Okay. I represent to you that it's my
12 understanding the form has not changed since October
13 2015. Assuming that is correct that the form hasn't
14 changed, you would expect that form to have been
15 available to the doctors and nurses in --

16 A Yes.

17 Q -- October of 2015 --

18 A Yes.

19 Q -- caring for Matthew Scheer?

20 A Yes.

21 Q Okay.

22 A If they believe it is a situation where he
23 needed to be committed for mental illness.

24 Q When Matthew came to the hospital he, like
25 anybody else typically would do, filled out certain

1 paperwork. That paperwork asks for a person to
2 contact.

3 Is that generally what the paperwork
4 contains?

5 A Yes.

6 Q What does listing someone as the person to
7 contact, what does that authorize the hospital staff
8 to do?

9 A Contact that person in an emergency
10 situation.

11 Q And in an emergent situation patient
12 permission has been presumed when the patient listed
13 that person as the emergency contact; correct?

14 A If there is an emergency, yes.

15 Q Okay. So if there is an emergency and a
16 family member or whoever has been listed as the
17 contact is needed, one doesn't have to go get
18 permission in that situation because it's already been
19 given when the patient came in and filled out
20 paperwork; fair?

21 A Correct. Fair.

22 Q Do you have any involvement in the -- well,
23 let me ask this. There is chain of command policy at
24 Grand Strand Regional Medical Center; correct?

25 A I don't know. I believe so.

1 Q If a nurse or a physician had a concern about
2 what HIPPA did and did not allow to occur --

3 A Uh-huh.

4 Q -- there are systems set up at Grand Strand
5 where they can get answers to that question, whatever
6 question they may have?

7 A Correct.

8 Q And that system that's in place if it's an
9 important question that they need answers they can get
10 that answer 24/7; correct?

11 A Yes.

12 Q And you would anticipate that doctors and
13 nurses would know that they have the ability to get
14 those type of answers 24/7?

15 A They do.

16 Q Have Dr. Patel or Dr. Rachel Ash-Bernal ever
17 asked you if the ability to get answers on questions
18 related to privacy practices -- strike that question
19 and let me start that over again.

20 Have Dr. Ash-Bernal or Dr. Patel ever asked
21 you if Grand Strand Regional Medical Center had a
22 system in place by which answers to privacy questions
23 could be provided 24 hours a day seven days a week?

24 A No.

25 MR. HINSON: I will show you what we will

1 mark as Exhibit 5.

2 (PLF. EXH. 5, Responses, was marked for
3 identification.)

4 BY MR. HINSON:

5 Q Ms. Trahey, I have provided you responses to
6 Plaintiff's third request for admission on behalf of
7 the Defendants Patel, Rachel Ash-Bernal, and Southern
8 Inpatient Services, LLC. And this document exchanged
9 in discovery asked admit that October 3, 2015 Grand
10 Strand Regional Medical Center had a system in place
11 by which a health care provider could get answers to
12 questions that he, she might have regarding
13 permissible disclosures under HIPPA.

14 Do you see that question?

15 A I do.

16 MR. JOHNSON: Brink, if you are going to ask
17 her questions she has never seen the document.
18 We are going to have a conversation.

19 MR. HINSON: This has been exchanged in
20 discovery.

21 Well, if you didn't show it to her that's
22 not --

23 MR. JOHNSON: You didn't tell me she needed
24 to see the discovery request and the question is
25 have you provided the witness with the document,

1 not if you've provided -- Jay has provided me
2 with a copy of his answers.

3 MR. HINSON: Any document exchanged through
4 discovery is fair game in a deposition, and I
5 don't have to disclose each and every single
6 page. This is a document you've had access to.
7 It's been exchanged in discovery.

8 MR. JOHNSON: You and I will disagree but you
9 might give Jay a chance to catch up.

10 BY MR. HINSON:

11 Q Ms. Trahey, my question is this.

12 MR. JOHNSON: Will you give her an
13 opportunity to read it, please?

14 MR. HINSON: Sure. I don't know that she
15 needs to read the whole document for my question.

16 BY MR. HINSON:

17 Q Ms. Trahey, let me ask you the question. You
18 take as much time as you need to review the document
19 to answer it because I think we might be going further
20 than is necessary if you review all pages in this
21 document.

22 On October 3, 2015 Grand Strand Regional
23 Medical Center had a system in place by which a health
24 care provider could get answers to questions that he
25 or she might have regarding to permissible disclosures

1 under HIPPA. That's correct; right?

2 A I'm sorry?

3 Q On October 3 -- and I think this has already
4 been addressed. I want to make sure we are clear.

5 On October 3, 2015 Grand Strand Regional
6 Medical Center had a system in place by which a health
7 care provider, a doctor or a nurse, could get answers
8 to questions that he or she might have regarding to
9 permissible disclosures under HIPPA?

10 A Yes.

11 Q And as we talked about earlier that system
12 that was in place would provide answers to the doctor
13 or nurse 24 hours a day seven days a week if they
14 needed it; correct?

15 A Correct.

16 Q As I understand Dr. Patel, Dr. Ash-Bernal, no
17 one from Southern Health Partners has ever contacted
18 you to ask you that question; correct?

19 A That is correct.

20 Q Okay. Look at request number five, admit
21 that pursuant to the provisions of HIPPA a patient's
22 protected health information may be released without
23 the patient's authorizations in situations where the
24 disclosure would serve to avert a serious threat to
25 health or safety.

1 Do you see that question?

2 A I do.

3 Q Okay. And as we talked about earlier under
4 the privacy practice under HIPPA if disclosure of
5 health information were to avert a serious threat to
6 health or safety that disclosure can may made;
7 correct?

8 MR. MCKAY: Object to form.

9 THE WITNESS: We do.

10 BY MR. HINSON:

11 Q That's correct; right?

12 A Correct.

13 Q I want to show you number six, admit that
14 Grand Strand Regional Medical Center's notice of
15 privacy practices provide that, quote, as permitted by
16 law we may also use and disclose health information
17 for the following types of entities including but not
18 limited to, colon, a person or persons able to prevent
19 or lessen a serious health threat to health or safety.

20 And as we talked about earlier with regard to
21 Exhibit 1 that is what the notices of privacy
22 practices for Grand Strand Regional Medical Center
23 provides; correct?

24 A Correct.

25 Q Okay. Do you on occasion have staff ask you

1 questions about HIPPA?

2 A I do.

3 Q Does that include doctors from time to time?

4 A Residents, yes.

5 Q Want to know, sometimes have questions what
6 it does and doesn't allow; correct?

7 A Correct.

8 Q And when you are asked those questions you
9 provide them answers; correct?

10 A Correct.

11 Q If you don't know the answer you go find it;
12 correct?

13 A Correct.

14 Q Does Grand Strand Regional Medical Center
15 have an informed refusal policy or something similar,
16 a policy as to what's supposed to happen when a
17 patient refuses medical treatment?

18 A I am unclear. I do not know.

19 I understand the question I just don't know.

20 Q Okay.

21 MR. JOHNSON: While you're searching, in
22 terms of the next deposition any idea when you
23 might want her here to start?

24 THE WITNESS: And I think when you say that I
25 am going to go to the bathroom.

1 MR HINSON: That will be fine.

2 (A recess was taken.)

3 BY MR. HINSON:

4 Q Ms. Trahey, I just want to show you a page
5 from Matthew's records. This is the discharge summary
6 from his first trip to the ER on October 2, 2015. And
7 my question to you there is a signature here that says
8 patient --

9 MR. JOHNSON: Patient parent guardian.

10 BY MR. HINSON:

11 Q -- patient parent guardian. Presuming
12 Matthew was in his mid twenties at the time that is a
13 signature -- that line should bear his signature
14 presuming he is mentally competent; correct?

15 A Yes.

16 Q Okay. And I represent to you that that is
17 his father's signature. His father shouldn't be
18 allowed to sign for his adult son provided that his --
19 unless his adult son had some sort of condition that
20 would render him not able to sign; is that fair?

21 A It is.

22 Q If you had questions about what is allowed
23 and not allowed under the privacy practices on HIPPA
24 is the website for the Department of Health and Human
25 Services one of the first places you would go?

1 A No.

2 Q Where would you go first?

3 A We have our own site through HVA privacy
4 site. I would look there for my information.

5 Q Okay. So tell me this is some sort of
6 website that is HVA's information on the topic?

7 A Correct.

8 Q Okay. So HVA has compiled some of the
9 frequently answered questions on this and created some
10 sort of document that you can look through?

11 A Correct.

12 Q Okay. And is that on the HVA Internet of
13 some sort? It's not something I can access from my
14 computer sitting here right now?

15 A Correct.

16 Q Sitting in your office you can access it?

17 A Correct.

18 Q Is it something that you would have access
19 to? Could you log on at home remotely and look at it
20 if you had a question?

21 A Yes.

22 Q Does it generally have most of the answers
23 you might need?

24 A Yes.

25 Q How is it organized? Is it just a list of

1 commonly asked questions and answers to it? Generally
2 what's the structure of it?

3 A It's done by topic. It has information for
4 business associate agreements, amendments, privacy
5 questions.

6 Q Would part of the questions -- and you may
7 not know for certain but would you anticipate that
8 among the topics within this web document would be
9 questions regarding dealing with disclosure of a
10 person with mental illness?

11 A I am unclear if it's there.

12 Q But it may?

13 A It may.

14 Q If it didn't have what you were looking for
15 for whatever reason among the other resources you
16 might use would that be HHS, the Health and Human
17 Services?

18 A I would probably reach out to my compliance
19 director, my privacy officer.

20 Q And who is that?

21 A Wanda Askew or it was Wanda Askew until
22 recently.

23 Q Okay. In October 2015 it would have been
24 Wanda Askew?

25 A Yes.

1 Q How do you spell that name?

2 A A-S-K-E-W.

3 Q And who is it now?

4 A It is -- well --

5 Q I'm sorry?

6 A Well, recently my division is moved into
7 Orange Park. They're closing Atlanta division. I am
8 unsure who -- Wanda is still compliance but she has
9 moved under Nashville.

10 Q But in October 2015 you had a person that was
11 in the corporate --

12 A Correct. It's still Wanda.

13 Q In October 2015 you had a person in the
14 corporate office who had certain expertise and
15 knowledge in what is and isn't permissible under
16 HIPPA's privacy practices and if you had a question
17 you could go to that person?

18 A Correct.

19 Q Okay. The brochure we looked at that we
20 marked as Exhibit 1 is that available to patients at
21 the hospital?

22 A They receive it upon admission.

23 Q Everybody should get it when they show up at
24 the hospital?

25 A Correct.

1 Q Okay. Ms. Trahey, I do want to mark this
2 discharge summary as Exhibit 6 we talked about
3 earlier.

4 (PLF. EXH. 6, Discharge Summary, was marked
5 for identification.)

6 BY MR. HINSON:

7 Q You would anticipate presuming that the
8 proper practices and protocols were followed that
9 Matthew and his dad when they came to Grand Strand in
10 October 2, 2015 would have been provided a copy of
11 this notice of privacy practice?

12 A Yes. It's also posted on all the walls at
13 point of entry and registration.

14 Q Would you agree that a patient should expect
15 that if there is an emergency and the disclosure -- a
16 limited disclosure of their health information to a
17 close friend or family member would help lessen
18 whatever threat they were facing the patient would
19 expect that that disclosure would be made?

20 MR. MCKAY: Object to form.

21 THE WITNESS: If they are listed on -- as a
22 person to receive information.

23 MR. HINSON: Okay.

24 BY MR. HINSON:

25 Q Are you in any way involved in -- I think we

1 talked about this briefly earlier. There is a chain
2 of command policy that's been provided in this case.
3 We can mark this as Exhibit 7.

4 (PLF. EXH. 7, Chain of Command, was marked
5 for identification.)

6 BY MR. HINSON:

7 Q And I am not asking if you can recite it
8 bullet point by bullet point but generally are you
9 familiar with the chain of command policy for Grand
10 Strand Regional Medical Center?

11 A This is the first time I've actually read it,
12 looked at it.

13 Q Okay. But you understood that they had a
14 chain of command?

15 A Yes.

16 Q And that if there was a concern about patient
17 care that there was a chain of command that could be
18 instituted until that concern was resolved or
19 otherwise alleviated; correct?

20 A Correct.

21 Q And while this might deal with a medical
22 decision whether or not to administer a drug, whether
23 or not to do surgery this chain of command could also
24 involve questions involving the dos and don'ts of the
25 disclosure of health information; correct?

1 A Correct.

2 Q And if someone had a question about the dos
3 and don'ts of privacy practices and privacy laws you
4 would anticipate that you would be called in this
5 chain of command; would you not?

6 A I would be.

7 Q Okay. Ms. Trahey, I am going to switch gears
8 for just a second and I don't mean to pry into your
9 private life. It's not in any way personal to you. I
10 am just trying to recognize when we draw a jury in
11 this case anybody that may have a connection with you.

12 Do you have family members in the area?

13 A I do. Two children.

14 Q Two children. Any family members over the
15 age of 18 that might be on the jury?

16 A I do. Two children.

17 Q Two children. Okay, what are their names?

18 A Tyler and McKenna Trahey.

19 Q They both share the same last name.

20 Anybody else with a different last name
21 besides Trahey of blood relation or by marriage?

22 A No.

23 Q Organizations in the community, churches,
24 Rotary clubs, other social or civic organizations that
25 you belong to?

1 A No. I'm sorry. I take that back. Saint
2 Michaels Catholic Church.

3 Q And let's see. Your address is in Surfside.
4 So you are in Horry County; correct?

5 A I am.

6 Q Just a minute, Ms. Trahey. Let me look over
7 my notes.

8 Do you agree that it's important for doctors
9 and nurses to have a general understanding of the dos
10 and don'ts of the privacy practices?

11 MR. MCKAY: Object to form.

12 THE WITNESS: I do.

13 BY MR. HINSON:

14 Q Do you agree that the privacy practices under
15 HIPPA should never stand as a barrier to patient
16 safety?

17 MR. MCKAY: Object to form.

18 THE WITNESS: I do.

19 BY MR. HINSON:

20 Q Do you have a resume or CV?

21 A CV?

22 Q Do you have a resume?

23 A I do.

24 Q Would you agree just to provide a copy?
25 Is it current and up to date?

1 A It is.

2 Q Would you agree to provide a copy to our
3 court reporter sometime after this deposition? The
4 next few days you can arrange to e-mail it to her or
5 mail it to her and we can make that Exhibit 8.

6 A I will e-mail to Weldon.

7 Q Weldon, that's fine. Either way.

8 MR. HINSON: Weldon, is that agreeable to
9 make that Exhibit 8?

10 MR. JOHNSON: Sure.

11 MR. HINSON: Ms. Trahey, I am going to hand
12 you the notice of 30(b)(6) deposition. We can
13 mark that as Exhibit 9.

14 (PLF. EXH. 9, Amended Notice, was marked for
15 identification.)

16 BY MR. HINSON:

17 Q And you have seen this document before today?

18 A I believe so.

19 Q Okay. I had noticed a deposition of Grand
20 Strand under a rule that's called Rule 30(b)(6) of the
21 rules of civil procedure, and the topics listed or the
22 matter of examination listed include 15 different
23 things.

24 You were designated per Mr. Weldon Johnson to
25 speak about topics five, six and seven. I will give

1 you a second to look at those.

2 A (Perusing)

3 Okay.

4 Q As well as number 16?

5 A Okay.

6 Q To the extent that my questions have involved
7 those topics --

8 MR. HINSON: Weldon, are you agreeable
9 stipulating that this deposition can serve as the
10 30(b)(6) on those topics?

11 MR. JOHNSON: I do. You've also touched on
12 14 and 15.

13 MR. HINSON: Okay. And recognizing that the
14 chain of command extends to topics other than
15 HIPPA we can -- I guess I don't want to stipulate
16 that 14 is exhausted at this point but that she
17 spoke about 14 and 15 as well; is that fair?

18 MR. JOHNSON: Correct.

19 MR. HINSON: Okay.

20 BY MR. HINSON:

21 Q All right, and, Ms. Trahey, having looked
22 over five, six, seven, 14, 15 and 16, those topics,
23 you understand that your testimony today was given
24 both with regard to yourself and on behalf of Grand
25 Strand Regional Medical Center?

1 A I do.

2 MR. HINSON: Okay, no further questions, Ms.
3 Trahey. I thank you for your time.

4 MR. MCKAY: No questions.

5 MR. JOHNSON: None.

6 THE REPORTER: Signature?

7 MR. JOHNSON: I forgot to ask you about this.
8 Our court reporter is going to type up all of his
9 questions, all of your answers. You have the
10 right before she seals it up to read over it and
11 sign it to make sure that the transcription is
12 correct or that there is something you might need
13 to change, you misunderstood a question, those
14 kinds of things.

15 Since you've never given a deposition before
16 I would recommend you read it, and I will e-mail
17 it to you when she sends it to me and you'll have
18 30 days from the time I get it. I am not sure I
19 am going to get it to you the same day to read
20 over it.

21 There will be a sheet of paper attached to it
22 called an errata page in which if you come to
23 page 12, line 13 you have an objection to, call
24 me and we'll fill out whatever the changes, if
25 any, you need to make.

1 THE WITNESS: Thank you.

2 MR. HINSON: Weldon, I just want to make her
3 notice of deposition the next exhibit so we got
4 both of them on there.

5 (PLF. EXH. 10, Amended Notice, was marked for
6 identification.)

7 THE REPORTER: Are you purchasing a copy, Mr.
8 Johnson?

9 MR. JOHNSON: E-Tran.

10 MR. MCKAY: E-Tran.

11 MR. JOHNSON: With scanned exhibits.

12 MR. MCKAY: Same thing.

13 (The witness, after having been advised of
14 her right to read and sign this transcript,
15 does not waive that right.)

16 (The deposition was concluded at 12:45 p.m.)

