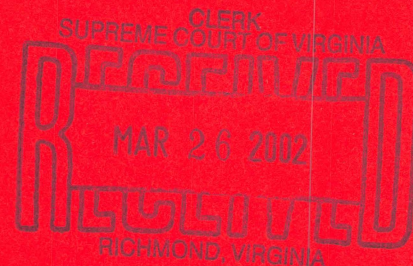


In The
Supreme Court of Virginia

RECORD NO. 012008



**HORACE E. PERDIEU, as Administrator of the
Estate of Lucille P. Overton, deceased,**

Appellant,

v.

BLACKSTONE FAMILY PRACTICE CENTER, INC. et al.,

Appellee.

**APPENDIX
VOLUME I OF II**

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V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF NOTTOWAY

LUCILLE P. OVERTON,
Plaintiff,
v.

At Law No. _____

JOSEPHINE FOWLER, M.D.
1366 South Angell Street
Providence, RI 02906

and/or
c/o Memorial Hospital
111 Brewster Street
Pawtucket, RI 02860
Defendant.

VALIDATE CASE PAPERS
RCPT : 98000003840
DATE : 09/21/98 TIME: 10:07
CASE : 135CL98000048-00
ACCT : OVERTON, LUCILLE P
AMT. : \$182.00

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, LUCILLE P. OVERTON, through her son, Horace E. Perdieu, acting as her attorney-in-fact, and by and through her undersigned counsel, B.G. Stephenson, and moves this Court for judgment against Defendant JOSEPHINE FOWLER, M.D., in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00), plus interest, costs and allowable attorney's fees, and as grounds therefor states as follows:

I. JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to Va. Code § § 8.01-328.1 and 17-123. The conduct alleged herein occurred within Blackstone, Virginia in the County of Nottoway. Defendant JOSEPHINE FOWLER, M.D. (hereinafter "Fowler") was named as a defendant in another action before this Court styled Overton v. Blackstone Family Practice Center, Inc., et al., Nottoway County Law No. 97-59, which was initiated in and transferred from the Circuit Court of Arlington County (Law No. 97-12). A voluntary nonsuit as to Fowler was entered on March 23, 1998 in that action.

This action is commenced pursuant to Va. Code § § 8.01-380 and 8.01-229(E)(3), and on the basis of other matters revealed to and discovered by Plaintiff since the voluntary nonsuit of Fowler, as more particularly described herein.

2. Plaintiff, LUCILLE P. OVERTON, currently resides at Woodbine Rehabilitation and Healthcare Center, located at 2729 King Street, Alexandria, State of Virginia. She was formerly a patient and resident at HCMF Corporation's "Heritage Hall-Blackstone" nursing home facility in Blackstone, Virginia, located at 900 South Main Street, City of Blackstone, Virginia (hereinafter "Heritage Hall"). Heritage Hall is an institution established to provide and engage in providing shelter, food, and general and nursing care to sick, aged, and infirm persons.

3. Fowler is a medical doctor who, at all times relevant to these proceedings, was a resident physician who was associated with and was training under the auspices of one Blackstone Family Practice Center, Inc. (hereinafter "Blackstone"), a medical professional corporation that was engaged in clinical practice. Plaintiff is now informed that in January, 1995, Blackstone had an agreement with the Medical Colleges of Virginia of Virginia Commonwealth University (hereinafter "MCV"), under which residents in the MCV program could carry out a clinical family practice rotation at Blackstone's offices. Plaintiff is informed and believes that Blackstone's assets were acquired by MCV in the summer of 1995 after the time of the conduct that is the subject of this action. One Charles I. Rosenbaum, M.D. (hereinafter "Rosenbaum") was one of Fowler's supervising physicians, and was also named as the attending physician to Plaintiff as shown on the

Heritage Hall chart records. Plaintiff is informed and believes that Rosenbaum was one of the partners in Blackstone, or was otherwise a principal thereof, at the time of Plaintiff's residence at Heritage Hall. Blackstone was named as alternate physician to Plaintiff as reflected in the Heritage Hall chart records. Fowler was an MCV student, and was conducting her family practice residency rotation under the auspices of and as a resident staff member of Blackstone and engaged in the acts and conduct complained of herein in Blackstone, Virginia, within the jurisdiction of this Court. During the time period relevant to this action, namely, during January, 1995, Fowler held a Temporary License issued by the Commonwealth of Virginia Department of Health Professions Board of Medicine, namely, License Number 0116006024 issued to Fowler for her use as an Intern Resident. Her Temporary License in effect in January, 1995 expired on June 30, 1995. Her Temporary License was issued by the Board of Medicine pursuant to statutory authority of the Commonwealth of Virginia, namely, Section 54.1-2937 of the Virginia Code under criteria prescribed in that code section and other code sections of the Virginia Code, including Section 54.1-2961.

4. Fowler now resides at 1366 South Angell Street, Providence, Rhode Island, 02906, and is engaged in her profession at the Memorial Hospital of Rhode Island, 111 Brewster Street, Pawtucket, Rhode Island, 02860.

COUNT I: UNAUTHORIZED PRACTICE OF MEDICINE

5. Plaintiff is informed and believes that Fowler's license did not permit her to engage in the unsupervised practice of medicine at the Heritage Hall nursing home facility. Section 54.1-

2961 of the Code of Virginia, 1950, as amended, as that section was in effect during January, 1995 provides, among other provisions, that a resident physician such as Fowler holding a temporary license "shall be responsible and accountable at all times to a licensed member of the staff."

6. According to Section 54.1-2961 of the Code of Virginia, 1950, as amended, as that section was in effect during January, 1995, "interns and residents [such as Fowler] holding temporary licenses may be employed in a legally established and licensed hospital or other organization operating an approved graduate medical education program when their practice is confined to persons who are bona fide patients within the hospital or other organization or who receive treatment and advice in an outpatient department of the hospital" (emphasis added).

7. The scope of Fowler's temporary license did not permit her to practice medicine outside of the Blackstone facility. However, Fowler practiced medicine during her family practice rotation at the Heritage Hall facility, which Plaintiff is informed and believes was not an organization operating an approved graduate medical education program and recognized as such. Fowler practiced medicine on several patients at the Heritage Hall facility, including Plaintiff, outside the ambit of her temporary license in violation of the laws of Virginia. Plaintiff is informed and believes that Medicare and Medicaid were billed for these unauthorized and unlawful services for the benefit of Fowler's employer.

8. Fowler undertook to examine and treat Plaintiff without any express or implied consent from Plaintiff or from Plaintiff's

authorized representative, namely, Horace Perdieu her attorney-in-fact, and without their knowledge of the matters recited above, nor did Fowler attempt to put Mr. Perdieu on notice thereof after she undertook to examine and treat Plaintiff.

9. Plaintiff has learned that at no time was Fowler supervised or advised by Plaintiff's attending physician Rosenbaum, nor by any attending physician on Blackstone's staff concerning any aspect of Plaintiff's care.

10. Fowler's unsupervised examinations and purported treatments of the patients at Heritage Hall, and her unsupervised examinations and purported treatment of Plaintiff in particular were completely unauthorized and outside the statutory scope and ambit of her temporary license to practice medicine, and constituted the unauthorized practice of medicine.

11. As a direct and proximate result of Fowler's unauthorized practice of medicine and her failure to seek proper consent to treat Plaintiff, Plaintiff suffered serious physical injuries and permanent disabilities, including a hip that was so damaged that replacement surgery was required, during which surgical procedure she suffered cardiac arrest and she had to be resuscitated, and she has since required ongoing physical therapy and other medical attention and will so require in the future.

12. As a direct and proximate result of Fowler's unauthorized practice of medicine and statutory violation of the scope of her temporary intern-resident license and her failure to seek proper consent to treat Plaintiff, Plaintiff suffered extreme physical pain and mental and emotional anguish and will so suffer in the future.

13. As a direct and proximate result of Fowler's unauthorized practice of medicine and statutory violation of the scope of her temporary intern-resident license and her failure to seek proper consent to treat Plaintiff, Plaintiff incurred expenses for medical and other care, including physical therapy and rehabilitative services, continuing care in another health care facility, and constant medical attention, and she will continue to require such attention in the future, and she has sustained permanent injury and permanent disability.

COUNT II: MEDICAL MALPRACTICE

14. Plaintiff hereby realleges and incorporates by reference all of the allegations in Paragraphs One through Thirteen of this Motion for Judgement as it fully sets out herein.

15. Even if Fowler had been licensed to provide unsupervised medical treatment to Heritage Hall patients and had obtained proper consent to treat Plaintiff, Fowler's actions during the course of her care of Plaintiff constituted medical malpractice in that she breached her duty to exercise and provide the requisite standard of care in providing medical care for Plaintiff, and failed to provide the requisite examination, treatment, supervision and proper diagnosis of Plaintiff. Fowler's negligent failure in her duties in her treatment of Plaintiff directly and proximately caused Plaintiff to sustain serious physical and emotional injury as more particularly described in this Count II.

16. On or about January 4, 1995, Plaintiff, who was at the time 76 years of age, was accepted and admitted as a patient at Heritage Hall. Plaintiff was transferred to Heritage Hall from Johnston-Willis Hospital in Richmond, Virginia, having undergone

surgery and treatment at that hospital for, among other conditions, a bowel obstruction. Her medical records, discharge and transfer records from Johnston-Willis Hospital were readily available to all medical personnel who would treat Plaintiff at Heritage Hall, including Fowler. In addition, Heritage Hall obtained its own medical history and conducted its own tests, as well as an evaluation of Plaintiff at the time of her admission. This information was included in Plaintiff's medical charts at Heritage Hall and was readily available to any medical personnel who treated Plaintiff, including Fowler.

17. Plaintiff's medical records, discharge and transfer records from Johnston-Willis Hospital, and her Heritage Hall chart records indicated, inter alia, that Plaintiff was confused and suffered from dementia to the extent that she was unable to sign Heritage Hall admission documents, that she was restrained at Johnston-Willis for her safety, that she required physical assistance at Johnston-Willis with bathing, dressing, eating, and toileting, that she was constantly confused and required supervision at Johnston-Willis, that she had an unsteady gait, and that she scored as having the highest risk for falls on an initial Heritage Hall evaluation and on every weekly evaluation performed during her stay at Heritage Hall. This information was readily available to any medical personnel who treated Plaintiff, including Fowler.

18. On or about January 20, 1995, while unsupervised, Plaintiff fell from her bed in her room at Heritage Hall onto the floor, where she remained in a helpless state until discovered lying on her left side by a member of the Heritage Hall staff.

19. At an earlier time of the same day, on or about January 20, 1995, Plaintiff wandered out of Heritage Hall facility and was discovered after a period of time wandering unsupervised on a nearby city street.

20. Heritage Hall staff requested a physician to examine Plaintiff after her fall, and contacted Blackstone to advise that Plaintiff had fallen and needed medical attention. Fowler was dispatched to examine Plaintiff.

21. Fowler conducted an improper and incomplete examination of Plaintiff, or failed to conduct any examination at all, and failed to diagnose any injury, and tersely stated in Plaintiff's chart that no treatment was required. Fowler ordered no x-rays taken of Plaintiff, ignoring all of the medical indications therefor. Fowler made no other notations in Plaintiff's chart of any other examination and treatment, and Plaintiff has since learned that in fact no other treatment or examination was rendered. Furthermore, despite the notice in Plaintiff's medical records that Plaintiff was at high risk for falling, that Plaintiff suffered from dementia and had been restrained at Johnston-Willis Hospital, Fowler implemented no safety plan nor any safety measures, nor did she conduct an examination which took into account Plaintiff's documented communication deficit. She gave no orders for safety measures to either protect against falling or to prevent serious injury if she did fall, even after being on notice that Plaintiff had fallen, confirming the evaluation that she was at a high risk for falling.

22. On or about January 21, 1995, the day after Plaintiff sustained the fall as described above, she fell a second time while

unsupervised in the Heritage Hall dining room, where she remained in a helpless state until discovered lying on her left side on the floor by a Heritage Hall staff member.

23. Fowler was again summoned to examine and treat Plaintiff after this second fall. Again, Fowler conducted an improper and incomplete examination, or failed to conduct any examination, and failed to diagnose any injury, and again tersely stated in Plaintiff's chart that there was no apparent injury and that no treatment was required. She again gave no orders pertaining to any proper safety measures.

24. Plaintiff's medical records indicate that Plaintiff sustained a subcapital fracture of her left hip during one or both of her known falls at Heritage Hall on January 20 and 21, 1995.

25. After her second fall, Plaintiff's medical and psychological condition drastically deteriorated. Plaintiff complained of pain in her left leg, was noted in her chart by the Heritage Hall staff and by Fowler herself to be even more disoriented, sluggish, and confused than usual, and the Heritage Hall nursing staff noted that Plaintiff was consuming less food than was normal for her. Plaintiff's respiratory condition also deteriorated as a direct and proximate result of the hip injury and the subsequent immobility. However, Fowler failed to follow up in any meaningful way on Plaintiff's condition. Fowler claims to have no independent recollection of Plaintiff, and during both of the incidents of falling described herein, Fowler failed to conduct a proper and thorough examination, taking into account Plaintiff's communication deficit, which would have revealed Plaintiff's hip fracture. Fowler failed to order x-rays of the injured area

despite all of the medical indications for such x-rays, and did not attend to or properly investigate the source of Plaintiff's complaints of leg pain and injury. In spite of the records available to her which revealed that Plaintiff was at high risk for falling, that she had been found wandering outside the Heritage Hall facility, and being on notice that the evaluation of Plaintiff's high risk for falling was indeed accurate by virtue of the incidents herein described, Fowler made no attempt at any time to implement a safety plan, to seek, impose or direct orders to impose restraints either physically or by medication or other suitable methods to prevent another fall and foreseeable injury therefrom, did not provide for additional attention which would have taken into account Plaintiff's clearly documented communication deficit and need for constant supervision and assistance, nor did Fowler otherwise properly address the circumstances, being totally negligent and careless in her treatment of Plaintiff.

26. At no time did Fowler properly document any examination or treatment of Plaintiff according to the medical standard of care in the local Blackstone community or in the Commonwealth of Virginia.

27. On or about January 30 and 31, 1995, Plaintiff's son and attorney-in-fact, Mr. Horace Perdieu, visited Plaintiff, observed her condition and pressed Heritage Hall's staff for proper attention to Plaintiff. At that time, Heritage Hall contacted Blackstone, and Rosenbaum and one Dr. Damewood (another physician conducting his residency through MCV and Blackstone) initiated their own examination of Plaintiff on or about the same date.

Their examination revealed that Plaintiff had probably suffered a hip fracture, and x-rays ordered by Dr. Damewood confirmed that she had indeed sustained a hip fracture, and Plaintiff was thereafter hospitalized. Due to the amount of time that she had been immobilized from the undiscovered hip fracture, Plaintiff's available treatment options were limited. Plaintiff required and underwent surgery to replace her hip with a prosthesis. This remaining surgical option was dangerous for a person of Plaintiff's age and deteriorated condition, and during her hospitalization and surgical treatment Plaintiff suffered cardiac arrest and was resuscitated by hospital personnel.

28. One Dr. Barry W. Burkhardt, M.D., the surgeon who examined and operated on Plaintiff at Johnston-Willis Hospital, noted that the fracture of Plaintiff's left hip had occurred approximately ten days before, coinciding with her falls on January 20 and/or January 21, 1995.

29. Fowler entered into a physician-patient relationship with the Plaintiff when she initiated her first examination of Plaintiff, albeit without consent of the patient and without proper authority to medically treat Plaintiff.

30. Following the creation of this physician-patient relationship, Fowler was under a continuing duty under the laws of Virginia to exercise reasonable care in the treatment of Plaintiff in light of her condition. The applicable medical standard of care required that Fowler use the reasonable care, skill, and learning as that of a reasonably prudent practitioner in the field of her medical practice or specialty in the local Blackstone community and in the Commonwealth of Virginia as a whole in attending, diagnosing

and treating Plaintiff.

31. Once Fowler undertook to examine and treat Plaintiff, she violated her duty to provide Plaintiff with reasonable care, and failed to properly examine Plaintiff and/or to diagnose her condition. Because of Fowler's negligent failure, Plaintiff's son, Horace Perdieu, was falsely advised that Plaintiff was in good condition.

32. Fowler acted in a negligent and careless manner in violation of the laws of Virginia, in that she failed to adhere to the standard of reasonable care applicable to physicians within the local Blackstone community and the Commonwealth of Virginia as a whole after she undertook the treatment of Plaintiff. Fowler breached her duty of reasonable care to Plaintiff in that she failed to exercise reasonable care, properly attend, restrain, examine and diagnose Plaintiff whose known and documented condition required such action.

33. Plaintiff's condition gave rise to a special risk of injury when she was left unattended and unrestrained as a result of Fowler's misdiagnosis and utter failure to implement any safety measures or to develop a safety plan to reasonably protect Plaintiff from falling or to prevent serious injury if she did fall. Such a risk was compounded by Plaintiff's mental impairment which prevented her from understanding and appreciating the extent of her physical disability. Despite Fowler's knowledge of the special risks to Plaintiff, Fowler breached her duty of care by failing to provide orders for restraints or other safety measures necessary to eliminate or reduce such a risk. Fowler negligently failed to order the implementation of safety measures on behalf of

Plaintiff, and negligently failed to take any reasonable steps to prevent the occurrences that caused Plaintiff to suffer serious injury.

34. Further, Fowler breached her duty of care in that she failed to order the implementation of restraints or other safety measures after Plaintiff's first fall, despite her knowledge that Plaintiff had wandered out of the Heritage Hall facility, and despite her knowledge that Plaintiff was documented as having a high risk for falling and that Plaintiff had in fact fallen. Fowler's breach of duty proximately caused Plaintiff to fall a second time.

35. Further, Fowler breached her duty of care by failing to provide proper and adequate medical attention in diagnosing and treating Plaintiff's injuries after the injury was sustained. Fowler failed to properly observe Plaintiff's condition or to properly act on the condition she observed or should have observed, and Plaintiff consequently was left to suffer with a broken hip for approximately ten days before receiving any necessary medical attention. As a result of Fowler's negligent failure and consequent delay, Plaintiff's condition was exacerbated and Plaintiff was forced to suffer additional and considerable pain and suffering.

36. As a direct and proximate result of Fowler's breach of her duty toward Plaintiff, Plaintiff suffered serious physical injuries and permanent disabilities, including a hip that was so damaged that relatively dangerous surgery was required, during which treatment her heart stopped and she had to be resuscitated, and she has since required ongoing physical therapy and other

medical attention, and she will continue to require medical attention in the future and she has sustained permanent injury and permanent disability.

37. As a direct and proximate result of Fowler's breach of her duty to Plaintiff, she suffered extreme physical pain and mental and emotional anguish and will continue to so suffer in the future.

38. As a direct and proximate result of Fowler's breach of her duty to Plaintiff, she incurred expenses for medical and other care, including physical therapy and rehabilitative services, continuing care in another health care facility, and constant medical attention and will continue to require such attention in the future.

COUNT III: CONSCIOUS DISREGARD FOR PLAINTIFF'S WELLBEING

39. Plaintiff hereby realleges and incorporates by reference all of the allegations in Paragraphs One through Thirty-Eight of this Motion for Judgement as it fully sets out herein.

40. Fowler displayed such recklessness and negligence in her treatment of Plaintiff as to evince a conscious disregard for Plaintiff's wellbeing. Fowler's actions constituted a complete and total failure to meet the standard of care that she owed to Plaintiff as her physician. Before the first fall, it was reckless for Fowler to ignore the myriad of indications in Plaintiff's medical records that Plaintiff was at a high risk for falling. It was reckless for Fowler to ignore the fact that Plaintiff suffered from dementia and could not communicate properly, and to fail to conduct a thorough examination given that fact. It was reckless for Fowler to fail to order x-rays or the implementation of any

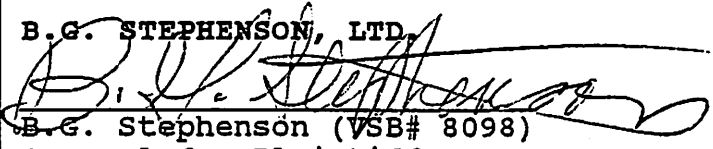
safety measures, and it was reckless for her, as a resident physician, to fail to seek any advice or supervision whatsoever concerning the purported treatment and examination of Plaintiff. However, when Fowler's reckless negligence is coupled with the fact that she was practicing completely outside of the statutory ambit of her temporary license, took no different course of medical action, nor sought any supervision or consultation with her supervisors after Plaintiff fell twice, her behavior displays a conscious disregard for Plaintiff's wellbeing and the wellbeing of the other patients that she treated at Heritage Hall.

WHEREFORE, Plaintiff moves this Court for judgment against Defendant, Josephine Fowler, M.D., in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) in compensatory and exemplary damages, plus interest, costs and allowable attorney's fees and such other relief as this Court may deem proper.

Respectfully submitted,

LUCILLE P. OVERTON
By Counsel

B.G. STEPHENSON, LTD.


B.G. Stephenson (VSB# 8098)

Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-0638

VIRGINIA:

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

THE ESTATE OF LUCILLE P.
OVERTON, Deceased
Plaintiff,

v.

BLACKSTONE: FAMILY PRACTICE
CENTER, INC., CHARLES ROSENBAUM
a/k/a C.J. ROSENBAUM, M.D.,
HCMF CORPCRATION, t/a
Heritage Hall Health Care, and
JOSEPHINE FOWLER, M.D.,
Defendants.

Law No.: CL-031

PLAINTIFF'S DESIGNATION OF EXPERTS

COMES NOW the Plaintiff, The Estate of LUCILLE P OVERTON, by her attorney-in-fact Horace Perdieu, and her undersigned counsel, B G Stephenson, and hereby designates Plaintiff's experts pursuant to the Court's Scheduling Order and as identified in previous responses to Interrogatories propounded by the Defendants

Plaintiff designates as experts of Plaintiff the parties named in response to Interrogatories propounded by Defendant Blackstone Family Practice Center, Inc. and Responses to Interrogatories propounded by Defendant HCMF Corporation, and adopts the answers served by Plaintiff on September 10, 1999 with respect to both sets of Interrogatories.

In repetition thereto, and supplementing these responses, Plaintiff states as follows



John Oliver Martin, M.D.
3706 Howsen Avenue
Fairfax, VA 22030
(703) 352-3057

Dr. Martin is a physician who has been engaged in the family practice of medicine for approximately thirty years, and is familiar with the proper care of patients and the elderly in hospitals and nursing homes. His testimony and his expert opinions will be based upon his experience as a family practice physician and Plaintiff's medical records and other medical evidence.

Dr. Martin is expected to testify about the lack of provisions of a suitable care plan to prevent Plaintiff's falling or "wandering" while she resided at Heritage Hall. He is expected to testify that the medical and admission records indicate her propensity for falls, which would require a suitable care plan be established at the time of the Plaintiff's admission to the facility and that it was not provided. This plan should have been created with input from both the Plaintiff's physicians and the care facility. Further, he is expected to opine that Defendants Blackstone and Rosenbaum should have entered orders consistent with Plaintiff's care needs, which were stated in both her medical records and the records of the assessments performed during the admission process by the staff at Heritage Hall. Defendants had access to these records, which serve to establish their knowledge of the Plaintiff's particular risks. Dr. Martin is expected to testify that, according to the medical community, when there is no record made of an examination or of treatment then it is assumed that neither took place. Further, the delay that occurred between Plaintiff's injury and proper diagnosis of the same provided an opportunity for her lung congestion to develop. He is also expected to testify to the impact of a hip prosthesis on Plaintiff over her lifetime and the permanent nature of her injury, and costs of medical care associated therewith.

Dr. Martin is expected to testify that as Medical Director of Heritage Hall, and as a member of the Quality Assurance Committee, Defendant Rosenbaum had a responsibility to ensure proper development and implementation of such suitable care plans. Dr. Martin is expected to testify that Defendant HCMF's policies concerning the implementation of restraints are inconsistent. Dr. Martin is expected to opine that the act of advising Plaintiff to "ring for assistance" if she ever fell again falls far short of the standard of care in any community in light of Plaintiff's known physical and mental disabilities. He is expected to opine that in cases involving a fractured hip the leg will usually rotate outward, thereby presenting an easily detectable sign of injury. He is expected to opine that the x-rays which were taken at Johnston-Willis Hospital revealed marked external rotation which is a definite and obvious sign of hip fracture which would be obvious upon a routine examination of the extremity. He is expected to opine that Dr. Fowler's examination and treatment of Plaintiff was not in conformance with the medical standard of care in any community, and that the subsequent examination by Dr. Damewood revealed pain on motion of Plaintiff's left hip, which should have alerted Dr. Fowler to the probability of a hip fracture, that Dr. Fowler as a resident should have been under the supervision of Defendants Rosenbaum and Blackstone, and that it was negligent for Defendant Rosenbaum, as Plaintiff's attending physician, to allow Dr. Fowler to treat her completely unsupervised. Dr. Martin is further expected to testify

concerning the consequences of and the ongoing medical problems associated with the failure to detect a broken hip and leaving it unattended. As particularly relates to Plaintiff, Dr. Martin is expected to opine that as a result of her immobility caused by the broken hip, Plaintiff developed congestion which required further medication, and caused further deterioration of Plaintiff's physical condition and directly contributed to Plaintiff's cardiac arrest during the process of her being attended for her broken hip at Johnston-Willis Hospital. He is expected to opine that the delay between injury and time of diagnosis allowed lung congestion to develop, making it necessary to operate on her while the lungs were congested, which greatly increases the chance of complications.

Dr. Martin is expected to opine that it was negligent and improper practice for Defendant Rosenbaum to allow his name to be designated as Plaintiff's "attending physician" on her chart and to never directly observe, examine, or treat Plaintiff and to delegate all treatment of Plaintiff to an unsupervised resident physician. He is expected to opine that a patient's attending physician of record is ultimately responsible for the examination and treatment that his patient receives.

He is expected to opine that there was ample indication in Plaintiff's records that she needed safety measures to prevent injury, and that leaving Plaintiff unattended subjected her to sustaining injuries which produced great pain and caused Plaintiff to suffer continuing pain. Dr. Martin is expected to testify about the costs of sustaining and recovering from an operation such as the one Plaintiff underwent, and the costs of ongoing rehabilitation and care associated therewith. Dr. Martin is also expected to testify concerning the permanency of Plaintiff's hip injury, the effects of a permanent hip prosthesis such as the one required by Plaintiff after she was injured at Heritage Hall. He is expected to opine that Defendants' failures directly and proximately caused Plaintiff physical injury, and ongoing pain and suffering.

Reinald Leidelmeyer, M.D.
3405 St. Paul's Place
Fairfax, VA 22031
(703) 591-7566

Dr. Leidelmeyer is expected to testify as to the same matters as Dr. Martin and to opine regarding those matters consistent with Dr. Martin's opinions. In addition to supporting Dr. Martin's testimony, Dr. Leidelmeyer is expected to testify that the Defendant's medical records are devoid of any circumstances concerning the two falls the Plaintiff suffered while under the care and supervision of the Defendants; the records do indicate that one of the falls occurred as the Plaintiff wandered the facility unsupervised by the nursing staff. Dr. Leidelmeyer is further expected to opine that Dr. Fowler's records of the examinations following each fall were not sufficiently detailed. Specifically, Dr. Fowler's statements that there were no injuries and that no treatment was required are not supported by any further documentation about what kind of examinations, if any, she performed and on what findings during these examinations her conclusions of no injuries were based. Furthermore, Dr. Leidelmeyer is expected to testify that resident physicians are required to report and discuss all findings from any interaction with a patient to their attending physician, in Dr. Fowler's case Dr. Rosenbaum. Inasmuch as there is no record or evidence of such conversation, he is

expected to opine that this constitutes a serious aberration of accepted standards and protocol of resident physician training programs. Dr. Leidelmeyer is expected to testify that as result of Dr. Fowler's grossly inadequate records and her failure to report either fall, as required, it took approximately ten days or more and a request by the Plaintiff's concerned son for Dr. Rosenbaum to cause the Plaintiff to be properly examined and diagnosed, which resulted in the subsequent discovery of her fractured hip. Dr. Leidelmeyer is expected to conclude that these facts plus the inadequate care, supervision, and precautions of the nursing staff to a mentally and physically impaired patient resulted in the Plaintiff's unnecessary and prolonged suffering. Dr. Leidelmeyer may also testify concerning matters that Dr. Burkhardt is expected to cover as described in his designation. He is also expected to testify regarding the costs of medical care caused by Defendants' conduct.

Attached hereto labeled "Schedule A" is a Curriculum Vitae of Dr. Leidelmeyer

Barry Burkhardt, M.D.
P.O. Box 35725
Richmond, VA 23235-0725
(804) 320-1339

Dr. Burkhardt is the orthopedic surgeon who performed hip surgery on Plaintiff when she was admitted to Johnston-Willis Hospital in 1995 after receiving injuries at Heritage Hall. His testimony is expected to be consistent with Plaintiff's Johnston-Willis Hospital Operative Notes and other of Plaintiff's medical records produced in discovery. Dr. Burkhardt will base his testimony and his expert opinions upon his experience as a surgeon, his physical examinations, observations, his treatment of Plaintiff, Plaintiff's medical records and other medical evidence.

Dr. Burkhardt is expected to testify as to Plaintiff's condition upon her admittance to Johnston-Willis Hospital following the discovery of the injuries she sustained at the Defendant's facility. Dr. Burkhardt is expected to testify regarding the radiology reports that pertain to the Plaintiff's hip fracture. He is expected to opine that Plaintiff suffered a displaced subcapital fracture of her left hip, as confirmed by an examination which included x-rays, and that Plaintiff required immediate surgery in order to treat the fracture and to receive a self-centering response hip prosthesis cemented in place.

Dr. Burkhardt is expected to testify concerning the nature and extent of Plaintiff's hip fracture, and is expected to opine that the displaced subcapital fracture of Plaintiff's left hip is consistent with injuries received from a fall or falls. Dr. Burkhardt is expected to opine that Plaintiff's hip fracture was sustained approximately ten days to two weeks before surgery. Further, he is expected to testify to the nature and extent of the Plaintiff's hip fracture and the effects of that fracture that should have been noticed by both Blackstone and Rosenbaum. These effects include physical deterioration, chronic weakness, and lung congestion. Dr. Burkhardt is also expected to opine that the delays in the discovery, proper diagnosis and subsequent treatment of the Plaintiff's hip fracture resulted in serious complications, including cardiac arrest while undergoing hip replacement surgery. In addition, Dr. Burkhardt is expected to testify regarding the type

of medical attention the Plaintiff required consistent with the medical records that have been provided to the Defendants and the standard of care related thereto. Dr. Burkhardt's testimony is expected to include the costs of the Plaintiff's treatment, the amount of pain associated with a hip fracture, the permanent nature of the hip prosthesis, and the ongoing need for rehabilitation.

F. Carlos Gonzales, M.D.
3700 Joseph Siwick Drive
Fairfax, VA 22033
(703) 715-9700

Dr. Gonzales is expected to testify that the Defendants failed to provide a suitable plan for the Plaintiff's care or a safe living environment while she resided at Heritage Hall. Dr. Gonzales is expected to opine that when the Plaintiff was transferred from Johnston-Willis Hospital to Heritage Hall her medical records included a detailed Transfer Assessment form. This form indicated that the Plaintiff required constant physical assistance, supervision, and she had been posyed for safety, due to constant periods of confusion. Dr. Gonzales is expected to testify that the Plaintiff could not be left alone safely. He is further expected to testify regarding Heritage Hall's patient assessment policies and procedures. Dr. Gonzales is expected to opine that Heritage Hall policy is to assess each patient on admission for safety risk. If the safety is a high-risk issue, the nursing staff is required to fill out a Safety Device Assessment form and notify the Director of Nursing, at which point, a full assessment will be done on the patient and a comprehensive care plan team will determine what type of safety measure is to be used as an appropriate care plan. Dr. Gonzales is expected to testify that the record does not contain evidence of any of these measures, with exception of the Admission Nursing Assessment Form. Further, he is expected to testify that following the Plaintiff's two falls no safety measures were taken, with the exception of a verbal warning not to get up again without assistance. Dr. Gonzales is expected to testify that this not a realistic corrective measure for a confused patient. In addition, he is expected to opine that the nursing staff's performance as a whole was unacceptable and insufficient by any standard in the medical profession.

Attached hereto labeled "Schedule B" is a Curriculum Vitae of Dr. Gonzales.