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SIGNATURE OF DEPONENT

DEPONENT: GINA TRAHEY
DEPOSITION DATE: June 19, 2018
REPORTER: Jane L. McKillop
AWR JOB #: 19066
CASE CAPTION: David L. Scheer vs. Southern Myrtle
Inpatient Services, LLC, et al.

(Please return both Signature of Deponent pages)

I, the undersigned, GINA TRAHEY, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
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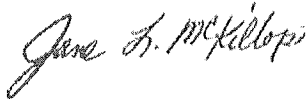
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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: June 19, 2018
REPORTER: Jane L. McKillop
AWR JOB #: 19066
CASE CAPTION: David L. Scheer vs. Southern Myrtle
Inpatient Services, LLC, et al.

GINA TRAHEY DATE

I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the Deponent was advised of his right to read and sign said deposition both verbally and in writing. If the Deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Jane L. McKillop, Reporter
My Commission expires
September 15, 2024

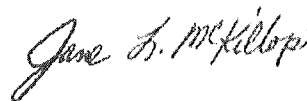
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CERTIFICATE OF REPORTER

I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of July 2018 at Murrells Inlet, Georgetown County, South Carolina.



Jane L. McKillop
My Commission expires
September 15, 2024

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HORRY

DAVID L. SCHEER, as Personal
Representatives of the Estate
Of MATTHEW J. SCHEER,

Plaintiffs,

Vs. CASE NO. 2017-CP-26-1571

SOUTHERN MYRTLE INPATIENT SERVICES,
LLC; NIRLEP A. PATEL, M.D.; RACHEL
ASH-BERNAL, M.D., AND GRAND STRAND
REGIONAL MEDICAL CENTER,

Defendants.

DEPOSITION OF: TUSHARA RHODES
DATE: June 19, 2018
TIME: 1:00 PM
LOCATION: A. William Roberts, Jr., &
Associates
1293 Professional Avenue, Suite 104
Myrtle Beach, South Carolina
TAKEN BY: Counsel for the Plaintiffs
REPORTED BY: Jane L. McKillop, Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

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TUSHARA RHODES,

Being first duly sworn, testified as follows:

EXAMINATION

BY MR. HINSON:

Q Ms. Rhodes, would you please state your full name?

A My name is Tushara Denise Rhodes.

Q And, Ms. Rhodes, have you ever given a deposition before?

A I have not.

Q And your counsel has probably gone over most of this with you but the rules require me to mention a few things. If at any point you have a question about or don't understand what I've asked if you would please just let me know I will be happy to rephrase it, repeat it, whatever I need to do to make sure you understand it.

A All right.

Q There may be from time from time objections to my questions. Unless you are instructed not to answer if you would please answer in spite of the objection.

A Okay.

Q If at any time you need to take a break -- I don't think we are going to be here very long but if

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1 you need to take a break you just let me know. I may⁴
2 ask you to finish the question we are on or maybe just
3 a series of questions on topic but we will certainly
4 accommodate that in short order.

5 A Okay.

6 Q And you are doing a great job now but our
7 human nature we sometimes tend to give uh-huhs and
8 shrug our shoulders or nod our head and it makes it
9 difficult for our court reporter. So while you are
10 welcome to do all those things I ask that you also
11 give a verbal answer out loud so that she can record
12 it.

13 A Got it.

14 Q Ms. Rhodes, I am going to provide you what we
15 will mark as Exhibit 1 to this deposition, which is
16 the notice of this rule 30(b)(6) deposition.

17 (PLF. EXH. 1, Amended Notice, was marked for
18 identification.)

19 BY MR. HINSON:

20 Q And I represent to you that it's my
21 understanding you've been designated to speak on
22 topics eight and nine, which are on page 2.

23 A All right.

24 Q And they read details relating to training
25 for Defendant's employees and agents including

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1 physicians, nurses and staff relating to the care of
2 psychiatric patients. And nine reads details related
3 to training for Defendants' employees and agents
4 including physicians, nurses and staff relating to the
5 involuntarily admission of psychiatric patients.

6 Would you be the best person at Grand Strand
7 Regional Medical Center to speak on these topics?

8 A I am authorized to speak on those topics,
9 yes.

10 Q Okay.

11 MR. JOHNSON: Not to interfere but in terms
12 of training under number 14 they do go over the
13 chain of command.

14 MR. HINSON: Okay.

15 BY MR. HINSON:

16 Q And with number 14, this is something I
17 addressed a little bit with the earlier designee,
18 number 14 reads training related to Grand Strand
19 Regional Medical Center's chain of command policy as
20 it was in place and applicable on the morning of
21 October 3, 2015.

22 Is that another topic you can speak on today?

23 A Yes.

24 Q Ms. Rhodes, take a step back for just a
25 second. Tell me your role at Grand Strand, your

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1 position, what you do, how long you've been there.

2 A I've been with Grand Strand Medical Center
3 for nearly four years and my current role is the
4 director of organizational development. I have been
5 in my role for just over a year.

6 My department is responsible for the clinical
7 education and professional development of the clinical
8 staff within the hospital including nurses -- well,
9 all of the nursing work force and other clinical
10 support areas.

11 Q I'm sorry. What was your job title?

12 A Director of organizational development.

13 Q And how long have you held that title?

14 A For just over a year. About 14 months.

15 Q And prior to that, wearing that hat what did
16 you do with Grand Strand?

17 A I was an administrative nursing supervisor.

18 Q Are you a nurse by training?

19 A I am.

20 Q So when you say you are involved in the
21 education of clinical staff does that include
22 physicians who are hospitalists working at Grand
23 Strand Medical Center?

24 A It is not. Physicians are not considered
25 clinical support staff.

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1 Q So it's just nurses and other support staff?⁷

2 A Yes.

3 Q And what type of -- let's take a step back.
4 So you said you have been at Grand Strand for nearly
5 four years. So when did you start approximately, the
6 month?

7 A July of 2014.

8 Q Okay. And what was your role at your job in
9 July 2014?

10 A I was the administrative nursing supervisor.

11 Q So those are the two positions you've held
12 there?

13 A Correct.

14 Q What did you do as administrative nursing
15 supervisor? What was that role?

16 A So I worked as a PRN, which is a per diem
17 position as a nursing supervisor providing basically
18 administrative oversight for the hospital in the
19 absence of direct managerial support. A lot of it
20 also included bed management.

21 Q Bed management?

22 A Yes.

23 Q And what does that mean? When you say bed
24 management what is that term?

25 A We coordinated admissions to the hospital.

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1 We coordinated transfers in and out of the hospital
2 and transfers within the hospital, so from unit to
3 unit.

4 Q With that coordination does part of that
5 coordination involve the transfer of information
6 regarding the patient?

7 A Uhn-uhn.

8 Q No. So what does it involve then in
9 transfer?

10 A Essentially we receive the orders to admit
11 the patient and bed request, the type of bed the
12 doctor is requesting the patient be admitted to based
13 on their diagnosis and we make that bed assignment.

14 Q Okay. Take me if you would through your
15 education and work history, and we have done the last
16 approximately four years but prior to that. Usually I
17 think it's easiest to start with completion of high
18 school and then work our way forward than go the other
19 direction.

20 A All right, you are going to age me. I
21 completed an associate degree in nursing and I
22 obtained my license as a registered nurse in the State
23 of North Carolina before transferring here.

24 Q Where did you complete the associate degree
25 in nursing?

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1 A At Rowan-Cabarrus Community College in
2 Salisbury, North Carolina.

3 Q And what year did you complete that
4 associates degree?

5 A 2008.

6 Q All right. And after you finished that
7 degree what did you do next?

8 A So after I finished my degree I went to work
9 for the VA hospital. I spent ten years at the or nine
10 and a half years at the VA hospital. I obtained a
11 masters degree in nursing education 2013 from
12 Chamberlain College of Nursing.

13 Q Which VA did you work at?

14 A I worked at the Salisbury VA Medical Center
15 for six and a half years before transferring to the
16 Charleston VA Medical Center.

17 Q Okay. And so you said you worked at the VA
18 for you said ten years approximately?

19 A Total.

20 Q So you must have started that prior to your
21 associates degree in nursing?

22 A I did. I worked as a nurse tech before.

23 Q Okay. So the VA in Salisbury and then the VA
24 in Charleston?

25 A Uh-huh.

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1 Q And then after that what?

2 A After the VA Charleston I transferred to
3 Grand Strand full time last year.

4 Q Okay. How long were you at the VA in
5 Charleston?

6 A I started there in May of 2015. Oh, I'm
7 sorry. I started there in July of 2014 at the clinic,
8 and then I transferred down in education in 2015.

9 Q So you were working there at the same time at
10 Grand Strand? It overlapped some?

11 A Yes.

12 Q Do you have a resume?

13 A I do. I didn't bring it with me today.

14 Q That's fine. I didn't ask you to and I
15 probably should have but I think we can accomplish
16 what we need today by just going through your work
17 history.

18 A Okay.

19 Q But if you would is it something you have
20 available to you at home or at work?

21 A Yes.

22 Q Would you agree to provide that either
23 directly to our court reporter or to Mr. Johnson and
24 we can mark that as Exhibit 2 to your deposition?

25 A I can provide that to Mr. Johnson.

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1 MR. JOHNSON: Okay.

2 BY MR. HINSON:

3 Q And the resume you'll provide will be
4 current, up to date and accurate; is that correct?

5 A Uh-huh. Yes. Yes.

6 Q So as the director of organizational
7 development you spend at least some of your time
8 involved in education of the clinical staff; correct?

9 A Yes.

10 Q And it's my understanding that there is some
11 sort of orientation that's done every other week at
12 Grand Strand for new nurses and staff?

13 A That's correct.

14 Q And do you play a role in that -- those
15 training sessions every other week?

16 A My department is responsible for those
17 training sessions.

18 Q Okay. Tell me -- well, part of the training
19 involves HIPPA; correct?

20 A Correct.

21 Q Generally speaking the dos and don'ts of the
22 privacy practices and rules?

23 A Right.

24 Q Is there any -- well, and Ms. Trahey as I
25 understand it, she is the one who is involved with

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1 that training with regard to HIPPA; is that fair?

2 A That's right.

3 Q And she has some sort of PowerPoint or
4 presentation that she puts on to the group?

5 A It's a PowerPoint that's provided to us by
6 World Health.

7 Q Okay. What, if any, training is provided to
8 these new employees regarding the chain of command?
9 Is that discussed in this training session?

10 A It is discussed. During new hire orientation
11 as well as new nursing orientation we discuss the
12 policy and its location, how they can access it. We
13 also go through elements of the policy to include when
14 they would initiate the chain of command and then how
15 we they would go about escalating it.

16 Q Okay. Are they provided a copy of the chain
17 of command during the orientation?

18 A I would have to review the actual orientation
19 binder that's provided to staff.

20 Q But certainly it's something that's discussed
21 during training?

22 A It is.

23 Q If there is a nurse who has a concern about
24 the treatment plan for a patient it is incumbent upon
25 the nurse to initiate the chain of command until he or

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1 she is -- until the issue has been resolved to his or
2 her satisfaction; correct?

3 A That's correct.

4 Q And the first step in the chain of command at
5 Grand Strand or generally any hospital is for the
6 nurse to engage the physician about what's occurring
7 or what's being planned; is that fair?

8 A The first step in the chain a command is for
9 the nurse to engage the physician, yes.

10 Q And if the discussion with the physician, the
11 discussion between the nurse and the physician does
12 not either one, result in a change in the plan or two,
13 satisfy the nurse with what is the current plan there
14 is a next rung within the chain of command letter;
15 correct?

16 A That's correct.

17 Q And that chain of command just continues all
18 the way up to the CO at the hospital?

19 A Correct.

20 Q And if a nurse had a concern with a patient
21 who he or she believed had mental illness and was
22 being released and might be a threat to himself or to
23 others that would be a situation where the nurse could
24 on first step of the chain of command engage the
25 doctor and say I am concerned about releasing this

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1 patient?

2 A If the nurse had that concern they could
3 engage the physician, yes.

4 Q In fact if the nurse had that concern they
5 should engage the doctor about that; correct?

6 A If the nurse had that concern then they
7 should engage the physician.

8 Q The chain of command policy -- and we looked
9 at this in the earlier deposition. I am not asking
10 any particular specific question about it right now,
11 but this is available somewhere on the hospital's
12 Internet or where would the nurse or staff member find
13 it?

14 A They would be able to find it on the
15 hospital's internal web.

16 Q Okay. And you would expect that nurses and
17 physicians would know where to find it if they went
18 looking for it?

19 A Yes.

20 Q Okay. You are aware that a lawsuit has been
21 brought on behalf of Matthew Scheer related to his
22 care and treatment in October 2015?

23 A I've been made aware, yes.

24 Q When were you made aware of that case?

25 A I was initially contacted by our hospital's

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1 risk management person just a few months ago.

2 Q So prior to a few months ago you were not
3 aware of the existence of this lawsuit; is that fair?

4 A No, I was not.

5 Q Has the training or education of staff with
6 regard to the chain of command policy changed in any
7 way since October of 2015?

8 A I would say that within my time and my role
9 education and training is updated as policies are
10 updated if there are changes, but I am not able to
11 speak to specifically whether the training has changed
12 since 2015.

13 Q To your knowledge has anything in the
14 training changed in response to Matthew Scheer being
15 discharged from the hospital in October of 2015?

16 A Not to my knowledge.

17 Q What training, if any, do the new nurses and
18 staff members receive with regard to the involuntary
19 admission of mentally ill patients?

20 A New nurses are introduced during orientation
21 that there is a process for involuntary admission of
22 patients if they are found to be a threat to
23 themselves or others, and they are made aware of where
24 the paperwork is located. And then the paperwork is a
25 state form that's provided and so it pretty much

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1 drives their practice.

2 Q Okay. The expectation of a nurse who
3 believes that a patient should be involuntarily
4 admitted to the hospital is that the nurse would bring
5 that to a physician's attention; is that correct?

6 A The nurse would talk with the physician if
7 she felt that there was an issue that she needs to
8 discuss regarding admission, yes.

9 Q That's what is supposed to occur?

10 A Right.

11 Q There are patients at Grand Strand who have
12 mental illness and psychiatric issues; correct? I
13 know it's not a mental health hospital, but there are
14 patients who have mental illness; correct?

15 A I would imagine so.

16 Q There is some psyche rooms at the hospital;
17 right?

18 A There are.

19 Q Is the nursing staff on that floor, the floor
20 that has or the wing that that psychiatric rooms, are
21 they given training on how to care from a nursing
22 perspective for psychiatric patients?

23 A Because it's not a psychiatric hospital the
24 nurses are not provided with additional education
25 outside of what they receive in their licensure

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1 program, which allows them to be a nurse or licensed
2 as a nurse.

3 Q And so the extent to which Grand Strand
4 provides any additional training to nurses with regard
5 to care of psychiatric patients would be limited to
6 going over the paperwork for the involuntary admission
7 of psyche patients?

8 A That's not the full extent. They also
9 receive education regarding our hospital's restraint
10 policy, which would include situations that required a
11 patient to be restrained. And then they also
12 receive -- they receive education on crisis prevention
13 and deescalation in a patient who is acting out and
14 requires deescalation to prevent them from harming
15 themselves or others.

16 Q So there is training in restraint policy and
17 training in deescalation?

18 A Right.

19 Q And that's part of the orientation we
20 discussed?

21 A This is initial and annual training.

22 Q Is the training on deescalation, either
23 initial or both initial and annual, is there some sort
24 of PowerPoint presentation on those topics?

25 A The content that we provide for restraints

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1 there is a PowerPoint that is provided. We also
2 follow our corporate protocol. The content regarding
3 care and deescalation is a licensed content.

4 Q What do you mean by that?

5 A This is content that our educators receive
6 education and training to become certified to teach
7 the class, and then the education that they provide is
8 content that's provided by the company that certifies
9 them to teach.

10 Q Okay. But the hospital does have copies of
11 that information, that content?

12 A We are not able to make copies of it but we
13 can present it.

14 Does that make sense?

15 Q Well, I understand you might not be able to
16 make copies of it for commercial purposes.

17 A Right.

18 Q But if in this lawsuit those documents were
19 relevant it's something you physically have the
20 ability to make a copy of; correct?

21 A We could provide the information.

22 Q Okay.

23 A The training.

24 Q Okay. Who does the training with regard to
25 deescalation?

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1 A I don't understand.

2 Q Well, I mean is it you or is it some other
3 person? Who is the person who -- I show up to work
4 the first day at Grand Strand. I understand it's a
5 two day --

6 A So who facilitates the training?

7 Q Yes.

8 A Yes, the clinical educators facilitate the
9 training.

10 Q And so that I guess varies from time to time?

11 A What do you mean?

12 Q Well, you said the clinical -- is there one
13 person who does that typically?

14 A We have people who are identified to do the
15 training. They have to be certified to teach it.

16 Q Okay. So it's a number of different people
17 who do it?

18 A We have two.

19 Q And who are they?

20 A Actually we have three. We have Daniel Soder
21 and Gregory Pittman who are clinical educators, and
22 then we have Jenna Norris who is an assistant nurse
23 manager.

24 Q Okay. Is there a particular policy that
25 pertains to deescalation? I know there is a restraint

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1 policy. You mentioned that, but is there a policy as
2 to how deescalation should be conducted or attempted?

3 A Outside the training that's provided?

4 Q Yes.

5 A To my knowledge at the time there was not a
6 policy regarding deescalation.

7 Q Okay.

8 A But I am going to have to verify that.

9 Q While there was training on it there wasn't
10 specific policy?

11 A Because there is training that delegates the
12 procedure and the processes.

13 Q And that training on deescalation, that's
14 been occurring for a number of years; correct?

15 A I can't speak to the exact origination of the
16 training but I can say that it has been in place for
17 at least the last couple of years.

18 Q Generally speaking take me through what
19 the -- there is a patient with some sort of
20 psychiatric illness and they become loud, disruptive,
21 agitated.

22 What is the -- if you know what does the
23 training indicate should occur to try to deescalate
24 the situation?

25 A I am not aware of the specifics of the

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1 training.

2 Q Okay.

3 A I'm sorry.

4 Q Would those documents we spoke about, the
5 PowerPoint or other presentation materials, they would
6 address that to some degree?

7 A Yes.

8 Q If there is a problem with a patient with
9 some sort of psychiatric illness there is a means and
10 mechanism to restrain them; correct?

11 I mean there are security guards on staff
12 that there is a policy that would allow for restraint
13 if needed; correct?

14 A If needed there is a policy that addresses
15 the restraining of a patient.

16 Q And that does happen from time to time I
17 presume; is that correct?

18 A From time to time it does.

19 Q And from time to time patients are
20 involuntarily admitted to Grand Strand; correct?

21 A That's correct.

22 Q Is that information is logged in any way how
23 would we find out how many patients were involuntarily
24 committed say in 2017 or 2016?

25 A I am not sure.

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1 Q Okay. If you had to go looking for that
2 information where would you start?

3 A I would start with my manager.

4 Q And who is that?

5 A It is Tiffany Keys, the chief nursing
6 officer.

7 Q Ms. Rhodes, just a few other questions. Not
8 to be invasive to your private life I just want to
9 make sure I can identify anybody on the jury that
10 would know you or have any relation to you.

11 Are you originally from Horry County?

12 A I am not.

13 Q Are you from North Carolina I presume?

14 A Yes.

15 Q And any family members in the area that have
16 either by blood or marriage the last name other than
17 Rhodes?

18 A My brother is in the area. His last name is
19 Fortune.

20 Q Fortune. What's his first name?

21 A Eric.

22 Q Eric, all right. And what's your address?

23 A It is 3951 Briar Vista, two words, Drive.

24 Q That's Myrtle Beach?

25 A Yes.

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1 Q And how long have you lived at that address?

2 A About a year and a half.

3 Q Your prior address how long did you live
4 there?

5 A I moved there when I moved here in South
6 Carolina.

7 Q Okay. Any clubs, organizations, churches you
8 belong to? So, for instance, Rotary Club or a church
9 you go to?

10 A Yes. I attend Carolina Forest Community
11 Church. I belong to the South Carolina Nurses
12 Association. I belong to the American College of
13 Health Care Executives.

14 Q You are active in those groups to some
15 degree?

16 A Yes. Yes.

17 Q Are you a member of the American Nurses
18 Association by chance?

19 A I'm sorry.

20 Q Are you a member of the ANA, the American
21 Nursing Association?

22 A Yes, both the ANA and the South Carolina
23 Nurses Association as an affiliate group.

24 MR. HINSON: All right, Ms. Rhodes, I don't
25 think I have anything more for you. Let me look

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1 over my notes. These gentlemen may have
2 questions.

3 THE WITNESS: Okay.

4 MR. HINSON: Ms. Rhodes, a few more
5 questions.

6 This chain of command policy that we talked
7 about, we can mark that as Number 3 to her
8 deposition.

9 (PLF. EXH. 3, Chain of Command Policy, was
10 marked for identification.)

11 BY MR. HINSON:

12 Q Ms. Rhodes, this chain of command policy,
13 could you identify what we've marked as Exhibit 3?

14 A Yes. This is our hospital chain of command
15 policy.

16 Q And this chain of command policy is something
17 that's addressed in orientation for nurses; correct?

18 A Correct.

19 Q And this chain of command is available at all
20 times 24/7; correct?

21 A This chain of command is available via our
22 internal web, yes.

23 Q But the chain of command -- that was a very
24 inartfully asked question. I'm sorry -- it applies
25 24/7. If at any point someone needs to institute the

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1 chain of command it doesn't matter whether it's
2 Tuesday at 3:00 in the afternoon or Sunday at 3:00
3 a.m. it's available?

4 A Yes.

5 Q Okay. So if there is a concern about patient
6 safety, about the way -- well, if there is concern
7 about patient safety the expectation is the chain of
8 command should be instituted until the problem is
9 resolved in some manner?

10 A Yes.

11 Q And you expect the nurses and the physicians
12 at Grand Strand to be generally familiar with this
13 chain of command; correct?

14 A We do.

15 Q And you would expect the nurses and
16 physicians at Grand Strand to be aware that this chain
17 of command is applicable 24/7; correct?

18 A Yes.

19 Q And the availability of the institution of
20 the chain of command 24/7 that includes issues a
21 person may have about privacy practices impacting
22 patient care?

23 Meaning if a health care provider had a
24 question about what privacy practices do or do not
25 allow and they were concerned it may impact patient

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1 care they could institute this at any point?

2 A We have a policy that addresses protected
3 health information, and they are aware they can
4 contact our privacy officer if they have a question
5 regarding protected health information.

6 Q Likewise if it was concerning patient safety
7 that would be available 24/7?

8 A Correct.

9 MR. HINSON: All right, thank you, Ms.
10 Rhodes.

11 THE WITNESS: No problem.

12 THE REPORTER: Do you want her to read?

13 MR. JOHNSON: Yes.

14 THE REPORTER: Same order, E-Tran?

15 MR. JOHNSON: Yes.

16 MR. MCKAY: Yes.

17 (The witness, after having been advised of
18 her right to read and sign this transcript,
19 does not waive that right.)

20 (The deposition was concluded at 1:33 p.m.)

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SIGNATURE OF DEPONENT

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DEPONENT: TUSHARA RHODES
DEPOSITION DATE: June 19, 2018
REPORTER: Jane L. McKillop
AWR JOB #: 19066
CASE CAPTION: David L. Scheer vs. Southern Myrtle
Inpatient Services, LLC, et al.

(Please return both Signature of Deponent pages)

I, the undersigned, TUSHARA RHODES, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
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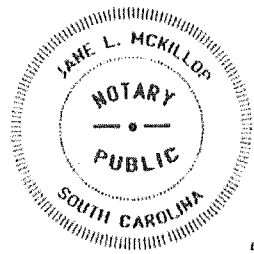
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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: June 19, 2018
REPORTER: Jane L. McKillop
AWR JOB #: 19066
CASE CAPTION: David L. Scheer vs. Southern Myrtle
Inpatient Services, LLC, et al.

TUSHARA RHODES DATE

I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the Deponent was advised of his right to read and sign said deposition both verbally and in writing. If the Deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Jane L. McKillop

Jane L. McKillop, Reporter
My Commission expires
September 15, 2024

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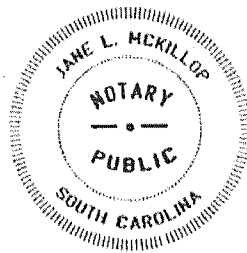
CERTIFICATE OF REPORTER

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I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of July 2018 at Murrells Inlet, Georgetown County, South Carolina.



Jane L. McKillop

Jane L. McKillop
My Commission expires
September 15, 2024

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HORRY
DAVID L. SCHEER, as Personal
Representative of the estate
Of MATTHEW J. SCHEER,
Plaintiff,
Vs. CASE NO. 2017-CP-26-1571
NIRLEP A. PATEL, M.D.; SOUTHERN
MYRTLE INPATIENT SERVICES, LLC;
RACHEL ASH-BERNAL, M.D., and
GRAND REGIONAL MEDICAL CENTER, LLC,
Defendants.

VIDEO
DEPOSITION OF: NIRLEP A. PATEL, M.D.
DATE: October 16, 2017
TIME: 10:29 AM
LOCATION: A. William Roberts, Jr., &
Associates
1293 Professional Drive, Suite D
Myrtle Beach, South Carolina
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Jane L. McKillop, Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

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APPEARANCES OF COUNSEL:

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Also Present: Christopher G. Mills, Videographer

(Index at rear of transcript)

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1 (PLF. EXH. 1, Medical Records, was marked for
2 identification.)³

3 THE VIDEOGRAPHER: We are now on the record.
4 Today's date is October the 16th, 2017. The time
5 is approximately 10:29 a.m.

6 This is the video deposition of Nirlep A.
7 Patel, M.D. This deposition is taken in the
8 matter of David L. Scheer versus Nirlep A. Patel,
9 M.D., et al., Case Number 2017 dash CP dash 26
10 dash 1571.

11 Will the court reporter please swear in the
12 witness.

13 NIRLEP A. PATEL, M.D.,

14 Having been duly sworn, testified as follows:

15 EXAMINATION

16 BY MR. HINSON:

17 Q Dr. Patel, my name is Brink Hinson. I've
18 been retained by the family of Matthew Scheer in this
19 lawsuit that's been filed.

20 Have you ever had the occasion to give a
21 deposition before today?

22 A I have.

23 Q And was the occasion where you were giving
24 your deposition was it related to some sort of medical
25 negligence litigation?

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1 A Yeah.

2 Q And this may be a process that you are
3 familiar with but I want to just briefly go over some
4 of the -- some of the rules and protocols for today.

5 Do you understand that the testimony you are
6 providing is testimony under oath?

7 A Yes.

8 Q Do you understand that if you fail to be
9 truthful in your answers you could commit perjury?

10 A Yes.

11 Q And, Doctor, it's important to me that you
12 understand my questions. If at any point you don't
13 understand my question please let me know. I will be
14 happy to rephrase it, repeat it, do whatever I need to
15 do to make sure you understand it.

16 A Fine.

17 Q And we may -- this may never come up but I
18 see you shaking your head and people have a tendency
19 to nod their heads and shrug their shoulders, which is
20 perfectly fine, but if you could also give a verbal
21 answer out loud as well as any gestures that might be
22 given.

23 A I understand.

24 Q Also, there may be times where there are
25 objections to my questions from either of the two

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1 attorneys sitting on the other side of the table from
2 me. Unless you are instructed not to answer, unless
3 the specific instruction from your counsel is not to
4 provide an answer I would ask that you please answer
5 my question in spite of an objection being made.

6 A Okay.

7 Q Dr. Patel, please state your full legal name.

8 A Nirlep Ashok Patel.

9 Q And, Dr. Patel, what is your profession?

10 A Internal medicine physician.

11 Q And where do you work as an internal medicine
12 physician?

13 A Grand Strand Hospital.

14 Q In October of 2015 Matthew Scheer was
15 admitted to Grand Strand as your patient; is that
16 correct?

17 A I believe that's what the medical record
18 reflects, yes.

19 Q And you were the admitting physician for
20 Matthew Scheer; correct?

21 A The admitting physician, correct.

22 Q Doctor, I have pre-marked what we have
23 labeled as Exhibit Number 1, which I believe is a copy
24 of the medical record that was provided in this case.

25 A Uh-huh.

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1 Q Have you had an opportunity to look over that
2 before today?

3 A I've looked over the medical record, yes.

4 Q Okay. Do you have any independent
5 recollection of Matthew?

6 A I don't really have any significant
7 recollection of the patient, no. Impressions.

8 Q I am going to turn your attention to a
9 particular page in the record and in case you may be
10 familiar --

11 A Is this the one I should be using?

12 Q Yes.

13 A All right.

14 MR. MCKAY: You got a page number you want
15 him to refer to?

16 MR. HINSON: Yes.

17 BY MR. HINSON:

18 Q And, Doctor, we use what we all Bates numbers
19 in legal cases. They are essentially like a serial
20 number we assign to each page.

21 A Okay.

22 Q What I am looking at is what's marked as
23 Scheer underscore GSRMC underscore medreca underscore
24 0065. So it's the 65th page in this Exhibit 1.

25 A Right.

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1 Q As we go through the day I will probably just ⁷
2 refer to page number and not give you the whole --

3 A Got you.

4 Q -- prefix for it. Okay, I am looking at page
5 65. I believe it's a history and physical.

6 Do you see that document?

7 A Right. Uh-huh.

8 Q Can you look at that document page 65, 66 and
9 67?

10 A Well, page 67 is just the electronic
11 signatures. So that's not anything, but the first two
12 are just I guess the transcription of, you know, the
13 history and physical.

14 Q Okay. And so this is the transcript to the
15 history and physical you performed with regard to
16 Matthew Scheer; correct?

17 A Yes.

18 Q And tell me generally how Matthew was at the
19 time you saw him.

20 A Again, I have no independent recollection but
21 based on this record, just kind of reviewing this
22 paragraph here it looks like he's a 26 year old
23 gentleman who was -- looks like was sent back from a
24 facility to be evaluated for a medical reason of some
25 kind, and his basic -- from what it looks like here is

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1 that he was calm and cooperative and doesn't appear to
2 be in any acute distress from what I would summarize
3 from this.

4 Q And at the time that you saw Matthew is it
5 your understanding that he had earlier in the day been
6 to the emergency department at Grand Strand Regional?

7 A Yes, the record seems to reflect that.

8 Q Okay. And the record from Grand Strand
9 Regional from earlier in the day would have been
10 accessible to you?

11 A Yes.

12 Q And you mentioned earlier I think you said he
13 was calm and cooperative at the time you saw him?

14 A Yes.

15 Q Would you have described him as being in a
16 manic state?

17 A Not based on this, no.

18 Q Okay. Doctor, I want to turn your attention
19 now to page 100 in the record.

20 A Okay.

21 Q Doctor, I am looking at the -- again page 100
22 I am looking at the bottom left-hand corner. There
23 appears to be a nursing note made around 1:15 in the
24 morning. Well, let's backup for one second.

25 That page 65 where you had your history and

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1 physical about what time did you make that -- that
2 note?

3 A If you have it before I do it's usually
4 written on the top of it or the bottom of it at the
5 end.

6 Q Okay. I think we are looking at page 67.

7 A Yeah. So --

8 Q Is it 1729?

9 A Yeah. So about, yeah, like 5:30 or so.

10 Q Okay. So approximately you made this note
11 regarding Matthew at approximately 5:30 p.m.?

12 A That sounds about right.

13 Q Did you see him after that?

14 A No.

15 Q So 5:30 p.m. you see Matthew. This is
16 October 2nd. 5:30 p.m. you see Matthew. You do an
17 evaluation of him and you don't see him again after
18 that point?

19 A Correct.

20 Q Are you ever informed anything about him
21 after that point before you leave the hospital that
22 day?

23 A No.

24 Q Okay. And look back at the note for a
25 second. I am looking at page 66 and I am looking

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1 under assessment and plan.

2 Do you see that?

3 A Okay.

4 Q It just says possible psychosis?

5 A Okay.

6 Q Correct?

7 A Correct.

8 Q And then it says we will place the
9 psychiatric consultation for Dr. Oduwole for this
10 evening is requested.

11 Do you see that?

12 A I see that.

13 Q So you would have written that; correct?

14 A Correct.

15 Q Resume his Keppra 3,000 milligrams daily at
16 night and PRN. That's as needed; correct?

17 A Correct.

18 Q Ativan for agitation?

19 A Correct.

20 Q So you ordered for Matthew a psych consult
21 for that evening?

22 A Correct.

23 Q Keppra?

24 A Correct.

25 Q And Ativan?

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1 A I ordered the Keppra and the psychiatric
2 consult. The PRN Ativan is as needed. So I did not
3 place the order for that but that's something that
4 could be obtained as needed if it's required.

5 Q It says resume Keppra daily?

6 A Correct.

7 Q So that's not Keppra as needed though; is it?
8 That's --

9 A Keppra is not needed, no. Keppra is --
10 that's his home medicine I believe.

11 Q So the order is for him to start taking
12 Keppra again?

13 A Correct.

14 Q Okay. So, Doctor, let's turn back -- I'm
15 sorry -- to page 100.

16 A Okay.

17 Q And now let's look in the bottom left-hand
18 corner there. It looks like a note from a Nurse Bell.

19 Do you see that?

20 A Yes.

21 Q And so this note appears to be October 3rd at
22 around 1:13 a.m.

23 Do you see a time stamp there?

24 A I see that.

25 Q So this would have been some hours,

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1 approximately seven hours after you saw Matthew;
2 correct?

3 A Sounds about right.

4 Q Okay. Can you read that note for me?

5 A Patient approached the nurses station and was
6 pacing shirtless. Patient ripped off arm bands and
7 threw on floor. Patient started yelling and stating,
8 quote, that we did not control, nor could Obama, end
9 quote. Patient accused staff of being devil
10 worshipers. On call MDF for non call to see patient.

11 Q Okay. Look at the next note, Doctor. It
12 says nurse's note. Looks like it's at 1:31. I am
13 looking at the top right of that page.

14 Do you see where --

15 A Yes.

16 Q -- I'm looking?

17 Can you read that note for me?

18 A Patient pacing -- pacing in hallways.

19 Approached nursing unit saying that we cannot control
20 him.

21 THE REPORTER: Excuse me, Doctor. Could you
22 slow down a little bit so I can --

23 THE WITNESS: Sure. No problem.

24 Patient pacing in hallways. Approached
25 nursing unit saying that if we cannot control

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1 him, period. Patient escorted back to room,
2 period. Patient very verbal with staff, period.
3 Becoming aggressive with staff, comma, saying
4 that we are all with the devil, period. Security
5 at bedside, period. Patient verbalizing that he
6 is here voluntarily and that we cannot keep him
7 here, period. Staff tried to calm patient and
8 reenforce that we are here to help him, period.
9 Staff offered to call patient's father for him to
10 speak to, period. Patient refused, period. Dr.
11 Ash-Bernal in to see patient, period. Patient
12 stated he wanted -- he wants to leave, period.
13 AMA papers signed by Dr. Ash-Bernal, comma,
14 patient and this RN, patient escorted off unit by
15 security, period.

16 MR. HINSON: Okay, thank you, Doctor.

17 BY MR. HINSON:

18 Q Does that sound like a patient who is calm
19 and cooperative?

20 A I mean it seems like he is a little bit more
21 agitated now.

22 Q Doctor, the patient ripped off his arm bands
23 and threw them in the floor. Patient was yelling
24 stating that we could not control him, nor could
25 Obama.