Phyllis Corrigan
4925 King Solomon Drive
Annandale, VA 22003
(703) 425-9261

Mary Jo Berne
9104 Fishermans Lane
Springfield, VA 22153
(703) 644-5166

Ms. Corrigan and Ms. Berne are both expected to testify as to the standard of care which Plaintiff should have received by Defendant HCMF CORPORATION in its

facility and that the proper care was not provided which was reasonably necessary to prevent the falls; and resulting injury to the Plaintiff. Both suggest a care plan specific to Plaintiff's risks should have been instituted immediately upon her admission to the Heritage Hall facility, and certainly after her first fall. Each have proposed possible care plans and are expected to opine that Defendant neglected to provide any suitable care plan that should have been devised and implemented for the Plaintiff. Both have training as Registered Nurses and have worked extensively in nursing homes and are familiar with standards and practices in the operation thereof. Both are expected to testify regarding those standards and practices and the failures of HCMF Corporation in relation to the care of Plaintiff. They are both expected to testify regarding the charts related to Lucille Overton and the significance of the charting, and the failures on the part of Defendant HCMF Corporation, as reflected in the charts maintained by Defendant HCMF Corporation.

Ms. Ola Powers;
Deputy Director
Virginia Board of Medicine
Licensing Department
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230

Ms. Powers or a Virginia Medical Board officer, of comparable expertise, designated in her stead, is expected to testify concerning the issuance of temporary licenses to practice medicine in the Commonwealth of Virginia by the Board of Medicine's Licensing Department to resident physicians associated with an accredited medical school particularly the Medical College of Virginia. In addition, Ms. Powers or the designated officer is expected to opine about the nature and scope of the temporary license, and what is permitted by the Code of Virginia and regulations promulgated by the Board pertaining to practice of medicine by a resident physician under the program of the Medical college. Further testimony is expected concerning the restrictions that are imposed on the licensee, whether supervision is required, and to what extent the resident physician must be directly supervised while practicing under the temporary license. The Plaintiff reserves the right to call either Ms. Powers or other public officials in their capacity as public officials charged with administering the Virginia Board of Medicine's Resident Physician Licensing Program.

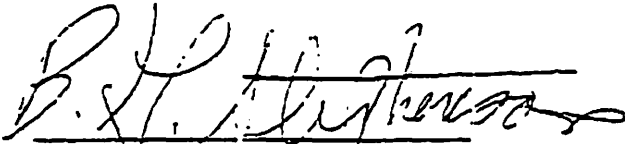
Robert M. Krulavitz
Woodbine Accountant
2729 King Street
Alexandria, Virginia 22302-4098
(703) 836-8838

Mr. Krulavitz is an accountant at the Woodbine Rehabilitation & Healthcare Center, which is the facility the Plaintiff was transferred to following her release from the hospital for the fractured hip she sustained at Heritage Hall. Mr. Krulavitz is expected to testify regarding the costs associated with the type of long term care needed by the Plaintiff while she resided at the Woodbine facility following her hip fracture and subsequent hip replacement surgery.

Plaintiff reserves her right to supplement these designations as may be required.

LUCILLE P. OVERTON
By Counsel

B.G. STEPHENSON, LTD.



B.G. Stephenson (VSB # 8098)
Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-4738

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be sent via First Class, U.S. Mail, postage prepaid, this 1st day of February, 2001, to the following:

Lynne J. Fiscella, Esquire
Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
Telephone: (804) 673-4004
Facsimile: (804) 673-6555
Counsel for HCMF Corporation
Via Heritage Hall Health Care

S. Elizabeth Prarr, Esquire
LeClair Ryan, P.C.
707 E. Main Street, 11th floor
Richmond, Virginia 23219
Counsel for Dr. Rosenbaum &
Blackstone Family Practice

Mary M.H. Priddy, Esquire
Goodman, West & Filetti
4501 Highwoods Parkway, Suite 210
Glen Allen, Virginia 23060
Counsel for Dr. Fowler

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator of
The Estate of Lucille P. Overton, deceased

Plaintiff,

v.

BLACKSTONE FAMILY PRACTICE CENTER,
INC., et al.

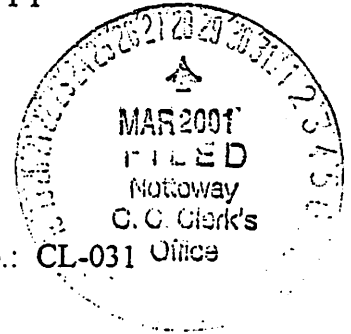
Defendants.

**DEFENDANTS BLACKSTONE FAMILY PRACTICE CENTER, INC. AND
CHARLES I. ROSENBAUM, M.D.'S MOTION *IN LIMINE* TO EXCLUDE
PLAINTIFF'S EXPERT WITNESS, REINALD LEIDELMEYER, M.D.**

COME NOW defendants Blackstone Family Practice Center, Inc. ("Blackstone Family Practice") and Charles I. Rosenbaum, M.D. ("Dr. Rosenbaum"), by counsel, and submit the following as their motion *in limine* to exclude plaintiff's expert witness, Reinald Leidelmeyer, M.D.:

Preliminary Statement

In the Motion for Judgment, plaintiff alleges, among other things, that defendants Blackstone Family Practice, Dr. Rosenbaum and Josephine Fowler, M.D. committed medical malpractice. In his designation of experts, plaintiff identified Dr. Leidelmeyer to testify that defendants violated the applicable standard of care. Because Dr. Leidelmeyer failed to maintain an active clinical practice in defendants' specialty or a related field of medicine within one year of the date of the alleged medical malpractice, as required by Virginia Code § 8.01-581.20, Dr. Leidelmeyer is not qualified to testify as



an expert witness. Consequently, defendants' motion *in limine* to exclude Dr. Leidelmeyer must be granted.

Facts

At all relevant times, Dr. Rosenbaum and Josephine Fowler, M.D. were Family Practice physicians practicing at Blackstone Family Practice. Dr. Leidelmeyer never had specialty training in Family Practice Medicine. Leidelmeyer Deposition, at 15.¹ Dr. Leidelmeyer is not board certified in any specialty. Leidelmeyer Deposition, at 24. Dr. Leidelmeyer did not admit any patient to a hospital from 1994-present. Leidelmeyer Deposition, at 67.

Dr. Leidelmeyer has worked at the Fairfax County Health Department from 1990-present. Leidelmeyer Deposition, at 58-59. Dr. Leidelmeyer has always been a part-time employee at the Fairfax County Health Department and he has worked three days per week and four hours per day. Leidelmeyer Deposition, at 59-61.

While working at the Fairfax County Health Department from 1994-1997, Dr. Leidelmeyer only performed pre-employment physicals² and read the x-ray if there was a positive skin test. Leidelmeyer Deposition, at 66.³ While working at the Fairfax County Health Department from 1990-present, Dr. Leidelmeyer never saw any nursing home patients. Leidelmeyer Deposition, at 66. More importantly, Dr. Leidelmeyer has not treated any patients for fractures since he began his employment with the Fairfax County Health Department in 1990. Leidelmeyer Deposition, at 78. Dr. Leidelmeyer candidly

¹ The relevant portions of Dr. Leidelmeyer's deposition are attached hereto as Exhibit A.

² A pre-employment physical consists of "Looking at the nose, looking at the ears, looking at the throat, feel for glands, listen to their heart, listen to their lungs, feel their abdomen, see their reflexes, take their blood pressure, do a general physical. Leidelmeyer Deposition, at 65-66.

³ A positive skin test shows if a person has been in contact with or infected at any time with tuberculosis. Leidelmeyer Deposition, at 64.

admits that his job at the Fairfax County Health Department is different from that of a Family Practice physician. Leidelmeyer Deposition, at 67.

Argument

At all relevant times, Dr. Rosenbaum and Josephine Fowler, M.D. were Family Practice physicians practicing at Blackstone Family Practice. In the Motion for Judgment, plaintiff alleges that defendants committed medical malpractice in January 1995. Moreover, Dr. Leidelmeyer is expected to testify that defendants failed to timely diagnose and treat a nursing home patient's fractured hip. Leidelmeyer Deposition, at 113.

Virginia Code § 8.01-581.20 provides, in pertinent part, that

A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards **and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action.**

Virginia Code § 8.01-581.20 (emphasis added). See also Fairfax Hosp. Sys., Inc. v. Curtis, 249 Va. 531, 537 (1995). The treatment of patients is essential to the determination of whether or not a physician has a clinical practice. See Peck v. Tegtmeier, 834 F. Supp. 903, 911 (W.D. Va. 1995). Furthermore, the Supreme Court of Virginia recently held that "[t]he purpose of the requirement in § 8.01-581.20 that an expert have an active practice in the defendant's specialty or a related field of medicine is to prevent testimony by an individual who has not **recently** engaged in the actual performance of the procedures at issue in the case." Sami v. Varn, 260 Va. 280, 285 (2000) (emphasis added). The Sami court also held that "in applying the 'related field of

medicine' test for the purposes of § 8.01-581.20, it is sufficient if in the expert witness' clinical practice the expert performs the procedure at issue and the standard of care for performing the procedure is the same." Id. As set forth below, Dr. Leidelmeyer failed to maintain an active clinical practice in either defendants' specialty or a related field of medicine within one year of the date of the alleged medical malpractice in this case, as required by Virginia Code § 8.01-581.20.

A. Dr. Leidelmeyer did not have an active clinical practice in any specialty from 1994-present because he did not treat patients during that critical time period.

The treatment of patients is essential to the determination of whether or not a physician has a clinical practice. See Peck, 834 F. Supp. at 911. In this case, Dr. Leidelmeyer did not treat patients within one year of the alleged medical malpractice. This is a critical flaw in Dr. Leidelmeyer's qualifications.

Specifically, Dr. Leidelmeyer has worked at the Fairfax County Health Department from 1990-present. Leidelmeyer Deposition, at 58 – 59. While working at the Fairfax County Health Department from 1994-1997, Dr. Leidelmeyer **only** performed pre-employment physicals and read the x-ray if there was a positive skin test. Leidelmeyer Deposition, at 66. As a matter of law, the performance of pre-employment physicals does not constitute providing "treatment" to a patient. Because Dr. Leidelmeyer did not actually treat patients during the period of 1994-1997, he did not have an active clinical practice in any specialty within one year of the alleged malpractice, as required by Virginia Code § 8.01-581.20.

B. Dr. Leidekmeyer did not have an active clinical practice in defendants' specialty within one year of the alleged malpractice.

Assuming arguendo that Dr. Leidekmeyer had a "clinical" practice from 1994-1997, he is still not qualified to testify regarding the applicable standard of care because Dr. Leidekmeyer did not have an active clinical practice as a Family Practice physician within one year of the alleged medical malpractice. Particularly, at all relevant times, Dr. Rosenbaum and Josephine Fowler, M.D. were Family Practice physicians practicing at Blackstone Family Practice. By contrast, Dr. Leidekmeyer has never had any specialty training in Family Practice medicine. Leidekmeyer Deposition, at 15. Moreover, Dr. Leidekmeyer is not board certified in any medical specialty. Leidekmeyer Deposition, at 24. In fact, Dr. Leidekmeyer candidly admits that his job at the Fairfax County Health Department is different from that of a Family Practice physician. Leidekmeyer Deposition, at 67. In short, Dr. Leidekmeyer clearly did not have an active clinical practice in defendants' specialty, Family Practice medicine, within one year of the alleged medical malpractice.

C. Dr. Leidekmeyer did not have an active clinical practice in a related field of medicine within one year of the alleged malpractice.

Assuming arguendo that Dr. Leidekmeyer had a "clinical" practice from 1994-1997, he is still not qualified to testify regarding the applicable standard of care because Dr. Leidekmeyer did not have an active clinical practice in a related field of medicine within one year of the alleged medical malpractice. In Sami, the Supreme Court of Virginia held that "the purpose of the requirement in § 8.01-581.20 that an expert have an active clinical practice in the defendant's specialty or a related field of medicine is to prevent testimony by an individual who has not recently engaged in the actual

performance of the procedures at issue in the case.” Sami, 260 Va. at 285. The Sami court also held that “in applying the ‘related field of medicine’ test for the purposes of § 8.01-581.20, it is sufficient if in the expert’s clinical practice the expert performs the procedure at issue....” Id. Dr. Leidekmeyer cannot satisfy this test.

Dr. Leidekmeyer is expected to testify that defendants failed to timely diagnose and treat a nursing home patient’s fractured hip. Leidekmeyer Deposition, at 113. More importantly, in his job at the Fairfax County Health Department, Dr. Leidekmeyer has neither treated any patients for fractures since 1990 nor has he seen any nursing home patients since 1990. Leidekmeyer Deposition, at 66, 78. Because Dr. Leidekmeyer has not diagnosed and treated a fracture in a nursing home patient, the procedure at issue in this case, within one year of the alleged malpractice, he does not have an active clinical practice within a related field of medicine. See id. Consequently, Dr. Leidekmeyer cannot qualify as an expert witness.

Conclusion

In light of the foregoing, defendants respectfully request that this Court grant their motion *in limine* to exclude plaintiff’s expert witness, Reinald Leidekmeyer, M.D.

CHARLES I. ROSENBAUM, M.D. and
BLACKSTONE FAMILY PRACTICE
CENTER, INC.

By Kevin L. Nussme
Counsel

Kelvin L. Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
Richmond, Virginia 23219
Telephone : (804) 783-2003
Facsimile: (804) 783-2294
*Counsel for Blackstone Family Practice Center, Inc.
and Charles I. Rosenbaum, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent via facsimile and U.

S. Mail, postage prepaid, this 27th day of March, 2001 to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff, Lucille P. Overton

Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*

Kelvin L. Newsome

1 VIRGINIA:

2

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

3

4 ----- X

THE ESTATE OF LUCILLE P.

5 OVERTON, Deceased, :

6 Plaintiff, :

7

Vs.

Law No.: CL-031

8

BLACKSTONE FAMILY PRACTICE

9

CENTER, INC., CHARLES

ROSENBAUM a/k/a C.J. :

10

ROSENBAUM, M.D., HCMF

CORPORATION, t/a HERITAGE

11

HALL HEALTH CARE, :

AND JOSEPHINE FOWLER, M.D.,

12

Defendants. :

13

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14

15

16 Deposition of Reinald Leidelmeier, M.D.

Fairfax, Virginia

17

Friday, March 16, 2001

18

19

20 Reported By: Terri Duncan

21

Job No. 136929

22

1 Q Three months?

2 A There's three months missing. Maybe it
3 was four months. Internal medicine, surgery,
4 obstetrics. I'm not sure of the -- it was the
5 rotating internship, I think.

6 Q And during this rotating internship at
7 Johnston-Willis, is it fair to say that there was
8 no family practice training?

9 A There was no family practice training
10 at the time here in the United States.

11 Q After you finished your rotating
12 internship at Johnston-Willis, did you go on to a
13 residency program?

14 A No.

15 Q Have you ever had any specific training
16 in family practice medicine?

17 A No.

18 Q Have you ever performed a fellowship of
19 any sort?

20 A Yes. Actually to go back, I was a
21 foreign graduate. And I had to make a living.
22 But I also knew I was going to be drafted in the

1 Q But all the patients had tuberculosis,
2 is that correct?

3 A All the patients had tuberculosis. And
4 hopefully those who were surgerized (sic) didn't
5 have any more, at least not in an infective
6 stage.

7 Q Do you have any certification as a
8 gerontologist or geriatrician?

9 A No.

10 Q Do you have a board certification of
11 any sort?

12 A No.

13 Q Have you ever sat for any boards?

14 A No. I worked to establish a board in a
15 specialty.

16 Q Was that family practice?

17 A No. Emergency medicine.

18 Q After you completed your job at the
19 Health Department in Charlottesville, what did
20 you do next?

21 A I started a private general practice
22 here in Fairfax.

1 Q Were you affiliated with the Health
2 Department from 1990 to the present?

3 A Yes.

4 Q What were you doing in 1995 at the
5 Health Department?

6 A I have no idea. Doing the clinics and
7 reading the x-rays.

8 Q Have you ever retired from the practice
9 of medicine?

10 A Well, I think today is -- or last
11 week. Because the Health Department has a
12 re-organization going. I'm not included. Let's
13 put it that way.

14 Q When you sold the clinic, did you
15 retire?

16 MR. STEPHENSON: Objection.

17 THE WITNESS: No. I started
18 working for the Health Department.

19 BY MR. NEWSOME:

20 Q How many hours a week were you working
21 at the Health Department in 1990?

22 A I think it was maybe three days a week.

1 Q At what Health Department were you
2 working?

3 A Fairfax County Health Department.

4 Q What was your job title?

5 A I don't know. Physician. I don't
6 know. I don't know if I had a title. Am I
7 supposed to have a title?

8 Q I'm just asking if you had a title.

9 A And I am asking -- I don't know if I
10 had a title.

11 Q Did you work three days a week from
12 1990 until year 2001?

13 A Yes.

14 Q How many hours a day were you working?

15 A Either morning or -- mostly mornings.

16 Q Are we talking three or four hours a
17 day?

18 A Yes, something like that. Some evening
19 clinics. And when others were on vacation or not
20 available or whatever the setup was, I would fill
21 in.

22 Q Were you a full-time employee --

1 A No.

2 Q Let me just ask my question. From 1990
3 until 1997, were you a full-time employee at the
4 Fairfax Health Department?

5 MR. STEPHENSON: Objection.

6 MR. NEWSOME: Let me rephrase the
7 question. I don't know what your objection is,
8 counsel.

9 BY MR. NEWSOME:

10 Q Were you a full-time employee,
11 Dr. Leidelmeyer, at the Fairfax County Health
12 Department from 1990 to 1997?

13 A No.

14 Q Were you working on an as-needed
15 basis?

16 A No.

17 Q You were a part-time employee?

18 A Yes.

19 Q Were you doing pre-natal clinics where
20 you examined women and listened for heart tones
21 for babies, is that what you were doing?

22 A Yes, general pre-natal checkups. And

1 listening to the heart, that was part of that.

2 Q What percentage of your time was spent
3 at the Fairfax County Health Department
4 performing pre-natal checkups?

5 A Could you repeat that?

6 Q Sure. What percentage of your time at
7 the Fairfax County Health Department was spent
8 doing pre-natal checkups?

9 A Actually, I think it was about, in the
10 early years, was about 50 percent.

11 Q Let's go from 1994 to 1996. I just
12 want to get a feel for exactly what you were
13 doing. We can take it by year. Let's take it by
14 year.

15 In 1994 what were your duties? First
16 of all, were you still part-time in 1994?

17 A I was always part-time.

18 Q What were your duties back in 1994?

19 A I have no idea.

20 Q What were you doing?

21 A How do you mean? In these clinics?

22 Q Yes.

1 would read the x-rays.

2 Q What is a positive skin test?

3 A The skin test for if they have been in
4 contact with or infected at any one time with
5 tuberculosis.

6 Q And if there was a positive skin test,
7 you would read the x-ray, is that correct?

8 A Yes.

9 Q What else were you doing? We have
10 already talked about the pre-employment physicals
11 for the newcomers and if they had a positive skin
12 test, you would read the x-rays.

13 Were you doing anything else with
14 respect to the newcomer clinic?

15 A Well, the pre-employment physicals were
16 not only for the newcomers. It was the fire
17 department, people in the food industry, they got
18 yearly checkups. And they would get them through
19 the Health Department.

20 Q Other than the pre-employment physicals
21 and looking at the positive skin tests, x-rays,
22 were you doing anything else at the clinic in

1 1994?

2 A I don't think so.

3 Q In 1995 were you still doing the
4 pre-employment physicals?

5 A Yes. I was basically doing the same
6 thing the last five years.

7 Q Again, when you say the same thing, you
8 were doing pre-employment physicals and reading
9 the x-rays if they were positive skin tests, is
10 that correct?

11 A That's right.

12 Q Were you seeing any patients at nursing
13 homes?

14 A No.

15 Q From 1994 to 1997?

16 A No.

17 Q Tell me what these pre-employment
18 physicals consisted of. What actually were you
19 checking?

20 A Looking at the nose, looking at the
21 ears, looking at the throat, feel for glands,
22 listen to their heart, listen to their lungs,

1 feel their abdomen, see their reflexes, take
2 their blood pressure, do a general physical.

3 Q While you were at the Fairfax County
4 Health Department, did you ever see any nursing
5 home patients?

6 A No.

7 Q While you were at the Fairfax County
8 Health Department, did you ever train or
9 supervise interns or residents?

10 A No.

11 Q You were just doing the physicals, is
12 that correct, when you were at the Health
13 Department from 1994 to 1997, and reading the
14 positive skin tests, is that correct?

15 A Yes.

16 Q Were you actually treating patients?

17 A Depending on the findings of the x-ray
18 and so forth, I would write prescriptions for
19 medications, prophylactic, anti-tuberculous
20 antibiotics and other medications.

21 Q Would the medications that you were
22 prescribing, were those medications dealing

1 specifically with tuberculosis?

2 A Yes. Basically, yes.

3 Q Can we agree that your job at the
4 Fairfax County Health Department was different
5 from a family practice, from a family practice
6 clinic?

7 A Yes.

8 Q Back in 1994 did you have any active
9 hospital privileges?

10 A I am an honorary member of the staff
11 and I will have the privileges until I die.

12 Q Were you active at any hospital in
13 1994?

14 A No.

15 Q Were you active at any hospital in
16 1995?

17 A No.

18 Q Have you been active at any hospital
19 from 1994 to the present?

20 A Admitting patients, you mean?

21 Q Yes.

22 A No.

1 Q Since you have been employed at the
2 Fairfax County Health Department, have you
3 treated patients for fractures?

4 A No.

5 Q Since you have been employed at the
6 Fairfax County Health Department, have you given
7 tetanus shots?

8 A I don't give any injections in general.
9 It's usually the nurse who does that, or other
10 personnel.

11 Q Since you have been at the Fairfax
12 County Health Department, have you ordered any
13 tetanus shots?

14 A No tetanus shots that I am aware of.

15 Q Since you have been employed at the
16 Fairfax County Health Department, have you ever
17 taken any call?

18 A Call of what?

19 Q Call? Have you been on call?

20 A For what?

21 Q To cover the Health Department, on
22 call.

1 Dr. Leidelmeyer Plaintiff's Designation of
2 Experts. I would like to have that marked as
3 Leidelmeyer 20.

4 (Leidelmeyer Deposition Exhibit 20
5 marked for identification by the
6 reporter and attached.)

7 BY MR. NEWSOME:

8 Q Doctor, what opinions are you offering
9 in this case?

10 A What opinion?

11 Q Yes.

12 A A failed diagnosis that was and usually
13 is very obvious.

14 Q Is that the only --

15 A Not supported in the records that an
16 adequate examination was done.

17 Q Are you offering any other opinions in
18 this case, Doctor?

19 A I think that's enough.

20 Q When did Ms. Overton fracture her hip?

21 A I think the very first fall she
22 probably fractured her hip.

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator of
The Estate of Lucille P. Overton, deceased

Plaintiff,

v.

At Law No.: CL-031

BLACKSTONE FAMILY PRACTICE CENTER,
INC., et al.

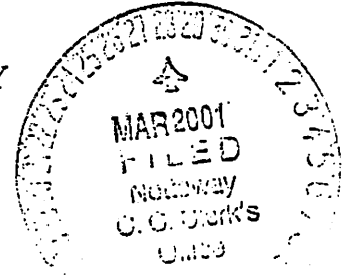
Defendants.

**DEFENDANTS BLACKSTONE FAMILY PRACTICE CENTER, INC. AND
CHARLES I. ROSENBAUM, M.D.'S MOTION *IN LIMINE* TO EXCLUDE
PLAINTIFF'S EXPERT WITNESS, JOHN MARTIN, M.D.**

COME NOW defendants Blackstone Family Practice Center, Inc. ("Blackstone Family Practice") and Charles I. Rosenbaum, M.D. ("Dr. Rosenbaum"), by counsel, and submit the following as their motion *in limine* to exclude plaintiff's expert witness, John Martin, M.D.:

Preliminary Statement

In the Motion for Judgment, plaintiff alleges, among other things, that defendants Blackstone Family Practice, Dr. Rosenbaum and Josephine Fowler, M.D. committed medical malpractice. In his designation of experts, plaintiff identified Dr. Martin to testify that defendants violated the applicable standard of care. Because Dr. Martin failed to maintain an active clinical practice within one year of the date of the alleged medical malpractice, as required by Virginia Code § 8.01-581.20, Dr. Martin is not qualified to testify as an expert witness. Accordingly, defendants' motion *in limine* to exclude Dr. Martin must be granted.



Facts

Dr. Martin did not complete a residency or a fellowship. Martin Deposition, at 4.¹ Dr. Martin is not board certified in any specialty. Martin Deposition, at 6. Dr. Martin has been retired since 1987. Martin Deposition, at 4. More importantly, Dr. Martin has not had an active clinical practice since 1987. Martin Deposition, at 4, 7.

Argument

At all relevant times, Dr. Rosenbaum and Josephine Fowler, M.D. were Family Practice physicians practicing at Blackstone Family Practice. In the Motion for Judgment, plaintiff alleges that defendants committed medical malpractice in January 1995. More specifically, plaintiff alleges that defendants failed (1) to prevent a nursing home patient from falling; and (2) to diagnose and treat a nursing home patient's fractured hip.

Virginia Code § 8.01-581.20 provides, in pertinent part, that

A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action.

Virginia Code § 8.01-581.20 (emphasis added). See also Fairfax Hosp. Sys., Inc. v. Curtis, 249 Va. 531, 537 (1995). The treatment of patients is essential to the determination of whether or not a physician has a clinical practice. See Peck v. Tegtmeier, 834 F. Supp. 903, 911 (W.D. Va. 1995). Furthermore, the Supreme Court of Virginia recently held that "[t]he purpose of the requirement in § 8.01-581.20 that an

¹ The relevant portions of Dr. Martin's deposition are attached hereto as Exhibit A.

expert have an active practice in the defendant's specialty or a related field of medicine is to prevent testimony by an individual who has not **recently** engaged in the actual performance of the procedures at issue in the case.” Sami v. Varn, 260 Va. 280, 285 (2000) (emphasis added). The Sami court also held that “in applying the ‘related field of medicine’ test for the purposes of § 8.01-581.20, it is sufficient if in the expert witness’ clinical practice the expert performs the procedure at issue and the standard of care for performing the procedure is the same.” Id.

To meet the requirements of Virginia Code § 8.01-581.20 and qualify to testify as an expert regarding the applicable standard of care in this case, Dr. Martin must have had an active clinical practice in defendants’ specialty or a related field of medicine within one year of January 1995. Dr. Martin cannot meet this burden because he **retired** from the daily practice of medicine in 1987. Martin Deposition, at 4. More importantly, Dr. Martin admitted in his deposition that he has not had an active clinical practice since 1987. Id. Specifically, Dr. Martin testified as follows during his deposition:

Q. I’m trying to get a feel for what you do professionally. Again, you said you haven’t had an active clinical practice since 1987. Is that correct?

A. That’s true, yes.

Martin Deposition, at 7. Dr. Martin’s candid testimony that he has been retired since 1987 and that he has not had an active clinical practice since 1987 is fatal to plaintiff’s attempt to qualify Dr. Martin as an expert witness on the issue of the applicable standard of care. Accordingly, defendants’ motion *in limine* to exclude Dr. Martin should be granted.

Conclusion

In light of the foregoing, defendants respectfully request that this Court grant their motion *in limine* to exclude plaintiff's expert witness, John Martin, M.D.

**CHARLES I. ROSENBAUM, M.D. and
BLACKSTONE FAMILY PRACTICE
CENTER, INC.**

By *Kelvin L. Newsome*
Counsel

Kelvin L. Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
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and Charles I. Rosenbaum, M.D.*

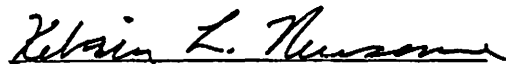
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent via facsimile and U.

S. Mail, postage prepaid, this 27th day of March, 2001 to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff, Lucille P. Overton

Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*


Kevin L. Hanson

COPY

V I R G I N I A:

IN THE CIRCUIT COURT
FOR THE COUNTY OF NOTTOWAY

(Removed from Arlington County Circuit Court)

- - - - -x
LUCILLE P. OVERTON,)
)
Plaintiff) Nottoway County
) At Law No. 97-59
vs.)
)
BLACKSTONE FAMILY PRACTICE) Arlington County
CENTER, INC., et al.,) At Law No. 97-12
)
Defendants)
- - - - -x

Thursday, September 3, 1998
Fairfax, Virginia

Deposition of

JOHN MARTIN, M.D.

called for examination by counsel for the defendants,
pursuant to notice, in the office of Ollen, Carleton,
Evans & Wochok, 4031 University Drive, Fairfax Virginia,
22030, commencing at 11:20 o'clock a.m., before M.
Louise Comninaki, a Notary Public for the Commonwealth
of Virginia, when were present on behalf of the
respective parties:

Reported by: M. Louise Comninaki

ACCURATE STENOTYPISTS, INC.
(703) 691-0480 / (703) 273-9367
P.O. Box 485, Fairfax, Virginia 22030

1 A Okay.

2 Q Are you taking -- well, would you state your
3 name, please?

4 A John O. Martin.

5 Q Are you taking any medication today that
6 would prohibit you from giving truthful responses?

7 A No.

8 Q What is your office address?

9 A I don't have an office. I'm retired.

10 Q Okay. When did you retire?

11 A 1987.

12 Q All right. When you retired, did you see
13 patients after 1987?

14 A Not for pay, no. Just as volunteer things.
15 I still have my license, though. I still have a full
16 Virginia medical license.

17 Q Okay. You see no patients for pay, so you
18 don't have -- you haven't had an active clinical
19 practice since 1987. Is that true?

20 A That's true, yes.

21 Q What is your date of birth, Doctor Martin?

22 A June 12, 1927.

23 Q What is your Social Security Number?

1 A You rotate through all the specialties, yes.

2 Q Tell me a little bit about that internship.

3 MR. STEPHENSON: In what respect?

4 BY MR. NEWSOME:

5 Q I want you to describe to me what rotations
6 you did in that year period, to the extent you recall.

7 A Well, it's one year, and we rotated through
8 surgery, pediatrics, medicine, emergency room,
9 obstetrics. I guess that was all.

10 Q Did you go through a residency program?

11 A No, I did not.

12 Q Did you go through a fellowship?

13 A No. No, I went directly, after I finished
14 internship, to work in the clinic at Fort Myer.

15 Q Okay. I will ask you about that. Are you
16 certified as a geriatrician?

17 A No, I am not.

18 Q Do you have any board certifications, Doctor?

19 A No, I don't. When I started practice, they
20 didn't have certification in family practice.

21 Q And just so I can be clear, you are not board
22 certified in any specialty?

23 A No, no.

1 Q I'm trying to get a feel for what you do
2 professionally. Again, you said you haven't had an
3 active clinical practice since 1987. Is that correct?

4 A That's true, yes.

5 Q Are you doing anything medically related
6 today?

7 A The only thing I do is seeing friends and
8 relatives and people on the softball team. I play in a
9 softball league, and I am always seeing people injured
10 in softball games. This is mostly elderly players and
11 there are a lot of injuries. That's the extent of it.

12 Q Has it been -- I'm sorry. Go ahead.

13 A Up until two years ago, I was on the Human
14 Rights Committee at the Northern Virginia Training
15 Center for the Retarded.

16 I mean, I wasn't directly involved in the
17 medical decisions except that we examined the medical
18 decisions particularly as regards drugs and restraints
19 and that sort of thing. The committee did that. I was
20 chairman for a couple years.

21 Q What was that committee called, again?

22 A Human Rights Committee.

23 Q And you didn't actually treat patients?

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, ADMINISTRATOR OF
THE ESTATE OF LUCILLE P. OVERTON,
DECEASED

Plaintiff,

v.

At Law No.: CL-031

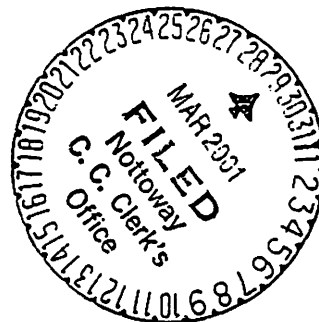
BLACKSTONE FAMILY PRACTICE CENTER,
INC.,

CHARLES I. ROSENBAUM,
a/k/a C.I. ROSENBAUM, M.D.,

JOSEPHINE FOWLER, M.D. and

HCMF CORPORATION, t/a
HERITAGE HALL HEALTH CARE

Defendants.



**DEFENDANTS BLACKSTONE FAMILY PRACTICE CENTER, INC. AND
CHARLES I. ROSENBAUM, M.D.'S MOTION FOR SUMMARY JUDGMENT**

COME NOW defendants Blackstone Family Practice Center, Inc. ("BFPC") and Charles I. Rosenbaum, M.D. ("Dr. Rosenbaum"), by counsel, and submit the following as their Motion for Summary Judgment.