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1 A Uh-huh.

2 Q Is that a change in Matthew's condition from
3 when you saw him?

4 A Well, I didn't see him but it doesn't seem
5 like he's exactly the same as when I saw him.

6 Q I'm sorry?

7 A I did not see him at that time but it doesn't
8 seem like that was not the behavior that I saw when I
9 saw him.

10 Q So when you saw him around 5:30 he was not
11 acting like that; correct?

12 A Correct.

13 Q That was a change in his -- his behavior from
14 when you saw him?

15 A It would seem so.

16 Q He wasn't aggressive with you; was he?

17 A Not to my recollection. Not to the -- per
18 what the medical records state so . . .

19 Q If he was -- if he was aggressive with you
20 you would anticipate you would have charted his
21 aggressiveness; wouldn't you?

22 A I would normally do that, yes.

23 Q He wasn't yelling at you that you recall;
24 correct?

25 A Again to my recollection no.

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1 Q And you didn't chart that he was yelling at
2 you?

3 A I don't believe that I charged that, no.

4 Q If he had been yelling at you do you believe
5 you most likely would have charted it?

6 A Would normally have charted that, yes.

7 Q Matthew has been brought to the hospital
8 because of concern of psychosis; correct?

9 A Which hospital visit are you referring to
10 now?

11 Q This one right here, Grand Strand Regional.
12 That's one of the reasons he was brought to the
13 hospital with concerns for psychosis?

14 A My understanding he was sent here because of
15 some sort of medical clearance issue.

16 Q You ordered a psyche consult for him; didn't
17 you, Doctor?

18 A Correct.

19 Q Why did you order a consult for him?

20 A My understanding was that he went to
21 Lighthouse for counseling, evaluation, treatment. He
22 came back for some sort of again it's like I said
23 medical evaluation, but since that was part of the
24 plan to evaluate him seemed reasonable to see if we
25 could continue that part while he is here, while we

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1 are running more medical tests on him.

2 Q The principal concern about Matthew Scheer in
3 early October 2015 was acute psychosis; wasn't it?

4 MR. MCKAY: Object to form.

5 THE WITNESS: Rephrase. I'm sorry. Can you
6 say that again?

7 BY MR. HINSON:

8 Q The principal concern for the health care
9 providers --

10 A Uh-huh.

11 Q -- including yourself seeing Matthew
12 Scheer --

13 A Uh-huh.

14 Q -- at Grand Strand Regional Medical Center in
15 early October of 2015 was the concern for acute
16 psychosis?

17 A For my encounter or for the first ER
18 encounter?

19 Q Both?

20 A I am not sure. I wasn't there for the first
21 ER encounter.

22 Q Okay.

23 A But for my encounter my impression is that I
24 am admitting him for medical reasons.

25 Q Okay. And those medical reasons include

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1 acute psychosis; correct?

2 A It's one of the problems that he had,
3 correct.

4 Q Okay. In your assessment plan the number one
5 thing you wrote was possible psychosis; is that
6 correct?

7 A That's correct.

8 Q Doctor, his state at the time you saw him at
9 around 5:30 was calm and cooperative you said;
10 correct?

11 A I believe that's what it states, correct.

12 Q And you agree with that; correct?

13 A Yes.

14 Q And at around 1 a.m. on the 3rd, a few hours
15 later, he is becoming agitated, yelling and having a
16 change in his overall manner would you agree?

17 A I would agree that he is becoming more
18 agitated at that time, yes. I was not there. So I
19 don't know for sure.

20 Q But the record would reflect some changes;
21 would you agree?

22 A The record seems to reflect that.

23 Q Doctor, could you turn with me to page 70 in
24 the record?

25 A Okay.

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1 Q And looking about one quarter down the page
2 it says comment. It says the care of this patient has
3 been discussed with the accepting admitting physician
4 who agrees to immediately assume the care of the
5 patient.

6 Do you see what it says?

7 A I see it.

8 Q That would be in reference to you; correct?

9 A Sounds about right with the time stamp, yeah.

10 Q Okay. So you agreed to accept and admit the
11 patient and assume care of Matthew Scheer?

12 A That's what it says, correct.

13 Q Then it say -- the next lines say call
14 admitting physician for further orders, clarification
15 orders or change in patient's condition.

16 Do you see that?

17 A I do.

18 Q Did anyone call to tell you of a change in
19 Matthew's condition?

20 A No.

21 Q Did anyone call to tell you that Matthew had
22 become uncooperative, loud and yelling?

23 A No.

24 Q Did anyone call and tell you that he was
25 ripping off his arm band and approached the nurses

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1 desk shirtless?

2 A No.

3 Q Did anyone call and tell you that your
4 patient was desiring to leave the hospital against
5 medical advice?

6 A No.

7 Q If you had a patient who is under your care
8 Dr. Scheer -- or excuse me -- Dr. Patel, and there is
9 a concern of psychosis would you like to be informed
10 if that patient plans to leave the hospital?

11 A Well, I wasn't working at the time. So I'm
12 off duty. I'm off shift. I don't have my pager at
13 that point. So there is no way that I would know.

14 Q There is no way to contact you?

15 A Huh?

16 Q There would be no way to contact you?

17 A I mean anyone can call my cellphone if they
18 want to.

19 Q Correct.

20 A Like I said I am off duty at that time. So
21 at 1 o'clock in the morning I am typically asleep.

22 Q Okay. So you would not want to be informed
23 if your patient who is under your care is attempting to
24 leave the hospital under medical advice? You would
25 rather sleep?

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1 MR. MCKAY: Object to form.

2 THE WITNESS: Not at all. But like I said
3 I'm off duty at that time. So I would -- it
4 would be great if I could be awake 24/7, 365 days
5 a year. But unfortunately I can't do that
6 so . . .

7 BY MR. HINSON:

8 Q That's a little -- a little different than my
9 question, Doctor.

10 A Uh-huh.

11 Q If the patient who has been admitted under
12 your care --

13 A Uh-huh.

14 Q -- for concerns of psychosis is attempting to
15 leave the hospital against medical advice would you
16 like to be contacted about that even if it's at 1
17 o'clock in the morning?

18 A If I am on duty, if I am working then yes.
19 If I am off duty and not working, then that's not
20 what's typically done, no.

21 Q And you would not want to be contacted?

22 A Again I am not on duty. So that is not what
23 we normally do in this situation. The physicians that
24 are on duty are the ones that are contacted.

25 Q Okay. Doctor, that's a little different than

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1 my question. I am not asking what is typically done.

2 I am asking if you like to be contacted.

3 A If I was working in the capacity where a
4 physician is on call all the time then of course. But
5 I am working as a shift worker. I am off duty.
6 Therefore, no, physicians are not contacted when they
7 are off duty.

8 Q Okay. And you would not want to be then is
9 my question?

10 A As I said physicians are not contacted when
11 they are off duty.

12 Q What time did you go off duty on October 2,
13 2015?

14 A I don't recall exactly when I left the
15 building but our shift ends around 7.

16 Q And you told me earlier the last time you saw
17 Matthew was around 5:30?

18 A Correct.

19 Q How much time would you estimate that you
20 spent having direct patient contact with Matthew
21 Scheer?

22 A I mean I don't recall exactly but I did the
23 dictation around 5:25 or so, thereabouts, 5:20. I
24 mean I would have to estimate 30 minutes or so. I
25 don't know. I mean give or take.

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1 Q Okay. Was Matthew -- do you have any
2 independent recollection of Matthew's father David?

3 A I do not.

4 Q Doctor, earlier we looked at this assessment
5 and plan, and you read the sentence that reads we will
6 place the psychiatric consultation for Dr. Oduwole for
7 this evening as requested.

8 Do you have a belief as to when you
9 anticipated Dr. Oduwole was going to be able to do a
10 psychiatric consultation of Matthew Scheer?

11 A I don't. It could have been that evening
12 possibly. It could have been the following day at
13 some point. I don't know.

14 Q You requested it though for that evening;
15 correct?

16 A I was hoping that he could come in -- come by
17 that -- that evening after his office hours or
18 whatnot. That was my hope.

19 Q What was the purpose for asking for
20 psychiatric consultation by Dr. Oduwole?

21 A Well, my understanding was that he had gone
22 to Lighthouse to be seen by Dr. Oduwole, which I
23 understand he works there. So it made sense to see if
24 he could come by and see him while he was here since
25 he was sent back to the hospital for further medical

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1 workup. We do both things at the same time.

2 Q Do you know Dr. Oduwole?

3 A Not personally.

4 Q Did you ever at any point speak to him about
5 Matthew?

6 A No, not to my recollection.

7 Q Did you ever at any point speak to Dr.
8 Ash-Bernal about Matthew Scheer?

9 A Not to my recollection.

10 Q Initially Matthew came in through the
11 emergency room. That's the way he came to Grand --
12 was presented to the Grand Strand Regional Medical
13 Center; correct?

14 A I believe that's correct, yes.

15 Q Did you ever have a conversation with the ER
16 physician about Matthew Scheer?

17 A I don't recall exactly but there was probably
18 a phone call as -- as you can see by this one, this
19 document here on page 70. You know we don't typically
20 talk to the ER doctor when there is an admission.

21 Q Okay. And the -- it appears that the ER
22 doctor that saw him was Amanda Battisti; is that
23 correct?

24 A That's what it says here, correct.

25 Q Do you know Amanda Battisti?

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1 A Again not personally, no.

2 Q Okay. And you have no recollection of what
3 she may have told you at the time that Matthew's care
4 was transferred from her in the emergency department
5 to you?

6 A I do not.

7 Q You would anticipate she would give you the
8 pertinent information regarding Matthew's condition
9 and presentation; correct?

10 A I would assume so.

11 Q If a patient with concern for psychosis was
12 experiencing auditory and visual hallucinations you
13 would anticipate that would be part of what would be
14 relayed to you as the physician taking charge of
15 Matthew's care; correct?

16 A I would presume so.

17 Q Doctor, you are board certified in internal
18 medicine; is that correct?

19 A Yes.

20 Q As an internal medicine physician does part
21 of your training and education include training and
22 education on psychiatric matters?

23 A Yes.

24 Q Did you do a rotation through some sort of
25 psychiatric wing or facility when you were going

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1 through your residency?

2 A Yes.

3 Q Would you agree with me that mental illness
4 can be a medical condition?

5 A Well, I mean it's certainly a condition that
6 we're -- you know, we encounter but there can be a
7 medical condition that can do that, yes.

8 Q Doctor, what is epilepsy?

9 A It's a seizure disorder.

10 Q Do you agree with me it's a -- it's a
11 disorder that medical science has been studying for
12 approximately two centuries now?

13 A I am not sure exactly how long but it's been
14 a long time.

15 Q And when you say it's a seizure disorder
16 what -- what do you mean? Explain.

17 A I mean it's a pretty broad, you know,
18 diagnostic. It's -- it's a pretty broad diagnosis
19 but, you know, seizures are typically one of the
20 things that manifest with a patient with epilepsy if
21 that's what you are asking.

22 Q And seizures can be a -- can cause serious
23 harm; can they not?

24 A Yes.

25 Q And seizures can even cause death to

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1 patients?

2 A They can.

3 Q Epilepsy is a serious medical condition;
4 correct?

5 A It can be.

6 Q Seizures related to epilepsy can be deadly?

7 A They can be.

8 Q And what is Keppra?

9 A Keppra is an antiepileptic drug that -- again
10 I don't know when it was started to be but it's an
11 antiepileptic.

12 Q It helps prevent seizures and controls
13 seizures?

14 A Essentially, yes.

15 Q If a patient has epilepsy and is prescribed
16 Keppra to help control and prevent seizures can the
17 patient not taking his Keppra as prescribed
18 potentially result in the patient experiencing
19 seizures?

20 MR. MCKAY: Object to form.

21 THE WITNESS: If a patient is prescribed
22 Keppra to prevent seizures there is always the
23 possibility that if you stopped taking Keppra
24 that you could have a seizure.

25 BY MR. HINSON:

A | W | R

1 Q And if he stopped taking it he might have a
2 dangerous seizure; correct?

3 A He might.

4 Q If a patient with epilepsy does not take
5 Keppra as has been prescribed for him this could
6 potentially harm the patient; couldn't it?

7 A Again if he -- if he was prescribed to take
8 Keppra and he stops taking Keppra then he could have a
9 seizure, a breakthrough seizure and that could, you
10 know, not be good.

11 Q And it could cause harm to the patient?

12 A Correct.

13 Q Can seizures related to epilepsy cause
14 problems with psychosis?

15 A I honestly don't know for sure.

16 Q Are you familiar with the term postictal
17 psychosis, P-O-S-T-I-C-T-A-L?

18 A Postictal?

19 Q Postictal.

20 A Not -- not very familiar with it, no, but I
21 know of it, yes.

22 Q What's your understanding of it?

23 A Postictal is typically just a state where a
24 person who has had a seizure of any kind they can, you
25 know, potentially at least typically be sort of out of

A W R

1 it. You know, it's typical how we see them but that's
2 typically what that refers to, postictal.

3 Q Would you agree with this sentence postictal
4 psychosis is the phenomenon that typically occurs
5 after a period of increased seizure activities?

6 A I don't know.

7 Q Would you agree with this sentence the
8 psychosis related to postictal psychosis will usually
9 resolve spontaneously but frequently will require a
10 short-term treatment with antipsychotic medications?

11 A I don't know.

12 Q Do patients with epilepsy have a higher risk
13 of psychosis?

14 A I don't know.

15 Q Do patients with epilepsy have a higher risk
16 of suicide?

17 A I don't know.

18 Q Dr. Patel, we eat food because we need
19 nutrition; correct?

20 A I suppose so.

21 Q We all need to eat?

22 A That would be correct.

23 Q If a person refuses to eat a person could
24 become malnourished?

25 A It's a possibility.

A | W | R

1 Q Malnourishment can potentially rise to the
2 level of becoming seriously injurious to a person?

3 A I suppose over a long period of time.

4 Q There is certainly counts of malnourished
5 people suffering serious injury; aren't there?

6 A I would say so but I am not for sure.

7 Q People in prison and war camps have suffered
8 serious malnourishment; have they not?

9 A I believe they have.

10 Q And some of those people suffered serious
11 health consequences as a result?

12 A I don't know for sure but it -- you know,
13 based on pictures and things like that, yeah, I would
14 say they have.

15 Q You would agree with me that malnourishment
16 can be a potentially serious condition?

17 A It can be.

18 Q Okay. Did you see in the medical record that
19 Matthew -- it was reported that Matthew had not been
20 eating for several days?

21 A I don't know. If you could point to where
22 that is. I'm not sure.

23 Q Sure. Let's turn to page 14, Doctor. And I
24 am looking -- on page 14 under general it says eating
25 and drinking poorly.

A | W | R

1 Do you see that?

2 A I see that.

3 Q Okay. Doctor, let's turn a couple of pages
4 back, page 12. Looking under the section called
5 gastrointestinal it says anorexia.

6 Do you see that?

7 A I see that.

8 Q Okay. I am going to look up a little further
9 in the notes still on page 12.

10 A Uh-huh.

11 Q It says patient reported not eating today or
12 yesterday.

13 Do you see that?

14 A I see that.

15 Q Okay. It's not recommended for a patient to
16 not eat for two days; would you agree?

17 A No, it's not recommended.

18 Q What is anorexia?

19 A It's a condition by which -- well, it's a
20 condition by which you're not consuming food by a
21 variety of reasons possibly. But essentially, yes,
22 you are not eating.

23 Q That can potentially cause serious harm to a
24 person, anorexia; can't it?

25 A It can.

A | W | R

1 Q What are hallucinations?

2 A I mean I would describe hallucinations as
3 either auditory or visual imagery that someone is
4 experiencing that are not there.

5 Q They believe something to be present around
6 them in some form or fashion that isn't actually
7 there; correct?

8 A Yes.

9 Q Hallucinations have potential to be harmful
10 to the person if they are not in touch with reality?

11 A Well, I guess it would depend on what kind of
12 hallucinations they are.

13 Q People with hallucinations can -- sometimes
14 they can fly and jump off buildings. There has been
15 accounts of that in history; hasn't there, medical
16 history?

17 MR. MCKAY: Object to form.

18 THE WITNESS: I am not sure.

19 BY MR. HINSON:

20 Q You never heard things like that, people
21 believing they can do something and harming themselves
22 because they couldn't actually do it?

23 A I've never had any specifically myself, no.

24 Q Have you ever heard news accounts of such
25 things?

A | W | R

1 MR. MCKAY: Object to form.

2 THE WITNESS: Not that I recall.

3 BY MR. HINSON:

4 Q Would you agree that's a possibility, a
5 person with hallucinative -- hallucination disorder
6 could potentially think he or she could do something
7 they actually can't do?

8 A I suppose that's possible.

9 Q Well, if they think they can do something
10 they can't do, fly, walk on water, jump out in front
11 of a bus they could harm themselves; couldn't they?

12 MR. MCKAY: Object to form.

13 THE WITNESS: It would depend on what the
14 hallucination is.

15 BY MR. HINSON:

16 Q But they could; couldn't they, harm
17 themselves?

18 A If they are having that specific
19 hallucination, yeah.

20 Q And they might harm themselves, but the
21 person who thinks he can fly, gets to the top of a
22 building to show that he can do that, in fact can't,
23 might harm himself without actually intending to harm
24 himself; couldn't he?

25 A I am not sure but I mean if he is having

A W R

1 thoughts specifically of that.

2 Q It could cause harm?

3 A It could.

4 Q They could cause harm to somebody else;
5 couldn't they, a person with hallucinations?

6 A That I don't know. Again it would depend on
7 what the hallucination is.

8 Q It's certainly possible; isn't it?

9 A I suppose anything is possible in this world,
10 sir.

11 Q If the person who thinks he can fly jumps off
12 a three-story building and falls to his death did that
13 person -- in your mind would that be an intention to
14 commit suicide?

15 MR. MCKAY: Object to form.

16 THE WITNESS: I am not sure. But we are
17 talking about hypotheticals here or --

18 MR. HINSON: Sure.

19 THE WITNESS: I am not sure how to answer a
20 hypothetical. I don't know the answer to that
21 question.

22 BY MR. HINSON:

23 Q Suicide means you intend to cause yourself
24 harm; correct, you intend to kill yourself?

25 A I believe so, yes.

A | W | R

1 Q You accidentally run a red light and get hit
2 by a car --

3 A Uh-huh.

4 Q -- and get killed that's not suicide; is it?

5 A I don't believe that would be a suicide, no.

6 Q So suicide requires the intent to cause harm
7 to one's self?

8 A I believe so, yes.

9 Q Homicide would require intent to cause harm
10 to others?

11 A I believe so.

12 Q Does epilepsy resolve itself on its own? Can
13 people just be cured of epilepsy?

14 A I honestly don't know.

15 Q Do you know if there is a cure for epilepsy?

16 A There is treatment for epilepsy. I don't
17 know if there is a cure.

18 Q What does a suicidal ideation, what does that
19 term mean?

20 A Thoughts of harming one's self basically.

21 Q Suicidal ideation involves a specific plan to
22 harm one's self; is that correct?

23 A Sometimes or just having thoughts that you
24 might want to harm yourself.

25 Q Would you agree that people with suicidal

A | W | R

1 ideations don't always admit to having suicidal
2 ideations?

3 A I don't know.

4 Q You don't?

5 A I don't.

6 Q You can't say one way or another whether
7 everyone who has ever had suicidal ideation has
8 admitted to having a suicidal ideation?

9 MR. MCKAY: Object to form.

10 THE WITNESS: I don't have the ability to
11 read minds. If they say they are not having
12 suicidal ideations then I have to take them at
13 their word.

14 BY MR. HINSON:

15 Q So you cannot agree with this statement, a
16 person -- excuse me. Strike that.

17 You can't agree with this statement, people
18 with suicidal ideations do not always admit to having
19 suicidal ideations?

20 A I'm not sure I understand the question.

21 Q Okay. Doctor, could people with the
22 intention of harming themselves always admit to the
23 intent to harm themselves?

24 A I don't know.

25 Q You don't know?

A W R

1 A I don't.

2 Q Doctor, do people with the intent to harm
3 others always admit to having the intent to harm
4 others?

5 A I don't know.

6 Q You don't know?

7 A I don't know.

8 Q So you think it's possible that everyone with
9 the intent to harm others would admit to having the
10 intent to harm others?

11 MR. MCKAY: Object to form.

12 THE WITNESS: Again I don't know.

13 BY MR. HINSON:

14 Q You don't know?

15 A No.

16 Q Do you believe it's possible that everyone
17 with the intent to harm themselves would admit to
18 having the intent to harm themselves?

19 A I'm sorry. Say that again.

20 Q A minute ago I asked you do you agree that
21 people with the intent to harm themselves don't always
22 admit to having that intention. And you said you
23 couldn't answer that question, you didn't know?

24 A That's right.

25 Q Okay. So do you believe that people with the

A | W | R

1 intent to harm themselves if asked will always say
2 that they will harm themselves?

3 A I mean if I am asking my patient a question
4 and they say yay or nay at the former or latter again
5 like said I am not a mind reader. It's my job to take
6 a history and at the history they state no, then
7 that's what, you know, I am going to have to go on.

8 Q And then it's the state of the analysis right
9 there, they said no, or is it?

10 A Not necessarily. I may ask follow-up
11 questions but, you know, if they in those follow-up
12 questions -- and again I don't know what those
13 follow-up questions would be -- you know, if in my
14 judgment they're being honest and truthful then
15 that's -- yes, that would be a no.

16 Q So the reason you would dig further, Doctor,
17 to decide if they are being honest and truthful is
18 because people with suicidal ideations don't always
19 admit to having suicidal ideations; do they?

20 MR. MCKAY: Object to form.

21 THE WITNESS: Again I don't know. I believe
22 you asked that me that question earlier so . . .

23 BY MR. HINSON:

24 Q So you still -- you don't know?

25 A I don't know.

A | W | R

1 Q What is the difference between a CT and an
2 MRI?

3 A One has radiation. One does not, but there
4 is a lot of differences. I mean in technical aspects
5 that's -- that's one.

6 Q They're better at -- a CT is better at some
7 things than the MRI and the MRI is better at detecting
8 some things than a CT; correct?

9 A That would be true.

10 Q Which is better for detecting seizures in the
11 brain?

12 A I honestly don't know the answer to that
13 question. I would ask a neurologist or radiologist
14 that question.

15 Q If you had a concern that a patient of yours
16 might be having seizures which would you order a CT or
17 an MRI?

18 A Well, first we would usually start with a CT
19 scan. That's typically what we start with in most
20 cases so . . .

21 Q Why do you start there?

22 A Well, it's a -- it's a simpler test first of
23 all to get and it can often times give you the answer.
24 And if it's inconclusive or if you need to dig a
25 little deeper then you can get an MRI certainly.

A | W | R

1 Q Doctor, turn with me to page 12. You may
2 already be there it looks like.

3 A Yes.

4 Q This would have been part -- what we are
5 looking at on page 12 would have been part of the
6 medical record available to you at the time Matthew
7 was your patient; correct?

8 A Yes.

9 Q Okay. Doctor, I am looking at the notes here
10 about one quarter down the page. Would you read
11 that -- that note for me starting with Mr. Scheer?

12 A Mr. Scheer is a 26 year old male that has
13 epilepsy, presents to the ED complaining of paranoia
14 and hallucinations, period. Associated symptoms
15 include insomnia and anorexia due to believing that
16 all, quote, food he used to eat is contaminated now,
17 period, quote -- end quote. Patient's father reported
18 that he had an extended complex vision lasting last
19 night -- or correction -- last night lasting a couple
20 of hours, period. Patient reports hearing voices and
21 believes someone is plotting against him by poisoning
22 him, period. Patient denies suicidal or homicidal
23 thoughts, period. Patient reported not eating today
24 or yesterday, period. Patient reports not taking his
25 prescribed Keppra for the last two to three days,

A | W | R

1 period. No other symptoms at this time, period.

2 Q Okay, thank you, Doctor. And up there under
3 complaint what's -- what's listed as the complaint for
4 the patient?

5 A Paranoia and hallucinations.

6 Q All right. And under quality what's listed
7 there?

8 A Hallucinations, comma, paranoid.

9 Q Let's turn to page 13. Under psyche what's
10 it read there, Doctor?

11 A Auditory hallucinations, comma, visual
12 hallucinations, comma, insomnia, period. Denies,
13 colon, depression, suicidal ideation, comma, homicidal
14 ideation, period.

15 Q Okay. And under additional notes can you
16 read that part?

17 A Reports paranoid thoughts that are others --
18 that others are against him and thought that his food
19 is being poisoned, period.

20 Q Would you agree with me that the time that
21 Matthew Scheer was at Grand Strand Regional Medical
22 Center he was having hallucinations?

23 MR. MCKAY: Object to form.

24 THE WITNESS: He was not having those when I
25 was evaluating him.

A | W | R

1 BY MR. HINSON:

2 Q He had a history of recently having
3 hallucinations at the time you saw him; correct?

4 A The medical record seems to reflect that he
5 was at some point.

6 Q Okay. The medical record reflects a young
7 man who is having both auditory and visual
8 hallucinations; correct?

9 A That's what it seems to state here.

10 Q Do you disagree with it for any reason?

11 A No.

12 Q Earlier we read a note from Nurse Bell that
13 read patient was yelling at nursing staff stating they
14 were all devil worshipers.

15 Do you recall that?

16 A I do.

17 Q All right. To your knowledge are the staff
18 at Grand Strand Regional Medical Center devil
19 worshipers, Dr. Patel?

20 A Not to my knowledge.

21 Q Does that sound like a man who has a good
22 grasp on reality?

23 MR. MCKAY: Object to form.

24 BY MR. HINSON:

25 Q To you?

A | W | R

1 A At that time I would probably say no.

2 Q Can seizures impact brain activity in a
3 negative way?

4 A It's a pretty broad question but it's -- it's
5 a neurological condition. So can it impact brain
6 activity. Of course.

7 Q Could a seizure disorder cause one to
8 experience psychosis?

9 A I don't know.

10 Q Are you familiar with a book Harrison's
11 Principles of Internal Medicine?

12 A I am familiar with it.

13 Q Is it a book you used in medical school?

14 A We -- that's one of the many textbooks that
15 we used in medical school.

16 Q Do you have a copy of this book in some form?

17 A I may -- I may have at some point. I don't
18 know if I still have it at this point but I probably
19 do.

20 Q Where would you have it if you did have it?

21 A At home in a box somewhere.

22 Q Is it generally considered a reliable source
23 of information in the field of internal medicine?

24 A It's fairly reliable, certainly not
25 authoritative but it's reliable.

A | W | R

1 Q If Matthew had had a series of epileptic
2 seizures do you believe it's possible that could have
3 caused postictal psychosis?

4 A Again I don't know my -- the medical records
5 from and the documentation that I have I don't recall
6 that being there. So I don't know.

7 Q But you don't know whether or not Matthew had
8 had seizures a couple days earlier?

9 A I don't know.

10 Q Do you know if Matthew ever received the
11 Keppra that you ordered for him?

12 A I mean upon my review of the records I
13 believe he refused it when it was offered.

14 Q Okay. The purpose of the Keppra was to
15 prevent seizures; correct?

16 A That's the -- I believe that's what he was
17 prescribed it for, yes.

18 Q And seizures can be potentially harmful to a
19 patient; correct?

20 A They can be.

21 Q Seizures, epileptic seizures can even be
22 deadly; can they not?

23 A They can be.

24 Q By refusing his Keppra Matthew was putting
25 himself in harm's way; wasn't it?

A | W | R

1 MR. MCKAY: Object to form.

2 THE WITNESS: That I don't know but a patient
3 has a right to refuse a medication.

4 BY MR. HINSON:

5 Q By refusing the Keppra Matthew was putting
6 himself at risk of seizures?

7 A It's a possibility he could have a
8 breakthrough seizure if one does not take their
9 medications.

10 Q And so that would be a yes to my question;
11 right?

12 A I believe so.

13 Q So by refusing his Keppra Matthew was putting
14 himself at risk of serious harm?

15 MR. MCKAY: Object to form.

16 THE WITNESS: Again a patient has a right to
17 refuse their medications, but there is a
18 possibility that if you don't take your
19 medications you could have an event. It's also
20 possible that you may never have an event. I
21 don't know.

22 BY MR. HINSON:

23 Q By refusing his Keppra Matthew was putting
24 himself at the risk of a seizure and the risk of
25 serious harm?

A | W | R

1 A It's possible.

2 Q That's a yes?

3 A It's possible.

4 Q Why is it only possible? Why is it not true
5 that he was putting himself at the risk?

6 A Because like I said he may never have another
7 seizure again. I have no idea.

8 Q Well, that's part of what the word risk
9 means, is you have the possibility of having that
10 occur?

11 MR. MCKAY: Object.

12 THE WITNESS: I believe I said it's possible.

13 BY MR. HINSON:

14 Q So by refusing Keppra Matthew was putting
15 himself at risk? I am not asking whether he was
16 guaranteed to have a seizure. Listen to my question.

17 A Uh-huh.

18 Q By refusing Keppra Matthew was putting
19 himself at risk of seizure?

20 A At risk of having a seizure, yes, it's
21 possible.

22 Q And by refusing Keppra Matthew was putting
23 himself at risk of serious harm?

24 A Yes.

25 Q What was the purpose of the Ativan?

A W R

1 A The PRN Ativan?

2 Q Yes.

3 A Ativan is a sedative. So it's a medication
4 that we -- can be used to, you know, sedate a patient.

5 Q Did you see had any evidence there was an
6 effort made to administer Ativan to Matthew?

7 A I don't know. I mean I wasn't there. So I
8 don't know.

9 Q Did you see any evidence in the medical
10 records that there was an effort made to --

11 A I don't recall now.

12 Q Let me finish my question, Doctor, just for
13 the purpose of the record.

14 A Uh-huh.

15 Q Do you see any evidence in the record there
16 was an attempt made to administer Ativan to Matthew by
17 the staff at Grand Strand Regional Medical Center?

18 A I don't recall seeing that.

19 Q Doctor, if we called up the hospital right
20 now and I wanted to know if my mother was a patient at
21 Grand Strand Regional Medical Center would they tell
22 me whether or not she was present in the hospital?

23 A I mean there is rules in terms of giving out
24 patient information. So I don't know if you identify
25 yourself or prove that you are who you say you are,

A | W | R

1 that sort of thing.

2 Q But you would anticipate or maybe you
3 wouldn't. I am not sure. If I called up the hospital
4 and I said is a certain name present in the hospital
5 right now whether they would answer that question or
6 not?

7 A I don't believe they would, no.

8 Q Okay. So you don't believe that the person's
9 presence or absence in a health care facility is
10 information that can be disclosed?

11 A I am not sure exactly but I am pretty sure
12 no, but I am not sure.

13 Q Okay. What is HIPAA, Doctor?

14 A I believe it stands for health information
15 protection and privacy act. More than that I am not
16 sure exactly, but it helps protect, you know,
17 privileged patient information, that type of thing.

18 Q And in your training as a physician have you
19 received some training as to the rules and regulations
20 related to HIPAA?

21 A Yes.

22 Q And is it my understanding that you believe
23 that HIPAA would be -- would prevent the health care
24 facility from stating whether or not a person was
25 present or absent in the facility?

A | W | R

1 A I believe so.

2 Q So if my mother gets in a car wreck in
3 Columbia --

4 A Uh-huh.

5 Q -- do I have to drive -- how do I find out if
6 she is there? What do I do?

7 A I believe you would call the hospital. I am
8 assuming in this hypothetical scenario someone told
9 me -- someone told you that something happened. And I
10 believe you would have to identify yourself or --
11 again I don't know exactly, but I am sure there is a
12 policy or procedure in terms of how you are supposed
13 to find out that information.

14 Q Do I have to drive around to every hospital?

15 MR. MCKAY: Object to form.

16 BY MR. HINSON:

17 Q Look from room to room?

18 A I honestly don't know.

19 Q People can designate someone to share their
20 health care information with; correct?

21 A Correct.

22 Q Often times when someone goes to a doctor
23 that's one of the -- and filling out paperwork that's
24 part of -- part of what they fill out, who can -- who
25 can access my information?

A | W | R

1 A That's correct.

2 Q People often times put their spouse in there;
3 don't they?

4 A Correct.

5 Q Did you see in this record that Matthew had
6 listed his father as a person to notify?

7 A No, I did not see that personally.

8 Q All right. Doctor, look on page 10.

9 A Okay.

10 Q Do you see where it says person to notify the
11 first person listed is Scheer, comma, David?

12 A Correct.

13 Q Then there is a phone number underneath that;
14 is there not?

15 A Correct.

16 Q Doctor, look again on page 52. So first of
17 all let's look at page 10. That was the initial
18 admission at 10 a.m.?

19 A That's the face sheet, correct.

20 Q Okay. Then let's look on page 52.

21 A Okay.

22 Q That's the admission later that day at 1719.
23 Do you see the admit time there up at the
24 top?

25 A Yes, I see that.

A | W | R

1 Q Okay. Who is the person to notify listed as?

2 A David Scheer.

3 Q Is there a phone number provided?

4 A Yes.

5 Q If there was a change in the patient's
6 condition Matthew having filled this out as David
7 being the person to notify this would allow a health
8 care provider to contact David; would it not?

9 MR. JOHNSON: I am going to object to the
10 form of the question.

11 THE WITNESS: It can, yes.

12 BY MR. HINSON:

13 Q The -- I can't march down to the hospital
14 today and ask for a copy of somebody else's medical
15 records unless they have given a HIPAA release for me;
16 can I?

17 A I believe that's correct, yes.

18 Q So if David Scheer was provided a copy of
19 Matthew's medical records in April of 2016 that would
20 presumably be because David (sic) had given Matthew
21 (sic) some sort of HIPPA release to see his medical
22 information?

23 A I would presume so.

24 Q You would not anticipate that Grand Strand
25 Regional Medical Center would allow a person's medical

A | W | R

1 record to be provided without either a HIPAA release
2 or some sort of court order; would you?

3 A I would -- yeah, I would believe so. Yeah.

4 Q Do you agree that where a patient is
5 incapacitated a health care provider may share the
6 patient's information to family, friends and others
7 involved in the patient's care so long as the health
8 care provider determines based on professional
9 judgment in doing so it's the best interest of the
10 patient?

11 A I believe so, yes.

12 Q Do you believe that a patient's medical
13 information may be -- may be shared if the patient has
14 experienced temporary psychosis and does not have the
15 capacity to agree or object to the health care sharing
16 this information with the family member and the health
17 care providers believes that the disclosure is in the
18 patient's best interest?

19 MR. MCKAY: Object to form.

20 THE WITNESS: I'm -- I'm not sure honestly.

21 You are reading from something. So I am going to
22 presume that's a part of some policy or bylaw.

23 BY MR. HINSON:

24 Q You would agree with me that HIPAA is not
25 intended to trump patient care and patient safety?

A | W | R

1 MR. MCKAY: Object to form.

2 THE WITNESS: I don't know honestly.

3 BY MR. HINSON:

4 Q Dr. Patel, have you ever involuntarily
5 admitted a patient to the hospital for mental illness?

6 A Uh-huh. Yes.

7 Q Tell me is that something you've had the
8 occasion to do one time? A handful of times? How
9 often does that occur?

10 A And then myself I have not committed a
11 patient, you know, too frequently but we admit
12 patients that are involuntarily committed. When you
13 say frequently, I am not sure I can give you an exact
14 number but, you know, it -- couple times a month
15 maybe. I am not sure.