PRELIMINARY STATEMENT

In his Motion for Judgment, plaintiff alleges, among other things, that defendants Dr. Rosenbaum and BFPC committed medical malpractice. In Plaintiff's Designation of Experts, plaintiff identified two expert witnesses, John O. Martin, M.D. and Reinald Leidelmeyer, M.D., to testify that defendants BFPC and Dr. Rosenbaum violated the applicable standard of care.

Because Dr. Martin and Dr. Leidelmeyer failed to maintain an active clinical practice within one year of the date of the alleged medical malpractice in the field of Family Practice medicine or a related field of medicine, as required by Virginia Code § 8.01-581.20, Dr. Martin and Dr. Leidelmeyer are not qualified to testify as expert witnesses.¹ Consequently, plaintiff's claims must fail as a matter of law because he does not have an expert witness to testify that defendants BFPC and Dr. Rosenbaum were negligent.

ARGUMENT

Virginia law is clear that in order to recover for medical malpractice, the plaintiff ordinarily must prove through the use of expert testimony the applicable standard of care, a deviation from that standard, proximate causation, and damages. Rogers v. Marrow, 243 Va. 162, 167 (1992). Exceptions exist in those rare cases in which a health care provider's act or omission is clearly negligent within the common knowledge of laymen. Raines v. Lutz, 231 Va. 110, 113 n 2 (1986). This is a complex medical malpractice case and there is absolutely nothing in the record to suggest that this narrow exception should apply here.

In his Motion for Judgment, plaintiff alleges that defendants committed negligence in January 1995. Motion for Judgment, at ¶¶ 17, 18, 20, 21, 23, 45-53, 67. Because Dr. Martin and Dr. Leidelmeyer cannot, as a matter of law, qualify as expert witnesses, plaintiff has no expert witness to testify that defendants BFPC and Dr. Rosenbaum committed medical malpractice. As the Virginia Supreme Court has consistently held, this omission is fatal in a medical malpractice case. See, e.g., Lutz, 231 Va. at 113. Consequently, plaintiff cannot establish that defendants

¹ Defendants' Motion for Summary Judgment is filed with this Court in anticipation of the Court's holding that Drs. Martin and Leidelmeyer are not qualified to testify as expert witnesses in this case. Defendants' arguments that Drs. Martin and Leidelmeyer are not qualified as expert witnesses are more fully set forth in defendants' Motions *in Limine* to exclude Plaintiff's Expert Witnesses, John D. Martin, M.D. and Reinald Leidelmeyer, M.D. which were previously forwarded to this Court.

committed medical malpractice as a matter of law and defendants' Motion for Summary Judgment should be granted.

CONCLUSION

In light of the foregoing, defendants respectfully request that summary judgment be entered in their favor on plaintiff's claim of medical malpractice.

BLACKSTONE FAMILY PRACTICE CENTER,
INC. and
CHARLES I. ROSENBAUM, M.D

By *S. Elizabeth Pharr*
Of Counsel

Kelvin L. Newsome, Esquire
S. Elizabeth Pharr, Esquire
LECLAIR RYAN, a Professional Corporation
707 E. Main Street - 11th Floor
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of defendants' Motion for Summary Judgment was sent via facsimile and U. S. Mail, postage prepaid, this 28th day of March, 2001 to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff

Lynne J. Fiscella, Esquire
Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*

D. Elizabeth Phan

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, ADMINISTRATOR OF
THE ESTATE OF LUCILLE P. OVERTON,
DECEASED

Plaintiff,

v.

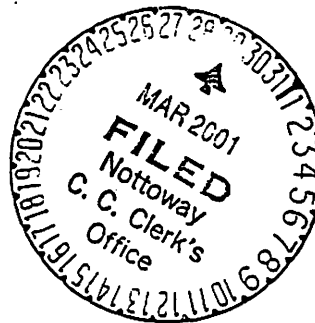
At Law No.: CL-031

BLACKSTONE FAMILY PRACTICE CENTER,
INC.,

CHARLES I. ROSENBAUM,
a/k/a C.I. ROSENBAUM, M.D.,

JOSEPHINE FOWLER, M.D. and

HCMF CORPORATION, t/a
HERITAGE HALL HEALTH CARE



Defendants.

**DEFENDANTS CHARLES I. ROSENBAUM, M.D. AND BLACKSTONE
FAMILY PRACTICE CENTER, INC.'S MOTION FOR SUMMARY
JUDGMENT OF PLAINTIFF'S CLAIM THAT
DEFENDANTS VIOLATED 42 U.S.C. 3**

COME NOW Defendants, Charles I. Rosenbaum, M.D. ("Dr. Rosenbaum") and Blackstone Family Practice Center, Inc. ("BFPC"), by counsel, pursuant to Rule 3:18 of the Rules of the Virginia Supreme Court, and move for entry of summary judgment and dismissal of plaintiff's claim that Dr. Rosenbaum and/or BFPC violated 42 U.S.C. § 1395i-3. In support of their Motion, Defendants state as follows:

1. In his Motion for Judgment, plaintiff alleges that Dr. Rosenbaum and BFPC committed medical malpractice by violating 42 U.S.C. § 1395i-3.

2. Contrary to plaintiff's contentions, however, the statute does not provide a private right of action for grievances or allegations of medical malpractice by nursing home residents or their survivors.

3. Instead, 42 U.S.C. § 1395i-3 provides that a nursing home resident is directed to report grievances to a state agency that investigates allegations and holds individual hearings based on allegations reported by residents. 42 U.S.C. § 1395i-3(g)(C). In other words, the statute neither provides a private right of action for medical malpractice allegations nor does it provide any additional remedy other than appealing to a state agency to investigate grievances. Accordingly, defendants' motion for summary judgment must be granted.

WHEREFORE the defendants respectfully request that summary judgment be entered in their favor and plaintiff's claim that Dr. Rosenbaum and BFPC violated 42 U.S.C. § 1395i-3 be dismissed.

CHARLES I. ROSENBAUM, M.D.
AND
BLACKSTONE FAMILY PRACTICE
CENTER, INC.

By *D. Elizabeth Phan*
Counsel

Kelvin L. Newsome, Esq. (VSB 34478)
S. Elizabeth Pharr, Esq. (VSB 44439)
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
Richmond, Virginia 23219
(804) 783-2003
Facsimile (804) 783-2294
*Counsel for Blackstone Family Practice Center, Inc.
and Charles I. Rosenbaum, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Summary Judgment of Plaintiff's Claim That Defendants Violated 42 U.S.C. § 1395i-3 was sent via Facsimile and U. S. Mail, postage prepaid, this 28th day of March, 2001 to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff, Lucille P. Overton

Lynne J. Fiscella, Esquire
Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*

d. Elizabeth Khan

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

ESTATE OF LUCILLE P. OVERTON,
Plaintiff,

v.

BLACKSTONE FAMILY PRACTICE
CENTER, INC., CHARLES J. ROSENBAUM,
a/k/a C.J. ROSENBAUM, M.D., and
HCMF CORPORATION,
t/a Heritage Hall Health Care,
Defendants.

LAW NO.: CL-031



**DEFENDANT HCMF CORPORATION t/a HERITAGE HALL HEALTH CARE'S
MOTION IN LIMINE AND MOTION FOR SUMMARY JUDGMENT**

COMES NOW, defendant, HCMF Corporation, t/a Heritage Hall Health Care, by counsel, and moves this Court in limine to exclude plaintiff's experts, Phyllis Marie Corrigan, Mary Jo Berne and John Martin, M.D., as to this defendant on the grounds that plaintiff's experts did not have an active clinical practice in defendant's specialty or related field of medicine within one year of the date of the alleged malpractice as required by Section 8.01-581.20 of the Code of Virginia, 1950, as amended and to exclude plaintiff's expert F. Carlos Gonzales, M.D. on the grounds that he testified that this defendant could not have prevented the plaintiff's fall. Finally, this defendant will move this court to grant summary judgment on the grounds and for the reasons set forth below:

1. This is a medical malpractice action in which plaintiff alleges that she received medial care which did not comply with the standard of care while she was a resident at Heritage Hall, a long term residential nursing care facility, from January 4 through January 31, 1995.

Specifically as to this defendant, plaintiff alleges that Heritage Hall failed to implement a suitable care plan or safety procedures to prevent plaintiff from falling and injuring herself.

2. On February 10, 2001, plaintiff designated expert witnesses expected to testify at trial. (See Plaintiff's Designation of Experts attached as Exhibit A.) Two nurses, Mary Jo Berne, R.N. and Phyllis Corrigan, R.N., and two physicians, Dr. John O. Martin and Dr. F. Carlos Gonzales, were designated by plaintiff to testify at trial as to the failure of this defendant to comply with the standard of care.

3. Defendant has deposed each of these witnesses. (See selected pages of the deposition of Mary Jo Berne, R. N., attached as Exhibit B, selected pages of the deposition of Phyllis Corrigan, R.N., attached as Exhibit C, selected pages of the deposition of Dr. Martin attached as Exhibit D and selected pages of the deposition of Dr. Gonzales attached as Exhibit E).

4. Section 8.01-581.20 of the Code of Virginia, 1950, as amended, provides that a witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standard of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis for the action.

5. Plaintiff has designated Mary Jo Berne, R.N. as an expert to testify at trial that this defendant failed to provide proper care "which was reasonably necessary to prevent the falls and resulting injury to the plaintiff." (See Exhibit A.). Ms. Berne testified in her deposition that the last time she actively engaged in the clinical practice of nursing was in 1988 or 1989 (See Exhibit B., pp. 3-4). Since that time she has taken care of two hospice patients, she has assessed

patients for nursing home or hospice placement and she has consulted with lawyers for chart reviews (See Exhibit B, pp. 4-5). Ms. Berne has not been employed by a nursing home since 1980 (See Exhibit B, p. 18). Ms. Berne did not have an active clinical nursing practice in a nursing home or long term residential care facility within one year of January 1995.

6. Plaintiff also designated Phyllis Corrigan, R.N. as an expert witness expected to testify at trial that this defendant failed to provide proper care "which was reasonably necessary to prevent the falls and resulting injury to the plaintiff." (See Exhibit A). Ms. Corrigan testified in her deposition that she has never worked in a nursing home or long term residential care facility. All of her nursing experience has been in a hospital or acute care setting (See Exhibit C, pp. 9-10). Ms. Corrigan has never had an active clinical practice in the defendant's specialty of long term residential nursing care or a related field of medicine.

7. Plaintiff designated Dr. Martin to testify primarily as to the physician and physician practice group defendants but also designated him to testify against this defendant. Dr. Martin testified in his deposition that he retired in 1987 and has not had an active clinical practice since that time. (See Exhibit D, p. 4). Dr. Martin has never had an active clinical practice in the defendant's specialty of long term residential care and has had not active clinical practice since 1987.

8. Defendant moves the Court to exclude Nurses Berne and Corrigan and Dr. Martin from testifying at trial as expert witnesses on the grounds that they have not had an active clinical practice in either the defendant's specialty or a related field of medicine within one year of the medical treatment at issue in this action. Lawson v. Elkins, 252 Va. 352, 355 (1996); Fairfax Hospital System, Inc. v. Curtis, 249 Va. 531, 537 (1995).

9. Plaintiff has also designated Dr. F. Carlos Gonzales to testify that this defendant "failed to provide a suitable plan for the Plaintiff's care or a safe living environment while she resided at Heritage Hall." (See Exhibit A) During his deposition, Dr. Gonzales testified that there was nothing that Heritage Hall could have done differently that would have prevented Ms. Overton from falling. (See Exhibit E, p. 37.) He further testified that he had no opinion with regard to whether there were precautions that should have been taken that were not. He said, "Accidents can happen." (See Exhibit E, p. 36.) Finally, Dr. Gonzales testified that he couldn't say that Mrs. Overton would not have fallen if a different life care plan had been developed. (See Exhibit E, p. 39.)

9. If the Court excludes Nurses Berne and Corrigan and Drs. Martin and Gonzales from testifying at trial, defendant then moves the Court to grant it summary judgment on the grounds the plaintiff cannot prevail in this medical malpractice action without expert testimony on the issue of what is the standard of care for the treatment of residents in a long term residential care facility and whether that standard of care has been breached by this defendant. Raines v. Lutz, 231 Va. 110, 113 (1996).

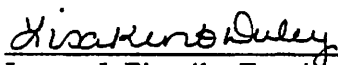
10. The plaintiff has also alleged a cause of action for breach of contract as to Heritage Hall. In the breach of contract allegation, plaintiff asserts that Heritage Hall acted in a negligent and careless manner towards plaintiff, therefore, failing to adhere to its promise of reasonable care and caution in its treatment of the plaintiff. Plaintiff alleges defendant, Heritage Hall, failed to provide plaintiff with the care that it had contracted to provide. The plaintiff clearly needs an expert to testify that reasonable care and caution were not administered to Ms. Overton. If the above named experts are prohibited from testifying, clearly the breach of contract action fails as well.

11. Finally, plaintiff has alleged a breach of statutory duty against the defendant, Heritage Hall. Specifically, plaintiff alleges that defendant, Heritage Hall violated Section 32.1-138 of the Code of Virginia, 1950, as amended. No private cause of action stems from this code section. "It shall be the responsibility of the Commissioner to ensure that the provision of this section and the provisions of section 32.1-138.1 are observed and implemented by nursing home facilities." Section 32.1-138(G), Code of Virginia. In addition, the plaintiff further alleges that the defendants violated federal law 42 USC § 1395i-3. Again, no private cause of action arises from this code section. The remedies noted throughout the code section are limited to the discretion of the Secretary of Health and Human Services. (See 42 USC § 1395i-3 (f), (h)(B), attached as Exhibit F.)

WHEREFORE, defendant moves the Court to exclude Nurses Berne and Corrigan and Drs. Martin and Gonzales from testifying at trial and to grant its summary judgment and to dismiss this case with prejudice as to it. In the alternative, defendant moves this Court to grant its summary judgment in reference to Count 4; Breach of Statutory Duty and to dismiss this Count with prejudice.

HCMF Corporation, t/a
Heritage Hall Health Care
By Counsel

DENTON & FISCELLA



Lynne J. Fiscella, Esquire

Lisa Kent Duley, Esquire

6630 West Broad Street, Suite 290

Richmond, VA 23230

Ph. (804) 673-4004

Fax (804) 673-6555

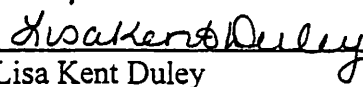
DENTON
& FISCELLA
WEST BROAD STREET
SUITE 290
RICHMOND, VIRGINIA 23230
TEL: (804) 673-4004
FAX: (804) 673-6555

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of March, 2001, served a true and correct copy of defendant HCMF Corporation's Motion in Limine and Motion for Summary Judgment by United States mail, postage prepaid, and addressed as follows:

B. G. Stephenson, Esq.
4157 Chain Bridge Road
Fairfax, VA 22030
Counsel for Plaintiff

Kelvin Newsome, Esquire
S. Elizabeth Pharr, Esquire
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
Richmond, VA 23219
Counsel for Dr. Charles Rosenbaum and
Blackstone Family Practice Center, Inc.



Lisa Kent Duley

ch:97-007/motion-in-limine

VIRGINIA:

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

THE ESTATE OF LUCILLE P.
OVERTON, Deceased
Plaintiff,

v.

BLACKSTONE FAMILY PRACTICE
CENTER, INC., CHARLES ROSENBAUM
a/k/a C.J. ROSENBAUM, M.D.,
HCMF CORPORATION, t/a
Heritage Hall Health Care, and
JOSEPHINE FOWLER, M.D.,
Defendants.

Law No.: CL-031

PLAINTIFF'S DESIGNATION OF EXPERTS

COMES NOW the Plaintiff, The Estate of LUCILLE P OVERTON, by her attorney-in-fact Horace Perdieu, and her undersigned counsel, B G Stephenson, and hereby designates Plaintiff's experts pursuant to the Court's Scheduling Order and as identified in previous responses to Interrogatories propounded by the Defendants

Plaintiff designates as experts of Plaintiff the parties named in response to Interrogatories propounded by Defendant Blackstone Family Practice Center, Inc. and Responses to Interrogatories propounded by Defendant HCMF Corporation, and adopts the answers served by Plaintiff on September 10, 1999 with respect to both sets of Interrogatories.

In repetition thereto, and supplementing these responses, Plaintiff states as follows



John Oliver Martin, M.D.
3706 Howsen Avenue
Fairfax, VA 22030
(703) 352-3057

Dr. Martin is a physician who has been engaged in the family practice of medicine for approximately thirty years, and is familiar with the proper care of patients and the elderly in hospitals and nursing homes. His testimony and his expert opinions will be based upon his experience as a family practice physician and Plaintiff's medical records and other medical evidence.

Dr. Martin is expected to testify about the lack of provisions of a suitable care plan to prevent Plaintiff's falling or "wandering" while she resided at Heritage Hall. He is expected to testify that the medical and admission records indicate her propensity for falls, which would require a suitable care plan be established at the time of the Plaintiff's admission to the facility and that it was not provided. This plan should have been created with input from both the Plaintiff's physicians and the care facility. Further, he is expected to opine that Defendants Blackstone and Rosenbaum should have entered orders consistent with Plaintiff's care needs, which were stated in both her medical records and the records of the assessments performed during the admission process by the staff at Heritage Hall. Defendants had access to these records, which serve to establish their knowledge of the Plaintiff's particular risks. Dr. Martin is expected to testify that, according to the medical community, when there is no record made of an examination or of treatment then it is assumed that neither took place. Further, the delay that occurred between Plaintiff's injury and proper diagnosis of the same provided an opportunity for her lung congestion to develop. He is also expected to testify to the impact of a hip prosthesis on Plaintiff over her lifetime and the permanent nature of her injury, and costs of medical care associated therewith.

Dr. Martin is expected to testify that as Medical Director of Heritage Hall, and as a member of the Quality Assurance Committee, Defendant Rosenbaum had a responsibility to ensure proper development and implementation of such suitable care plans. Dr. Martin is expected to testify that Defendant HCMF's policies concerning the implementation of restraints are inconsistent. Dr. Martin is expected to opine that the act of advising Plaintiff to "ring for assistance" if she ever fell again falls far short of the standard of care in any community in light of Plaintiff's known physical and mental disabilities. He is expected to opine that in cases involving a fractured hip the leg will usually rotate outward, thereby presenting an easily detectable sign of injury. He is expected to opine that the x-rays which were taken at Johnston-Willis Hospital revealed marked external rotation which is a definite and obvious sign of hip fracture which would be obvious upon a routine examination of the extremity. He is expected to opine that Dr. Fowler's examination and treatment of Plaintiff was not in conformance with the medical standard of care in any community, and that the subsequent examination by Dr. Damewood revealed pain on motion of Plaintiff's left hip, which should have alerted Dr. Fowler to the probability of a hip fracture, that Dr. Fowler as a resident should have been under the supervision of Defendants Rosenbaum and Blackstone, and that it was negligent for Defendant Rosenbaum, as Plaintiff's attending physician, to allow Dr. Fowler to treat her completely unsupervised. Dr. Martin is further expected to testify

concerning the consequences of and the ongoing medical problems associated with the failure to detect a broken hip and leaving it unattended. As particularly relates to Plaintiff, Dr. Martin is expected to opine that as a result of her immobility caused by the broken hip, Plaintiff developed congestion which required further medication, and caused further deterioration of Plaintiff's physical condition and directly contributed to Plaintiff's cardiac arrest during the process of her being attended for her broken hip at Johnston-Willis Hospital. He is expected to opine that the delay between injury and time of diagnosis allowed lung congestion to develop, making it necessary to operate on her while the lungs were congested, which greatly increases the chance of complications.

Dr. Martin is expected to opine that it was negligent and improper practice for Defendant Rosenbaum to allow his name to be designated as Plaintiff's "attending physician" on her chart and to never directly observe, examine, or treat Plaintiff and to delegate all treatment of Plaintiff to an unsupervised resident physician. He is expected to opine that a patient's attending physician of record is ultimately responsible for the examination and treatment that his patient receives.

He is expected to opine that there was ample indication in Plaintiff's records that she needed safety measures to prevent injury, and that leaving Plaintiff unattended subjected her to sustaining injuries which produced great pain and caused Plaintiff to suffer continuing pain. Dr. Martin is expected to testify about the costs of sustaining and recovering from an operation such as the one Plaintiff underwent, and the costs of ongoing rehabilitation and care associated therewith. Dr. Martin is also expected to testify concerning the permanency of Plaintiff's hip injury, the effects of a permanent hip prosthesis such as the one required by Plaintiff after she was injured at Heritage Hall. He is expected to opine that Defendants' failures directly and proximately caused Plaintiff physical injury, and ongoing pain and suffering.

Reinald Leidelmeyer, M.D.
3405 St. Paul's Place
Fairfax, VA 22031
(703) 591-7568

Dr. Leidelmeyer is expected to testify as to the same matters as Dr. Martin and to opine regarding those matters consistent with Dr. Martin's opinions. In addition to supporting Dr. Martin's testimony, Dr. Leidelmeyer is expected to testify that the Defendant's medical records are devoid of any circumstances concerning the two falls the Plaintiff suffered while under the care and supervision of the Defendants; the records do indicate that one of the falls occurred as the Plaintiff wandered the facility unsupervised by the nursing staff. Dr. Leidelmeyer is further expected to opine that Dr. Fowler's records of the examinations following each fall were not sufficiently detailed. Specifically, Dr. Fowler's statements that there were no injuries and that no treatment was required are not supported by any further documentation about what kind of examinations, if any, she performed and on what findings during these examinations her conclusions of no injuries were based. Furthermore, Dr. Leidelmeyer is expected to testify that resident physicians are required to report and discuss all findings from any interaction with a patient to their attending physician, in Dr. Fowler's case Dr. Rosenbaum. Inasmuch as there is no record or evidence of such conversation, he is

expected to opine that this constitutes a serious aberration of accepted standards and protocol of resident physician training programs. Dr. Leidelmeyer is expected to testify that as result of Dr. Fowler's grossly inadequate records and her failure to report either fall, as required, it took approximately ten days or more and a request by the Plaintiff's concerned son for Dr. Rosenbaum to cause the Plaintiff to be properly examined and diagnosed, which resulted in the subsequent discovery of her fractured hip. Dr. Leidelmeyer is expected to conclude that these facts plus the inadequate care, supervision, and precautions of the nursing staff to a mentally and physically impaired patient resulted in the Plaintiff's unnecessary and prolonged suffering. Dr. Leidelmeyer may also testify concerning matters that Dr. Burkhardt is expected to cover as described in his designation. He is also expected to testify regarding the costs of medical care caused by Defendants' conduct.

Attached hereto labeled "Schedule A" is a Curriculum Vitae of Dr. Leidelmeyer

Barry Burkhardt, M.D.
P.O. Box 35725
Richmond, VA 23235-0725
(804) 320-1339

Dr. Burkhardt is the orthopedic surgeon who performed hip surgery on Plaintiff when she was admitted to Johnston-Willis Hospital in 1995 after receiving injuries at Heritage Hall. His testimony is expected to be consistent with Plaintiff's Johnston-Willis Hospital Operative Notes and other of Plaintiff's medical records produced in discovery. Dr. Burkhardt will base his testimony and his expert opinions upon his experience as a surgeon, his physical examinations, observations, his treatment of Plaintiff, Plaintiff's medical records and other medical evidence.

Dr. Burkhardt is expected to testify as to Plaintiff's condition upon her admittance to Johnston-Willis Hospital following the discovery of the injuries she sustained at the Defendant's facility. Dr. Burkhardt is expected to testify regarding the radiology reports that pertain to the Plaintiff's hip fracture. He is expected to opine that Plaintiff suffered a displaced subcapital fracture of her left hip, as confirmed by an examination which included x-rays, and that Plaintiff required immediate surgery in order to treat the fracture and to receive a self-centering response hip prosthesis cemented in place.

Dr. Burkhardt is expected to testify concerning the nature and extent of Plaintiff's hip fracture, and is expected to opine that the displaced subcapital fracture of Plaintiff's left hip is consistent with injuries received from a fall or falls. Dr. Burkhardt is expected to opine that Plaintiff's hip fracture was sustained approximately ten days to two weeks before surgery. Further, he is expected to testify to the nature and extent of the Plaintiff's hip fracture and the effects of that fracture that should have been noticed by both Blackstone and Rosenbaum. These effects include physical deterioration, chronic weakness, and leg congestion. Dr. Burkhardt is also expected to opine that the delays in the discovery, proper diagnosis and subsequent treatment of the Plaintiff's hip fracture resulted in serious complications, including cardiac arrest while undergoing hip replacement surgery. In addition, Dr. Burkhardt is expected to testify regarding the type

of medical attention the Plaintiff required consistent with the medical records that have been provided to the Defendants and the standard of care related thereto. Dr. Burkhardt's testimony is expected to include the costs of the Plaintiff's treatment, the amount of pain associated with a hip fracture, the permanent nature of the hip prosthesis, and the ongoing need for rehabilitation.

F. Carlos Gonzales, M.D.
3700 Joseph Siawick Drive
Fairfax, VA 22033
(703) 715-9700

Dr. Gonzales is expected to testify that the Defendants failed to provide a suitable plan for the Plaintiff's care or a safe living environment while she resided at Heritage Hall. Dr. Gonzales is expected to opine that when the Plaintiff was transferred from Johnston-Willis Hospital to Heritage Hall her medical records included a detailed Transfer Assessment form. This form indicated that the Plaintiff required constant physical assistance, supervision, and she had been posed for safety, due to constant periods of confusion. Dr. Gonzales is expected to testify that the Plaintiff could not be left alone safely. He is further expected to testify regarding Heritage Hall's patient assessment policies and procedures. Dr. Gonzales is expected to opine that Heritage Hall policy is to assess each patient on admission for safety risk. If the safety is a high-risk issue, the nursing staff is required to fill out a Safety Device Assessment form and notify the Director of Nursing, at which point, a full assessment will be done on the patient and a comprehensive care plan team will determine what type of safety measure is to be used as an appropriate care plan. Dr. Gonzales is expected to testify that the record does not contain evidence of any of these measures, with exception of the Admission Nursing Assessment Form. Further, he is expected to testify that following the Plaintiff's two falls no safety measures were taken, with the exception of a verbal warning not to get up again without assistance. Dr. Gonzales is expected to testify that this not a realistic corrective measure for a confused patient. In addition, he is expected to opine that the nursing staff's performance as a whole was unacceptable and insufficient by any standard in the medical profession.

Attached hereto labeled "Schedule B" is a Curriculum Vitae of Dr. Gonzales.

Phylis Corrigan
4925 King Solomon Drive
Annandale, VA 22003
(703) 425-9261

Mary Jo Berne
9104 Fishermans Lane
Springfield, VA 22153
(703) 644-5166

Ms. Corrigan and Ms. Berne are both expected to testify as to the standard of care which Plaintiff should have received by Defendant HCMF CORPORATION in its

facility and that the proper care was not provided which was reasonably necessary to prevent the falls; and resulting injury to the Plaintiff. Both suggest a care plan specific to Plaintiff's risks should have been instituted immediately upon her admission to the Heritage Hall facility, and certainly after her first fall. Each have proposed possible care plans and are expected to opine that Defendant neglected to provide any suitable care plan that should have been devised and implemented for the Plaintiff. Both have training as Registered Nurses and have worked extensively in nursing homes and are familiar with standards and practices in the operation thereof. Both are expected to testify regarding those standards and practices and the failures of HCMF Corporation in relation to the care of Plaintiff. They are both expected to testify regarding the charts related to Lucille Overton and the significance of the charting, and the failures on the part of Defendant HCMF Corporation, as reflected in the charts maintained by Defendant HCMF Corporation.

Ms. Ola Powers;
Deputy Director
Virginia Board of Medicine
Licensing Department
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230

Ms. Powers or a Virginia Medical Board officer, of comparable expertise, designated in her stead, is expected to testify concerning the issuance of temporary licenses to practice medicine in the Commonwealth of Virginia by the Board of Medicine's Licensing Department to resident physicians associated with an accredited medical school particularly the Medical College of Virginia. In addition, Ms. Powers or the designated officer is expected to opine about the nature and scope of the temporary license, and what is permitted by the Code of Virginia and regulations promulgated by the Board pertaining to practice of medicine by a resident physician under the program of the Medical college. Further testimony is expected concerning the restrictions that are imposed on the licensee, whether supervision is required, and to what extent the resident physician must be directly supervised while practicing under the temporary license. The Plaintiff reserves the right to call either Ms. Powers or other public officials in their capacity as public officials charged with administering the Virginia Board of Medicine's Resident Physician Licensing Program.

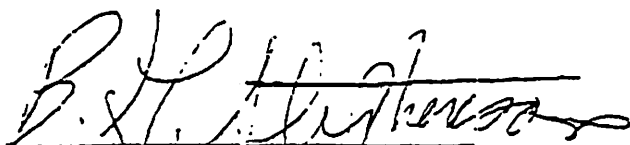
Robert M. Krulevitz
Woodbine Accountant
2729 King Street
Alexandria, Virginia 22302-4098
(703) 836-8838

Mr. Krulevitz is an accountant at the Woodbine Rehabilitation & Healthcare Center, which is the facility the Plaintiff was transferred to following her release from the hospital for the fractured hip she sustained at Heritage Hall. Mr. Krulevitz is expected to testify regarding the costs associated with the type of long term care needed by the Plaintiff while she resided at the Woodbine facility following her hip fracture and subsequent hip replacement surgery.

Plaintiff reserves her right to supplement these designations as may be required.

LUCILLE P. OVERTON
By Counsel

B.G. STEPHENSON, LTD.

A handwritten signature in dark ink, appearing to read "B.G. Stephenson", is written over a horizontal line.

B.G. Stephenson (VSB # 8098)
Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-4738

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be sent via First Class, U.S. Mail, postage prepaid, this 10th day of February, 2001, to the following:

Lynne J. Fiscella, Esquire
Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
Telephone: (804) 673-4004
Facsimile: (804) 673-6555
Counsel for HCMF Corporation
Via Heritage Hall Health Care

S. Elizabeth Prarr, Esquire
LeClair Ryan, P.C.
707 E. Main Street, 11th floor
Richmond, Virginia 23219
Counsel for Dr. Rosenbaum &
Blackstone Family Practice

Mary M.H. Priddy, Esquire
Goodman, West & Filetti
4501 Highwoods Parkway, Suite 210
Glen Allen, Virginia 23060
Counsel for Dr. Fowler

Schedule A

R. LEIDELMEYER, MD.
3405 St. Paul's Place
Fairfax, Va. 22031
tel: 703 591 7568

Curriculum Vitae.

Born: October 2nd 1924

Grade and Secondary Education; The Hague Holland

After graduating from High School in 1943, during World War II, joined the Dutch UNDERGROUND Resistance against the German Occupation. Captured by the GESTAPO in January 1945, spend a couple of weeks in solitary confinement in a Dutch prison. Was transported in a cattlegwagon to a German Prison camp. Was imprisoned until the end of the war. Eligible for the Medal for the Freedom Fighters issued by Queen Beatrix .

Medical School; Leiden University, Leiden Holland.

Internship, Rotating with practical exams; University Hospitals, Holland, 2 1/2 years.

Physicians License to practice, Holland, June 1953

President, The Hague Student Film Organization 1950-1953

Rotating Internship; Johnston Willis Hospital 1953-1954. Richmond, Va

Passed; Va State Board Exam, Part I and II, 1954

Physician A, Va. Dept. of Health, 1954-55

Captain US Army. Commanding Officer US Army Dispensary, Germany, 55-57

Physician B, Va. Dept of Health, Charlottesville Va. 1957-60

Approved Residency Internal Medicine and Chest Diseases, in affiliation of the University of Va, Charlottesville 1958

Private Practice- general Medicine, 1960-1968, Fairfax Va.

Originator and Co-Chairman, Emergency Department, the Fairfax Hospital, 1961-1982.

Director Poison Control Center, Fairfax Hospital 1962-82

Organized the first National Meeting of Emergency Physicians in the USA in 1968, out of which the American College of Emergency Physicians was created. The Organization now has more than 20 000 members.

Member of the National Board of Directors of the ACEP 1968-73, Chairman Committee of Community Emergency Services, 1968-73. Chairman International Committee ACEP 1973-76.

Organized the Virginia Chapter of the ACEP, member of its Board of Directors 1970-80.