16 Q And you can involuntarily admit them against
17 their will?

18 A Yes.

19 Q And there is a process in place at Grand
20 Strand Medical Center for that to occur; correct?

21 A Yes.

22 Q Tell me what that process is.

23 A Well, typically there is some paperwork that
24 needs to be filled out, involuntary -- involuntary
25 commitment papers. And I believe at some point it has

A | W | R

1 to be notarized, signed off on by other personnel.
2 But from my perspective, you know, it's what we feel
3 the reason or medical reason for that. And I believe
4 it's for a period of three days or thereabouts. I
5 don't know exactly but . . .

6 Q Where would you go get this form in the
7 hospital? Where is it kept?

8 A It's a couple of places. There is a drawer
9 in the ED that can be kept, and I think it's present
10 on some of the floors. But I mean it's kept in at
11 least one of those two places.

12 Q Okay.

13 A I don't know exactly what drawer.

14 Q In your ability to involuntarily commit a
15 mental patient in such a situation it's not dependent
16 upon the reason the patient initially came to the
17 hospital; is it?

18 A No. It's typically based upon, you know, at
19 the time that you assess the patient what you feel
20 is -- needs to be done.

21 Q The patient could come to the hospital for a
22 car wreck, but if you think the patient is mentally
23 ill and unable to care for themselves and might cause
24 harm to themselves or others you have the ability to
25 keep them; correct?

A | W | R

1 A I suppose so, yes.

2 Q Okay. And I'll show you what we will mark as
3 Exhibit 2.

4 A Okay.

5 MR. HINSON: Let her mark that real quick.

6 Sorry.

7 (PLF. EXH. 2, Involuntary Commitment Papers,
8 was marked for identification.)

9 BY MR. HINSON:

10 Q Doctor, can you identify what we marked as
11 Exhibit 2?

12 A These are the involuntarily -- involuntary
13 commitment papers.

14 Q And this is the paperwork we were -- you were
15 speaking of earlier; correct?

16 A Yes.

17 Q You have on occasion filled out this
18 paperwork; correct?

19 A On a rare occasion, yes.

20 Q Okay. And you did so because the person in
21 that situation was mentally ill and you believed that
22 person had the potential to cause serious harm to
23 himself or others?

24 A I don't recall the exact circumstances in
25 which I did.

A | W | R

1 Q That's the general reason though; correct?

2 A Correct.

3 Q And when you did that the patient was able to
4 be contained in the hospital for a period of time
5 without any sort of court order or anything like that;
6 correct?

7 A That's the purpose of the involuntary
8 commitment.

9 Q All right, Doctor, let's turn --

10 A Do you still need this?

11 Q You can just keep that in front of you,
12 Doctor. I don't need it at the moment.

13 Let's turn to your note, Dr. Patel, your
14 discharge summary in this case. Looking at Exhibit 1,
15 page 54.

16 A Okay.

17 Q And I am looking where it says he was not
18 here under involuntarily commitment. He was admitted
19 under voluntary psychiatric evaluation and therefore
20 he cannot be kept here against his will.

21 Do you see that part?

22 A I do.

23 Q Okay. He can be kept against his will
24 regardless of the fact that he was admitted under
25 voluntarily psychiatric evaluation; can he not?

A | W | R

1 A If something occurred that requires that,
2 yes.

3 Q Okay. It goes on to say he was advised --
4 well, let me read the next sentence.

5 A Uh-huh.

6 Q The patient request to leave against medical
7 advice. He was advised that this could be potentially
8 dangerous and he could potentially become ill either
9 from infection, seizures or the result of a
10 psychiatric illness but he still insisted on leaving.

11 Do you see that?

12 A I see that.

13 Q Did you write that note?

14 A This is a dictation.

15 Q Okay. You dictated this note?

16 A I dictated this note.

17 Q Okay. You weren't actually present for when
18 this occurred; were you?

19 A No.

20 Q So you actually don't have any independent
21 knowledge of how this transpired with Matthew desiring
22 to leave Grand Strand Regional Medical Center?

23 A Independent knowledge, no. I have to go
24 based on whatever is documented and try to formulate a
25 summary.

A | W | R

1 Q At any point in your summary do you indicate
2 that you were not present when Matthew left?

3 A I honestly don't know but seeing how I was
4 not working that -- that night I was clearly not
5 present.

6 Q Okay. You wouldn't have been able to answer
7 questions for Matthew at the time he left; would you?

8 A No, because I was not present.

9 Q Okay. The note goes on to say the patient
10 left against medical advice later that night. All
11 questions were answered to the best of my ability.

12 A Correct.

13 Q Did you see that?

14 A I do.

15 Q What questions did you answer at the time
16 Matthew left to the best of your ability?

17 A I didn't answer any questions at -- at the
18 actual time that he left. It's a general statement
19 that I typically put at dictations. When I admit a
20 patient or discharge a patient we talk. They have
21 questions and I answer questions. It's referring to a
22 general summary of questions that were answered.

23 Q So you didn't answer any questions to the
24 best of your ability at the time Matthew was
25 attempting to leave Grand Strand Medical Center?

A | W | R

1 A I answered all the questions to the best of
2 my ability when I evaluated the patient, and questions
3 that were asked were answered to the best of my
4 ability when I evaluated the patient.

5 Q What questions did he ask?

6 A I don't recall.

7 Q What did you base this note on, Doctor?

8 A I based it on my HMP, the labs that I saw,
9 any other documentation that I could find in the chart
10 just try to an summarize, you know, the clinical
11 course basically.

12 Q Did you ever have a conversation with Dr.
13 Rachel Ash-Bernal about Matthew?

14 A No.

15 Q So you based this discharge note entirely off
16 of looking at other notes written in the chart?

17 A Correct.

18 Q So you personally have no knowledge of any
19 discussion with Matthew at the time he wanted to leave
20 about how he could, quote -- well, about how he was
21 advised that this could be potentially dangerous, that
22 he could potentially become ill either from
23 infections, seizures or the result of psychiatric
24 illness?

25 A But based on the notes that were in the chart

A | W | R

1 another physician did. So I had to summarize that and
2 that's what that reflects.

3 Q It reads exactly as Dr. Ash-Bernal said it,
4 Doctor?

5 A I don't know.

6 Q Do you have the ability to copy and paste
7 when you are working within the medical record?

8 A Currently we do, but as I said this is a
9 dictation. So you can't copy and paste a dictation.

10 Q When did you learn Matthew left the hospital
11 against medical advice?

12 A I believe it was sometime when I came back to
13 work the next morning.

14 Q What were you told?

15 A I don't remember.

16 Q Did you ever speak with the police about
17 Matthew?

18 A I don't recall I did, no.

19 Q Doctor, I don't want to ask about the
20 substance of any discussions during the -- any sort of
21 committee, but was there ever any sort of committee
22 that you were a part of or asked to speak to regarding
23 Matthew Scheer?

24 A Not to my recollection, no.

25 Q Did anyone from the hospital's -- again I

A W R

1 don't want to know the substance, Doctor, but did
2 anyone from the hospital's risk management team ever
3 speak to you about Matthew Scheer following Matthew's
4 discharge against medical advice?

5 MR. JOHNSON: Objection; privilege.

6 THE WITNESS: Not to my recollection. Not to
7 my recollection.

8 BY MR. HINSON:

9 Q Doctor, have you had the opportunity to look
10 over some police reports with regard to Matthew
11 Scheer?

12 A I believe I saw something in -- in one of the
13 records. There was a -- a police report of some kind.
14 I can't recall.

15 Q Is it your understanding that the courts of
16 South Carolina have declared Matthew Scheer to have
17 died on October 3, 2015?

18 A I can't say for sure but to my understanding
19 that's -- that's what they declared.

20 Q Do you have any reason sitting here today
21 that Matthew Scheer is still alive?

22 A I have no way to know for sure but that's
23 what the -- or that's what the legal document says
24 so . . .

25 Q You have no -- no basis to believe otherwise;

A | W | R

1 do you?

2 A I don't.

3 Q Okay. Doctor, Matthew Scheer as we have
4 looked at the record reflects that he had been having
5 auditory and visual hallucinations; correct?

6 A I believe that's what the record reflects.

7 Q He was a young man with epilepsy; correct?

8 A A history of, correct.

9 Q He was a young man with a history of epilepsy
10 who was reported had not been taking his Keppra?

11 A I believe that's what it reflects, yes.

12 Q And the record reflects he was not -- did not
13 take or was ingesting Keppra during the time he was at
14 Grand Strand Regional Medical Center; correct?

15 A Not to my knowledge, no.

16 Q The record reflects that he at some point in
17 the early hours of October 3rd became loud, disruptive
18 and shouting that the staff were devil worshipers;
19 correct?

20 A Correct.

21 Q The report reflects he was shouting that
22 Obama was Satan; correct?

23 A I believe there is something that says
24 something, words to that effect.

25 Q The record reflects he hasn't eaten in

A | W | R

1 several days; correct?

2 A It's reported that he hadn't eaten in several
3 days.

4 Q The term anorexia is even used in this
5 record; correct, Doctor?

6 A I see that.

7 Q Had you been present at the time Matthew
8 wanted to leave, you, Dr. Patel, do you believe you
9 would have had the authority, the ability to fill out
10 an application for involuntary emergency
11 hospitalization for mental illness to keep Matthew
12 there for a little bit longer?

13 MR. MCKAY: Object to form.

14 THE WITNESS: I had the ability and the
15 authority to do it. I mean I was not there. So
16 I don't know exactly what transpired but we all
17 have that ability, yes.

18 BY MR. HINSON:

19 Q Do you believe that Matthew's condition as
20 reflected in the record as you understand it could
21 justify keeping him there involuntarily?

22 MR. MCKAY: Object to the form.

23 THE WITNESS: I would like to see the patient
24 myself and assess the patient myself, talk and
25 examine him and then I would know for sure. So I

A | W | R

1 can't say absolutely if that is what I would have
2 done.

3 BY MR. HINSON:

4 Q More likely than not, Doctor, what do you
5 think you would have done from the record we have to
6 look at today?

7 MR. MCKAY: Object to form.

8 THE WITNESS: Again, like I said I don't
9 know. I would have to assess the patient like I
10 do for all of my patients and talk to them,
11 examine them and then I would be able to make
12 that determination.

13 BY MR. HINSON:

14 Q Well, we can't do that, Doctor. We don't
15 have the ability to go back in time. So best we can
16 do is look at the records we have.

17 A That's correct.

18 Q Based off of what you know what do you think
19 you would have done had you been there?

20 MR. MCKAY: Object to form.

21 THE WITNESS: Again like I said I don't know.
22 I would have to be there and I would have to see
23 the patient myself. Sometimes what you see in
24 the record based on what you experience
25 personally and how your assessment is can differ.

A | W | R

1 So I can't say for sure. I would have to see the
2 patient.

3 BY MR. HINSON:

4 Q You keep saying I can't say for sure.
5 What do you think you would have done more
6 likely than not?

7 MR. MCKAY: Object to form.

8 THE WITNESS: Again I can't say for sure.

9 BY MR. HINSON:

10 Q I am not asking you to say for sure. More
11 likely than not, Doctor, what do you think you would
12 have done?

13 MR. MCKAY: Object to form.

14 THE WITNESS: I don't think I can answer that
15 question without assessing the patient.

16 BY MR. HINSON:

17 Q Doctor, I assume correctly that you won't
18 come to trial in this case and say -- testify to the
19 effect of had you been there you too would have let
20 him walk out the door?

21 MR. MCKAY: Object to form.

22 BY MR. HINSON:

23 Q Because you can't say either way because you
24 weren't there?

25 A Again like I said I would have to be there to

A | W | R

1 assess the patient, and then I would have to make the
2 determination whether or not I would have been able to
3 let him leave or I would have, you know, had to make
4 him stay.

5 Q So you can't testify one way or another what
6 you would have done had you been present?

7 A I can't testify one way or another.

8 Q Okay. We looked earlier in the record,
9 Doctor, that David Scheer's contact information had
10 been provided on two occasions when Matthew came to
11 Grand Strand Regional Medical Center.

12 Do you recall that?

13 A I do.

14 Q If you had a patient who was looking to leave
15 against medical advice and you had concern that they
16 may become ill from infections, seizures or the result
17 of a psychiatric illness is one of the things you
18 might consider if you had the person's close family
19 members contact information calling up that individual
20 and just say hey, I just want to let you know this
21 patient is looking to leave against medical advice?

22 A Only if they had been given explicit
23 permission for us to do so.

24 Q Why do you need explicit permission?

25 A Well, like I said that's part of the rules.

A | W | R

1 You have to get permission to do that unless, you
2 know, you feel like you said they are incapacitated,
3 in a coma or on a ventilator or something like that or
4 many other examples so . . .

5 Q What if a person --

6 A And of course that can be withdrawn at any
7 time as I understand it so . . .

8 Q What if the person is experiencing psychosis
9 and you believe it's in the best interest to contact
10 the family member, does HIPAA still prevent that?

11 MR. MCKAY: Object to form.

12 THE WITNESS: I'm not sure. That would be up
13 to, you know, whoever is there at the time to
14 make that determination.

15 BY MR. HINSON:

16 Q Assume with me for a second that the federal
17 code allows such a disclosure, meaning allows a
18 physician to contact a family member about a patient's
19 desire to leave the hospital, a patient experiencing
20 acute psychosis.

21 A Presuming HIPPA doesn't exist?

22 Q Presuming HIPAA allows it.

23 A Okay.

24 Q Do you agree with me that would be a
25 reasonable step that could be taken?

A | W | R

1 MR. MCKAY: Object to form.

2 THE WITNESS: I mean I believe you asked that
3 question when you were reading it; correct?

4 Like I said that's up to the people that are
5 there, that are evaluating the patient. If they
6 feel like that's a condition that exists then
7 that's up to them to decide that.

8 BY MR. HINSON:

9 Q If you wanted to learn more about what HIPAA
10 does or doesn't allow what would you do?

11 MR. MCKAY: Object to form.

12 THE WITNESS: I suppose there are a lot of
13 resources that you could go to to look it up,
14 both in the hospital or just simply searching for
15 it.

16 BY MR. HINSON:

17 Q Do you ever have the occasion to go to
18 continuing education events about the dos and do not's
19 of HIPPA?

20 A We usually do, correct.

21 Q The hospital on occasion provides those --

22 A The hospital, employers, a variety of places,
23 yes. There are usually updates and that sort of
24 thing.

25 Q If David Scheer was allowed to have Matthew's

A | W | R

1 records some weeks after -- some months after
2 Matthew's death --

3 A Uh-huh.

4 Q -- you would presume that was because he had
5 been given permission to receive Matthew's health
6 information?

7 A I would presume so.

8 Q Why did you not check on Matthew again before
9 you left the hospital again, or why did you not check
10 on Matthew again before you left the hospital on
11 October 2, 2015?

12 A Well, per the record and my documentation I
13 have a patient who is in no acute distress, appears to
14 be medically and then stable and there is no reason
15 for me to go and check on him 30 minutes, 40 minutes
16 after I had just seen him and talked to him and
17 presumably his father who I believe was in the room.

18 Q You saw Matthew --

19 A That one time.

20 Q -- one occasion only?

21 A Correct.

22 Q And at the time you left you didn't know one
23 way or another if the Keppra had actually been
24 provided to him and he had taken it; did you?

25 A Oh, no, but I believe that it's a nightly

A | W | R

1 bedtime timeframe medication. So 5:30 is not when it
2 would normally have been given so -- I believe.

3 Q But he hadn't had his prescribed Keppra for
4 several days; had he?

5 A I believe that's correct, yes.

6 Q Why not give it to him right away?

7 A You can do that or you can just schedule it
8 and give it at the normal prescribed time. If he
9 takes it at night, bedtime with dinner that's fine.
10 Typically, you know, it might have been given with a
11 meal in some cases, but that can be given right away
12 or within a reasonable amount of time.

13 Q Does Keppra have to be taken with food?

14 A I can't recall. I'd have to look that up but
15 I'm not sure.

16 Q You did not prescribe any antipsychotic
17 medication for Matthew; correct?

18 A I don't believe I did, no.

19 Q Did you consider that?

20 A Well, at the time that I was talking to him,
21 you know, one of the things that we were processing
22 and dealing with as you mentioned was his non-medical
23 issues. So it certainly crossed my mind and I believe
24 in my dictation I talked about maybe ordering
25 something as needed.

A | W | R

1 But again, you know, you -- something you are
2 thinking about. You may not want to order after you
3 think about it some more or you might change your mind
4 or you might want to give it later. A variety of
5 reasons exist.

6 Q But an order for any sort of antipsychotic
7 medications was never made; was it?

8 A I'm sorry. Say that again.

9 Q There was no order ever made for any
10 antipsychotic drugs; correct?

11 A I don't recall reading anything in the orders
12 for that.

13 Q It wasn't even ordered as needed; correct?

14 A To my knowledge no.

15 Q You said you did not at any point speak with
16 Dr. Oduwole with regard to Matthew; correct?

17 A No, I did not speak with him.

18 Q So at the time you left the hospital October
19 2, 2015 you did not know if Dr. Oduwole was in route
20 to the hospital to see Matthew or hours away from
21 being able to see Matthew; did you?

22 A I don't know that. I wouldn't know that.

23 Q Sorry?

24 A I wouldn't know that, no.

25 Q So you wouldn't know -- at the time you left

A | W | R

1 the hospital you didn't know --

2 A Uh-huh.

3 Q -- when that psychiatric consult would take
4 place?

5 A Well, as I said earlier I think, you know, we
6 typically place them. And usually within 24 to 48
7 hours, you know, they evaluate their patient unless he
8 is out of town or something like that.