Organized the first three Scientific Meetings of the Virginia, Maryland, Delaware, West Virginia and Washington DC Chapters of the

F. CARLOS GONZALES, M.D.
Diplomate Board of Internal Medicine
10325 WEST DRIVE
FAIRFAX, VIRGINIA 22030
Telephone 591-0250

Schedule B

CURRICULUM VITAE

SAN MARCOS UNIVERSITY, LIMA, PERU
PRE MEDICAL SCHOOL AND MEDICAL SCHOOL
07/63 TO 06/71

ST. ELIZABETH'S HOSPITAL, WASHINGTON, D.C.
ROTATING INTERNSHIP
12/14/72 TO 06/30/74

WILMINGTON MEDICAL CENTER, WILMINGTON, DELAWARE
STRAIGHT MEDICINE INTERNSHIP
07/01/74 TO 06/30/75

VA HOSPITAL-GEORGETOWN UNIVERSITY MEDICAL CENTER
WASHINGTON, D.C.
RESIDENCY IN MEDICINE
07/01/75 TO 06/30/77

VA HOSPITAL-GEORGETOWN PROGRAM, WASHINGTON, D.C.
FELLOWSHIP IN HYPERTENSION RESEARCH
07/01/77 TO 06/30/78

PRIVATE PRACTICE FROM 1978 TO PRESENT

CHAIRMAN OF THE MEDICAL RECORDS & UTILIZATION REVIEW COMMITTEE
FAIR OAKS HOSPITAL, FAIRFAX, VIRGINIA
1988 AND 1989

PHYSICIAN ADVISOR, UTILIZATION REVIEW
FAIR OAKS HOSPITAL, FAIRFAX, VIRGINIA
1989 TO PRESENT

R. LEIDELMEYER, MD.
3405 St. Paul's Place
Fairfax, Va. 22031
tel: 703 591 7568

Schedule A.

Curriculum Vitae.

Born: October 2nd 1924

Grade and Secondary Education; The Hague Holland

After graduating from High School in 1943, during World War II, joined the Dutch UNDERGROUND Resistance against the German Occupation. Captured by the GESTAPO in January 1945, spend a couple of weeks in solitary confinement in a Dutch prison. Was transported in a cattlewagon to a German Prison camp. Was imprisoned until the end of the war. Eligible for the Medal for the Freedom Fighters issued by Queen Beatrix .

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Rotating Internship; Johnston Willis Hospital 1953-1954. Richmond, Va
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Captain US Army, Commanding Officer US Army Dispensary, Germany, 55-57

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Member of the National Board of Directors of the ACEP 1968-73, Chairman Committee of Community Emergency Services, 1968-73. Chairman International Committee ACEP 1973-76.

Organized the Virginia Chapter of the ACEP, member of its Board of Directors 1970-80.

Organized the first three Scientific Meetings of the Virginia, Maryland, Delaware, West Virginia and Washington DC Chapters of the

ACEP.

Honorary Member of the American College of Emergency Physicians.

Member of the Government appointed commission to formulate and set up the NATIONAL requirements and training program for Emergency Medical Technicians and Paramedics, and set up the National Registry of Emergency Medical Technicians 1972-1976

Member Metropolitan Regional EMS Council 1971-1976

Associate Editor and Contributor of the First and Second Edition of EMERGENCY DEPARTMENT ORGANIZATION AND MANAGEMENT, American College of Emergency Physicians, A.L.Jenkins, MD. Editor.

Reviewed and wrote a foreword for the books EMERGENCY CARE, by Harvey Grant and Robert Murray, and EMERGENCY CARDIAC CARE by Robert J.Huszar, MD., published by Prentice Hall.

Invited to present papers at the following Medical Meetings

Little Rock Ark	Honolulu Hawaii	Tampa Fla
Rockford.Ill	Lubbock Texas	Las Vegas Nev x3
Virginia Beach x2	Washington DC	Chicago Ill.
Atlanta Georgia	Charlottesville,Va	Dallas texas
Philadelphia,Pa	Williamsburg Va	St.Thomas US.Virgin Islands

and the following International meetings

Honolulu Hawaii	Brughes Belgium	Prague Czech
Budapest Hungary	Arnhem Holland	Sydney Australia
Melbourne Austr	Mainz Germany	The Bahamas

The topics ranged from Organization and Design, development of Emergency Medical Services in the broadest sense of the word, its Facilities etc as well as clinical subjects as Trauma, Foreign body injuries, Poison Control, Insect allergies etc etc.

Interviewed, mentioned, quoted or participated in several round table conferences published among others in Medical Economics, Medical World News, MD, Newsweek, AMA News, AMA Journal, Hospital Topics, etc. My talk on design of Emergency Departments appears in the USA HEW publication HRA 74007

Articles published on Emergency Medicine in the broadest sense of the word appeared in the Virginia Medical Monthly (x 4,) Journal of the National Ambulance and Medical Services Association, Journal of the Emergency Department Nurses Association, Journal-now ANNALS- of the American College of Emergency Physicians, Journal of the Netherlands Medical Association (x2), Emergency Medicine (x 5) etc.

Invited to become Professor and Chairman of the Emergency Medical

Services Department, Ohio State University, Columbus Ohio. Licensed to practice in Ohio by reciprocity.

Recipient of the FIRST Meritorious Service Award of the American College of Emergency Physicians at its 10th Anniversary.

Developed and published a new atraumatic method for reduction of an anterior dislocated shoulder, as researched and confirmed by Mark J. Mirick at all, Annals of Emergency Medicine, December 1979. Other articles include " The Embedded broken off needle in the footsole", "Reduced! A dislocated Shoulder, Subtly and Painlessly, "Reduced, A dislocated Jaw, Logically and Quickly", " The subluxated Elbow".

Initiated and organized the training program of the Fairfax County Fire and Rescue Service for Emergency Medical Technicians and later Cardiac Paramedics. Was instructor and lecturer in that program for a number of years.

Invited to provide Emergency Medical Coverage at the Economic International Summit Conference of President Reagan and European Heads of State and the Japanese and Canadian Prime Ministers, Williamsburg, Va 1983.

Member AMA, Virginia Medical Society, Fairfax County Medical Society, Founder-Member American College of Emergency Physicians, Member Active Staff, The Fairfax Hospital 1961-1983, HONORARY MEMBER of the MEDICAL STAFF The Fairfax Hospital 1983 to date. In charge of the supervision and Education in Emergency Medicine of Medical Students, Interns and Residents spending a stage at the Emergency Department of the Fairfax Hospital.

Member Rotary Club Fairfax, 1962 to date. Member, Board of Directors, Fairfax County Chapter, International Red Cross, 1987-1989.

Certified in Advanced Cardiac Life support and Advanced Trauma Life support 1980.

Owner-Director Fairfax Acute Care Clinic 1982-1989.

1993 AWARDED HONORARY MEMBER OF THE AMERICAN COLLEGE OF EMERGENCY PHYSICIANS, on the occasion of its 25th Anniversary.

ORIGINAL

V I R G I N I A:

IN THE CIRCUIT COURT
FOR THE COUNTY OF NOTTOWAY

(Removed from Arlington County Circuit Court)

- - - - -	-X	
LUCILLE P. OVERTON,)	
)	
Plaintiff)	Nottoway County
)	At Law No. 97-59
vs.)	
)	
BLACKSTONE FAMILY PRACTICE)	Arlington County
CENTER, INC., <u>et al.</u> ,)	At Law No. 97-12
)	
Defendants)	
- - - - -	-X	

Thursday, September 3, 1998
Fairfax, Virginia

Deposition of

MARY JO BERNE

called for examination by counsel for the defendants, pursuant to notice, in the office of Ollen, Carleton, Evans & Wochok, 4031 University Drive, Fairfax Virginia, 22030, commencing at 2:45 o'clock p.m., before M. Louise Comninaki, a Notary Public for the Commonwealth of Virginia, when were present on behalf of the respective parties:

Reported by: M. Louise Comninaki

ACCURATE STENOTYPISTS, INC.
(703) 691-0480 / (703) 273-9367
P.O. Box 485, Fairfax, Virginia 22030



P R O C E E D I N G S

Thereupon --

MARY JO BERNE

was called to testify, and after having been first duly sworn to tell the truth by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE
DEFENDANT HCMF CORPORATION

BY MS. FISCELLA:

Q Could you please state your full name for the record?

A Mary Jo Berne.

Q And can you spell that last name, please?

A B-e-r-n-e.

Q Thank you. What is your current office address?

A Office address? I am currently not working as a nurse clinically right now, so the office address would not have anything to do with that.

Q How about a residential address?

A 9104 Fisherman's Lane, Springfield -- Virginia, of course -- 22153.

Q And when was the last time you practiced as

1 an RN?

2 A Clinically practiced in -- let's see -- I
3 believe it was '88. I have done some consulting since
4 then.

5 Q Okay.

6 A I have taken some time off for my children --
7 and I'm sure you will do so soon, I noticed coming in --
8 and so that's why I'm not clinically practicing right
9 now.

10 Q So, the last time you were actively engaged
11 in the clinical practice of nursing was 1988?

12 A I believe it was '88, towards the end of '88
13 and into '89. I have done some hospice patients since
14 then, but not on a regular, clinical two- and three-day
15 a week type thing. I haven't done that since '88, the
16 end of '88.

17 Q What did you do after 1989 or in 1989 with
18 regard to hospice patients, and how often?

19 A I have taken two care of two hospice
20 patients. I was asked to help care for them until they
21 expired, as well as I have assessed patients for nursing
22 home and hospice placement.

23 In other words, they needed some assessment

1 to see if they were in the position to go from a nursing
2 home to a hospice, or did they need to stay in a nursing
3 home situation.

4 I have done some consulting -- this would be
5 chart review -- nursing home related and some have been
6 hospital related, where I have been consulting for to
7 see if there was any kind of malpractice, for a reason
8 to take it further on.

9 Q Okay. So, after 1989 in terms of your
10 clinical practice, you were not practicing nursing, but
11 you were taking care of two hospice patients and
12 assessing patients for admission to hospices?

13 A Yes. I don't know what you mean by
14 "clinical." I consider that clinical. But, in the
15 sense I would go onto a ward and take care of patients,
16 I haven't done that since 1988-'89. I consider that a
17 different avenue.

18 Assess elderly patients is what I do.
19 Patients' families call me to come and do those.

20 Q In terms of consulting, all those are lawyers
21 you were consulting on behalf of?

22 A Yes, right.

23 Q Are you registered with a service?

1 A No.

2 Q How do lawyers get your numbers?

3 A It has been word of mouth. I don't seek it
4 out to have a 40-hour week until my kids are a little
5 older. I have done it as a request type of thing.

6 Q Do you advertise at all?

7 A No.

8 Q Have you performed any consulting for
9 Mr. Stephenson --

10 A Yes.

11 Q -- other than this case?

12 A Yes.

13 Q On how many occasions?

14 A Three, I believe. Four, pardon me. I
15 believe this is the fourth, total.

16 Q And what type of cases were they, generally?

17 A One was a surgical case for a patient that
18 deceased, and I was to look through the notes and assess
19 the nursing care for that patient who died, you know,
20 right after the surgery.

21 This nursing home case. One is an accident,
22 fall. I was to assess the patient in the hospital and
23 his care as to a fall. That, I believe, was a head

1 that would come down from -- maybe the post coronary
2 care, patients coming in for diabetic teaching, strokes,
3 any of these kind of things.

4 It was not a surgical unit. The surgical was
5 separate from the medical in this particular. I also
6 did work on a psych ward for a six-month period. They
7 attached that to the end of the medical unit, and then
8 they moved that off the premises.

9 I did also assist with that for a while. It
10 wasn't my thing, so I went back over to the medical
11 side.

12 Q Since 1980, have you actually been employed
13 by a nursing home?

14 A No, no. Just the elderly patients that we
15 had, which was probably 75 percent of the patients on
16 the medical unit.

17 Q At Fair Oaks?

18 A Right, or Commonwealth at the time. I don't
19 want to be confusing on that.

20 Q What have you reviewed in preparation for
21 your deposition today? Let me rephrase. What have you
22 reviewed prior to your deposition today?

23 A Actually, I did go through the entire chart,

V I R G I N I A:

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

- - - - -x

LUCILLE P. OVERTON,

Plaintiff,

-vs-

AT LAW NO.
97-12

BLACKSTONE FAMILY PRACTICE CENTER, INC.,

CHARLES J. ROSENBAUM,

a/k/a

C.J. ROSENBAUM, M.D.,

and

HCMF CORPORATION,

t/a

HERITAGE HALL HEALTH CARE,

Defendants.

- - - - -x

ORIGINAL

Fairfax, Virginia

Thursday, October 8, 1998

Deposition of:

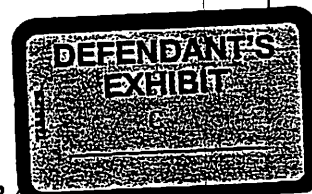
PHYLLIS MARIE CORRIGAN

called for examination by counsel for the defendants,
pursuant to notice, in the office of Ollen, Carleton,
Evans & Wochok, 4031 University Drive, Suite 500,
Fairfax, Virginia, commencing at 11:10 o'clock, a.m.,
before Kirk A. Sturges, a Notary Public for the State
of Virginia at Large, when were present on behalf of
the respective parties:

Reported by: Kirk Sturges

ACCURATE STENOTYPISTS, INC.

(703)273-9367 691-0480; FAX 591-034



1 Q Have you ever worked in a nursing home
2 facility?

3 A No, I have not.

4 Q Have you had any experience in working
5 with elderly patients?

6 A Yes.

7 Q Describe that for me.

8 A Well, both at the medical unit at
9 Commonwealth Hospital and then on the medical unit at
10 Fair Oaks Hospital, I would say anywhere from 65 to
11 75 percent of the patients I dealt with on a daily
12 basis were 65 to 95.

13 Q Am I correct, though, that all of these
14 patients would have been hospital patients expected
15 to be discharged --

16 A [Interposing] Yes.

17 Q -- when their medical condition resolved?

18 MR. STEPHENSON: Wait until she finishes
19 the question.

20 THE WITNESS: Yes. This was an acute
21 care facility.

22 BY MS. PRIDDY:

23 Q Am I correct that you have never taken

1 care of patients in a long term care facility of any
2 type?

3 A I have not.

4 Q Are you an RN?

5 A Yes.

6 Q Describe for me your medical training.

7 A I graduated from a three-year
8 hospital-based program in 1961. I went to Fairleigh
9 Dickinson University for a year in '62-63.

10 I went back to school in '75-76, but I do
11 not have my degree.

12 Q Is that the end of your formal training?
13 I assume you have had some continuing education along
14 the way, but is that the --

15 A [Interposing] Yes. That was my formal.

16 Q Do you have a CV?

17 This can be off the record.

18 {Thereupon, there was a discussion
19 held off the record, which was not
20 reported by the court reporter.}

21 MS. PRIDDY: Back on the record.

22 Just to confirm for the record,
23 Mr. Stephenson has agreed to send me a copy of

COPY

V I R G I N I A:

IN THE CIRCUIT COURT
FOR THE COUNTY OF NOTTOWAY

(Removed from Arlington County Circuit Court)

- - - - -	-X		
LUCILLE P. OVERTON,)		
)		
Plaintiff)	Nottoway County	
)	At Law No. 97-59	
vs.)		
)		
BLACKSTONE FAMILY PRACTICE)	Arlington County	
CENTER, INC., <u>et al.</u> ,)	At Law No. 97-12	
)		
Defendants)		
- - - - -	-X		

Thursday, September 3, 1998
Fairfax, Virginia

Deposition of

JOHN MARTIN, M.D.

called for examination by counsel for the defendants, pursuant to notice, in the office of Ollen, Carleton, Evans & Wochok, 4031 University Drive, Fairfax Virginia, 22030, commencing at 11:20 o'clock a.m., before M. Louise Comninaki, a Notary Public for the Commonwealth of Virginia, when were present on behalf of the respective parties:

Reported by: M. Louise Comninaki

ACCURATE STENOTYPISTS, INC.
(703) 691-0480 / (703) 273-9367
P.O. Box 485, Fairfax, Virginia 22030



1 A Okay.

2 Q Are you taking -- well, would you state your
3 name, please?

4 A John O. Martin.

5 Q Are you taking any medication today that
6 would prohibit you from giving truthful responses?

7 A No.

8 Q What is your office address?

9 A I don't have an office. I'm retired.

10 Q Okay. When did you retire?

11 A 1987.

12 Q All right. When you retired, did you see
13 patients after 1987?

14 A Not for pay, no. Just as volunteer things.
15 I still have my license, though. I still have a full
16 Virginia medical license.

17 Q Okay. You see no patients for pay, so you
18 don't have -- you haven't had an active clinical
19 practice since 1987. Is that true?

20 A That's true, yes.

21 Q What is your date of birth, Doctor Martin?

22 A June 12, 1927.

23 Q What is your Social Security Number?

V I R G I N I A

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

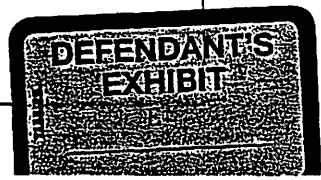
- - - - - x
:
THE ESTATE OF LUCILLE P. OVERTON, :
deceased, :
Plaintiff, :
:
-vs- :
:
BLACKSTONE FAMILY PRACTICE CENTER, :
INC., CHARLES J. ROSENBAUM, a/k/a :
C.J. ROSENBAUM, M.D., JOSEPHINE :
FOWLER, M.D., and HCMF CORPORATION, :
t/a HERITAGE HALL HEALTH CARE :
:
Defendants. :
:
- - - - - x

LAW NO. CL-031

Fairfax, Virginia
Friday, March 16, 2001

Deposition of

F. CARLOS GONZALES, M.D.,
a witness, called for examination by counsel on behalf of
the Defendant, HCMF Corporation, t/a Heritage Hall Health
Care, pursuant to notice, taken in the medical offices of
F. CARLOS GONZALES, M.D., 3700 Joseph Siewick Drive, Suite
402, Fairfax, Virginia, beginning at 3:52 o'clock p.m.,
before CATHERINE SNYDER, a Verbatim Reporter and a Notary
Public in and for the State of Virginia, at large, when
there were present on behalf of the respective parties:



This document has been updated. Use KEYCITE.

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 7--SOCIAL SECURITY
SUBCHAPTER XVIII--HEALTH INSURANCE FOR AGED AND DISABLED
PART A--HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

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Current through P.L. 106-274, approved 9-22-2000

§ 1395i-3. Requirements for, and assuring quality of care in, skilled nursing facilities

(a) "Skilled nursing facility" defined

In this subchapter, the term "skilled nursing facility" means an institution (or a distinct part of an institution) which--

(1) is primarily engaged in providing to residents--

(A) skilled nursing care and related services for residents who require medical or nursing care, or

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(l) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which--



(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment--

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$5,000 with respect to each assessment.

(III) The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title an assessment must be conducted--

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than January 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of--

(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care

(i) In general

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least at least [FN1] 8 consecutive hours a day, 7 days a week.

(ii) Exception

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that--

(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965 [42 U.S.C.A. § 3027(a)(12)]) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this subparagraph shall be subject to annual renewal.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a skilled nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990 for more than 4 months unless the individual--

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A skilled nursing facility must provide, for individuals used as a nurse aide [FN2] by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term "nurse aide" means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual--

- (i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or
- (ii) who volunteers to provide such services without monetary compensation.

(G) "Licensed health professional" defined

In this paragraph, the term "licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

(6) Physician supervision and clinical records

A skilled nursing facility must--

- (A) require that the medical care of every resident be provided under the supervision of a physician;
- (B) provide for having a physician available to furnish necessary medical care in case of emergency; and
- (C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

(7) Required social services

In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed--

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right--

(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without

discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

(B) Notice of rights and services

A skilled nursing facility must--

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r(e)(6) of this title; and

(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised

by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

(E) Information respecting advance directives

A skilled nursing facility must comply with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless--

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a skilled nursing facility must--

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except--

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include--

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C.A. § 3021 et seq. or § 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C.A. § 3058g]).

(C) Orientation

A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(3) Access and visitation rights

A skilled nursing facility must--

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a skilled nursing facility must--

(i) (I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(6) Protection of resident funds

(A) In general

The skilled nursing facility--

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of \$100 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits [FN3] all interest earned on such separate account to such account. With respect to any other personal funds, the facility must

maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in--

(i) the persons with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a-5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Skilled nursing facility administrator

The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A skilled nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that--

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

(3) Sanitary and infection control and physical environment

A skilled nursing facility must--

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a-3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to skilled nursing facility requirements

The requirements, referred to in section 1395aa(d) of this title, with respect to a State are as follows:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must--

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from skilled nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3) of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

(4) Skilled nursing facility administrator standards

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be--

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this

section.

(f) Responsibilities of Secretary relating to skilled nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988--

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that--

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements--

(i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities

(including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraph (C), shall prohibit approval of such a program--

(I) offered by or in a skilled nursing facility which, within the previous 2 years--

(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II) of this section;

(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) of this section or section 1396r(g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r(h)(2)(A)(ii) of this title of not less than \$5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B) of this section, subsection (h)(4) of this section, section 1396r(h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r(h)(2)(A) of this title, or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of this subchapter) in a State if the State--

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

(4) Secretarial standards for qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to--

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall--

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti- Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in

accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that--

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Standard survey

(i) In general

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the

facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title. The Secretary shall review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents--

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the

sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted--

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow

inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

(C) Remedies for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

(4) Investigation of complaints and monitoring compliance

Each State shall maintain procedures and adequate staff to--

(A) investigate complaints of violations of requirements by skilled nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if--

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard skilled nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public--

(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

- (ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,
- (iii) copies of statements of ownership under section 1320a-3 of this title, and
- (iv) information disclosed under section 1320a-5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C.A. § 3021 et seq. or § 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C.A. § 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

(C) Notice to physicians and skilled nursing facility administrator licensing board

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify--

- (i) the attending physician of each resident with respect to which such finding is made, and
- (ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies--

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Secretarial authority

(A) In general

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies--

- (i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove

the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this subchapter and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(B) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while--

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d).

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(C) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the

findings, under this subchapter with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if--

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(D) Assuring prompt compliance

If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

(E) Repeated noncompliance

In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)--

(i) impose the remedy described in subparagraph (B)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(3) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this subchapter. If the facility's participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) of this section.

(5) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), [FN4] and (iii) of paragraph (2)(B) may be imposed during the

pendency of any hearing.

(6) Sharing of information

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

CREDIT(S)
2000 Electronic Update

(Aug. 14, 1935, c. 531, Title XVIII, § 1819, as added Dec. 22, 1987, Pub.L. 100-203, Title IV, § 4201(a)(3), 101 Stat. 1330-160, and amended Dec. 22, 1987, Pub.L. 100-203, Title IV, §§ 4202(a)(2), 4203(a)(2), 4206, 101 Stat. 1330-175, 1330-179, 1330-182; July 1, 1988, Pub.L. 100-360, Title IV, § 411(l)(1)(A), (2)(A) to (D), (F) to (K), (L)(i), (4), (5), (7), 102 Stat. 800 to 805, as amended Oct. 13, 1988, Pub.L. 100-485, Title VI, § 608(d)(27)(A), (C), (D), (I), 102 Stat. 2422, 2423; July 1, 1988, Pub.L. 100-360, Title IV, § 411(l)(11), as added Oct. 13, 1988, Pub.L. 100-485, Title VI, § 608(d)(27)(L), 102 Stat. 2423; Dec. 19, 1989, Pub.L. 101-239, Title VI, § 6901(b)(1), (3), (d)(4), 103 Stat. 2298, 2301; Nov. 5, 1990, Pub.L. 101-508, Title IV, §§ 4008(h)(1)(B) to (F)(i), (G), (2)(B) to (N), (m)(3)(F), 4206(d)(1), 104 Stat. 1388-46 to 1388-50, 1388-54, 1388-116; Sept. 30, 1992, Pub.L. 102-375, Title VII, § 708(a)(1)(A), 106 Stat. 1292; Oct. 31, 1994, Pub.L. 103-432, Title I, §§ 106(c)(1)(A), (2)(A), (3)(A), (4)(A), (B), (d)(1) to (5), 110(b), 108 Stat. 4406 to 4408; May 15, 1997, Pub.L. 105-15, § 1, 111 Stat. 34; Aug. 5, 1997, Pub.L. 105-33, Title IV, §§ 4432(b)(5)(A), 4755(a), 111 Stat. 421, 526.)

[FN1] So in original.

[FN2] So in original. Probably should be "as nurse aides".

[FN3] So in original. Probably should be "credit".

[FN4] So in original. The comma probably should not appear.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1987 Acts. House Report No. 100-391(Parts I and II) and House Conference Report No. 100-495, see 1987 U.S. Code Cong. and Adm. News, p. 2313-1.

1988 Acts. House Report No. 100-105(Parts I and II) and House Conference Report 100-661, see 1988 U.S. Code Cong. and Adm. News, p. 803.

Senate Report No. 100-377 and House Conference Report No. 100-998, see 1988 U.S. Code Cong. and Adm. News, p. 2776.

1989 Acts. House Report No. 101-247, House Conference Report No. 101-386, and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1906.

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT BLACKSTONE FAMILY PRACTICE
CENTER, INC., AND CHARLES ROSENBAUM, M.D.'S
MOTIONS IN LIMINE AND MOTIONS FOR SUMMARY JUDGMENT

COMES NOW the Plaintiff, Horace E. Perdieu, as Administrator of the Estate of Lucille P. Overton, by counsel, and hereby files this Memorandum of Law in Opposition to Defendant Blackstone Family Practice Center, Inc., and Charles Rosenbaum, M.D.'s Motions in Limine and Motions for Summary Judgment. In support thereof, Plaintiff sets forth the following:

I. STATEMENT OF FACTS

Lucille P. Overton, deceased, was admitted to the HCMF Corporation nursing home facility (t/a Heritage Hall Health Care) as a resident on or about January 4, 1995. She was admitted to Heritage Hall (after being discharged from Johnston-Willis Hospital) with altered mental status. She was suffering from dementia and needed assistance and supervision. She was assessed by Heritage Hall upon her admission as being a high risk for falls. Mrs. Overton sustained a broken hip in a fall on or about January 20 or 21, 1995. Mrs. Overton continued deteriorating until she was ultimately diagnosed as having sustained a broken hip some ten days later; she was then transported to Johnston-Willis Hospital where she underwent hip replacement surgery.

In this medical malpractice action, Plaintiff Horace E. Perdieu, as Administrator of the Estate of Lucille Overton, seeks to hold Defendants accountable for the failure to properly and timely examine, diagnose, and treat Mrs. Overton. The standard of care applicable to BFPC and Dr. Rosenbaum mandated that Mrs. Overton be given more than a cursory examination by a resident. Furthermore, a reasonable physician in the position of Dr. Rosenbaum, as director of BFPC, would have read the fall report related to each of her falls and would have noticed Mrs. Overton's injury and taken immediate, appropriate action. In order to establish this standard of care, explain it to the jury, and establish the breach thereof, Plaintiff has designated experts. As outlined in Plaintiff's Designation of Experts (attached hereto as Exhibit A), Plaintiff's experts are expected to testify regarding the applicable standard of care, the breach

thereof by BFPC and Dr. Rosenbaum (and the other named defendants to this action), and causation.

In taking the depositions of Plaintiff's designated experts, counsel for defendants were able to examine these experts on their proposed testimony and qualifications. Defendants prematurely object to Plaintiff's use of these experts. Not only will Plaintiff's evidence and cited legal authority demonstrate that these experts are qualified to offer their testimony in support of Plaintiff's case, but the full deposition transcripts are replete with the experts' qualifications. Defendant's use of limited portions of the deposition transcripts is misleading and disingenuous. Plaintiff asks this Court to receive and review the original transcripts of the deposition testimony of the experts objected to, along with other data and authority submitted herewith, or supplemental hereof, including presentation of the witnesses at trial with proper voir dire concerning their credentials.

II. ARGUMENT

A. Plaintiff's Experts Should Not Be Excluded on the Basis of Limited Excerpts from Deposition Testimony.

Plaintiff's experts should not be excluded on the basis of "selected pages" of their depositions, especially when the totality of the discovery in this case has demonstrated that these experts are eminently qualified, in accordance with Virginia law. Plaintiff has the right to present expert witnesses to the Court and

to have their credentials fully and properly evaluated by the Court as they are tendered as experts.

Counsel for BFPC and Dr. Rosenbaum examined Dr. Leidelmeyer for over two hours. Despite Dr. Leidelmeyer's extensive experience and excellent qualifications (evidence of which had already been submitted during discovery to defense counsel in the form of *curriculum vitae* and Plaintiff's Designation of Experts), counsel directed his lengthy examination at uncovering some basis for objection to the qualification of Dr. Leidelmeyer as an expert. The submission of a few select pages from this long deposition transcript is misleading and does not allow this Court to review the testimony of Dr. Leidelmeyer in totality. Plaintiff respectfully requests that this Court require Defendant to file the entire transcript from this deposition and others (that Defendant intends to rely upon in these Motions in Limine) so that the Court may have the benefit, in the absence of voir dire testimony by the experts at trial, of the full testimony of Plaintiff's experts in evaluating the qualifications.

Defendant Motions in Limine are not sufficient to disqualify any of plaintiff's experts. Plaintiff respectfully asks that this Court allow Plaintiff to present experts at trial, with the appropriate voir dire as they are presented. Plaintiff has already given Defendant copies of the *curriculum vitae*, as well as detailed expert designations, and Defendant has taken the depositions of Plaintiff's experts. Plaintiff fully intends to be in compliance with all applicable Virginia law when these experts are presented at trial.

Furthermore, Plaintiff does not have to provide the defense with a full presentation of its case, either in discovery or in response to motions such as this one; the information provided to Defendant by this point is more than adequate to satisfy Defendant's rights to discovery. Plaintiff respectfully submits that the experts should be allowed to testify as to the areas involved in this case to which they may give such expert testimony. Their qualifications may be further tested at trial in the proper voir dire, and Defendant may certainly renew any objections they may have to the testimony of the expert at the time such testimony may be offered and presented to the Court.

B. Plaintiff's Experts Are Qualified to Testify.

Va. Code Ann. § 8.01-581.20 provides that "a witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action." (attached as Exhibit B). In accordance with this rule, Plaintiff's proposed expert witnesses are all eminently qualified to testify as experts in this case, because they can demonstrate expert knowledge of the standard of care and have had active clinical practices within one year of the injury to Mrs. Overton that is the subject of this action.

1. DR. LEIDELMEYER

Reinald Leidelmeyer, M.D. is expected to testify that the records of the examinations following each of Mrs. Overton's falls, as contained in her charts, are not sufficiently detailed. There is no documentation of any injuries, and the chart states that no treatment was required. The chart does not contain any record of any examination that would have allowed a physician to rule out the possibility of injury after Mrs. Overton sustained two falls. Dr. Leidelmeyer is further expected to testify that resident physicians are required to report and discuss findings from interaction with a patient to their attending physician (namely, Dr. Rosenbaum). He is further expected to opine that this constitutes a serious aberration of accepted standards and protocol. He is expected to conclude that these facts plus the inadequate care, supervision, and precautions of the nursing staff to a mentally and physically impaired patient resulted in Mrs. Overton's unnecessary and prolonged suffering. Plaintiff's Designation of Experts, including the section discussing Dr. Leidelmeyer, is attached hereto as Exhibit A.

Dr. Leidelmeyer is eminently qualified to testify regarding the standard of care, the breach thereof, and causation. His qualifications are exhaustive; his *curriculum vitae* is attached hereto as Exhibit C. He has worked in any number of related fields of medicine, as well as in the Defendants' own specialty. He worked in the Fairfax Hospital Emergency Room as a general practitioner ("family practice" and "general practice" are synonymous, as Dr. Leidelmeyer and Dr. Martin will testify to) for ten years, and practiced in his own clinic specializing

in family medicine for 20 years before joining the Fairfax County Health Department to work in its clinic. His qualifications and experience certainly warrant the admission of his expert testimony regarding the standard of care, and Plaintiff would ask that this Court hear his testimony at trial at the appropriate voir dire in order to determine for itself whether or not Dr. Leidelmeyer is qualified.

Dr. Leidelmeyer meets the one-year rule. In 1995, he was performing pre-employment physicals, reading and interpreting x-rays, and doing yearly check-ups at the Fairfax County Health Department. He has worked under the title "Physician" at the Health Department from 1990 until just recently in 2001. His duties included, but were not limited to, pre-natal and post-natal check-ups at the pre-natal clinic within the Health Department. His role depended on the needs of the Health Department at the time; but throughout his employment with the Health Department, he was acting as a physician engaging in the examination, diagnosis, and treatment of various patients. This practice of medicine by Dr. Leidelmeyer meets the statutory requirement that he be engaged in an active clinical practice within one year of Mrs. Overton's injury.

2. DR. MARTIN

John O. Martin, M.D., is expected to testify regarding the lack of provisions of a suitable care plan for Mrs. Overton, to prevent her from wandering or falling while at Heritage Hall. He is expected to testify that the medical and admission records indicate her propensity for falls, necessitating the care plan to prevent injury. He is further expected to testify that Defendants BFPC and Rosenbaum should have entered orders consistent with Mrs. Overton's care needs, and

Rosenbaum, as Medical Director of Heritage Hall, had a responsibility to ensure that a proper care plan was developed and implemented. Dr. Martin is further expected to opine that in cases involving a fractured hip, the leg rotates outward, presenting an easily detectable sign of injury. He is also expected to opine that the x-rays later taken on Mrs. Overton's hip reveal such a marked external rotation which would have been obvious upon a routine examination. Plaintiff's Designation of Experts, including the section discussing Dr. Martin, is attached hereto as Exhibit D.

Dr. Martin is highly qualified, and meets the statutory requirement for testifying as to the standard of care. His Affidavit is attached hereto as Exhibit D. Throughout his entire medical career, he has practiced medicine in the Commonwealth of Virginia, and has served as the President of the Northern Virginia Academy of General Practice. His experience includes a broad range of family and general clinical practice, and he has treated patients of all ages.

Dr. Martin also meets the one-year rule. In January, 1995, and beyond, he was a duly licensed physician in the Commonwealth of Virginia, and his active clinical practice of medicine included serving as physician to his family and friends, and serving as the physician for the Northern Virginia Softball League (which has over 300 players over the age of 40 years, with the majority of the players being over the age of 60). In this capacity, Dr. Martin heard medical complaints from players and gave them advice concerning treatment and prevention of injuries. Through education, study, and experience examining, diagnosing, and treating patients, Dr. Martin is qualified. Plaintiff respectfully

asks that this Court hear Dr. Martin's testimony at voir dire in order to assess his qualifications at trial.

3. PHYLLIS CORRIGAN, R.N. and MARY JO BERNE, R.N.

Phyllis Corrigan, R.N. and Mary Jo Berne, R.N. are both expected to testify that proper care was not provided by Heritage Hall that was reasonably necessary to prevent the falls and resulting injury to Mrs. Overton. Both have suggested a care plan that should have been developed and implemented, and that Heritage Hall breached the standard of care by not doing so. They are further expected to testify regarding Mrs. Overton's charts and other medical records. They are also expected to testify that the failures of Heritage Hall and the examining physicians are reflected in these charts.

Both Ms. Corrigan and Ms. Berne are qualified to testify regarding the standard of care applicable to a nursing home. As evidenced by their resumes (attached hereto as Exhibits E and F, respectively), they both have training as Registered Nurses, and both have worked extensively in nursing homes and in the care of elderly patients. Specifically, Ms. Corrigan was a Primary Care Nurse at Fair Oaks Hospital from 1990 to 1997. Among other duties (as explained in her resume) she worked in a particular unit of the hospital that provided care for elderly patients. On this medical floor, 75 percent of Ms. Corrigan's patients were elderly patients with multiple medical problems. Ms. Corrigan is therefore familiar with the needs and difficulties of elderly patients who are unable to care

for themselves. This experience certainly gives Ms. Corrigan knowledge of the defendant's specialty of the care of elderly patients.

There is no question regarding whether Ms. Corrigan meets the one-year rule. Ms. Corrigan was employed by Fair Oaks Hospital in this capacity from 1990 to 1997, clearly encompassing the date of the 1995 injury of Mrs. Overton.

While Ms. Berne officially retired in 1989, she has since that time cared for two hospice patients, assessed patients for nursing home placement, and maintained a familiarity with the practice area.

4. OLA POWERS

Ola Powers is the Deputy Director of the Virginia Board of Medicine Licensing Department. She, or another Virginia Medical Board Officer designated in her stead, is expected to testify regarding the issuance of temporary licenses to practice medicine in the Commonwealth of Virginia. She is expected to opine about the nature and scope of the temporary license, and whether the resident physician was required by law and by the license to be supervised by an attending or another member of the staff of BFPC or Heritage Hall.

5. DR. GONZALES

Defendants imply that F. Carlos Gonzales, M.D. should be excluded as an expert because he will not be supportive of Plaintiff's case. However, as explained in the Designation of Experts (attached as Exhibit A), Dr. Gonzales is expected to testify that Defendants failed to provide a suitable plan for the care of

Mrs. Overton. He is further expected to opine Mrs. Overton could not be left alone safely, and that the staff of Heritage Hall performed in a manner unacceptable and insufficient by any standard in the medical profession.

C. **Summary Judgment Should Not Be Granted, Because Plaintiff's Experts are Qualified.**

Summary judgment should not be granted, for the following reasons. First, as demonstrated above and as will be demonstrated at trial, Plaintiff's experts are qualified to testify as to the standard of care and breach thereof. Second, Plaintiff's breach of contract claim against Defendant HCMF may be pursued regardless of the presence of expert witnesses. Third, even if all of Plaintiff's experts are precluded from testifying at trial, the exclusion of their testimony is not fatal to the case because the facts are within the common knowledge and experience of the jury.

First, Plaintiff's experts are qualified to testify at trial. Plaintiff respectfully requests that this Court consider Plaintiff's arguments (as stated above), the *curriculum vitae* of all Plaintiff's experts (attached as exhibits), Plaintiff's Designation of Experts, the full deposition testimony of Plaintiff's experts, and the testimony of the experts themselves as will be presented before this Court at trial. Plaintiff asks that this Court address the qualifications of the experts at such time as they may be presented at trial; and that Defendants may preserve their objections for the appropriate time and that the Court may determine whether to allow the expert to testify at voir dire.

Second, Plaintiff's breach of contract claim against Defendant HCMF will stand regardless of expert testimony. This claim alleges that Heritage Hall failed to create and administer a proper care plan for Mrs. Overton, and that they failed to supervise her and prevent her injury, pursuant to the contract between the parties. No expert testimony is necessary to demonstrate the provisions of the contract and that said provisions were not met.

Finally, even if the Court excludes Plaintiff's experts, the exclusion of their testimony is not fatal to the case. Defendant BFPC cites Raines v. Lutz, arguing that the failure of a plaintiff in a medical malpractice case to present experts to testify regarding the standard of care is fatal to the case and mandates summary judgment. This is an inaccurate characterization of the holding of that case. Raines instead was a case wherein the plaintiff did not even offer any experts to testify; instead, he simply relied upon the opinion of a medical malpractice review panel to support the case. The Court held that this was insufficient. In the case at bar, we are offering experts; Plaintiff's experts are qualified, and Plaintiff should be permitted to demonstrate such before this Court at trial in the appropriate voir dire.

Furthermore, expert testimony is not always necessary to prove the standard of care and breach thereof in a medical malpractice case. In Beverly Enterprises v. Nichols, the Supreme Court of Virginia held that expert testimony is not necessary to establish that which is in the common knowledge and experience of the jury. In that case, the defendant contended that expert testimony was necessary to establish the appropriate standard of care and any

breach thereof. A nursing home patient who was mentally and physically unable to care for herself was left unsupervised with a tray of food. Despite the knowledge that she had had two prior serious choking incidents, the defendant left her alone and unsupervised, and as a result, she died of suffocation from choking on the food. The Court held that "certainly, a jury does not need expert testimony to ascertain whether the defendant was negligent because its employees failed to assist Mrs. Nichols under these circumstances" 247 Va. 264, 268 (1994). Furthermore, the Court said that Section 8.01-581.20 does not require the plaintiff to present expert testimony in all medical malpractice actions: "Here, the question of whether a reasonably prudent nursing home would permit its employees to leave a tray of food with an unattended patient who had a history of choking and who was unable to eat without assistance *is clearly within the common knowledge and experience of the jury.*" (Emphasis added) *Id* at 269.

In the case at bar, Mrs. Overton was at a clear risk for falls. Her admission records and the charts from the hospital document her dementia and her mental and physical incapacity. Heritage Hall, however, failed to take appropriate measures to ensure her safety and to prevent her from falling. Even if the Court excludes Plaintiff's experts from testifying, the facts and evidence in this case fall into the same framework as the Beverly Enterprises case, and are within the common knowledge and experience of the jury.

Summary judgment should not be granted, because many material facts are still in dispute. Even if the experts are excluded, Plaintiff can still proceed on

the breach of contract theory against Heritage Hall, and can still proceed in the medical malpractice action as a whole because the facts as alleged are within the common knowledge and experience of the jury.

III. CONCLUSION

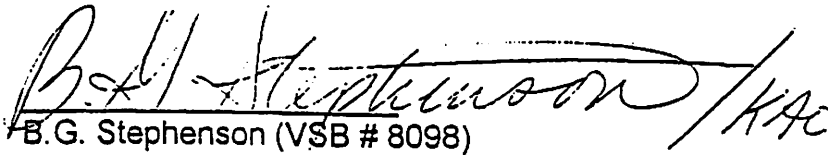
Plaintiff's experts should not be excluded, and summary judgment should not be granted, on the grounds explained above. Plaintiff respectfully requests that this Court require the Defendants to file the complete transcripts with the Court for review in totality. Plaintiff further requests that it be given the opportunity to amend and file additional papers, given the short period of time Plaintiff had in which to respond to these multiple motions. Plaintiff further requests that it be allowed to present its experts at trial. Defendant can then renew its objections, and the Court should determine the qualifications and admissibility of the experts at the appropriate voir dire. If the Court wishes to consider these matters further, Plaintiff respectfully requests that the Court grant additional time in which to file supplemental papers and memoranda.

RESPECTFULLY SUBMITTED this 3rd day of April, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.


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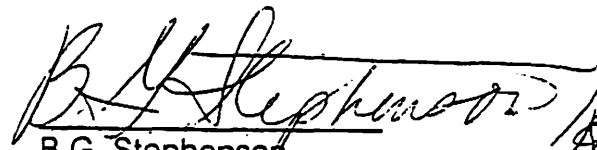
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

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TOC: Code of Virginia : / : ARTICLE 2. MISCELLANEOUS PROVISIONS : § 8.01-581.20. Standard of care in proceeding before medical malpractice review panel; expert testimony;...

Citation: Va Code Ann 8.01-581.20

Va. Code Ann. § 8.01-581.20

CODE OF VIRGINIA
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*** STATUTES CURRENT THROUGH 2000 REGULAR SESSION ***
*** (CASES CURRENT THROUGH APRIL 10, 2000) ***

TITLE 8.01. CIVIL REMEDIES AND PROCEDURE
CHAPTER 21.1. MEDICAL MALPRACTICE
ARTICLE 2. MISCELLANEOUS PROVISIONS

♦ GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Va. Code Ann. § 8.01-581.20 (2000)

§ 8.01-581.20. Standard of care in proceeding before medical malpractice review panel; expert testimony; determination of standard in action for damages

A. In any proceeding before a medical malpractice review panel or in any action against a physician, clinical psychologist, podiatrist, dentist, nurse, hospital or other health care provider to recover damages alleged to have been caused by medical malpractice where the acts or omissions so complained of are alleged to have occurred in this Commonwealth, the standard of care by which the acts or omissions are to be judged shall be that degree of skill and diligence practiced by a reasonably prudent practitioner in the field of practice or specialty in this Commonwealth and the testimony of an expert witness, otherwise qualified, as to such standard of care, shall be admitted; provided, however, that the standard of care in the locality or in similar localities in which the alleged act or omission occurred shall be applied if any party shall prove by a preponderance of the evidence that the health care services and health care facilities available in the locality and the customary practices in such locality or similar localities give rise to a standard of care which is more appropriate than a statewide standard. Any physician who is licensed to practice in Virginia shall be presumed to know the statewide standard of care in the specialty or field of medicine in which he is qualified and certified. This presumption shall also apply to any physician who is licensed in some other state of the United States and meets the educational and examination requirements for licensure in Virginia. An expert witness who is familiar with the statewide standard of care shall not have his testimony excluded on the ground that he does not practice in this Commonwealth. A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action.

B. In any action for damages resulting from medical malpractice, any issue as to the standard of care to be applied shall be determined by the jury, or the court trying the case without a jury.

HISTORY: 1979, c. 325; 1980, c. 164; 1989, cc. 146, 729; 1992, c. 240.

NOTES:

LAW REVIEW. --For comment on the abolition in Virginia of the locality rule in medical malpractice, see 13 U. Rich. L. Rev. 927 (1979). For survey of Virginia law on torts for the year 1978-1979, see 66 Va. L. Rev. 375 (1980). For note on the erosion of the locality rule and the qualification of experts testifying in medical malpractice suits in Virginia, see 4 Geo. Mason L. Rev. 99 (1981). For article on statewide standard of care in medical malpractice cases, see 18 U. Rich. L. Rev. 361 (1984). For article on the admissibility of written health care standards in medical and hospital negligence actions in Virginia, see 18 U. Rich. L. Rev. 725 (1984). For survey on medical malpractice in Virginia for 1989, see 23 U. Rich. L. Rev. 731 (1989). For an article, "Civil Practice and Procedure," see 31 U. Rich. L. Rev. 991 (1997).

I. Decisions Under Current Law.

A. General Consideration.

B. Standard of Care.

II. Decisions Under Prior Law.

I. DECISIONS UNDER CURRENT LAW.

A. GENERAL CONSIDERATION.

THIS SECTION DOES NOT REQUIRE A PLAINTIFF TO PRESENT EXPERT TESTIMONY in all medical malpractice actions. Dickerson v. Fatehi, 253 Va. 324, 484 S.E.2d 880 (1997).

RETROACTIVITY OF WITNESS QUALIFICATION PROVISIONS. --The current provisions of this section regarding the admissibility of the testimony of expert witnesses from outside of Virginia are procedural, rather than substantive, and, therefore, were applicable to a pending action rather than the version of the statute in effect in 1979, when the alleged malpractice occurred. Gaynor v. OGYN Specialists, Ltd., 51 F. Supp. 2d 718 (W.D. Va. 1999).

MOST SIGNIFICANT ELEMENT ABOUT THIS SECTION IS THAT EXPERTISE in a medical malpractice case does not have to come from an individual practicing in the same specialty which is the subject matter of the cause of action. Daniel v. Jones, 39 F. Supp. 2d 635 (E.D. Va. 1999).

Neonatologist who established his knowledge of the Virginia standard of care in dealing with a pregnant woman in a high-risk pregnancy was qualified to testify in obstetrical case, when issue was how to prevent preterm labor and extend the pregnancy in order to assure the more complete development of the fetus. Daniel v. Jones, 39 F. Supp. 2d 635 (E.D. Va. 1999).

A MEDICAL OPINION BASED ON A "POSSIBILITY" IS IRRELEVANT, PURELY SPECULATIVE AND, HENCE, INADMISSIBLE. In order for such testimony to become relevant, it must be brought out of the realm of speculation and into the realm of reasonable probability; the law in this area deals in "probabilities" and not "possibilities." Fairfax Hosp. Sys. v. Curtis, 249 Va. 531, 457 S.E.2d 66 (1995).

COMPLETION OF LICENSURE REQUIREMENTS SUFFICIENT TO TESTIFY AS EXPERT. --

Where, the applicable standard is that of the entire Commonwealth, where the proffered witness has lived, worked, taught, and practiced, and the doctor went so far as to complete the requirements for licensure as a general practitioner of medicine in Virginia, the field with which his familiarity must be demonstrated if he is to testify as an expert, this is a sufficient factual showing to establish, prima facie, that he possessed the necessary

knowledge, skill, and experience to testify as an expert to the appropriate standard of care in his field when he was admitted to practice in it. Grubb v. Hocker, 229 Va. 172, 326 S.E.2d 698 (1985).

LACK OF CURRENT PRACTICE NO BASIS FOR EXCLUDING TESTIMONY. --Because of the 1980 amendment to this section, it was clear that the doctor's lack of current practice in Virginia formed no basis, in itself, for the exclusion of his testimony. The lapse of his Virginia license and his absence from the State did not serve to negate the familiarity with the applicable standard which he demonstrated by qualifying for admission to practice in Virginia. Indeed, he testified to continuing contacts, visits and study which would only serve to maintain the familiarity with professional standards which he had previously acquired. Grubb v. Hocker, 229 Va. 172, 326 S.E.2d 698 (1985).

WRITTEN OPINION OF REVIEW PANEL NOT SUFFICIENT AS EXPERT TESTIMONY. --Expert testimony is ordinarily required in malpractice cases on (1) the standard of care, (2) a deviation from the standard, and (3) causation. The written opinion of the medical malpractice review panel is not in itself sufficient to fulfill those requirements. Raines v. Lutz, 231 Va. 110, 341 S.E.2d 194 (1986).

Health care providers are required by law to possess and exercise only that degree of skill and diligence practiced by a reasonably prudent practitioner in the same field of practice or specialty in Virginia. Expert testimony is ordinarily necessary to establish the appropriate standard of care, to establish a deviation from the standard, and to establish that such a deviation was the proximate cause of the claimed damages. Raines v. Lutz, 231 Va. 110, 341 S.E.2d 194 (1986).

AS TO ACTIONS FOR "WRONGFUL PREGNANCY," see Miller v. Johnson, 231 Va. 177, 343 S.E.2d 301 (1986).

DISTRICT JUDGE MAY REVERSE THE MAGISTRATE JUDGE'S ORDER WITH RESPECT TO PLAINTIFF'S EXPERT if the factual findings are clearly erroneous or legal conclusions are contrary to law. Peck v. Tegtmeyer, 834 F. Supp. 903 (W.D. Va. 1992), aff'd, 4 F.3d 985 (4th Cir. 1993).

Henning v. Thomas, 235 Va. 181, 366 S.E.2d 109 (1988); Black v. Bladergroen, 258 Va. 438, 521 S.E.2d 168 (1999).

B. STANDARD OF CARE.

ONLY ONE STANDARD OF CARE. --The Virginia Medical Malpractice Act makes no distinction between a mechanical standard of care and a general professional standard of care; clearly there is only one standard of care: that degree of skill and diligence practiced by a reasonably prudent practitioner in the field of practice or specialty in the Commonwealth. Peck v. Tegtmeyer, 834 F. Supp. 903 (W.D. Va. 1992), aff'd, 4 F.3d 985 (4th Cir. 1993).

"REASONABLY PRUDENT PRACTITIONER" STANDARD. --A physician must demonstrate that degree of skill and diligence in the diagnosis and treatment of the patient employed by a reasonably prudent practitioner in his field of practice or specialty. Brown v. Koulikakis, 229 Va. 524, 331 S.E.2d 440 (1985).

EXPERT TESTIMONY NOT ALWAYS NECESSARY. --Nothing in this section requires a plaintiff to present in all medical malpractice actions expert testimony to establish that degree of skill and diligence practiced by a reasonably prudent practitioner. Beverly Enterprises-Virginia, Inc. v. Nichols, 247 Va. 264, 441 S.E.2d 1 (1994).

PHYSICIAN IS NOT AN INSURER OF THE SUCCESS OF HIS DIAGNOSIS AND TREATMENT nor is he held to the highest degree of care known to his profession. The mere fact that he has

failed to effect a cure or that his diagnosis and treatment have been detrimental to the patient's health does not raise a presumption of negligence. Brown v. Koulizakis, 229 Va. 524, 331 S.E.2d 440 (1985).

APPLICABILITY IN DIVERSITY PROCEEDING. --Qualification requirements for a standard of care expert as set forth in this section are applicable to experts' qualifications in a diversity case. Peck v. Tegtmeyer, 834 F. Supp. 903 (W.D. Va. 1992), aff'd, 4 F.3d 985 (4th Cir. 1993).

ERROR IN INSTRUCTING THE JURY THAT IT COULD APPLY THE LOCAL STANDARD OF CARE WAS NOT HARMLESS, where the defendant had observed or should have observed the patient's jaundice when he first examined him, and the jury had heard evidence that, under such circumstances, the statewide standard of care required a bilirubin test while the local standard did not; notwithstanding the absence of evidence that the local standard was the more appropriate measure of the doctor's duty to his or her patient, the jury could have been led by the erroneous instruction to conclude that, because the defendant's expert witnesses had testified that he had complied with the local standard, he was not guilty of actionable negligence. Rhoades v. Painter, 234 Va. 20, 360 S.E.2d 174 (1987).

QUALIFICATIONS FOR RADIOLOGY EXPERT. --Because radiation physicist had never had a clinical practice of any kind, he did not meet the statutory requirements for qualification as an expert on the standard of care in radiology. Peck v. Tegtmeyer, 834 F. Supp. 903 (W.D. Va. 1992), aff'd, 4 F.3d 985 (4th Cir. 1993).

ACTIVE CLINICAL PRACTICE NOT FOUND. --Doctor's employment as director of a helicopter transport service which transported sick and injured patients could not be deemed an active clinical practice within the contemplation of this section. Fairfax Hosp. Sys. v. Curtis, 249 Va. 531, 457 S.E.2d 66 (1995).

EXPERT TESTIMONY PROPERLY EXCLUDED. --Trial court properly excluded certain expert testimony because the hospital's expert witnesses could not say within a reasonable degree of medical probability that certain factors associated with a near-sudden infant death syndrome event specifically caused infant's cardiopulmonary arrest. Fairfax Hosp. Sys. v. Curtis, 249 Va. 531, 457 S.E.2d 66 (1995).

The trial court did not abuse its discretion by refusing to permit the physician to qualify as an expert witness on the defendant's specialty, orthopaedic surgery as it involves the procedure of chemonucleolysis. The physician had never performed the procedure nor had he observed an actual procedure being performed. Even though the physician had received a certificate for participating in a seminar on chemonucleolysis, such limited instruction was not sufficient to conclude the physician was qualified to render opinions on the subject. Lawson v. Elkins, 252 Va. 352, 477 S.E.2d 510 (1996).

QUESTION WITHIN EXPERIENCE OF JURY. --The question of whether a reasonably prudent nursing home would permit its employees to leave a tray of food with an unattended patient who had a history of choking and who was unable to eat without assistance was certainly within the common knowledge and experience of a jury. Beverly Enterprises-Virginia, Inc. v. Nichols, 247 Va. 264, 441 S.E.2d 1 (1994).

II. DECISIONS UNDER PRIOR LAW.

The cases cited below were decided under corresponding provisions of former law. The term "this section," as used below, refers to former provisions.

THE STANDARD OF CARE IN A MEDICAL MALPRACTICE ACTION IS A MATTER OF SUBSTANTIVE LAW and thus federal courts are bound to apply the law of the Commonwealth. Chapman v. Edgerton, 529 F. Supp. 519 (W.D. Va. 1982).

STATUTORY STANDARD OF CARE NOT RETROACTIVE. --As the standard of care in medical malpractice actions is substantive and not procedural, there is no statutory standard of care applicable to actions which arose prior to the enactment of section setting forth same. Chapman v. Edgerton, 529 F. Supp. 519 (W.D. Va. 1982).

THE STANDARD OF CARE REQUIRED OF A PLASTIC SURGEON is that of other like specialists in good standing, in the same or similar localities as the defendant. Chapman v. Edgerton, 529 F. Supp. 519 (W.D. Va. 1982).

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TOC: Code of Virginia : / . . . / : ARTICLE 2. MISCELLANEOUS PROVISIONS : § 8.01-581.20. Standard of care in proceeding before medical malpractice review panel; expert testimony;...

Citation: Va Code Ann 8.01-581.20

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Date/Time: Wednesday, March 28, 2001 - 11:49 AM EST

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VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

AFFIDAVIT

John O. Martin, M.D., being duly sworn, deposes and states:

1. I am one of Plaintiff's designated medical experts in this case.
2. I make this Affidavit in opposition to the Defendants' Motion in Limine to Exclude the Plaintiff's Expert Witness, John Martin, M.D.
3. I am fully qualified to testify regarding the injuries to and care of Lucille Overton. Among my qualifications I state as follows:
Throughout my entire medical career, I have practiced medicine in the Commonwealth of Virginia. In addition, I was conferred privileges to admit and treat patients at Fairfax Hospital as a family

practitioner. Furthermore, I served as the President of the Northern Virginia Academy of General Practice. (The designations "general practice" and "family practice" are synonymous. The actual practice of medicine engaged in under both designations is considered the same, and the two terms are interchangeable). In January, 1995, and beyond, I was a duly licensed physician in the Commonwealth of Virginia and have continued to treat friends and relatives in clinical practice; and I was also and continue to be the physician for the Northern Virginia Senior Softball League, which has over 300 players over the age of 40. (with a majority of the players being over the age of 60). I frequently give medical advice regarding injuries, and I also advise the board of the League on medical and safety concerns. I have also managed the first aid program. My services in this regard have progressed to my teaching first aid courses to the League members and have continued to teach to the present date. In conjunction with teaching these courses I authored a first aid manual pertaining to the treatment of injuries sustained by senior softball players and published several articles in the League newsletter on safety, ways to avoid injury, and advice related to medical problems frequently experienced by the players. I believe that during this period I was fully qualified to practice family medicine, and am well aware, through education, study, and experience with patients, of the proper treatment of the injuries and

care that would have been proper regarding Lucille Overton. My experience includes a broad range of family and general clinical practice, treating patients of all ages, throughout my medical career as a practicing physician in the Commonwealth of Virginia.

COMMONWEALTH OF VIRGINIA,
CITY OF FAIRFAX, to wit:

The undersigned affiant, John O. Martin, M.D., this day personally appeared before me, a notary public in and for the City of Fairfax and the Commonwealth of Virginia, and states that to the best of his knowledge and belief the facts recited herein are true.

John O. Martin, M.D.
Name of Affiant

I, the undersigned, a notary public in and for the state and county aforesaid, do hereby certify that John O. Martin, M.D., whose name is signed to the foregoing document, acknowledged the same before me this 2nd day of April, 2001.

My commission expires: 4-30-01.

Christina O. Pate
Notary Public

Phyllis M. Corrigan

Objective Nurse Clinician with Skin and Wound Care Expertise

Experience 1980-1987 Fair Oaks Hospital Fairfax VA

Clinician II with Skin and Wound Care Expertise

- Primary Care Nurse working with a Nursing Assistant to provide total patient care for 8 to 10 patients. Responsible for all aspects of patient care including initiating IVs, medications, and treatments.
- Member of the Wound, Ostomy, and Continence Nurses' Association. Represented Fair Oaks Hospital on the INOVA, Inc. Skin Care Committee, which evaluated new care products of pharmaceutical companies. Provided consult to physicians and nurses on patients to both prevent decubitus from forming and to promote healing of ulcers.
- Team Leader when the Hospital changed to Patient Focused Care. Responsible for directing activities of clinical technician and assistant and providing total patient care.

1986-1990 US Army Medical Center Landstuhl, West Ger.

Registered Nurse

- Registered Nurse on 20 Bed Surgical Ward.
- Provided wound care, medications. Treatments and initiated IVs.
- Supervised teams consisting of registered nurses, and medical Corpsmen.

1982-1988 Commonwealth Hospital Fairfax, VA

Assistant Patient Care Director

- Primary Care for 8 to 8 patients per shift, including treatment, medications, charting, and supervising health care team.
- Responsible for hiring personnel, evaluations of them each six months, budgeting, and assuming the duties of Director when needed.
- Member of Quality Assurance Committee and Education Committee.

1973-1987 Martha Jefferson Hospital. Charlottesville, VA

Registered Nurse - Supervisor

- Charge Nurse on 36 Bed Medical/surgical Unit
- Supervised three or four registered nurses, Licensed Practical nurses and nurses Aides.
- Initiated IVs, medications, and treatments.
- Psychiatric care

Mary Jo Berne
9104 Fishermans Lane
Springfield, VA 22153
(703) 644-5166

Registered Nurse since 1979
Clinician II since 1981
Special Medical-Surgical certification 1985

Experience:

1980-1989 Commonwealth Hospital, Fairfax, VA
Clinician II Med-Surgery Ward
Primary Care Nurse providing total patient care in
all aspects, including IV's, medicines, and
treatments.
Instructed patients concerning their care at home.
Instructed family and elderly patients concerning
safety in the hospital and at home.
Instructed diabetic patients on special care
required at home.
Responsible for teaching new staff as assigned: IV
sticks; blood sugar testing; and NGtubes.
Charge nurse for the medical floor when assigned
for that shift.

1980 Fairfax Nursing Home, Fairfax, VA
Charge Nurse
Responsible, on forty bed floor, for total care
patients once RN received.
Responsible for: scheduling of other staff; updating
patient care plans; overseeing total care of
patients; teaching safety to patients and their
families; and communicating with doctors.

1979-1980 Fairfax Nursing Home, Fairfax, VA
Graduate Nurse-Assisting Charge Nurse
(until boards were completed).
Responsible for all care including: ward; medicines;
diet; safety; and total care patients.
Forty patient total care ward.

1989-1997 Retired from Floor Duty
Occasional Private duty.
Teaching patients in areas such as diabetics,
hypertension, skin care, and safety.
Consulting\reviewing charts for assessment of care.

Education:

1985 Special Medical Surgical Certification

1980-1990 Continuing Education Hours (240)
Areas: Care of the Elderly; Restraints; Skin Care;
IV Care; New Medications; Nursing and the Legal
Process; Decubitex; CPR; Chemotherapy.

1979 College: Shenendoah University
Degree: Nursing
Associate Degree: Allied Health

1975 High School: W.T. Woodson High School

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT HCMF CORPORATION'S
MOTION IN LIMINE AND MOTION FOR SUMMARY JUDGMENT

COMES NOW the Plaintiff, Horace E. Perdieu, as Administrator of the Estate of Lucille P. Overton, by counsel, and hereby files this Memorandum of Law in Opposition to Defendant HCMF Corporation's Motion in Limine and Motion for Summary Judgment. In support thereof, Plaintiff sets forth the following:

I. STATEMENT OF FACTS

Lucille P. Overton, deceased, was admitted to the HCMF Corporation nursing home facility (t/a Heritage Hall Health Care) as a resident on or about January 4, 1995. She was admitted to Heritage Hall (after being discharged from Johnston-Willis Hospital) with altered mental status. She was suffering from dementia and needed assistance and supervision. She was assessed by Heritage Hall upon her admission as being a high risk for falls. Despite this, Heritage Hall failed to create and implement a care plan to ensure Mrs. Overton's safety and well-being. Heritage Hall further breached its contract with Mrs. Overton by failing to provide reasonable care and supervision of her as a resident of the nursing home facility, pursuant to their agreement. As a result of the negligence of Heritage Hall, in its failure to provide for the safety and care of Mrs. Overton and in breach of its contract to provide her services in relation to her condition, Mrs. Overton sustained a broken hip in a fall on or about January 20 or 21, 1995. (Her chart documentation shows that she fell in her room and was found lying on her left side on January 20, 1995, and that she fell again in the dining room on the following day). Mrs. Overton continued deteriorating until she was ultimately diagnosed as having sustained a broken left hip some ten days after her first fall, and she was then transported to Johnston-Willis Hospital where she underwent hip replacement surgery.

In this negligence and breach of contract action, Plaintiff Horace E. Perdieu, as Administrator of the Estate of Lucille Overton, seeks to hold Heritage Hall accountable for its failure to provide for the care, safety, and supervision of

Mrs. Overton. In order to demonstrate at trial that the standard of care applicable to Heritage Hall mandated the development and implementation of an effective care plan, including provisions for the supervision of the Mrs. Overton and prevention of falls, and/or to provide a plan for preventing serious injury from falling. Plaintiff has designated experts. As outlined in Plaintiff's Designation of Experts (attached hereto as Exhibit A), Plaintiff's experts are expected to testify regarding the applicable standard of care, the breach thereof by Heritage Hall (and the other named defendants to this action), and causation.

In taking the depositions of Plaintiff's designated experts, counsel for defendants were able to examine these experts on their proposed testimony and qualifications. Defendants prematurely object to Plaintiff's use of the experts. Not only will Plaintiff's evidence and cited legal authority demonstrate that these experts are qualified to offer their testimony in support of Plaintiff's case, but the full deposition transcripts are replete with the experts' qualifications. Defendant HCMF's use of limited portions of the deposition transcripts is misleading and disingenuous. Plaintiff asks this Court to receive and review the original transcripts of the deposition testimony of the experts objected to, along with other data and authority submitted herewith, or supplemental hereof, including presentation of the witnesses at trial with proper voir dire concerning their credentials.

II. ARGUMENT

A. Plaintiff's Experts Should Not Be Excluded on the Basis of Limited Excerpts from Deposition Testimony.

Plaintiff's experts should not be excluded on the basis of "selected pages" of their depositions, especially when the totality of the discovery in this case has demonstrated that these experts are eminently qualified, in accordance with Virginia law. Plaintiff has the right to present expert witnesses to the Court and to have their credentials fully and properly evaluated by the Court as they are tendered as experts.