9 Q There is different ways to order a
10 consultation; correct? For instance, if you need a
11 consultation with a trauma surgeon you can order a
12 stat consultation or an emergency consultation;
13 correct?

14 A That's right.

15 Q Could you order an emergency psychiatric
16 consultation? Is that possible?

17 A Not at that time, no.

18 Q Why not at that time?

19 A I am not sure if we even have that capability
20 now. We are not a psychiatric facility. We don't
21 have an inhouse psychiatrist. So I don't think I can
22 get a stat psychiatric consult. That's why we sent
23 him to Lighthouse for evaluation and treatment.

24 Q You weren't involved in any way in sending
25 him to Lighthouse though; correct?

A W R

1 A No.

2 Q Do you believe that Matthew should have been
3 sent back from Lighthouse?

4 A Well, my understanding is that he was there
5 to be evaluated, and I came into the picture because
6 they had some questions about additional, you know,
7 medical concerns. He had been sent to Lighthouse
8 after presumably being medically cleared already. So
9 it's curious, but if that's -- they requested further
10 medical workup then we can try and do that.

11 Q You are not critical sitting here of
12 Lighthouse's decision to send Matthew back to the
13 hospital for medical concerns?

14 A Well, if they felt like there was something
15 that they wanted checked out first or further we'll
16 try and, you know, oblige and help out and see what
17 their concerns are.

18 Q And you are not critical of those concerns,
19 of them having those concerns?

20 A No. No. Not of those concerns, no.

21 Q Is it your understanding that the concerns
22 were principally an elevated white count of 14.4 and
23 an elevated total bilirubin of 5.5?

24 A That's right. To my understanding, yeah. I
25 am not sure about the bilirubin. I think they

A | W | R

1 mentioned the white count.

2 Q The white count could be a sign of infection;
3 correct?

4 A Could be a sign of infection. Could be a
5 sign of a hundred other things but, yeah, that's one
6 of the things it could be.

7 Q Of the main things that an elevated white
8 count could be a sign of extreme stress and anxiety is
9 one of them; correct?

10 A Stress and anxiety can cause a little bit of
11 a bump in the white count, which this is
12 approximately, yeah.

13 Q So it's possible that Matthew's elevated
14 white count was the result of stress and anxiety?
15 That's a possibility?

16 A It's a possibility, yes.

17 Q Do you believe it was a -- sitting here today
18 do you have any reason to believe it was anything
19 else? Is there something else that you believe is
20 more likely?

21 A Dehydration is usually a more common cause.

22 THE REPORTER: I'm sorry. What was?

23 THE WITNESS: Dehydration. That's a
24 possibility as well.

25 BY MR. HINSON:

A | W | R

1 Q So the combination of dehydration and stress?

2 A I suppose anything is possible.

3 Q And total bilirubin of -- elevated to 5.5
4 could that be a result of malnourishment and
5 dehydration?

6 A To my knowledge no.

7 Q What do you think was the -- caused the
8 bilirubin to be --

9 A Well, I don't have anything else to compare
10 it to. So it's an isolated reading. I am not even
11 sure if it was right or not. So you would first
12 probably repeat it to see if it was truly elevated or
13 not either in a short period of time. But, you know,
14 you can work that up and either as an inpatient or as
15 an outpatient to see, you know, what could possibly be
16 causing it.

17 Q So Matthew comes back from Grand Strand --
18 excuse me -- from Lighthouse, comes back to Grand
19 Strand. They said we won't admit him, we have
20 concerns about his white blood cell count.

21 A Okay.

22 Q Is that pretty much your understanding of
23 what occurred?

24 A Yes --

25 Q Is that a fair synopsis?

A | W | R

1 A -- that seems reasonable.

2 Q Could Grand Strand have responded back he is
3 medically cleared --

4 A Uh-huh.

5 Q -- we think the white blood cell is not
6 indicative of infections, it's more related to his
7 stress and failure to be properly hydrated and send
8 him back to Lighthouse? Was that -- that an option?

9 A I think you would have to be seen by somebody
10 first before you can just arbitrarily say that.

11 Q Seen by somebody where?

12 A In the -- like in the ED, for example, I
13 think. I don't know but I don't -- I don't think they
14 can just refuse that.

15 Q Couldn't you have done that?

16 A I am not an ED physician. I don't know.

17 Q But once you became the admitting physician
18 at Grand Strand couldn't you have sent him back to
19 Lighthouse?

20 A Well, I mean if they want -- if they had
21 concerns like you said about the white count being
22 elevated, you know, there is some additional tests
23 that I could run to see if there is something that
24 we -- you know, that needs to be further worked up.
25 And they are not complicated tests. They are simple

A | W | R

1 tests. You know, repeat some blood tests, possibly
2 get some imaging which we did. So I didn't think it
3 unreasonable to at least, you know, look into that if
4 they were concerned about it.

5 Q So that's your plan at the time, do some more
6 tests and then send him back to Lighthouse?

7 A Initially, yeah. I mean I would probably run
8 some more tests and then see what came of those. If
9 there was something concerning that we needed to check
10 out further then we could pursue that. If not the
11 presumption was eventually he was going to go back to
12 Lighthouse, yes.

13 Q What measures can be taken to deescalate a
14 rowdy patient, a rowdy and disruptive patient?

15 A Well, first and foremost talk to them. Often
16 times that's the simplest and most helpful.

17 Q Are there steps after that?

18 A Of course.

19 Q What are they?

20 A I mean there is medication that you can give
21 them if you need to. You can help guide them back
22 their leaving the room or if they are yelling. Again
23 just try to deescalate the situation by speaking to
24 them and trying to talk to them and find out what's --
25 what's the problem.

A | W | R

1 Q Are there folks at the hospital you can
2 involve?

3 A I'm sorry. In terms of what?

4 Q Are there other folks in the hospital you can
5 involve? Is there some sort of chain of command you
6 can get the hospital -- if you have a rowdy patient
7 what else can you do?

8 A Well, you can call security.

9 Q Is there a policy or protocol on how that's
10 done?

11 A I don't know.

12 Q Do you know Bethany Bell?

13 A I do not.

14 Q Do you know Jacqueline Freeman?

15 A Not personally.

16 Q Do you know her professionally?

17 A She is a nurse that works at the hospital.

18 Q Okay. Have you ever spoken with Jacqueline
19 Freeman about Matthew Scheer?

20 A I have not.

21 Q How about Theresa Adams, do you know her?

22 A Not personally. I know her.

23 Q Who is she?

24 A I believe she is a I want to say nursing
25 supervisor I think. I don't know.

A | W | R

1 Q Have you ever spoken to her about Matthew
2 Scheer in any capacity?

3 A No, I have not.

4 Q Doctor, turn with me to page 85 of Exhibit 1
5 in front of you if you would.

6 A Okay.

7 Q Could you identify what this document is?

8 A This looks like the AMA form.

9 Q The against medical advice form; correct?

10 A Correct.

11 Q Okay. And it shows that some of the risks
12 that Matthew was accepting was death and seizures.

13 Do you see that?

14 A I see that.

15 Q Some of the things he refused included
16 Keppra; correct?

17 A Correct.

18 Q And look lower down. It says all
19 medications; correct?

20 A Okay.

21 Q Do you see that?

22 A Right.

23 Q Looking at the bottom here it says I
24 acknowledge and I understand that my refusal for
25 further recommended examination and/or treatment or my

A W R

1 refusal to consent to recommended examination slash
2 treatment by the emergency physician and/or
3 specialists may result in injury to me including death
4 or severe permanent disability or deformity as
5 otherwise specified below. Then it says seizures,
6 psychosis and infection.

7 Do you see that?

8 A I see that.

9 Q One of the things that Matthew was
10 potentially suffering from was an acute psychotic
11 event; correct?

12 A It's one of the things that he was being
13 evaluated for.

14 Q And it's reflected, that is in the record,
15 that he had been having auditory and visual
16 hallucinations; correct?

17 A I believe that's reflected in the medical
18 record.

19 Q Okay, Doctor, how did a patient who is having
20 an acute psychotic event, auditory and visual
21 hallucinations properly comprehend -- comprehend and
22 understand the risks that he is accepting?

23 A I don't know. I wasn't present when this
24 form was filled out so . . .

25 Q Do you agree with me that that poses a

A | W | R

1 problem of explaining a risk of psychosis to a person
2 who is experiencing psychosis?

3 MR. MCKAY: Object to form.

4 THE WITNESS: Again I would have see how the
5 patient is when -- when you're actually
6 evaluating the patient to see if they can
7 comprehend that so . . .

8 BY MR. HINSON:

9 Q The person that's having a hard time
10 understanding and differentiating their hallucinations
11 from reality, that could potentially create a problem
12 with them understanding the risk that they are
13 accepting; would you agree?

14 A It's a possibility.

15 MR. MCKAY: Object.

16 THE WITNESS: But that's up to the -- you
17 know, if you are evaluating the patient.

18 BY MR. HINSON:

19 Q Do you have any explanation in this regard?

20 A In -- in regard to what exactly?

21 Q What Matthew was able to understand and not
22 understand at the time he was discharged?

23 A I don't know. I wasn't present at the time.

24 Q And you can't say one way or another what you
25 would have done had you been there because you weren't

A | W | R

1 there; correct?

2 A I was not there, correct.

3 Q And you can't say one way or another what you
4 would do have done?

5 A I can't say one way or another.

6 Q Okay. All right, look at the next page which
7 is 86. I am just -- you've used this form before;
8 right, this -- this AMA form?

9 A Yes.

10 Q And it says clinical signature is there on
11 the middle of page 86, and then the first line is
12 physician and the next line is health care personnel.

13 Is that supposed to be two different people?
14 Is the physician supposed to sign and another member
15 of the health care staff supposed to sign there?

16 A I don't think it's supposed to be where you
17 sign and print as I understand it, but there is
18 another one for the witness signature above it.

19 Q Well, there is a date and time beside both
20 the physician line and the health care personnel line.

21 A I see that.

22 Q And do you have any knowledge of how that
23 form is supposed to be filled out?

24 A I believe there is two people that are
25 supposed to sign it and date it obviously.

A | W | R

1 Q Okay. And put the time as well?

2 A I think so, yeah.

3 Q You don't have -- I asked you earlier about
4 Matthew Scheer. Do you have any further recollection
5 of him besides what we've discussed today?

6 A I do not.

7 Q And you said you don't remember David, his
8 dad?

9 A I do not.

10 Q Did you ever at any point speak whether on
11 the telephone or face time or any other mechanism to
12 his mother Debra?

13 A No.

14 Q Do you recall any conversations with any of
15 the other health care providers about Matthew then
16 what we've discussed today?

17 A No.

18 Q Doctor, I want to shift gears just a minute,
19 show you what we can mark as Exhibit 3.

20 (PLF. EXH. 3, Curriculum Vitae, was marked
21 for identification.)

22 MR. MCKAY: What is that?

23 MR. HINSON: That's the CV.

24 MR. MCKAY: I want to take a break.

25 MR. HINSON: Sure. Now is as fine a time as

A W R

1 any I guess.

2 THE VIDEOGRAPHER: Off the record at 12:09.

3 (A recess was taken.)

4 THE VIDEOGRAPHER: On the record at 12:15.

5 BY MR. HINSON:

6 Q Dr. Patel, I've provided you what we have
7 marked as Exhibit 3 to this deposition.

8 If you could identify that document?

9 A My CV.

10 Q Is it complete, current and truthful?

11 A Well, I have moved but, yeah.

12 Q Okay. Where do you live now?

13 A In Myrtle Beach, 3007 Bellfield Court.

14 Q Bellfield?

15 A 3007 Bellfield Court 29579.

16 Q Otherwise the --

17 A The other stuff is, yeah.

18 Q Do any of the publications that you list here
19 or presentations in any way involve mental health or
20 psychiatric issues?

21 A No.

22 Q Okay. Doctor, where were you born?

23 A Chicago.

24 Q 1978 I believe?

25 A Yes.

A | W | R

1 Q And where did you go to high school?

2 A In Chelmsford, High School in Massachusetts,
3 Chelmsford, Massachusetts.

4 Q After Duke I see you went to get a masters in
5 medical science in Boston; is that correct?

6 A Correct.

7 Q And it's my understanding from some friends
8 of mine who have gone to med school sometimes they --
9 people go to get a masters if they have a need to
10 boost their resume for their med school application.

11 Was that part of the reason you went and got
12 the masters?

13 A That was one of the reasons, yes.

14 Q Did you apply to med school right after Duke?

15 A I did.

16 Q Did you get in?

17 A No.

18 Q Where all did you apply?

19 A I don't remember exactly but a variety of
20 schools in the eastern part of the country.

21 Q And you got no --

22 A Correct.

23 Q -- no acceptances at that point?

24 A Correct.

25 Q And then you ended up going to med school at

A W R

1 St. George's University in Grenada; is that correct?

2 A Correct.

3 Q And -- so that's in the Caribbean?

4 A Yes.

5 Q And why did you go to a Caribbean med school?

6 A Because that's where I got accepted.

7 Q Okay. Did you -- were you not accepted in
8 any med schools in the Continental U.S.?

9 A Correct.

10 Q Where all did you apply at that time around
11 2003?

12 A I don't recall but I mean again, you know,
13 east coast type schools.

14 Q And you're -- you work as a hospitalist;
15 correct?

16 A Correct.

17 Q And you're -- but you are boarded in internal
18 medicine?

19 A Correct.

20 Q There's -- is -- is there a board in
21 hospitalry (sic) -- hospitaling (sic), whatever the
22 term would be?

23 A Well, there's a board certification for
24 internal medicine, and I believe recently there is
25 a -- they've kind of made a board certification for a

A | W | R

1 hospitalist if you just want to do that part of
2 internal medicine. I presume that would preclude you
3 from doing good old fashioned work in an office.

4 Q What sort of -- well, people who are
5 hospitalists can have a variety of backgrounds; is
6 that fair?

7 A True.

8 Q Some of your colleague as hospitalists have
9 backgrounds in family medicine?

10 A That's correct.

11 Q Do some of your colleagues as well,
12 hospitalists have backgrounds in emergency medicine?

13 A I don't know.

14 Q What other specialties have board
15 certifications that hospitalists sometimes have a
16 background in?

17 A If you are board certified in internal
18 medicine you can work as a hospitalist.

19 Q And you -- in October 2015 who was your
20 employer?

21 A EM Care.

22 Q EM Care. And what is EM Care?

23 A That's just the name of the company.

24 Q Okay. Does it stand for something?

25 A I don't know honestly exactly.

A | W | R

1 Q EM Care. And EM Care -- well, I don't see
2 them on your CV. So explain.

3 A Probably because I haven't updated it yet.

4 Q Okay. So it's not current at this point?

5 A Well, I mean I list my employment as the
6 place of the hospital that I work at. But currently
7 it says Team Health, which is my current employer. So
8 it's been updated as of when they took over.

9 Q Okay. So -- let me backup.

10 So October 2015 --

11 A Uh-huh.

12 Q -- you are working as a hospitalist at Grand
13 Strand Regional Medical Center but your employer is EM
14 Care; is that correct?

15 A 2015 correct, yes.

16 Q Okay. And when did EM Care change to Team
17 Health?

18 A I believe January 1, 2016. January 1, 2016.

19 Q Was it a name change? Was it purchased? Do
20 you know how that works?

21 A I think it was they got a new contract or
22 something like that, the hospital did.

23 Q Does EM Care provide hospitalists' services
24 for Grand Strand Regional Medical Center? Is that
25 what --

A | W | R

1 A They provided hospital services at that time,
2 yes.

3 Q Okay. And when you started working at Grand
4 Strand Regional Medical Center initially 2010; is
5 that --

6 A That's right.

7 Q Okay. And at the time you started working in
8 2010 was the -- was your employer EM Care?

9 A No.

10 Q Who was it then?

11 A Carolina Health Specialists.

12 Q Okay. And then who did it change to?

13 A To EM Care.

14 Q Okay. When did it change from Carolina
15 Health Specialists to EM Care?

16 A I want to say July 1, 2013. I could be wrong
17 on the year though.

18 Q And in October 2015 did EM Care provide
19 professional malpractice care -- professional
20 malpractice insurance for you?

21 A Yes.

22 Q And what was -- do you know the details of
23 that policy? How big is that policy?

24 A Off the top of my head, no.

25 Q Did you purchase your own policy?

A | W | R

1 A No.

2 Q So the only policy applicable to you in
3 October 2015 would have been the policy provided to
4 you by your employer EM Care?

5 A Correct.

6 Q Who is, if you know, Southern Myrtle
7 Inpatient Services, LLC?

8 A I mean looking at, you know, your pay stub
9 that's I guess their payroll company or something like
10 that. Again I don't know but, yeah.

11 Q You are familiar with that group though,
12 Southern --

13 A Yes, I am familiar.

14 Q -- Myrtle Inpatient Services, LLC?

15 A I am familiar with the name, yes.

16 Q Okay. And so you see pay stubs with that --
17 with that name.

18 Do you know how they are affiliated with EM
19 Care?

20 A I don't.

21 Q How did you come to reside in the Myrtle
22 Beach area, Dr. Patel?

23 A When I was in residency we were looking for
24 jobs and I applied, and that is one of the places that
25 I had applied at. And I kind of liked it -- kind of

A | W | R

1 liked it in the south. So I wanted to see if I could
2 relocate.

3 Q Do you -- and, Doctor, I am not trying to be
4 nosy or dig into your personal life. I just to let
5 you know that the reason that attorneys often ask
6 these questions is we want to make sure when we draw a
7 jury in this case if there is somebody that has a
8 connection to you I can at least identify that
9 connection.