Defendant HCMF's Motion in Limine is not sufficient to disqualify any of plaintiff's experts. Plaintiff respectfully asks that this Court allow Plaintiff to present experts at trial, with the appropriate voir dire as they are presented. Plaintiff has already given Defendant HCMF copies of the *curriculum vitae*, as well as detailed expert designations, and Defendant has taken the depositions of Plaintiff's experts. Plaintiff fully intends to be in compliance with all applicable Virginia law when these experts are presented at trial.

Furthermore, Plaintiff does not have to provide the defense with a full presentation of its case, either in discovery or in response to motions such as this one; the information provided to Defendant HCMF by this point is more than adequate to satisfy Defendant's rights to discovery. Plaintiff respectfully submits that the experts should be allowed to testify as to the areas involved in this case to which they may give such expert testimony. Their qualifications may be further tested at trial in the proper voir dire, and Defendant may certainly renew

any objections they may have to the testimony of the expert at the time such testimony may be offered and presented to the Court.

B. Va. Code Ann. § 8.01-581-20 Does Not Apply to Plaintiff's Experts, Because HCMF is not a "Health Care Provider".

Va. Code Ann. § 8.01-581.20 does not apply to Plaintiff's experts in relation to HCMF, because HCMF is not a "health care provider." Section 8.01-581.20 provides that an expert witness may testify regarding the standard of care "in any proceeding before a medical malpractice review panel or in any action against a physician, clinical psychologist, podiatrist, dentist, nurse, hospital, or other health care provider." (Attached hereto as Exhibit B). HCMF is a residential facility, not a health care provider within the contemplation of this code section.

The Code specifically says that an expert may testify in an action against a "clinical psychologist" or a "podiatrist." The language is open, however, with reference to a "physician", "dentist", "nurse", or "hospital." This indicates that the legislature meant to be expansive, and include many specialties within these areas, but also limited in that the defendant must be a "health care provider." For instance, the expansive term "physician" could include a pediatrician, a general/family practitioner, an othopaedist, or any other "physician" who provides health care. Likewise, a hospital contains facilities that allow patients to stay overnight or for longer periods of time, but to be included in the scope of this statute, said hospital must be in the business of providing health care.

HCMF is not in the business of providing health care; rather it is a residential facility with health care for its residents provided by BFPC (pursuant to Agreement, attached hereto as Exhibit C).

HCMF relies primarily on this statute in its Motion in Limine and Motion for Summary Judgment, and the limited authority cited by HCMF does not deal with residential facilities such as HCMF. One of their cases, Lawson v. Elkins, is a suit against an individual surgeon. Another case, Raines v. Lutz, involves the malpractice of a dentist. Fairfax Hospital v. Curtis involved a hospital's liability for the death of an infant in its care.

Section 8.01-581.20 does not apply to Plaintiff's experts in relation to Heritage Hall because Heritage Hall is not a "health care provider," as further evidenced by its agreement with BFPC. Heritage Hall is not within the contemplation of this statute, and Defendant HCMF has not cited any authority indicating that any other court in Virginia has applied this statute to cover a residential facility. Therefore, Defendant's Motion in Limine and Motion for Summary Judgment must fail.

C. Plaintiff's Experts Are Qualified to Testify.

Va. Code Ann. § 8.01-581.20 provides that "a witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of

the date of the alleged act or omission forming the basis of the action." In accordance with this rule, Plaintiff's proposed expert witnesses are all eminently qualified to testify as experts in this case, because they can demonstrate expert knowledge of the standard of care and have had active clinical practices within one year of the injury to Mrs. Overton that is the subject of this action.

1. **DR. LEIDELMEYER**

Reinald Leidelmeyer, M.D. is expected to testify that the records of the examinations following each of Mrs. Overton's falls, as contained in her charts, are not sufficiently detailed. There is no documentation of any injuries, and the chart states that no treatment was required. The chart does not contain any record of any examination that would have allowed a physician to rule out the possibility of injury after Mrs. Overton sustained two falls. Dr. Leidelmeyer is further expected to testify that resident physicians are required to report and discuss findings from interaction with a patient to their attending physician (namely, Dr. Rosenbaum). He is further expected to opine that this constitutes a serious aberration of accepted standards and protocol. He is expected to conclude that these facts plus the inadequate care, supervision, and precautions of the nursing staff to a mentally and physically impaired patient resulted in Mrs. Overton's unnecessary and prolonged suffering. Plaintiff's Designation of Experts, including the section discussing Dr. Leidelmeyer, is attached hereto as Exhibit A.

Dr. Leidelmeyer is eminently qualified to testify regarding the standard of care, the breach thereof, and causation. His qualifications are exhaustive; his *curriculum vitae* is attached hereto as Exhibit D. He has worked in any number of related fields of medicine, as well as in the Defendants' own specialty. He worked in the Fairfax Hospital Emergency Room as a general practitioner ("family practice" and "general practice" are synonymous, as Dr. Leidelmeyer and Dr. Martin will testify to) for ten years, and practiced in his own clinic specializing in family medicine for 20 years before joining the Fairfax County Health Department to work in its clinic. His qualifications and experience certainly warrant the admission of his expert testimony regarding the standard of care, and Plaintiff would ask that this Court hear his testimony at trial at the appropriate voir dire in order to determine for itself whether or not Dr. Leidelmeyer is qualified.

Dr. Leidelmeyer meets the one-year rule. In 1995, he was performing pre-employment physicals, reading and interpreting x-rays, and doing yearly check-ups at the Fairfax County Health Department. He has worked under the title "Physician" at the Health Department from 1990 until just recently in 2001. His duties included, but were not limited to, pre-natal and post-natal check-ups at the pre-natal clinic within the Health Department. His role depended on the needs of the Health Department at the time; but throughout his employment with the Health Department, he was acting as a physician engaging in the examination, diagnosis, and treatment of various patients. This practice of medicine by Dr. Leidelmeyer meets the statutory requirement that he be engaged in an active clinical practice within one year of Mrs. Overton's injury.

2. DR. MARTIN

John O. Martin, M.D., is expected to testify regarding the lack of provisions of a suitable care plan for Mrs. Overton, to prevent her from wandering or falling while at Heritage Hall. He is expected to testify that the medical and admission records indicate her propensity for falls, necessitating the care plan to prevent injury. He is further expected to testify that Defendants BFPC and Rosenbaum should have entered orders consistent with Mrs. Overton's care needs, and Rosenbaum, as Medical Director of Heritage Hall, had a responsibility to ensure that a proper care plan was developed and implemented. Dr. Martin is further expected to opine that in cases involving a fractured hip, the leg rotates outward, presenting an easily detectable sign of injury. He is also expected to opine that the x-rays later taken on Mrs. Overton's hip reveal such a marked external rotation which would have been obvious upon a routine examination. Plaintiff's Designation of Experts, including the section discussing Dr. Martin, is attached hereto as Exhibit A.

Dr. Martin is highly qualified, and meets the statutory requirement for testifying as to the standard of care. His Affidavit is attached hereto as Exhibit E. Throughout his entire medical career, he has practiced medicine in the Commonwealth of Virginia, and has served as the President of the Northern Virginia Academy of General Practice. His experience includes a broad range of family and general clinical practice, and he has treated patients of all ages.

Dr. Martin also meets the one-year rule. In January, 1995, and beyond, he was a duly licensed physician in the Commonwealth of Virginia, and his active

clinical practice of medicine included serving as physician to his family and friends, and serving as the physician for the Northern Virginia Softball League (which has over 300 players over the age of 40 years, with the majority of the players being over the age of 60). In this capacity, Dr. Martin heard medical complaints from players and gave them advice concerning treatment and prevention of injuries. Through education, study, and experience examining, diagnosing, and treating patients, Dr. Martin is qualified. Plaintiff respectfully asks that this Court hear Dr. Martin's testimony at voir dire in order to assess his qualifications at trial.

3. PHYLLIS CORRIGAN, R.N. and MARY JO BERNE, R.N.

Phyllis Corrigan, R.N. and Mary Jo Berne, R.N. are both expected to testify that proper care was not provided by Heritage Hall that was reasonably necessary to prevent the falls and resulting injury to Mrs. Overton. Both have suggested a care plan that should have been developed and implemented, and that Heritage Hall breached the standard of care by not doing so. They are further expected to testify regarding Mrs. Overton's charts and other medical records. They are also expected to testify that the failures of Heritage Hall and the examining physicians are reflected in these charts.

Both Ms. Corrigan and Ms. Berne are qualified to testify regarding the standard of care applicable to a nursing home. As evidenced by their resumes (attached hereto as Exhibits F and G, respectively), they both have training as Registered Nurses, and both have worked extensively in nursing homes and in the care of elderly patients. Specifically, Ms. Corrigan was a Primary Care Nurse

at Fair Oaks Hospital from 1990 to 1997. Among other duties (as explained in her resume) she worked in a particular unit of the hospital that provided care for elderly patients. On this medical floor, 75 percent of Ms. Corrigan's patients were elderly patients with multiple medical problems. Ms. Corrigan is therefore familiar with the needs and difficulties of elderly patients who are unable to care for themselves. This experience certainly gives Ms. Corrigan knowledge of the defendant's specialty of the care of elderly patients.

There is no question regarding whether Ms. Corrigan meets the one-year rule. Ms. Corrigan was employed by Fair Oaks Hospital in this capacity from 1990 to 1997, clearly encompassing the date of the 1995 injury of Mrs. Overton.

While Ms. Berne officially retired in 1989, she has since that time cared for two hospice patients, assessed patients for nursing home placement, and maintained a familiarity with the practice area.

4. OLA POWERS

Ola Powers is the Deputy Director of the Virginia Board of Medicine Licensing Department. She, or another Virginia Medical Board Officer designated in her stead, is expected to testify regarding the issuance of temporary licenses to practice medicine in the Commonwealth of Virginia. She is expected to opine about the nature and scope of the temporary license, and whether the resident physician was required by law and by the license to be supervised by an attending or another member of the staff of BFPC or Heritage Hall.

5. **DR. GONZALES**

Defendants imply that F. Carlos Gonzales, M.D. should be excluded as an expert because he will not be supportive of Plaintiff's case. However, as explained in the Designation of Experts (attached as Exhibit A), Dr. Gonzales is expected to testify that Defendants failed to provide a suitable plan for the care of Mrs. Overton. He is further expected to opine Mrs. Overton could not be left alone safely, and that the staff of Heritage Hall performed in a manner unacceptable and insufficient by any standard in the medical profession.

D. **Summary Judgment Should Not Be Granted, Because Plaintiff's Experts are Qualified.**

Summary judgment should not be granted, for the following reasons. First, as demonstrated above and as will be demonstrated at trial, Plaintiff's experts are qualified to testify as to the standard of care and breach thereof. Second, Plaintiff's breach of contract claim against Defendant HCMF may be pursued regardless of the presence of expert witnesses. Third, even if all of Plaintiff's experts are precluded from testifying at trial, the exclusion of their testimony is not fatal to the case because the facts are within the common knowledge and experience of the jury.

First, Plaintiff's experts are qualified to testify at trial. Plaintiff respectfully requests that this Court consider Plaintiff's arguments (as stated above), the *curriculum vitae* of all Plaintiff's experts (attached as exhibits), Plaintiff's Designation of Experts, the full deposition testimony of Plaintiff's experts, and the testimony of the experts themselves as will be presented before this Court at

trial. Plaintiff asks that this Court address the qualifications of the experts at such time as they may be presented at trial; and that Defendants may preserve their objections for the appropriate time and that the Court may determine whether to allow the expert to testify at voir dire.

Second, Plaintiff's breach of contract claim against Defendant HCMF will stand regardless of expert testimony. This claim alleges that Heritage Hall failed to create and administer a proper care plan for Mrs. Overton, and that they failed to supervise her and prevent her injury, pursuant to the contract between the parties. No expert testimony is necessary to demonstrate the provisions of the contract and that said provisions were not met.

Finally, even if the Court excludes Plaintiff's experts, the exclusion of their testimony is not fatal to the case. Defendant BFPC cites Raines v. Lutz, arguing that the failure of a plaintiff in a medical malpractice case to present experts to testify regarding the standard of care is fatal to the case and mandates summary judgment. This is an inaccurate characterization of the holding of that case. Raines instead was a case wherein the plaintiff did not even offer any experts to testify; instead, he simply relied upon the opinion of a medical malpractice review panel to support the case. The Court held that this was insufficient. In the case at bar, we are offering experts; Plaintiff's experts are qualified, and Plaintiff should be permitted to demonstrate such before this Court at trial in the appropriate voir dire.

Furthermore, expert testimony is not always necessary to prove the standard of care and breach thereof in a medical malpractice case. In Beverly

Enterprises v. Nichols, the Supreme Court of Virginia held that expert testimony is not necessary to establish that which is in the common knowledge and experience of the jury. In that case, the defendant contended that expert testimony was necessary to establish the appropriate standard of care and any breach thereof. A nursing home patient who was mentally and physically unable to care for herself was left unsupervised with a tray of food. Despite the knowledge that she had had two prior serious choking incidents, the defendant left her alone and unsupervised, and as a result, she died of suffocation from choking on the food. The Court held that "certainly, a jury does not need expert testimony to ascertain whether the defendant was negligent because its employees failed to assist Mrs. Nichols under these circumstances" 247 Va. 264, 268 (1994). Furthermore, the Court said that Section 8.01-581.20 does not require the plaintiff to present expert testimony in all medical malpractice actions: "Here, the question of whether a reasonably prudent nursing home would permit its employees to leave a tray of food with an unattended patient who had a history of choking and who was unable to eat without assistance *is clearly within the common knowledge and experience of the jury.*" (Emphasis added) Id at 269.

In the case at bar, Mrs. Overton was at a clear risk for falls. Her admission records and the charts from the hospital document her dementia and her mental and physical incapacity. Heritage Hall, however, failed to take appropriate measures to ensure her safety and to prevent her from falling. Even if the Court excludes Plaintiff's experts from testifying, the facts and evidence in

this case fall into the same framework as the Beverly Enterprises case, and are within the common knowledge and experience of the jury.

Summary judgment should not be granted, because many material facts are still in dispute. Even if the experts are excluded, Plaintiff can still proceed on the breach of contract theory against Heritage Hall, and can still proceed in the medical malpractice action as a whole because the facts as alleged are within the common knowledge and experience of the jury.

III. CONCLUSION

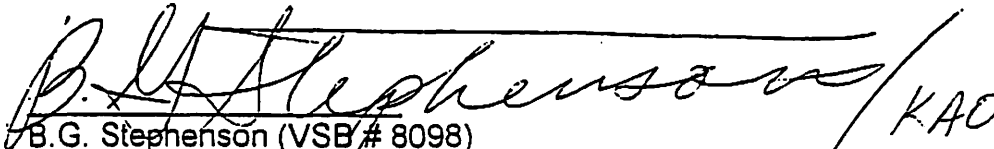
Plaintiff's experts should not be excluded, and summary judgment should not be granted, on the grounds explained above. Plaintiff respectfully requests that this Court require the Defendants to file the complete transcripts with the Court for review in totality. Plaintiff further requests that it be given the opportunity to amend and file additional papers, given the short period of time Plaintiff had in which to respond to these multiple motions. Plaintiff further requests that it be allowed to present its experts at trial. Defendant can then renew its objections, and the Court should determine the qualifications and admissibility of the experts at the appropriate voir dire. If the Court wishes to consider these matters further, Plaintiff respectfully requests that the Court grant additional time in which to file supplemental papers and memoranda.

RESPECTFULLY SUBMITTED this 3rd day of April, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.


B.G. Stephenson (VSB # 8098)

Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-0638

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003


B.G. Stephenson

AGREEMENT

MEDICAL DIRECTOR

HCMF CORP. d/b/a

HERITAGE HALL -

bn
ca This agreement is made and entered into on the 1st day of APRIL, 1994, by and between HCMF Corp., d/b/a Heritage Hall ~~Florida~~, hereinafter called the HOME, and BLACKSTONE FAMILY PRACTICE CENTER, hereinafter called the MEDICAL DIRECTOR.

WITNESSETH:

Whereas the Home desires to furnish its residents with optimal medical and nursing care services, and whereas MEDICAL DIRECTOR is a duly licensed physician in the State of Virginia,

IT IS HEREBY AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

MEDICAL DIRECTOR AGREES TO:

1. When requested, provide medical consultation and advice concerning the suitability of residents to be admitted and/or discharged and any other areas of medical concern.
2. Conduct, at least annually, an In-Service Training Program for the employees of Heritage Hall to acquaint them with the medical problems of the aged and infirm.
3. Review the "Nursing Care Policies and Procedures" at least annually and provide guidance on the execution of these policies.
4. Advise and provide consultation on matters regarding infection control and isolation procedures.
5. Provide temporary physician services in cases where the admitting physician is not the attending physician and assure that the patient has temporary medical orders until the attending physician can be reached.
6. Provide physician services in cases of emergency in the event the patient's attending physician cannot be reached.
7. Serve on the Quality Assessment and Assurance Committee which meets quarterly.
8. When requested, provide medical advice concerning employees health matters.

MEDICAL DIRECTOR AGREEMENT

PAGE TWO

9. Review patient and employee incident reports monthly and make recommendations as needed.
10. Indemnify and hold HCMF Corp. harmless from any and all liability, costs or expenses (including legal fees) which HCMF may incur as a result of any acts or admissions of the physician.
11. Maintain in full force and effect at all times during the term of this Agreement plus three (3) years, a policy or policies of liability insurance, issued by a State approved carrier, having policy limits of one million dollars (\$1,000,000) per incident and per practitioner providing services.
12. MEDICAL DIRECTOR must notify facility at least ten (10) days in advance if policy is canceled or amended to reduce coverage.
13. MEDICAL DIRECTOR will provide continuous written certification, or appropriate documentation of adequate professional liability coverage.
14. MEDICAL DIRECTOR hereby certifies compliance with all Medicare and Medicaid laws, regulations and all other State and Federal laws governing the actions of our missions by the HOME, and payment for services rendered by the Physician.

HOME AGREES TO:

1. Render reasonable materials and clerical help to the MEDICAL DIRECTOR to implement his activities in the HOME.
2. Reasonably cooperate with the MEDICAL DIRECTOR to assure that the HOME'S residents receive optimal medical and nursing care services.
3. HOME agrees to pay the MEDICAL DIRECTOR * per month for services rendered.

No relationship of employer and employee is created by this agreement, it being understood that MEDICAL DIRECTOR and his/her employees performing services hereunder act independently of the HOME, establish their own hours and routines and provide only the services to the HOME specifically specified herein.

Either party may terminate this agreement on thirty (30) days written notice. Otherwise, it will remain in effect until a different agreement is executed.

*HOME agrees to pay the MEDICAL DIRECTOR \$1,200.00 per month for services rendered, and \$300.00 per month for Quality Assurance Services, and \$100.00 per month for in-service provided throughout the 160 year.

Cm
20

MEDICAL DIRECTOR AGREEMENT

PAGE THREE

Both parties warrant they are in full initial and ongoing compliance with all current applicable federal, state, and local laws, regulations, and ordinances. Included, but not limited to, are:

a) The Civil Rights Act of 1964; b) the Rehabilitation Act of 1973; c) the Fair Labor Standards Act; d) Virginia Minimum Wage Act; e) other laws that apply and/or as amended.

Each party is appropriately licensed, approved, certified, or accredited, as required by applicable federal, state, and local laws.

Each party shall establish and maintain confidentiality as to client information and records that are of a personal nature, as required by federal or state laws.

Each party shall agree to maintain high standards of business and ethical conduct in regard to all services, goods, and activities inherent in this relationship.

THIS AGREEMENT shall run for a term of one year commencing on 4/1/94. Said Agreement shall be automatically renewed annually thereafter on the same terms and conditions stated herein until terminated by either party upon promulgation of thirty (30) days written notice to the other party.

MEDICAL DIRECTOR

Charles I. Rosenbaum, MD

(Signature)

CHARLES I. ROSENBAUM, MD

FOR BLACKSTONE FAMILY PRACTICE CENTER

DATE

4/1/94

HCMF CORP. d/b/a HERITAGE HALL - Blackstone

By

Robert E. Nelson

Robert E. Nelson

Director of Administrative Services

Date

4/6/94

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, Horace E. Perdieu, as Administrator of
the Estate of Lucille P. Overton, deceased, and hereby files this
Memorandum in Opposition to Defendants' Motions for Summary
Judgment. These Motions, filed by both Defendant HCMF and Defendant
Blackstone Family Practice Center, Inc. and Dr. Rosenbaum, to be heard
by this Court upon oral argument on April 18, 2001, address Count IV of
the Motion for Judgment. Plaintiff opposes these Motions on the following
grounds:

1. Plaintiff contends that Defendant HCMF violated § 32.1-138 of the Code of Virginia (a copy of which is attached as Exhibit A). This statute legislates certain duties imposed upon a nursing home in the care of its residents, including the requirement that a nursing home facility promulgate policies and procedures in relation to its operations; and as Count IV of the Motion for Judgment alleges, these duties were breached by Defendant HCMF.

2. Plaintiff also contends that Defendants HCMF, Blackstone Family Practice Center, and Dr. Rosenbaum violated 42 U.S.C. § 1395i-3 (a copy of which is attached as Exhibit B). This federal statute prescribes requirements that a "skilled nursing facility" and a physician have for the care of a resident of that home. Count IV of the Motion for Judgment further alleges that these Defendants breached these statutory duties in failing to provide for the proper care of Lucille Overton.

3. None of the Defendants to this suit, in filing responsive pleadings, attacked the application of these statutes to the issues in this case and did not raise any affirmative defenses to the existence of these statutory duties in their respective Grounds of Defense. These Motions for Summary Judgment were recently filed and raise this belated objection to the allegations in Count IV.

4. Plaintiff did not predicate this suit merely on these statutory violations as separate private causes of action. The statutes, however, impose duties on Defendants, and Plaintiff is seeking to hold Defendants

accountable for their breach of these duties, and their failure to provide the care which both the State and Federal Legislatures prescribed in relation to the operation of these entrusted care facilities.

5. The Motion for Judgment is based upon Defendants' breach of contractual, common law, and statutory duties. 42 U.S.C. § 1395i-3 and Va. Code Ann. § 32.1-138 codify and define certain duties and requirements for care that a nursing home must provide for its residents. The Virginia legislature, through Section 32.1-138, and the Federal Counterpart have imposed duties on nursing homes; thus holding them to prescribed minimum standards. It is submitted that violation of these prescribed duties is negligence per se. These Motions for Summary Judgment should be denied, and Plaintiff should be allowed to present the case to the fact finder to determine whether or not Defendants breached their contractual, common law, and statutorily-imposed duties.

6. Finally, the duties outlined in both statutes, as alleged in Count IV of the Motion for Judgment, are part of HCMF's contractual obligations to Lucille Overton. In contracting for the services of this nursing home facility, it was implied and explicitly stated that HCMF would provide for the care of Mrs. Overton. Plaintiff's breach of contract claim in part alleges that HCMF breached its contract with Mrs. Overton in failing to provide facilities that complied with the statutorily required standards. Plaintiff had a right to rely on the compliance with these requirements by the health care providers in supplying the contemplated health services to

her. Plaintiff therefore respectfully requests that summary judgment be denied

RESPECTFULLY SUBMITTED this _____ day of _____, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.

B.G. Stephenson (VSB # 8098)
Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-0638

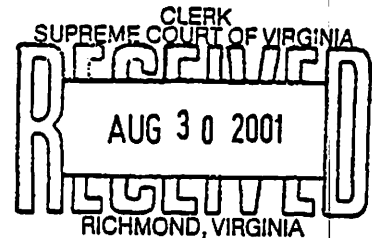
CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
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S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003

B.G. Stephenson



VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

THE ESTATE OF LUCILLE P. OVERTON,
deceased,

Plaintiff,

ORIGINAL

vs.

AT LAW NO.: CL-031

BLACKSTONE FAMILY PRACTICE CENTER, INC.,
CHARLES J. ROSENBAUM, a/k/a C.J. ROSENBAUM, M.D.,
JOSEPHINE FOWLER, M.D., and
HCMF CORPORATION, t/a Heritage Hall Health Care,
Defendants.

Alexandria, Virginia

Friday, April 27, 2001

De Bene Esse Deposition of

PHYLLIS M. CORRIGAN, R.N.

called for examination by counsel for the plaintiff, at
the offices of B. G. Stephenson, Ltd., 4157 Chain Bridge
Road, Fairfax, Virginia 22030, commencing at 10:35

ACCURATE STENOTYPISTS, INC.
P O BOX 485 FAYFAX VIRGINIA 22030

o'clock, a.m., and concluding at 12:49 o'clock, p.m.,
before Sandra Martin, a Notary Public for the Commonwealth
of Virginia, when were present on behalf of the respective
parties:

Reported by: Sandra J. Martin

APPEARANCES:

FOR THE PLAINTIFF:

BEVERLY GRAY STEPHENSON, ESQUIRE

Of: B. G. Stephenson, Ltd.

Inns of Court

4157 Chain Bridge Road

Fairfax, VA 22030

FOR THE DEFENDANTS: (Heritage Hall Health Care)

LISA KENT DULEY, ESQUIRE

Of: Denton & Fiscella

6630 West Broad Street

Suite 290

Richmond, VA 23230

APPEARANCES (Continued):

FOR THE DEFENDANTS:

(Blackstone Family Practice
Center, Inc., and Dr. Charles Rosenbaum)

S. ELIZABETH PHARR, ESQUIRE

Of: LeClair Ryan, P.C.

707 East Main Street

Eleventh Floor

Richmond, VA 23219

C-O-N-T-E-N-T-S

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
	On Qualifications			

PHYLLIS M. CORRIGAN, R.N.	6	25	29	--
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	DIRECT	CROSS	REDIRECT	RECROSS
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PHYLLIS M. CORRIGAN, R.N.	38	101	109	--
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E-X-H-I-B-I-T-S

EXHIBIT:	FOR IDENT.	IN EVD.
Plaintiff's Exhibit No. 3	23	--
Plaintiff's Exhibit No. 4	39	--
Plaintiff's Exhibit No. 5	43	--
Plaintiff's Exhibit No. 6	50	--
Plaintiff's Exhibit No. 7	59	--
Plaintiff's Exhibit No. 8	56	--
Plaintiff's Exhibit No. 9	61	--
Plaintiff's Exhibit No. 10	75	--

1 *P*R*O*C*E*E*D*I*N*G*S*

2 THE VIDEOGRAPHER: All right. We are now
3 on the record. Today's date is April 27th, 2001.
4 The time is, approximately, 10:35 a.m. I'm the
5 camera operator. My name is Nolan Church. I live
6 in Capitol Heights, Maryland. I work for Accurate
7 Stenotypists, located in Fairfax, Virginia.

8 This deposition is being taken at
9 the office of B. G. Stephenson, 4157 Chain Bridge
10 Road, Fairfax, Virginia.

11 The caption of the case is The Estate of
12 Lucille P. Overton, deceased, versus Blackstone
13 Family Practice Center, Inc., et al. The deponent
14 is Phyllis M. Corrigan. The notice of the
15 deposition is given by the plaintiff.

16 Will attorneys and court officers please
17 identify themselves?

18 MR. STEPHENSON: This is B. G. Stephenson
19 representing the plaintiff.

20 MS. DULEY: Lisa Duley representing
21 Heritage Hall.

22 MS. PHARR: Elizabeth Pharr representing
23 Blackstone Family Practice Incorporated and

1 Dr. Charles I. Rosenbaum.

2 Thereupon,

3 PHYLLIS M. CORRIGAN, R.N.

4 was called as a witness, and after being first duly
5 sworn by the notary, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 ON QUALIFICATIONS

9 BY MR. STEPHENSON:

10 Q Mrs. Corrigan, would you state your full
11 name and address, please?

12 A Yes. Phyllis M. Corrigan, 346 Liberty
13 Hill Road, Gilford, New Hampshire.

14 Q How long have you lived at your present
15 address?

16 A Three years.

17 Q Where did you live prior to that?

18 A 4925 King Solomon Drive, Annandale,
19 Virginia.

20 Q You are here today from your home now in
21 New Hampshire --

22 A New Hampshire, correct.

23 Q On May 18th of this year, where do you

1 plan to be?

2 A Florida.

3 Q Mrs. Corrigan, would you state your
4 educational background?

5 A Yes. I went -- graduated in 1961 from
6 Holy Name Hospital School of Nursing, which was in
7 Teaneck, New Jersey. I passed my state boards at
8 the time and was licensed in New Jersey.

9 I have -- at times, in addition to
10 maintaining my New Jersey license, I have been
11 licensed in California and in Virginia. And I began
12 my licensing in Virginia in 1973 and maintained my
13 Virginia license until last year when it was evident
14 that I was not going to return here. But I am still
15 licensed in the state of New Jersey.

16 I attended Fairleigh Dickenson University
17 for a year. And I also attended Saint Mary's
18 College for a year in Leaven Worth, Kansas. That
19 would have been in 1977-1978.

20 I had -- I have maintained up until I
21 ceased working on my continuing education credits
22 and the amount of credits I obtained per year
23 depended -- excuse me -- on the state where I was

1 registered and what the state requirements were.

2 Also, the hospital I worked in here in
3 Fairfax had a minimum requirement. And I either
4 achieved the minimal or more exceeded it in the
5 course of my working career.

6 Q Where did you obtain your nursing
7 training, if you did?

8 A In Teaneck, New Jersey.

9 Q In the hospital --

10 A Holy Name Hospital --

11 Q -- Seminary?

12 A -- it was a hospital. It was a three-year
13 hospital based. In that era, hospital-based
14 training for nurses was the way nurses were prepared
15 to enter the career into -- enter into nursing.

16 There were some hospital -- some four-year
17 B.S.N. programs throughout the country. But
18 primarily, the large amount of nurses were coming
19 out of a three-year program attached to a hospital.

20 Q And you had some education beyond the --

21 A Yes.

22 Q -- nursing --

23 A As I said, I went to college. I went to

1 Fairleigh Dickenson University for a year. And then
2 my husband went on active duty. And I then attended
3 Saint Mary's College when we were stationed in
4 Kansas.

5 Q Have you had any other courses that you've
6 taken along the way?

7 A As I said, I have my main -- my biggest
8 thing in the last years of my practice was -- I
9 became involved in wound care for -- primarily, for
10 the elderly, preventing stasis ulcers, wound care
11 for decubitus. And the hospital sent me to a number
12 of courses.

13 I attended a conference yearly, which was
14 a whole week of meeting with my peers to see what
15 was the newest methods. We -- and that was
16 where -- and I became a member of the Wound and
17 Ostomy Committee, which is a national organization.

18 Q Would you describe your work history?

19 A My work history for the exception of two
20 years where I worked as a industrial nurse, I have
21 primarily been hospital based. From 1961 -- I
22 worked from 1961 to 1997, in nursing with the
23 exception of two three-year periods where my husband

1 was stationed in Germany. And I was -- it was not
2 -- a hospital was not accessible for me to work in.

3 Q So did you do other work when you were
4 abroad?

5 A In those two periods of time, no. I did
6 not work in -- but I was never out of nursing for a
7 long enough period where I had to go back -- was
8 required to take an update course.

9 Q And you have continued to be a licensed
10 registered nurse?

11 A Yes.

12 Q Describe the kind of work that you have
13 done and particularly in the period of 1995 in -- in
14 the, you know, preceding time period before 1995.

15 A I did a variety of nursing -- as I said,
16 it was always hospital based. I did a variety of
17 nursing in a hospital except for the two years I was
18 doing industrial nursing.

19 But starting in 1981 when we moved into
20 the Northern Virginia area, I worked at what was
21 then Commonwealth Hospital. It is now Commonwealth
22 Care Facility. And I was on a medical unit, and my
23 primary focus was taking care of elderly, chronic

1 patients.

2 I left in '86 and went to Germany where I
3 worked in a hospital, a US army hospital, there, but
4 my clientele, because it was military, was generally
5 younger.

6 I came back to Northern Virginia, the
7 Commonwealth here -- Commonwealth Hospital had
8 evolved into Fair Oaks Hospital. And I was rehired
9 by them as soon as I got back. And I worked for
10 them from 1991 to 1997, again on a medical unit.
11 Again, my area of expertise was dealing with
12 primarily elderly, critical patients who came in
13 from either home or from -- or to -- from nursing
14 homes in an -- because of an acute problem.

15 And I maintained, as I said -- as I said,
16 I also developed the interest in wound care and
17 became the wound care expert for the facility.

18 Q In relation to your activities in
19 providing the care to the kind of patients that
20 you've described, can you go into, you know, what
21 you did and how many were under your care?

22 A Both settings, nursing is a constantly
23 evolving field so it changes with whatever the new

1 wave is.

2 In the '80s, the wave was what they called
3 total patient care. At that point in time, I did
4 everything for the patient from admission to
5 discharge. I provided -- with the nursing -- with
6 the aid of a nursing assistant, if a patient needed
7 to be fed, they were fed -- I helped feed, bathed,
8 ambulated, medicated, did treatments. And I worked
9 full time at the time, so this was eight hours a
10 day, five days a week.