10 A Okay.

11 Q Do you have any family in the Horry County
12 area?

13 A No.

14 Q Are you married?

15 A Not yet.

16 Q You are engaged?

17 A Yes.

18 Q What's your fiance's name?

19 A Susan.

20 Q Last name?

21 A Patel.

22 Q Is she a physician as well?

23 A No.

24 Q Where does Susan work?

25 A Currently at a pharmacy in Georgia. A

A W R

1 pharmacy in Georgia.

2 Q Okay. Is she a pharmacist?

3 A Yes.

4 Q Do you belong to any clubs, organizations in
5 the Horry County area?

6 A I don't think so.

7 Q Earlier I asked you about Harrison's
8 Principles in Internal Medicine. If we were to go to
9 your office, look on your shelves what textbooks in
10 internal medicine would we -- would we find?

11 A I don't have an office.

12 Q At home then? At a -- at a bookshelf at home
13 does it have some medical textbooks?

14 A Considering I just moved, no.

15 Q Okay. Before you moved? You just moved.
16 You just put it in boxes. They should be --

17 A That's pretty much where most of my textbooks
18 from medical school and beyond reside right now.

19 Q Do you recall what was part of it?

20 A Part of what?

21 Q The textbooks that you kept from medical
22 school?

23 A Yeah. There was a pathology textbook. From
24 medical school per se there was a chemistry textbook.
25 That was a histology textbook. There was a physiology

A | W | R

1 textbook. There was an anatomy text -- I mean, you
2 know.

3 Q Any books on psychiatry and mental health?

4 A Not to my knowledge. I am sure there is
5 probably a book or a small book or something like that
6 in there about that.

7 Q Doctor, I don't want to ask about the content
8 of your conversations with counsel. That's
9 privileged. That's not the intent of my question.

10 With the exception of the content of those
11 conversations what have you done to prepare for today?

12 A I reviewed the medical records. Primarily
13 that's pretty much what I've done.

14 Q Did you do any research?

15 A I mean aside from just looking at the medical
16 records I mean I probably looked up Keppra, the drug.
17 There is probably other things I can't recall, but
18 over the last year or something like that I probably
19 looked at some things and I don't know exactly. I
20 don't remember.

21 Q Did you ever look up any issues with regard
22 to HIPAA disclosures and what they allow and don't
23 allow?

24 A No.

25 Q In your review of the medical record did you

A | W | R

1 come across anything that you believe was incorrect or
2 missing?

3 A From what I can see, no.

4 Q You mentioned earlier that you had given a
5 deposition before. Was it -- and you said I believe
6 it was with regard to some sort of medical/legal
7 matter?

8 A Correct.

9 Q Was it -- how many times have you given
10 depositions prior to today?

11 A This is the third time.

12 Q Okay. The other two occasions were you a
13 party to a lawsuit?

14 A Yes.

15 Q You were -- you were a defendant?

16 A Correct.

17 Q What was the general synopsis of those two
18 cases?

19 THE WITNESS: Am I allowed to say?

20 MR. MCKAY: I don't -- let's go off the
21 record.

22 MR. HINSON: That's fine.

23 MR. MCKAY: I don't know if they're active
24 cases or not. I just do not know.

25 It they are active cases I think he would

A | W | R

1 have his --

2 THE VIDEOGRAPHER: I have to --

3 MR. HINSON: Oh, yeah. Sorry.

4 THE VIDEOGRAPHER: Off the record at 12:27.

5 (Discussion off the record.)

6 THE VIDEOGRAPHER: On the record at 12:28.

7 BY MR. HINSON:

8 Q Doctor, the question to you on the table is
9 could you just generally summarize your understanding
10 of the allegations against you in those other two
11 matters?

12 A The last -- the second one if -- it's been a
13 while since I've looked at it but if memory serves me
14 correct it was about a patient, you know, about
15 whether or not I was the physician I think caring for
16 the patient at the time that, you know, the patient
17 decompensated. That -- without, you know, again into
18 the actual details of the case I think that's
19 essentially what it was.

20 And the first one was a patient that was
21 admitted -- am I allowed to tell about what the
22 outcome of the patient's care was or --

23 Q Don't give me any patient identifying
24 information but just generally.

25 A The first one was about a patient that was

A | W | R

1 admitted and subsequently passed away that I was
2 involved in the care of, that I had admitted.

3 Q What were the medical issues involved though?

4 A I think the first one was the patient had
5 come in with some chest pain. And the second one
6 was -- again I am trying to think exactly because I
7 haven't thought about this one in a while but -- and
8 the patient was admitted for some sort of a trauma
9 related issue and I was one of the physicians that was
10 peripherally involved. And that's -- that's basically
11 it.

12 Q Okay. And one of the matters is resolved and
13 one of the matters --

14 A The second one is not resolved yet, no.

15 Q Okay. The one that was resolved was some
16 sort of payment made on your behalf?

17 A Not on my behalf, no.

18 Q Were you discharged or otherwise dismissed
19 from the case?

20 A Dismissed, yes.

21 Q Did Mr. McKay or members of his firm
22 represent you in either of those cases?

23 A No.

24 Q Who was -- who was your counsel in the first
25 case?

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1 A In the first case was Mr. McCutcheon and the
2 second case Mr. Sanders, Darren Sanders.

3 Q Have you ever been a party to a lawsuit as a
4 plaintiff for any reason?

5 A No.

6 Q Have you ever been arrested for anything more
7 than a traffic offense?

8 A I don't think I have ever been arrested.

9 Q Have you ever had your privileges suspended
10 or revoked in any way?

11 A No.

12 Q Have you ever had a complaint lodged against
13 you with the medical board?

14 A No.

15 Q Doctor, do you subscribe to any journals in
16 the field of medicine?

17 A In the journal American Medical -- I mean I
18 get several journals in the mail. So, yeah. I do
19 receive some journals, yes.

20 Q Which ones do you receive?

21 A That's one.

22 Q Journal of the American Medical Association?

23 A JAMA. I think that's the main one pretty
24 much. I don't -- occasionally I get some that I
25 didn't think I had subscribed to but I receive them.

A | W | R

1 Q Have you ever done any work as an expert
2 witness?

3 A No.

4 Q Have you ever had the occasion to testify at
5 trial for any reason?

6 A At trial, no.

7 Q Have you ever had occasion to give a
8 deposition because you were a subsequent medical
9 provider in any other occasion?

10 A Just those two that I mentioned. That's it.

11 Q Okay. Do you agree that good doctors can
12 sometimes make mistakes in judgment?

13 MR. MCKAY: Object to form.

14 THE WITNESS: It's a pretty broad question
15 but since we are all human. So anybody can make
16 mistakes.

17 BY MR. HINSON:

18 Q Good doctors can make mistakes in judgment?

19 A Huh?

20 MR. MCKAY: Object.

21 BY MR. HINSON:

22 Q So, yes, good doctors can make mistakes in
23 their judgment?

24 A Like I said we are all human. Good doctors,
25 any doctor can make a mistake in judgment.

A | W | R

1 Q Do you agree doctors should not be reckless?

2 MR. MCKAY: Object to form.

3 THE WITNESS: A doctor should try and do
4 everything in their power to not be reckless,
5 yes.

6 BY MR. HINSON:

7 Q Do you agree with this statement, the
8 professional such as a lawyer, doctor or mortgage
9 banker should not be allowed to needlessly endanger
10 the person who hired them?

11 MR. MCKAY: Object to form.

12 THE WITNESS: That's a pretty broad question
13 but I guess it depends on -- based on whatever
14 their assessment is.

15 BY MR. HINSON:

16 Q A physician should not needlessly endanger
17 his or her patient?

18 A Yeah, based on their assessment that they
19 should try not to but, you know, that's based on the
20 judgment of the provider in question at the time.

21 Q Do you agree a doctor has a duty to use
22 skill, care and diligence in performing an evaluation
23 on a patient for potential mental illness?

24 MR. MCKAY: Object to form.

25 THE WITNESS: If they are qualified to they

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1 can certainly do what they feel is best, yes, or
2 to the best of their ability.

3 BY MR. HINSON:

4 Q Are you qualified to perform an evaluation on
5 a patient for potential mental illness?

6 A I am not a psychiatrist but within the
7 purview of internal medicine you can always provide a
8 little bit, yes.

9 Q The record reflects that around 4:00 in the
10 afternoon on October 2, 2015 Matthew came back to
11 Grand Strand Regional Medical Center, presented to the
12 emergency room.

13 Would you agree with that?

14 A Yes.

15 Q And so Dr. Amanda Battisti seen Matthew.
16 You saw that; correct?

17 A She did see the patient, yes.

18 Q And the record reflects she -- she states no
19 change in patient's symptoms since previous visit
20 earlier today.

21 Did you see that in the record?

22 A I don't recall seeing that specifically but
23 if you are reading it from the record.

24 Q It's on page 57. Let's take a look at that,
25 Doctor.

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1 A Yes, it says no change in the patient's
2 symptoms since previous visit earlier today.

3 Q Okay. And some time thereafter Matthew's
4 admitted from the ER to your care; correct?

5 A Okay. Correct.

6 Q And so you saw Matthew sometime around 5 --
7 5, 5:30 up in there; correct?

8 A Sometime around 5-ish, yes.

9 Q If you had to explain to a jury what you did
10 for Matthew then at that point what would you explain
11 you did?

12 A I went in and I talked to the patient. Again
13 this is based on the medical record. I don't recall
14 the encounter itself. I went in and talked to the
15 patient. Then I believe the father was present in the
16 room at the time, helped with some of the history. I
17 examined the patient. I discussed any questions they
18 might have presumably and then I left.

19 Q You ordered Keppra for Matthew; correct?

20 A I believe so, yes.

21 Q Ativan as needed; correct?

22 A I did not order the Ativan but my thought
23 process was that if it was needed we could use Ativan.

24 Q But it was not actually ordered; correct?

25 A I did not order Ativan.

A | W | R

1 Q What tests, if any, did you order at that
2 point?

3 A An ultrasound.

4 Q At ultrasound of what?

5 A Liver and gallbladder or abdomen basically.

6 Q Was that ever performed?

7 A Yes, it was performed.

8 Q Anything else that you ordered?

9 A Not to my recollection.

10 Q Were those things the things that you did,
11 order an ultrasound --

12 A Uh-huh.

13 Q -- and order Keppra?

14 Those were the things that the emergency room
15 physician could do as well; correct?

16 A Yes. I mean any physician could order those.

17 Q Doctor, I want to kind of go through this for
18 a second with you. Matthew and his dad as you
19 understand from the record showed up at the emergency
20 department of Grand Strand in the morning hours of
21 October 2, 2015; correct?

22 A Correct.

23 Q Matthew had hallucinations both auditory and
24 visual reflected in the record; correct?

25 A It was reported that he had those, yes.

A | W | R

1 Q All right, he is sent then after some time to
2 Lighthouse but then sent back to Grand Strand;
3 correct?

4 A Correct.

5 Q And back at Grand Strand he is admitted to
6 the hospital?

7 A Correct.

8 Q At some point during the late evening, early
9 morning hours Matthew becomes -- has a change in his
10 condition.

11 Do you agree with that?

12 A Yeah, I would say that.

13 Q He becomes loud, agitated, yelling at nurses;
14 correct?

15 A The record seems to state that, yes.

16 Q No psychiatric consult had been provided for
17 Matthew at that point; correct?

18 A I don't think there is anything recorded that
19 he had been seen yet by a psychiatrist, at least not
20 at Grand Strand.

21 Q He hadn't received Keppra yet?

22 A I think it was offered but he had refused it.

23 Q He hadn't received any sort of antipsychotic
24 medication?

25 A Not what's seen in the record, no.

A | W | R

1 Q His father wasn't called or notified to your
2 knowledge that Matthew was planning to leave the
3 hospital?

4 A To my knowledge no.

5 Q And it's your understanding from reading
6 the -- being informed about the court's decision that
7 Matthew has been found to have died in the early
8 morning hours of October 3, 2015?

9 A Again I have no way to confirm that but if
10 that's what the court declared, then that's what --
11 that's what they declared.

12 Q Do you believe that Matthew Scheer received
13 reasonable and competent medical care on October 2nd
14 and 3rd, 2015?

15 A As far as, you know, my involvement that's
16 probably all I can say. But, yes, I believe that's
17 the case.

18 Q With your involvement?

19 A Huh?

20 Q With your involvement?

21 A That's all I can say for sure. I don't know.
22 I wasn't there.

23 Q Do you have a comment about or belief as to
24 whether he received reasonable and competent medical
25 care after your involvement?

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1 A I don't really have a comment whether he did
2 or not. I don't know.

3 Q And you have no comment one way or another
4 whether or not it was reasonable to let him leave on
5 the morning hours of October 3rd because you --

6 A I don't have any comment on it.

7 Q Because you personally weren't there?

8 A I was not there.

9 Q As a general statement would you agree with
10 this sentence if a patient is admitted to the hospital
11 for a voluntary psychiatric evaluation but the patient
12 is mentally ill and poses a danger to himself the
13 patient can be kept against his will?

14 A Well, as we stated earlier a patient can be,
15 you know, kept against their will at any point by a
16 physician if they feel that -- you know, if they feel
17 like they are in danger. That's -- that's what the
18 involuntarily commitment is.

19 Q If a physician believes a patient poses a
20 danger to himself the physician should keep the
21 patient against his will?

22 A Again that's up to the I guess the provider
23 that is evaluating the patient at the time. But if
24 they feel that's the case then they can, yeah.

25 Q And they should as well?

A | W | R

1 MR. MCKAY: Object to form.

2 THE WITNESS: Again I don't know.

3 BY MR. HINSON:

4 Q Would you believe that you should? If you as
5 a physician had a patient that you believed posed a
6 likely threat to himself you should take efforts to
7 keep that patient against his will; shouldn't you?

8 A If it was me that was evaluating the patient?

9 Q Yes.

10 A If I was evaluating the patient and I -- it
11 was in my judgment that the patient, you know, posed a
12 danger then -- then, yes, I would commit the patient
13 if I needed to, if I felt that it was necessary.

14 MR. HINSON: Thank you, Dr. Patel. I may be
15 done. Just give me a minute.

16 We can go off the record.

17 THE VIDEOGRAPHER: Off the record at 12:43.

18 (Off the record.)

19 THE VIDEOGRAPHER: On the record at 12:47.

20 BY MR. HINSON:

21 Q Doctor, what -- what do antipsychotic
22 medications do? Like what -- what -- if you had to
23 describe their purpose what are they?

24 A Well, they do several things. They can in
25 some cases calm a patient down. They can sometimes

A W R

1 help with -- if they are having hallucinations, you
2 know, they can -- if they are having let's say a mild
3 mood they can sometimes settle that down potentially,
4 some of the things that they can be helpful in.

5 Q Had antipsychotic medications been given to
6 Matthew earlier on October 2nd or 3rd could -- could
7 potentially this have prevented him from becoming
8 agitated and entering his uncooperative rowdy --

9 A I don't know.

10 Q Doctor, do you have any recollection of any
11 additional conversations with Matthew, Matthew's
12 father, health care providers regarding Matthew that
13 we haven't discussed here today?

14 A No, I don't recall any.

15 Q What were you -- I understand you later
16 learned that Matthew had left the hospital against
17 medical advice; is that --

18 A When I came back the next morning, yes.

19 Q Who told you that?

20 A I don't recall.

21 Q Is there any -- do you remember that -- how
22 that came about? Did you ask about Matthew? Did
23 somebody come up and tell you about that he left?

24 A I mean I don't recall the exact circumstances
25 of who I spoke with but maybe when I was rounding on

A | W | R

1 the floor I asked where did this patient go,
2 something -- probably something to that effect. I
3 don't know exactly. I don't recall.

4 Q Don't recall if there was any conversation
5 about whether or not he might have drowned himself?

6 A No.

7 MR. HINSON: Thank you, Dr. Patel.

8 MR. MCKAY: I have no questions.

9 MR. JOHNSON: I have none at this time.

10 MR. HINSON: All right, thank you.

11 THE VIDEOGRAPHER: This concludes our video
12 deposition. The time is 12:49. We are off the
13 record.

14 (Off the video record.)

15 THE REPORTER: You want to read and sign;
16 right?

17 MR. MCKAY: Yes.

18 THE REPORTER: Would you like a copy?

19 MR. MCKAY: Yes.

20 THE REPORTER: E-Tran --

21 MR. MCKAY: E-Tran is good.

22 MR. JOHNSON: E-Tran with scanned exhibits.

23 THE REPORTER: You want the exhibits also?

24 MR. MCKAY: Yes.

25 (The witness, after having been advised of

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1 his right to read and sign this transcript,
2 does not waive that right.)

3 (The deposition was concluded at 12:50 p.m.)
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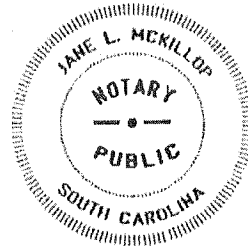
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DEPOSITION DATE: October 16, 2017
REPORTER: Jane L. McKillop
AWR JOB #: 12740
CASE CAPTION: David L. Scheer vs. Southern Myrtle
Beach Inpatient Services, LLC, et al.

NIRLEP A. PATEL, M.D. DATE

I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the Deponent was advised of his right to read and sign said deposition both verbally and in writing. If the Deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Jane L. McKillop

Jane L. McKillop, Reporter
My Commission expires
September 15, 2024

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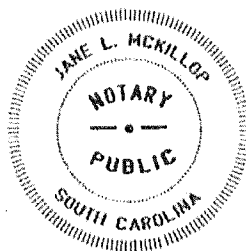
CERTIFICATE OF REPORTER

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I, Jane L. McKillop, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of October 2017 at Murrells Inlet, Georgetown County, South Carolina.



Jane L. McKillop

Jane L. McKillop
My Commission expires
September 15, 2024

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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. I also certify that this Record is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.

RECEIVED

Oct 26 2020

SC Court of Appeals

/s/ Robert L. Widener

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October 22, 2020