11 And it was to provide total patient -- the
12 care was total patient focus. So I admitted the
13 patient. And then wrote up a care plan, kept the
14 care plan going, and hopefully discharged the
15 patient back to home or in many cases to nursing
16 homes.

17 It evolved so that when I came back again
18 in 1990, we were back to team nursing. And here I
19 again did the admissions. But my primary focus was
20 to do medication and treatments and to assign the
21 duties of bathing, feeding, ambulating
22 to -- to other members of my team. I had
23 technicians. And I had a nursing assistant. And

1 their jobs were to transport, bathe, feed.

2 Q When you were acting in your capacity in
3 the 1990s, I take it you're describing that
4 through -- from 1990 up to --

5 A 1997. I --

6 Q -- through 1997?

7 A -- left Fair Oaks Hospital in March of
8 1997.

9 Q And during that time period, what kind
10 of -- of -- of persons were you attending?

11 A Primarily an elderly population. Because
12 it was a medical unit these were people who came, as
13 I said, from home. A lot of these patients had
14 chronic illnesses that they were being frequently
15 readmitted to the facility, again, either from home
16 or from a nursing home to be stabilized, to have
17 their medications adjusted, and then to be sent back
18 to wherever their place of residence.

19 Q When you said you send them back to a
20 place of residence, did that involve, you know,
21 nursing home residence?

22 A Yes. Many times patients would come
23 from home, but because as their status

1 debilitated -- they became more and more
2 debilitated, it was felt by the family or -- or
3 the -- and the physicians and these patients could
4 not return perhaps at that point in time, because
5 they needed a longer -- they needed extended care.

6 And since hospitals are by their nature
7 acute care facilities, they would have to be sent to
8 nursing homes when beds were available.

9 And so my job with the aid of a -- with a
10 social worker who actually went out and tried to
11 find placement, my job was to assist the social
12 worker in providing the nursing homes with all the
13 information that they would need to care for the
14 patient once they were released.

15 In the '80s, when I was doing the same
16 thing, we had a different situation where health
17 care -- and the health care maintenance
18 organizations didn't play as much of a role as they
19 do today. And that period of time, we frequently
20 had patients, because they could not be placed, and
21 the thrust was not in getting them up and getting
22 them out as quickly as possible, we would keep
23 patients up to three, four months within the

1 hospital setting, even though they were no longer
2 acute care patients.

3 But it's just because they could not be
4 placed. And we couldn't send them out. So we would
5 keep patients for longer periods of time in that
6 time -- in that period.

7 Q Were you involved in planning what care
8 was required for them during their stay?

9 A The patients that were staying in the
10 hospital, even though they were no longer acute,
11 yes.

12 Q And did you --

13 A The -- what the treatment consisted of is,
14 maintaining the most optimum care for a patient. We
15 couldn't send them home. We couldn't send them out.
16 And we couldn't place them. So we would care for
17 them in the hospital at -- what was -- as I said,
18 was then Commonwealth Hospital -- we would care for
19 them and do all their -- whatever they needed on a
20 day-to-day basis, even though they were no longer
21 acute care patients.

22 Q Did you receive patients from nursing
23 homes for attention that they needed for acute

1 problems?

2 A Yes.

3 Q And did you in turn then have patients
4 that were transferred from your facility into the
5 nursing home?

6 A Yes. We either placed them, if they were
7 new placements, or if they came from a nursing home
8 and the bed was being held, they would return to the
9 nursing home that they left.

10 Q Did you assist in the process of placement
11 in nursing homes when they had not, you know, yet
12 been in a -- in a nursing home environment?

13 A Yes.

14 Q What did you do in the way of compiling
15 information that accompanied the person being
16 treated when they were transferred in a -- to a
17 nursing home?

18 And conversely, what information did you
19 receive regarding the patient that was admitted for
20 your care?

21 A If I sent a nursing -- as I said, once it
22 was determined that the patient could not be
23 returned to their home for whatever reason, the

1 patient -- the social worker then went out and tried
2 to find a bed within the community.

3 And once the bed was -- she would then
4 contact me and go over with me and/or my fellow
5 nurses depending on -- I mean, I wasn't the only
6 nurse that does this. But she would talk to the
7 primary nurse for that patient and it's -- to do the
8 assessment, to see what the patient's needs were,
9 and as far as toileting, bathing, medicated -- being
10 medicated, with ambulation, what were the
11 cognitive -- what was it? -- cognitive state. Then
12 she would go out and try to find a bed for that
13 particular patient within the community.

14 Once a bed had been located, then it was
15 my job to make sure the patient was ready. And I
16 did that in two ways. First, I did a discharge
17 summary to the nursing home. This was
18 mandated -- our facility mandated that this be done.
19 And that was done the morning of discharge, so
20 everything that would go out would be the most
21 current information on that particular patient who
22 was going to become a resident in a nursing home.

23 And that included the most recent lab

1 works, what we had done for her, what her eating
2 patterns were, if she was continent, incontinent, if
3 she was going with a catheter, if she was going with
4 IV placement, so that she could be accessed without
5 being re-stuck in the nursing home, what medications
6 she received up until the moment of discharge.

7 And so that was the written copy that went
8 with the patient to the nursing home. It was either
9 hand-carried by a family member, if a family member
10 was going with the patient. Or it was going by the
11 ambulance service. The ambulance service would
12 carry that. Also, we did send some copies of -- the
13 social worker provided also copies of other lab
14 works and X-rays if needed.

15 Then the morning of discharge before the
16 patient left, I also contacted the nursing home to
17 speak to the nurse who would be the receiving agent
18 for the patient when she got -- when she became a
19 resident in the nursing home. And I again, updated
20 her on my patient's total condition as I was looking
21 at this patient before I sent her out to the nursing
22 home. So that they would be aware both verbally and
23 in a written statement of the status of the person I

1 was sending to them.

2 Q Is that regular practice?

3 A That was regular practice.

4 Q Did you --

5 A Oh, I should answer -- I think there was a
6 second part to your question, about when a patient
7 came to me. There was a transfer summary from the
8 nursing home that told me -- again, gave me some
9 idea of why the patient was being transferred to me
10 at that point in time, what had changed from
11 her -- in her status to require hospital admission.
12 And, again, it also would tell me if this
13 patient -- the specific needs of this patient as
14 regard to medication and activities of daily living.

15 Q With regard to -- to that information, was
16 that part of the person's record?

17 A Yes. That was kept generally in a folder
18 either at the desk -- nurses' desk or if it wasn't
19 too weighty, it was placed in a slot in -- within
20 the chart. So I would have access to it. And it
21 would be there for the physicians as well.

22 Q And this was an official medical record?

23 A This became part of the record at our

1 facility.

2 Q What purpose did that serve?

3 A Well, it gave me a window into seeing how
4 this patient was responding in the nursing home,
5 again, because of the elderly population -- I mean,
6 we're -- we're talking about patients who could be
7 anywhere, 60 up to a hundred.

8 And depending on their family status, a
9 lot of these patients didn't have anyone to come
10 with them to the hospital to give us a clear picture
11 of what this patient was like. A lot of times, this
12 patient was not able to verbalize their own needs.
13 So any information I got from the nursing home,
14 would be of an assist to me to develop the care plan
15 specific to that patient and his or her needs when
16 they came to me.

17 Q And you regularly interfaced with the
18 nursing home in connection with the transfer back
19 and forth of the patients?

20 A I interfaced when I sent them out both, as
21 I said, verbally and in writing. I did not always
22 get a phone call -- it would depend -- from a
23 nursing home, other than I would just be informed

1 that a patient was coming from the nursing home.
2 And what -- what I generally got from a nursing home
3 unless there was something dramatic that needed to
4 be passed on to me, generally, what I got from the
5 nursing home was a written form.

6 Q In relation to your employment activity in
7 your capacity as a registered nurse, have you served
8 in any other way other than directly connected with
9 your employment?

10 A Yes. In the -- in my first -- I'm
11 restricting myself to the tours where I was dealing
12 with geriatric patients. All -- all hospitals
13 require their nurses to serve in some capacity
14 outside of the -- well, I shouldn't say all. All
15 the hospitals I worked in required the nurses to
16 participate in some kind of committee work.

17 So in this block of time '81 to '86, I was
18 either on policies and procedures or the quality
19 assurance committee. And in that case, policies and
20 procedures, we developed the -- the hospital
21 policies and how we would carry through the
22 policies, what procedures we would utilize.

23 In quality assurance, we developed a form.

1 And we would review -- every month go through the
2 hospital and review on our unit -- pull a certain
3 amount of charts off the unit or go down into
4 medical records and pull charts to see if the
5 charting was being done according to the hospital's
6 standard.

7 So we had a form. And we go through
8 it, the charts, to determine whether our patients
9 were getting the care that the hospital expected
10 them -- if the nursing staff was meeting the
11 hospital's agenda -- or what the hospital said
12 needed to be done.

13 So we reviewed charts. And then we
14 reported back to the committee. And then the
15 results of the -- our -- what we discovered went
16 back to the units and was discussed in unit staff
17 meetings so that they could assure that the patients
18 were meeting -- getting the correct care.

19 Q And you did that following policies and
20 procedures?

21 A I did policies and procedures and then for
22 about two and a half, three years, before -- until I
23 left, I did the quality assurance.

1 When I came back, I worked on a couple of
2 committees. But then once I got into the wound care
3 field, I developed the skin care protocols for the
4 hospital. I was on call to any of the -- any
5 doctors who had any questions within the facility,
6 any nurses who had questions within the facility.

7 And I gave frequent in-services on how to
8 care for patients and their wounds, again,
9 because -- I was primarily called to deal with the
10 elderly, because they have different needs, both
11 because of incontinence and because of their friable
12 skin. So that was my area of expertise there. I
13 did the surveys in the hospital to make sure the
14 patients were getting correct care.

15 (Plaintiff's Exhibit No. 3 was previously
16 marked for Identification.)

17 BY MR. STEPHENSON:

18 Q I will show you what has been previously
19 marked here as we prepared to begin your deposition,
20 as plaintiff's exhibit three and this is in sequence
21 to exhibits that were previously marked.

22 (Opposing counsel are reviewing the
23 documents.)

1 Mrs. Corrigan, I want to show you what has
2 been marked as exhibit three to your deposition and
3 ask you if you can identify that for me.

4 A (Witness is reviewing the document.)

5 Yes. This was -- my -- basically, my job
6 history.

7 Q And --

8 A And what I did in the -- I guess how
9 far did we go? -- from '73 -- from '61 up until
10 '87 -- '97.

11 Q And so it sort of fills in the basics?

12 A It fills in -- as I said, I worked
13 constantly with the exception of those two.
14 three-year breaks when I was out of the country.

15 Q Is it essentially your curriculum vitae?

16 A Yes.

17 Q And are those recitals in the exhibit
18 accurate?

19 A Yes.

20 Q And -- and you have been describing
21 further your work activity, and how you --

22 A Yes.

23 Q -- cared for persons in your work

1 environment?

2 A Right.

3 MR. STEPHENSON: I guess that will be part
4 of the exhibit.

5 I submit that the witness is qualified in
6 examining --

7 MS. PHARR: Qualified in what fields?

8 MR. STEPHENSON: Qualified in the field
9 of -- of -- of care of elderly patients as they are
10 admitted and -- and receive care in the nursing home
11 environment.

12 MS. PHARR: Are you proffering her as an
13 expert witness in the field of nursing?

14 MR. STEPHENSON: In the field of nursing.

15 MS. DULEY: I would like to voir dire the
16 witness.

17 CROSS-EXAMINATION

18 ON QUALIFICATION

19 BY MS. DULEY:

20 Q You've never worked in a nursing home,
21 correct?

22 A No.

23 Q And you've -- and as a matter of fact,

1 you've never worked in any type of long-care
2 facility, correct?

3 A Correct.

4 Q You've never provided long-term care in a
5 nursing home or long-term care facility, correct?

6 A Correct.

7 Q Your -- your experience is in acute-care
8 facilities only, correct?

9 A Yes.

10 Q In acute-care facilities, patients expect
11 to be discharged. That's the nature of acute-care
12 facilities, correct?

13 A That is correct.

14 Q And as a result, there is no need to write
15 long-term life care plans in acute-care facilities,
16 correct?

17 A There is a need to maintain a plan
18 of -- until the day the patient leaves.

19 Q Right. But it's not long-term like in a
20 nursing home, correct?

21 A Well, as I stated, I have taken care of
22 patients for up to three to six months --

23 Q But it's not long-term like a nursing

1 home, correct?

2 A But it's not -- yes. That is correct.

3 Q So you've never written a life-care plan
4 for a patient in a long-term care facility, correct?

5 A No, I have not.

6 Q Geriatrics is a specialized field,
7 wouldn't you agree?

8 A It is.

9 Q And other than your wound care experience,
10 you do not have any specialized training in
11 geriatrics, correct?

12 A Except for all the in-services that I
13 attended in care of the geriatric patient, which
14 included more than skin care. It included
15 psychosocial needs of the geriatric patient. It
16 included specific disease processes that are -- are
17 dealt with by the more elderly patient.

18 Q And you do not have any direct experience
19 with falls in a nursing home, correct?

20 A Not in a nursing home.

21 Q And you've never developed policies and
22 procedures for a nursing home, correct?

23 A No, I have not.

1 Q You have no direct experience with
2 restraints or safety devices in a nursing home,
3 correct?

4 A In a nursing home, no.

5 Q And you would agree that the use of
6 restraints in a hospital requires a different
7 analysis than the use of restraints in a long-term
8 care facility, correct?

9 A The -- we try to avoid using restraints in
10 a hospital, if we can -- because --

11 Q You're not answering my question. Don't
12 you agree that the use of restraints in a hospital
13 requires a different analysis than the use of
14 restraints in a long-term care facility?

15 A No.

16 Q Do you remember having your deposition
17 taken on October 8, 1998?

18 A Yes.

19 Q And you were put under oath at that time?

20 A Yes.

21 Q And do you remember being asked the
22 following question and giving the following answer:

23 "Mrs. Corrigan, you would agree with me,

1 would you not, that the use of restraints in a
2 hospital is a different analysis than the use of
3 restraints in a long-term care facility?

4 "ANSWER: Yes."

5 A I do not remember that statement.

6 Q Okay. So you've never made decisions in a
7 nursing home setting regarding restraints, correct?

8 A Correct.

9 MS. DULEY: I would object to having
10 this witness admitted as an expert in elderly
11 patients -- in nursing -- in the nursing field with
12 elderly patients in a nursing home facility.

13 MR. STEPHENSON: Let me ask a few on
14 redirect.

15 REDIRECT EXAMINATION

16 ON QUALIFICATIONS

17 BY MR. STEPHENSON:

18 Q Mrs. Corrigan, in relation to the unit in
19 a hospital setting where you cared for patients, I
20 understood your testimony to deal with elderly
21 patients in a -- in that setting.

22 A Correct.

23 Q And in dealing with the elderly patients

1 in that setting, you have had extended stays of
2 patients that were beyond the acute care problem?

3 A That is correct.

4 Q And that involved the -- you know, the
5 basic needs of the -- of the elderly for whatever
6 their condition may have been?

7 A That is correct.

8 Q And in that regard, in caring for them, you
9 have had to care for them with respect to their
10 medical needs?

11 A Their medical and their physical and their
12 psychosocial needs.

13 Q And you have dealt with them in the same
14 capacity then, I assume, as any person that needs
15 care for those conditions?

16 A That's correct.

17 Q And in so doing, you had to devise care
18 plans that are suitable to the particular --

19 A To the particular --

20 Q -- party?

21 A To the particular patient at that
22 particular time.

23 Q With regard to whatever their medical

1 problems were?

2 A Correct.

3 Q Chronic and acute?

4 A The requirement was that we always update
5 the -- care plans were supposed to be constantly
6 updated to meet the -- or whatever the present
7 condition of the patient was, whether they were
8 acute or chronic.

9 Q And you have, with regard to such
10 patients, other than the acute problem for which one
11 may have been admitted, dealt with, you know,
12 whatever their medical needs are at the time?

13 A Correct.

14 MS. DULEY: Object to the form.

15 BY MR. STEPHENSON:

16 Q Well, tell me -- let me ask you this way:
17 What have you dealt with in terms of the overall
18 needs of -- of patients that you have served?

19 A If the patient was beyond the acute stage,
20 then the patient was -- but was still within the
21 facility, if -- we would bathe, dress, do their
22 personal care. I would still give them any
23 medications that they needed to be -- that they were

1 going to be on for long term and if they needed to
2 be fed -- anything that the patient still needed
3 because they were still unable to go home because of
4 their chronic condition. And it was to provide a
5 safe and healthy environment for that patient until
6 we could discharge them.

7 Q With regard to certain patients, did some
8 require restraints from time to time?

9 A Some patients did require restraints, the
10 difference -- restraint laws in the United States
11 have always -- have evolved quite dramatically as
12 well.

13 And in the '70s and '80s, patients
14 could be placed in restraints much simpler
15 than they could -- but what we try to avoid is
16 to -- particularly for elderly people, it only would
17 agitate them. So they were passive restraints that
18 you could use. And they were other things that you
19 could do for the patient to prevent putting them in
20 restraints.

21 What it has evolved to nowadays, is you
22 must have a physician's order. You must have that
23 order updated every 24 hours. The patient needs

1 almost constant supervision, because you would have
2 to be changing the patient.

3 What we would do for patients who were
4 elderly and needed restraints -- and needed to be
5 observed is move the patients out to where there
6 would be someone going around constantly, putting
7 them out by the nurses' station, trying to give them
8 an activity so that they would have something to do
9 with their hands and would occupy them.

10 And when they were placed in bed, we did
11 certain things to prevent them from falling out of
12 bed. But everything was done to maintain their
13 safety without restraining them if possible.

14 Q And restraints are just one consideration
15 of -- of some measure to -- to put in place --

16 A Restraints really --

17 Q -- with regard to the patient's care?

18 A Restraints are really a last-ditch method.
19 Restraints should really only be used to protect the
20 patient from injuring themselves severely and --

21 Q And that's with regard to whatever
22 environment they may be in --

23 MS. DULEY: Object to the form.

1 BY MR. STEPHENSON:

2 Q Is that with regard to whatever
3 environment they may be in --

4 MS. DULEY: Object to the form.

5 MR. STEPHENSON: You can go ahead and
6 answer.

7 THE WITNESS: Oh, it should be -- the
8 patient is supposed to be taken -- treated correctly
9 so that they do not injure themselves in any -- in
10 any situation.

11 BY MR. STEPHENSON:

12 Q With regard to your work at Commonwealth
13 Hospital, when it was Commonwealth Hospital before
14 it became Commonwealth Care Center, did you have
15 elderly patients that had longer stays?

16 A Yes. As I stated before, the -- in the
17 '80s, the -- the push was not to get the patients in
18 and out as rapidly as possible. Patients were kept
19 in for longer times.

20 Now, the trend is to get patients as
21 stable as quickly as possible so that they can
22 leave. And then those were the instances where I
23 would frequently have patients for three, five, six

1 months.

2 We also got patients that were sent home
3 and came back within 24 hours and -- because their
4 conditions didn't -- they just deteriorated so
5 rapidly at home and they came -- would come back to
6 us frequently to -- to the same bed that they had
7 left in the next -- in 24 hours. So these patients
8 would come and go and come and go and come and go.

9 Q And the care that you would --

10 A And the care that they got was
11 long -- was for a hospital setting, long-term.

12 Q As opposed to dealing with an acute
13 problem?

14 A As an acute problem.

15 Q And you dealt with those patients --

16 MS. DULEY: Object to the form.

17 BY MR. STEPHENSON:

18 Q And did you deal with those patients under
19 those circumstances?

20 A Yes, I did.

21 Q Other than your direct employment
22 activity, have you had occasion to involve yourself
23 in some other way in activities of the nursing home?

1 A The only time I actually had any
2 involvement with anyone in the nursing home was the
3 period of time when my grandmother was in a nursing
4 home. And we would go in -- the family would go in
5 to help assist with her care.

6 And we also -- I sat in on some meetings
7 that they had at that time with the family. And I
8 sat in as -- in my professional capacity.

9 Q And -- and what did you do in those
10 meetings?

11 A No. I just -- at that point in time,
12 just -- we talked about the overall care of what my
13 grandmother was receiving at the time, because my
14 grandmother couldn't converse with staff.

15 And so we tried to make things easier to
16 how they would help converse with her -- my
17 grandmother, because she only -- she reverted back
18 to her natural tongue, which was Italian. And we
19 helped what to do with her. And I also, because
20 at -- as her condition worsened, she couldn't
21 be -- make sure that her skin was taken care of
22 because she couldn't walk.

23 So I had some intimate contact with the

1 staff on her unit when she was in a nursing home
2 until she was deceased.

3 Q Was your participation there as -- in part
4 as a result of your -- your professional role?

5 A Oh, I think -- when people hear that
6 you're a nurse, they --

7 MS. PHARR: Objection; calls for
8 speculation.

9 BY MR. STEPHENSON:

10 Q To the extent that you know how you were
11 received, would you tell --

12 MS. PHARR: Objection; calls for
13 speculation --

14 MR. STEPHENSON: -- how you were received
15 in that capacity?

16 THE WITNESS: Well, I don't think it's --

17 MS. DULEY: Objection. That calls for
18 speculation.

19 MS. PHARR: She can't know what's in
20 another person's mind.

21 BY MR. STEPHENSON:

22 Q How did they treat you?

23 A I was treated as a professional, a

1 medical professional, a health care professional.

2 Q And did you participate in the process?

3 A I did.

4 MR. STEPHENSON: I submit that the witness
5 is qualified in what we have proffered her for. And
6 I will continue with the examination.

7 MS. DULEY: Well, that's fine. I've got a
8 continuing objection to her qualifications. But you
9 can proceed.

10 MS. PHARR: Can we go off the record
11 before you proceed?

12 THE VIDEOGRAPHER: We're going off the
13 record at approximately 11:13.

14 (A break was taken from 11:13 o'clock,
15 a.m., until 11:14 o'clock, a.m.)

16 Okay. We're back on the record. The time
17 approximately 11:14.

18 DIRECT EXAMINATION

19 BY MR. STEPHENSON:

20 Q Mrs. Corrigan, would you tell the Court
21 and the jury please if you reviewed records relating
22 to the residence of Lucille Overton at the Heritage
23 Hall Nursing facility in Blackstone, Virginia,

1 -during January of 1995?

2 A Yes, I did.

3 Q And what did you review?

4 A I reviewed the transfer summary from the
5 hospital. I reviewed the nursing progress notes,
6 the nursing flow sheets, the physicians order sheet,
7 the Heritage Hall policies and procedures and -- may
8 I?

9 Q Yes, please. If you --

10 A Oh, the physical restraint assessment
11 forms.

12 (Plaintiff's Exhibit No. 4 was previously
13 marked for Identification.)

14 BY MR. STEPHENSON:

15 Q Well, let me also refer to the Heritage
16 Hall admission agreement that's marked as exhibit
17 four.

18 (Opposing counsel are reviewing the
19 documents.)

20 Direct your attention to plaintiff's
21 exhibit four, did you review that document?

22 A (Witness is reviewing the document.)

23 Yes, I did.

1 Q That was -- can you describe what it is?

2 A Yes. It's the admission agreement between
3 the facility and the patient -- that they now call
4 the resident, Mrs. Overton, and the responsible
5 parties, which were, I assume, her children.

6 Q What did you find of significance in your
7 review of that document, if anything?

8 A The one thing that I noted
9 at -- specifically, was that at the end of the -- at
10 the end of the form, it was noted that the patient
11 was mentally unable to sign any of these forms
12 because of dementia and that was noted --

13 MS. DULEY: I'm going to object as to
14 hearsay.

15 MR. STEPHENSON: I think it's reflected in
16 the document. And the witness is testifying to what
17 she saw in the document. And --

18 MS. PHARR: It's still hearsay, Bev.
19 Someone else wrote it.

20 MR. STEPHENSON: But what she can
21 discern --

22 MS. DULEY: It's going to the truth of the
23 statement.

1 MR. STEPHENSON: All right.

2 MS. DULEY: And, therefore, it is hearsay.

3 MR. STEPHENSON: I submit that this is a
4 document produced in discovery as the --

5 MS. PHARR: It's still hearsay.

6 MR. STEPHENSON: -- as a document and
7 we --

8 MS. DULEY: It's still hearsay.

9 MS. PHARR: All the documents produced in
10 discovery are practically hearsay. Just because we
11 produce it, doesn't mean it's not hearsay.

12 BY MR. STEPHENSON:

13 Q Assuming that the recitals in this
14 document are accurate and subject to whatever proof
15 there may need to be of the -- of the recitals in
16 the document, were there some that were significant
17 to you?

18 A I'm sorry. I really don't understand
19 what -- that -- that question.

20 Q I'm asking you to assume that, you know,
21 without your verifying the accuracy of the recitals
22 in the document, were there items that stood out to
23 you?

1 A As I just stated, the -- it's
2 the -- this -- in my -- I believe this to be a legal
3 document. And in this document, it just states that
4 she was the patient --

5 MS. PHARR: Objection --

6 MS. DULEY: Continuing objection.

7 MS. PHARR: -- hearsay.

8 MR. STEPHENSON: Proceed with your answer
9 over their objections.

10 THE WITNESS: The client was unable to
11 sign the admission agreement between Heritage Hall
12 and herself because she was demented.

13 BY MR. STEPHENSON:

14 Q That's what the document states?

15 A And that's what the document states in two
16 places. And it was initialed by --

17 MS. DULEY: Continuing objection.

18 MS. PHARR: Objection.

19 BY MR. STEPHENSON:

20 Q Assuming that, what was the significance
21 of that to you?

22 MS. PHARR: Objection.

23 THE WITNESS: What was significant to me

1 is that on the 4th of January, they knew this
2 patient did suffer from some -- had some cognitive
3 problems and was -- if she couldn't sign for
4 herself, she needed to have some assistance. She
5 was cognitively unaware of what was going on around
6 her.

7 BY MR. STEPHENSON:

8 Q And did that have anything to do with what
9 kind of care you expect to provide to a resident
10 that comes in under that condition?

11 MS. PHARR: Objection to form.

12 THE WITNESS: If a patient -- the
13 word -- the use of dementia or any other statement
14 that says that the patient is not cognitively aware
15 would be a trigger to whoever is going to develop a
16 care plan for that patient, to recognize that this
17 patient was at risk because of her lack
18 of -- because her cognitive status was diminished.

19 MR. STEPHENSON: I would offer that into
20 evidence.

21 MS. DULEY: I would --

22 MS. PHARR: Objection.

23 MS. DULEY: Objection. It's hearsay.

1 MS. PHARR: It's hearsay.

2 (Plaintiff's Exhibit No. 5 was previously
3 marked for Identification.)

4 (Opposing counsel are reviewing the
5 documents.)

6 BY MR. STEPHENSON:

7 Q Mrs. Corrigan, I show you now what has
8 been marked as plaintiff's exhibit five. It's
9 labeled Johnston-Willis Hospital with a date of
10 January 4th, 1995, and ask you if you've looked at
11 that document.

12 A (Witness is reviewing the document.)

13 Yes, I have.

14 Q Or series of documents.

15 And can you identify what they are?

16 A Yes. This is the assessment form that the
17 hospital sent to -- from the -- that went with the
18 patient or it was sent to the patient with -- to
19 Heritage Hall describing --

20 MS. DULEY: Objection; calls for
21 speculation.

22 MR. STEPHENSON: The speculation, I would
23 assume, is that this was sent to the -- to Heritage

1 Hall from the hospital where Mrs. Overton was
2 transferred from as a patient.

3 BY MR. STEPHENSON:

4 Q But let me ask you -- let me -- to not
5 respond in that way now, to ask you if you can
6 identify what kind of a document it is?

7 A Yes. This is a discharge summary for the
8 patient, Lucille Overton, dated 1-4th-95. And it's
9 from the Johnston-Willis Hospital in Richmond,
10 Virginia.

11 Q And what information is contained in the
12 discharge summary?

13 A This contains why she was in the hospital,
14 talks about her diet, her physical status, her
15 medical services, her specific nursing needs, her
16 cognitive function, any stressors in her life, her
17 social status. It talks about her family. It talks
18 about her preferences.

19 There's a patient case summary statement
20 in here. And there is the -- a prescreening
21 notification, talks about why she had been in
22 the hospital. And it also contains her lab
23 data -- hospital -- what -- about the surgery that

1 she had had when she was in the hospital.

2 Q Now, with regard to this other is there
3 information related to the medical status of
4 the -- of the patient as discharged?

5 A It's -- yes, there is. It states in three
6 separate places about -- specifically, that the
7 patient was confused --

8 MS. DULEY: Objection; hearsay.

9 MR. STEPHENSON: Proceed.

10 THE WITNESS: That the patient was
11 confused --

12 MS. PHARR: Objection; hearsay.

13 THE WITNESS: That she needed help with
14 all of her bathing and her activities of daily
15 living. That her -- that she had been in a Posey
16 jacket for some -- at the hospital.

17 MS. DULEY: Continuing objection to her
18 answer.

19 MS. PHARR: Same objection.

20 MR. STEPHENSON: I -- the witness is asked
21 what does the document contain.

22 MS. PHARR: That's hearsay. That's why we
23 objected.

1 MS. DULEY: That's hearsay.

2 MR. STEPHENSON: No.

3 MS. DULEY: She does not have personal
4 knowledge --

5 MR. STEPHENSON: I'm not asking her to
6 verify the accuracy of the statements. I'm asking
7 what the document contains.

8 MS. PHARR: And that is hearsay.

9 MR. STEPHENSON: Well, we have different
10 view of the hearsay rules --

11 MS. PHARR: We have a right to --

12 MR. STEPHENSON: -- so we will argue that
13 to the judge.

14 MS. PHARR: Exactly.

15 BY MR. STEPHENSON:

16 Q All right. Proceed, Mrs. Corrigan, and
17 tell us what information the document contains.

18 A It also contains -- discusses the fact
19 that she was unsteady, that she did have problems
20 with her elimination, that she was incontinent, that
21 she was constantly confused and required assistance
22 and that she could not be left alone, that she did
23 where glasses.

1 Q Now, in relation to your preparing
2 transfer forms that you testified earlier that was
3 part of your process in -- in transferring patients
4 out, do you prepare this kind of information?

5 A This would have -- this is similar to what
6 I would have done when I was transferring a patient.

7 Q What is the significance of this kind of
8 information that's provided in transfer forms?

9 A Well, it's to -- it's to make it
10 easier -- the -- it's --

11 MS. PHARR: Objection to form.

12 THE WITNESS: The receiving facility would
13 have an idea of what that particular patient's needs
14 were on the date of discharge to their facility.

15 BY MR. STEPHENSON:

16 Q Is -- is that useful in any way to the
17 provider that is receiving the person transferred
18 from the hospital facility?

19 A Yes. Because it gives them -- they're
20 seeing this patient for the first time when she
21 walks -- or is brought into the facility. And this
22 would give them an idea of what the patient was like
23 while she was in another facility. This tells

1 them -- it gives them some psychosocial input.

2 They would have gotten it -- in order for
3 her to be placed, they would have gotten this
4 information from --

5 MS. PHARR: Objection; calls for
6 speculation.

7 THE WITNESS: She would have -- they would
8 have -- the nursing home would have known some of
9 these things, because the social worker would have
10 had to place her, and their beds -- they -- the bed
11 needs is dependent on what that patient need is for
12 care when they place them. They're categories of
13 care. So this tells them --

14 BY MR. STEPHENSON:

15 Q Mrs. Corrigan, may I ask you this: Do you
16 have an opinion within the realm of reasonable
17 medical certainty regarding the purpose for this
18 information being generated in the form and the use
19 that is made of that information?

20 A It was -- I would do it. And I would
21 accept it as being the information that I would need
22 in order to provide the optimum care for this
23 patient in my setting. I would need to know if she

1 was cognitively impaired. And I would need to know
2 what her physical impairments were in order to do an
3 adequate care plan for her stay in my
4 situation -- in my department.

5 Q And is that your opinion?

6 A Yes, that is.

7 Q And that's your opinion within the realm
8 of reasonable medical certainty?

9 A Yes, it is.

10 Q And was that your practice in connection
11 with your work history?

12 A Yes, it is.

13 Q Did you receive similar forms when
14 patients were admitted for care in your care
15 facility where you worked in the hospital setting?

16 A Only if they came from another facility.

17 Q And if they came from another facility,
18 was it regular practice to have that information --

19 A Yes, it was.

20 MS. DULEY: Object to the form.

21 THE WITNESS: Yes, it was.

22 (Plaintiff's Exhibit No. 6 was previously
23 marked for Identification.)

1 (Opposing counsel are reviewing the
2 documents.)

3 BY MR. STEPHENSON:

4 Q Mrs. Corrigan, I will show you what has
5 been marked exhibit six and ask you if you have seen
6 that document.

7 A Yes.

8 Q And --

9 A This was the admission assessment of risk
10 for falls that was done when this patient was at
11 Heritage Hall.

12 Q And I want you to assume that this is a
13 document produced by Heritage Hall that is labeled
14 admission assessment of risk for falls and ask if
15 you would tell me what information is contained in
16 that document that's significant to you.

17 MS. DULEY: Objection to hearsay.

18 MS. PHARR: Objection; hearsay.

19 BY MR. STEPHENSON:

20 Q I want you to assume that the information
21 provided in that document was compiled by Heritage
22 Hall, the defendant, in this case. And it is a
23 document that was prepared by the personnel that was

1 responsible for preparing the document and the
2 information reflected therein.

3 And based on the assumption that that
4 information was in fact prepared by Heritage Hall
5 and is an accurate assessment made by the person
6 that prepared that assessment, what significance is
7 that to you?

8 MS. PHARR: Objection; hearsay.

9 THE WITNESS: Same objection.

10 THE WITNESS: This is a scoring
11 evaluation. We set -- you give so many points to
12 the -- to patients based on their cognitive, if
13 they're on specific medications if -- that might
14 slow down their cognitive abilities, whether they
15 are using assistive device -- assistive devices to
16 get around such as a cane or a walker or a
17 wheelchair, whether they are incontinent of either
18 urine or feces, any sensory deficits they may have,
19 for example, if they were blind or if they had a
20 hearing difficulty.

21 And these are evaluation -- given so many
22 points. And then when the points are totaled up,
23 you can decide if these patients are at minimal,

1 medium or high risk for falls.

2 BY MR. STEPHENSON:

3 Q Based on the scoring in -- in this
4 document, what is the risk assessed of Mrs. Overton
5 in terms of her propensity for falling, if you have
6 an opinion?

7 MS. DULEY: Objection.

8 THE WITNESS: All three times that this
9 patient was evaluated, and they were evaluated on
10 the first, second, third week of her stay at the
11 home, she was in the high risk category.

12 BY MR. STEPHENSON:

13 Q What scoring do you receive to be scored
14 at high risk?

15 A Well, as I say, she came in -- one of her
16 diagnoses for -- when she was transferred into
17 Heritage Hall was that she had altered mental status
18 in my --

19 MS. PHARR: Objection; nonresponsive.

20 THE WITNESS: -- she -- in my facility,
21 that would have been a ten, automatic ten, because
22 she was not alert and able to make definitive needs.

23 In this facility, she was given two

1 points, that was their status for mental status.
2 They gave two points for confusion and dementia.

3 BY MR. STEPHENSON:

4 Q Is that below what you would assign --

5 A It's -- it's -- no, because it has to do
6 with -- with each hospital -- what each
7 facility -- when they write their own scoring
8 evaluation.

9 Q And do you look at totals --

10 A You look at the total score of the
11 patient.

12 Q And with regard to the total, how much do
13 you need to get in scoring under that scoring system
14 to be at high risk?

15 A Under their scoring system, nine and up
16 made her a high risk for falls.

17 Q And what was the risk -- assuming that
18 this was the time that this was generated, assuming
19 that at the time of her admission to Heritage Hall
20 on or about January the 5th of 1995, what was her
21 score according to this form?

22 MS. DULEY: Objection; hearsay.

23 THE WITNESS: This form, which was done

1 with -- on the -- on the 11th of January, gave her a
2 13, which was in the high risk evaluation.

3 BY MR. STEPHENSON:

4 Q And there were other dates --

5 A There were other dates --

6 Q -- that she was scored after -- subsequent
7 to that?

8 A -- subsequent to that, correct.

9 Q And then on the 18th, there was a score
10 of --

11 A Nine.

12 Q -- of nine?

13 A Uh-huh.

14 MS. DULEY: Continuing objection.

15 MS. PHARR: Same objection.

16 BY MR. STEPHENSON:

17 Q And on the subsequent date --

18 A On the 25th, she was up to a 14. And they
19 noted that she had increased confusion.

20 MR. STEPHENSON: I offer that in evidence.

21 MS. PHARR: Objection; hearsay.

22 MS. DULEY: Same objection.

23 (Plaintiff's Exhibit No. 8 was previously

1 marked for Identification.)

2 MR. STEPHENSON: I will show you eight.

3 (Opposing counsel are reviewing the

4 documents.)

5 BY MR. STEPHENSON:

6 Q Mrs. Corrigan, directing your attention to

7 what has been marked as plaintiff's exhibit eight.

8 Have you seen that document -- or including

9 the -- all the pages that compromise the exhibit?

10 A (Witness is reviewing the document.)

11 Yes, I have.

12 Q Would you explain what that is, if you

13 know?

14 A I would call this a flow sheet.

15 They -- they call it the resident care report. But

16 what it does is, at -- each shift checks off what

17 they have done for this patient as their diet, how

18 they eat, what -- if they have voided, if they have

19 been incontinent, if they've needed to be

20 catheterized.

21 And this just assists nurses so they don't

22 have to write this out. They can just check off

23 some of the activities of daily living. And they

1 only need to flow chart if something deviates from
2 this or if they need to call attention to some
3 specific change in the patient.

4 Q I want you to assume that -- that this
5 chart was generated, you know, by the personnel at
6 Heritage Hall. And assuming that they, you know,
7 had compiled the document on -- on the various dates
8 indicated, what is contained in the document by way
9 of information that is significant to you?

10 MS. PHARR: Objection; hearsay.

11 THE WITNESS: The thing that is
12 significant to me is that this patient -- they're
13 ambiguous about whether this patient was
14 being -- ambulated with or without assistance.

15 They stated in one -- one of their
16 admission sheets that the patient did need
17 assistance for transferring. And yet according to
18 this document, that she up ad lib, which means that
19 she -- ad lib means independent -- they could walk
20 at will. They don't require assistance.

21 And not until -- so that is the one
22 ambiguous thing to me that they had documented
23 someplace else in the record that she needed

1 assistance. But then they charted to the fact that
2 she was ambulating without assistance after the
3 15th. Up until the 15th, there were a few notations
4 on various shifts that she was assisted --

5 BY MR. STEPHENSON:

6 Q By the 15th, are you talking about the
7 15th of January of --

8 A Yes.

9 Q -- 1995?

10 A Yes. When she came in --

11 MS. PHARR: Continuing objection to
12 hearsay.

13 THE WITNESS: -- when she came in, they
14 did note that she was ambulated with assistance.
15 And then after -- from the 15th until the 21st, they
16 have checked off that she was ambulating without
17 assistance. And then after the 24th, we see that
18 she's now being ambulating again with assistance.

19 BY MR. STEPHENSON:

20 Q Is this the kind of information that is
21 compiled as -- you -- you have done this in your
22 field of expertise as part of the -- the charting?

23 A Yes. We use flow sheets.

1 Q And you compile that information, and
2 that's part of the patient's record?

3 A It is.

4 Q And that is -- is -- is part of the -- the
5 documents that form --

6 A The patient's record.

7 Q -- the patient's records?

8 A It is.

9 MR. STEPHENSON: Thank you. I would like
10 to offer that in evidence.

11 MS. DULEY: Objection.

12 MS. PHARR: Objection; hearsay.

13 MR. STEPHENSON: This is seven.

14 (Plaintiff's Exhibit No. 7 was previously
15 marked for Identification.)

16 (Opposing counsel are reviewing the
17 documents.)

18 BY MR. STEPHENSON:

19 Q Mrs. Corrigan, I want to show you what has
20 been marked as plaintiff's exhibit seven and ask if
21 you have seen this document.

22 A (Witness is reviewing the document.)

23 Yes, I have.

1 Q All right. And --

2 A These are two incident reports describing
3 two falls that the patient had at -- while she was a
4 resident of -- of Heritage Hall. One on the 20th of
5 January, 1995, and the second one on the 21st of
6 January, 1995. One occurred on the night shift, and
7 one occurred on the day shift.

8 Q And how do you tell that? Is that noted
9 in the form?

10 A Yes, it is.

11 Q I want you to assume that these incident
12 reports were generated by the personnel of Heritage
13 Hall and have been provided in discovery in this
14 case and that the information contained is a part of
15 the -- of the record of -- of Lucille Overton.

16 What is this significance of these
17 incident reports --

18 MS. PHARR: Objection; hearsay.

19 BY MR. STEPHENSON:

20 Q -- if any to you, if you have an opinion
21 as to their significance?

22 MS. PHARR: Objection; hearsay.

23 MS. DULEY: Objection; hearsay.

1 Q So there's no -- even though
2 Mrs. Overton's knee -- left knee was being bended
3 and extended on the 24th, she still didn't complain
4 of hip pain, isn't that correct?

5 A It doesn't mean a thing to me.

6 Q It doesn't mean anything to you.

7 Okay. And after Dr. Fowler's January
8 24th, 1995, left knee examination, there are no more
9 complaints of knee pain in the records, correct?

10 A Yeah. She was completely deteriorating
11 mentally --

12 Q Is that -- is that correct, Doctor?

13 A If it's in the records, then it is in the
14 record.

15 Q But you don't see any other complaints of
16 left knee pain after the 24th, isn't that correct?

17 A She was half conscious.

18 Q Doctor, is that correct?

19 A If it's in the record, then that's -- it's
20 correct.

21 Q Doctor, my point is, it's not in the
22 record, isn't that correct?

23 A Yes. It's not in the record.

1 24th, isn't that correct?

2 A I think Dr. Fowler didn't know how to
3 examine a patient that shows in the record also --

4 Q Doctor --

5 A -- and what is in that record it
6 says -- the same thing applies that she had
7 no -- no injuries. Where did that fracture come
8 from all of a sudden --

9 Q Doctor --

10 A -- that ten days later while lying in bed?

11 Q Now, even though Dr. Fowler was bending
12 and extending Mrs. Overton's left knee on January
13 24th, 1995, Mrs. Overton did not complain of hip
14 pain, isn't that right?

15 A The record also says --

16 Q Isn't that right, Doctor?

17 A The record also says that her condition
18 very much deteriorated and that she -- she was
19 confused and so forth at that date and later.

20 Q Doctor --

21 A So I don't trust that -- the record.

22 Q Doctor --

23 A Whatever it says, it says.

1 that Dr. Fowler did on Mrs. Overton on January 24th,
2 1995. And it states: "Left knee negative for
3 swelling, negative for infusions, negative for
4 tenderness, good flexion, extension to 140 degrees,"
5 isn't that correct?

6 A It's there so --.

7 Q And when Dr. -- and when Dr. Fowler flexed
8 and extended Mrs. Overton's left knee on January
9 24th, 1995, Mrs. Overton stated that she was not
10 experiencing any pain in her left knee, isn't that
11 correct?

12 A If it's in the record.

13 Q And that's what the record says, isn't
14 that correct?

15 A Well, it's hearsay, yes.

16 Q Well, let's look at it. That's what the
17 record says, isn't that correct?

18 A (No response.)

19 Q Isn't that correct? You can look at it.

20 A If it's in the record, yes.

21 Q "Patient denies pain this a.m." Then it
22 goes on to state, "knee pain denies at present."

23 That's what the record states on January

1 A -- whatever that is worth.

2 MS. DULEY: I would move to strike his
3 commentary.

4 MR. NEWSOME: I would move to strike.

5 THE WITNESS: All right.

6 BY MR. NEWSOME:

7 Q And when Dr. Fowler examined Mrs. Overton
8 on January 24th, 1995, Mrs. Overton had good flexion
9 of the left knee, isn't that right?

10 A I don't trust her record.

11 Q Doctor, let's look at the record.

12 Doctor, you were not there during the
13 examination, isn't that correct?

14 A No.

15 Q And so you have relied on these records,
16 isn't that correct?

17 A I thought we couldn't because it was
18 hearsay.

19 Q Doctor --

20 MR. Stephenson: Doctor, just go ahead.
21 That's all right. We rely on the records.

22 BY MR. NEWSOME:

23 Q Doctor, I'm looking at the exam. The exam

1 A -- all the others are traumatic.

2 Q Okay. Doctor, flexion -- flexion of the
3 knee is bending the knee, correct?

4 A Say that again.

5 Q Flexion of the knee is bending the knee,
6 correct?

7 A Yes.

8 Q And extension of the knee is straightening
9 the knee out, correct?

10 A Right.

11 Q Okay. If you lift the knee of a patient
12 with a fractured hip, you would expect that patient
13 to indicate some pain in the hip, correct?

14 A Yes.

15 Q Okay. On -- on January 24, 1995,
16 Dr. Fowler flexed and extended Mrs. Overton's left
17 knee, isn't that right?

18 MR. Stephenson: Objection.

19 THE WITNESS: She probably did.

20 BY MR. NEWSOME:

21 Q Okay.

22 A According to the record --

23 Q And when Dr. Fowler --

1 Q That's right. So Mr. Stephenson didn't
2 give it to you, is that correct?

3 A I haven't seen an X-ray. So what
4 difference does that make?

5 Q Okay. Now, Doctor --

6 A It was diagnosed on -- on -- on the 30th,
7 ten days after the fall.

8 Q Okay. Doctor, you're aware that
9 Mrs. Overton had osteoporosis, correct?

10 A Probably did.

11 Q Okay. And isn't it true that elderly
12 persons with osteoporosis can fracture their hips
13 from many different causes?

14 A The only other course is metastatic
15 carcinoma.

16 Q That's the only thing you're aware of,
17 correct?

18 A No. That -- that's the only thing.

19 Q Flexion of the knee is bending the knee,
20 correct?

21 A The fractures of the metastatic carcinoma
22 are usually spontaneous --

23 Q Okay.

1 degree of medical certainty when did the fractured
2 hip occur?

3 "In my opinion --

4 "ANSWER: In my opinion, probably at the
5 first fall."

6 A Probably at the first fall.

7 Q Which --

8 "QUESTION: Which was on --

9 "ANSWER: The 20th."

10 MR. Stephenson: Same answer.

11 THE WITNESS: Probable.

12 BY MR. NEWSOME:

13 Q Well, Doctor --

14 A Did you hear the word probable?

15 Q Okay. Fine, Doctor.

16 A Good.

17 Q Well, let's -- let's just move on.

18 Now, Doctor, isn't it true that you've
19 never even reviewed the actual X-ray of
20 Mrs. Overton's fractured hip?

21 A What difference does that make?

22 Q Doctor, have you reviewed the --

23 A Nobody gave it to me.

1 Q Okay. All right.

2 A I said the first time --

3 Q Doctor --

4 A -- it was probable --

5 MR. Stephenson: Objection. He testified
6 and you're -- refused to accept his testimony that
7 that was probable.

8 MR. NEWSOME: Excuse me. You don't need
9 to editorialize, Mr. Stephenson.

10 THE WITNESS: I said that.

11 MR. Stephenson: Well, then I'm
12 responding --

13 THE WITNESS: It was probable.

14 MR. Stephenson: -- to your question with
15 an objection.

16 THE WITNESS: I still think it was.

17 BY MR. NEWSOME:

18 Q Well, Doctor, let's look at your
19 deposition testimony. Let's see what you swore
20 under oath a month and a half ago.

21 Page 120, lines 3 through 9, you testified
22 as follows:

23 "QUESTION: Let me ask you to a reasonable

1 A All right.

2 Q Is that correct?

3 A Yeah.

4 Q Okay.

5 A So -- so what.

6 Q All right.

7 A I said I was very --

8 Q Doctor, there's --

9 A -- suspicious. If you deal with a broken

10 hip, there are broken hips that impact after the

11 first fall. And they can do some steps. It's not

12 very common, but it does happen --

13 Q Okay.

14 A -- and I have seen plenty of it.

15 Q Fine, Doctor.

16 A So the next day she falls again, and she

17 loses the same.

18 Q Okay. Doctor --

19 A She had a fracture at the time of the

20 fall, the first or the second day.

21 Q You're changing your testimony again right

22 now, is that correct?

23 A No. No.

1 sometimes do.

2 BY MR. NEWSOME:

3 Q Doctor, if you look at Mrs. Overton's
4 medical records and Dr. Fowler's examination, it
5 states that Mrs. Overton was ambulating without a
6 problem on January 20th, 1995 --

7 A Okay.

8 Q -- isn't that correct?

9 A Even if that is so --

10 Q Isn't that correct, sir?

11 A It states, yeah. Her record is worthless.

12 MS. DULEY: Objection.

13 THE WITNESS: We already discussed --

14 MR. NEWSOME: That's objection; move to
15 strike.

16 THE WITNESS: -- her record was worthless.

17 BY MR. NEWSOME:

18 Q Okay. Well, Doctor -- and let's just so
19 the record is clear for the jury, ambulating is
20 walking, isn't that correct?

21 A Yes.

22 Q Okay. So Mrs. Overton was walking on the
23 20th, after the fall?

1 correct?

2 A Yes.

3 Q Now, Doctor, let's look at Ms. -- look at
4 Dr. Fowler's examination from January 20, 1995, it
5 states, "status post-fall, ambulating without
6 problem."

7 Do you see that, Doctor?

8 A I don't have to see it.

9 Q Do you see that, Doctor?

10 A No.

11 Q It states that Mrs. Overton was ambulating
12 without a problem, isn't that correct?

13 A (No response.)

14 Q Doctor --

15 A Didn't you call that hearsay --

16 Q Doctor --

17 A -- before? Didn't you call that hearsay
18 before?

19 MR. Stephenson: No. Just answer his
20 question.

21 THE WITNESS: Let me answer this: This is
22 a note in the record. And I said, in most cases, 90
23 or more persons, they will not walk, but they

1 on January 20th, you would not expect her to be able
2 to walk after the fall --

3 A She didn't.

4 Q -- correct?

5 A She didn't.

6 Q Answer my question, Doctor. Let me try to
7 explain it one more time --

8 A I don't. I don't.

9 Q Well, let me ask -- okay. Let me just ask
10 you this question: If Mrs. Overton fractured her
11 hip on January 20th, 1995, you would not expect her
12 to be able to walk after the fall, correct?

13 A In most cases, no.

14 Q Okay. Well, when Dr. Fowler examined
15 Mrs. Overton after the alleged fall on January 20th,
16 1995, Mrs. Overton was walking, isn't that correct?

17 A No, she wasn't. No, she wasn't.

18 Q Well, Doctor -- well, Doctor, let's look
19 at the medical records.

20 And you did review the medical records,
21 correct?

22 A Yes.

23 Q And you reviewed the progress notes,

1 physician has to write down certain things and list
2 them out?

3 "ANSWER: It depends on the institution."

4 That was your sworn testimony, Doctor.

5 And you're changing it today, is that correct?

6 A No. And I'm not changing it at all.

7 Q Was your testimony -- was your sworn
8 testimony in your deposition true?

9 A There is -- there is an opening there, it
10 depends on the institution. It certainly applies to
11 nursing homes and -- and -- and hospitals.

12 Q Okay. Doctor, it's your opinion -- is
13 it -- is your opinion that Mrs. Overton fractured
14 her hip after the first fall on January 20th, is
15 that correct?

16 A It's probable.

17 Q Your testimony is that she broke her hip
18 following the fall on the 20th, correct?

19 A I said then and I said now, it's probable.

20 Q Okay. Now, the diagnosis of a fractured
21 hip is usually pretty obvious, correct?

22 A Pretty obvious.

23 Q Okay. If Mrs. Overton fractured her hip

1 CROSS-EXAMINATION

2 BY MR. NEWSOME:

3 Q Good afternoon -- good morning still,
4 Dr. Leidelmeyer.

5 What a physician writes down in the chart
6 regarding a -- an examination of a patient depends
7 on the institution, isn't that correct?

8 A No.

9 Q Well, Doctor, do you recall giving your
10 deposition, again, on March 16th of this year?

11 Do you recall that deposition, Doctor?

12 A I already said that a couple of times,
13 yes.

14 Q And, Doctor, you understand the difference
15 between telling the truth and telling -- telling a
16 false statement?

17 A Very well.

18 Q You do? Well, let's go to page 125.
19 During that deposition, you testified as follows:

20 "QUESTION: I'm saying that a doctor may
21 know -- excuse me. I'm saying so that a doctor may
22 know what to write down from an exam. Is there any
23 sort of textbook or any literature that says a

1 auspices of Blackstone Family Practice Center and
2 Dr. Rosenbaum in terms of the graduate training
3 program and the Medical College of Virginia?

4 MR. NEWSOME: It's objection to leading.

5 BY MR. Stephenson:

6 Q Have you made any -- do you have an
7 opinion with regard to that relationship?

8 A Well, there was not proper supervision
9 that's -- that's -- it is obvious out of the
10 records.

11 Q And you were involved in such a
12 supervisory program in training residents and
13 interns --

14 A Yes.

15 Q -- at the -- in connection with your
16 services at the Fairfax Hospital Emergency Room?

17 A No patient would go out of the department
18 before being seen -- after -- after an intern or a
19 resident saw the patient, no patient would leave the
20 department without the approval of the attending at
21 the time in the department.

22 MR. Stephenson: Answer Mr. Newsome's
23 questions.

1 MR. NEWSOME: Move to strike.

2 MR. Stephenson: Yes. Would you, please?

3 THE WITNESS: They failed to do proper
4 supervision of the patient, knowing that she was
5 needing assistance at all times.

6 BY MR. Stephenson:

7 Q And you -- you have no -- is there any
8 record of any supervision provided to this resident,
9 Dr. Josephine Fowler, during the time of her care in
10 servicing Mrs. Overton in the time that she attended
11 to her?

12 THE WITNESS: There is no --

13 MR. NEWSOME: Objection; move to strike.

14 THE WITNESS: There is no signature of the
15 attending physician anywhere during this ten-year
16 (sic) period.

17 BY MR. Stephenson:

18 Q Ten-day period?

19 A Well, between -- between the falls
20 and -- and when the other intern came and the X-ray
21 was taken.

22 Q In relation to that opinion, have you made
23 an assumption regarding Dr. Fowler's being under the

1 supervise the care of the intern, yes. And he
2 failed to do so.

3 Q And do you have an opinion as to whether
4 or not --

5 A Which is --

6 Q -- that is negligence on his part?

7 MR. NEWSOME: Again, the same objection
8 that I have -- that I have made to this testimony.

9 THE WITNESS: Which is against the rules
10 of -- of -- of treating the patients that he is in
11 charge of.

12 BY MR. Stephenson:

13 Q And -- and your opinion is that he failed
14 to exercise it?

15 A That's right

16 Q Do you have an opinion with regard to
17 Blackstone Family Practice Center, Inc., that is
18 listed as her secondary, you know, care physician?

19 A Well, they failed to --

20 MR. NEWSOME: Excuse me. Same objection.
21 This is outside the scope of this witness'
22 testimony.

23 THE WITNESS: Do you want me to answer?

1 BY MR. Stephenson:

2 Q Do you find any indication in the record
3 of any treatment rendered other than the entries by
4 Dr. Josephine Fowler, the resident, regarding her
5 treatment prior to January 31st, of 1995?

6 A No. There's no indication of it at all.

7 Q Do you have an opinion with regard to
8 whether or not that was a failure to execute the
9 proper standard of care on the part of Dr. Rosenbaum
10 as the attending physician?

11 MR. NEWSOME: Objection and move to strike
12 as being beyond the scope of this witness'
13 testimony.

14 BY MR. Stephenson:

15 Q So answering over the objection, do you
16 have an opinion within that regard?

17 A And what was it again?

18 Q The -- as to whether or not the failure to
19 attend to Mrs. Overton following her falls by her
20 listed, you know, primary physician, Dr. Rosenbaum,
21 constituted a failure to exercise the standard of
22 care required of him as her attending physician?

23 A He's required to -- to countersign and

1 medical certainty regarding the --

2 A Oh, yes.

3 Q -- the -- the pain associated with failing
4 to treat --

5 MR. NEWSOME: Again, same objection and
6 move to strike all this testimony.

7 THE WITNESS: Yes.

8 BY MR. Stephenson:

9 Q And that is the opinion --

10 A That's my opinion.

11 Q -- you have just expressed?

12 Do you have an opinion within the realm of
13 reasonable medical certainty regarding the failure
14 to execute the proper standard of medical care on
15 the part of Dr. Rosenbaum and Blackstone Family
16 Practice Center, Inc., in relation to the treatment
17 of Mrs. Overton following the fractures that
18 occurred from one or more of her falls?

19 A Well, there is -- there is no evidence
20 that he was aware of the condition of the patient.
21 There's no entry of him in the record.

22 Q So you find no indication of any --

23 MR. NEWSOME: Objection; leading.

1 witness has been designated to testify as to those
2 matters in the designation.

3 MR. NEWSOME: Well, the judge will deal
4 with that, but please continue, sir.

5 BY MR. Stephenson:

6 Q Do you have an opinion, sir?

7 A My opinion is that -- and it was
8 detrimental to her -- to her physical condition as
9 the record shows that it was. She deteriorated.

10 Q And what --

11 A Which made the following surgery more
12 hazardous.

13 Q Do you have an opinion with regard to the
14 pain and suffering that the patient may endure for
15 failure to timely diagnose and treat the fractured
16 hip?

17 A It was prolonged.

18 MR. NEWSOME: Again, same objection and
19 move to strike.

20 BY MR. Stephenson:

21 Q And you do have an opinion --

22 A That's my opinion, yeah.

23 Q -- within the realm of -- of reasonable

1 meetings where there always is a lawyer who said, if
2 it is not in the record --

3 MS. DULEY: Objection.

4 MR. NEWSOME: Objection; move to strike.

5 THE WITNESS: -- it is not there.

6 And my opinion is that there was no
7 other -- no proper examination.

8 BY MR. Stephenson:

9 Q And this opinion is based on your
10 longstanding service?

11 A Correct.

12 Q Dr. Leidelmeyer, do you have an opinion
13 within the realm of reasonable medical certainty
14 regarding the consequences of failure to diagnose a
15 fracture when it occurs?

16 MR. NEWSOME: I'd just object to that as
17 being clearly outside of the scope of this witness'
18 testimony and move to strike any testimony that he
19 gives.

20 MR. Stephenson: All right. I --

21 MS. DULEY: And I will join in that
22 objection.

23 MR. Stephenson: -- submit that the

1 THE WITNESS: I never have any
2 assumptions.

3 BY MR. Stephenson:

4 Q Do you have an opinion as to whether or
5 not if it is not shown in the record that that
6 examination was performed?

7 A Yes, I have an opinion.

8 MR. NEWSOME: Excuse me. Objection.
9 That's beyond the scope of his opinions. And also,
10 it's not a medical opinion. So I move to strike any
11 testimony.

12 MS. DULEY: And I would join in that
13 objection.

14 BY MR. Stephenson:

15 Q Over that objection, would you answer my
16 question?

17 A Would you state the question again?

18 Q Do you have an opinion as to whether or
19 not when there's no entry in the record of an
20 examination whether one was performed?

21 A I have attended --

22 MR. NEWSOME: Same objection.

23 THE WITNESS: I have attended many medical

1 Q -- of January, according to the record?

2 A Yes.

3 Q Did you find any record of examination of
4 the patient that was made on January 20th or January
5 21st, after reported falls?

6 A Only no apparent injuries. No treatment
7 necessary.

8 Q And that was --

9 A That was all. Absolute inadequate record.

10 Q And is that a -- a showing of any
11 examination that was performed?

12 A Absolutely none.

13 Q And there was no indication of any X-ray
14 being order?

15 A Absolutely none.

16 Q Or other physical examination --

17 A Correct.

18 Q -- performed?

19 A Absolutely none.

20 Q If it is not shown in the record, do you
21 have an assumption about whether or not something
22 was done?

23 MR. NEWSOME: That's objected; leading.

1 Q The question is about the responsibility
2 of the supervision in relation to medical attention
3 given by a resident in terms of examining for any
4 medical condition.

5 MR. NEWSOME: Again, same objection.

6 THE WITNESS: The attending physician is
7 required to the -- the examining intern is required
8 to -- to report to the attending physician and the
9 physician -- the attending physician is required to
10 check the patient and countersign her findings
11 and -- and orders.

12 BY MR. Stephenson:

13 Q Did you find any indication of that having
14 been done?

15 A None.

16 Q Did you find any --

17 A Except -- except when the new intern came,
18 ordered the X-ray, then Dr. Rosenbaum came and
19 checked the patient and he X-rayed.

20 Q That was some -- that was on --

21 A Ten day later.

22 Q -- the 31st of --

23 A Yeah.

1 Q And that has a visible connotation --

2 A It's -- you can see that at a glance.

3 Q And that prompts you to do what if you see
4 that?

5 A Well, take an X-ray to confirm
6 your -- your diagnosis, which the next intern did
7 immediately.

8 Q Now, in relation to the service by intern
9 or resident, as it were, is there some
10 responsibility in relation to the examination
11 performed by the resident in terms of relating to
12 supervision?

13 MR. NEWSOME: That's objection --

14 THE WITNESS: It's the attending --

15 MR. NEWSOME: Excuse me. Excuse me.

16 I object to that as being outside the
17 scope of the permissible opinions that this witness
18 has sworn that he was giving in this case and move
19 to strike any -- any testimony.

20 BY MR. Stephenson:

21 Q Over that objection, would you go ahead
22 and answer?

23 A What was the question again?

1 MS. DULEY: Objection.

2 MR. NEWSOME: Objection. Move to strike
3 as non-responsive.

4 BY MR. Stephenson:

5 Q All right. Dr. Leidelmeyer, in responding
6 to my question further, do you have an opinion as to
7 what kind of examination would have been indicated
8 when the patient is called upon to be examined after
9 a fall?

10 A Yeah. Again, if a little old lady of 77
11 falls and -- falls down, you go over the entire body
12 to see if there are any injuries.

13 Q How do you do that?

14 A Expose the body, take off the sheets,
15 after the patient is -- is -- is being put in her
16 bed and see if all the extremities move, if there is
17 pain on moving, passively or actively, by moving the
18 extremities -- besides, a fractured hip has a very
19 classical appearance and you can almost see it at a
20 glance that the hip is fractured, because the foot
21 lays flat on the bed while the proper foot, the
22 regular foot, that is not injured has -- stays up at
23 about an angle of -- of 60, 70 degrees.

1 Q Tell the Court and the jury, please, what
2 that opinion is.

3 A Well, any little old lady in her 70s needs
4 assistance to ambulatory care and other functions.
5 If that lady falls and cannot get up, any
6 fourth-year resident should know she has a broken
7 hip unless proven otherwise.

8 Q And so if that --

9 A And if there are two falls, then it's
10 certainly so that it's a broken hip unless proven
11 otherwise.

12 The record should show what kind of
13 examination was being performed. This record
14 doesn't at all. And the patient after that was
15 bedridden and deteriorated mentally and physically.

16 And until the new intern came and examined
17 the patient, the first thing he did was order the
18 X-ray, which should have been ordered ten days
19 ago -- ten days before.

20 Q So --

21 A People come to an -- a nursing home to be
22 taken care of. And they are not being able to be
23 taken care of --

1 Q I ask you to look at what has been marked
2 as plaintiff's exhibit 16 and ask if you have
3 reviewed that exhibit.

4 A (Witness reviewing document.) Yes.
5 (Plaintiff's Exhibit No. 16 was previously
6 marked for Identification.)

7 Q I will also show you what has been marked
8 as plaintiff's exhibit 15.

9 A (The witness reviewing document.) Yes.
10 (Plaintiff's Exhibit No. 15 was previously
11 marked for Identification.)

12 BY MR. Stephenson:

13 Q All right. I want you to assume that
14 these are medical records that were produced in this
15 litigation that related to Lucille Overton.

16 In your review of these records, did you
17 form an opinion within the realm of reasonable
18 medical certainty regarding the -- whether or not
19 there was a failure to provide the proper medical
20 care under the applicable standard of -- of that
21 care as applied to patient service in the medical
22 community?

23 A Yes.

1 to Mrs. Overton being found lying on her left side
2 on the floor --

3 MS. DULEY: Objection.

4 MR. Stephenson: -- in her room --

5 MS. DULEY: Bev, now, you're doing the
6 same thing. You cannot read from the documents
7 either. It's hearsay.

8 MR. NEWSOME: Can we go off the record for
9 one minute?

10 It's your deposition. But can we go off
11 the record for one minute?

12 MR. Stephenson: All right.

13 THE VIDEOGRAPHER: We're going off the
14 record. The time is approximately, 11:06.

15 (A break was taken from 11:06 o'clock,
16 a.m., until 11:12 o'clock, a.m.)

17 THE VIDEOGRAPHER: Okay. We're back on
18 the record. The time is, approximately 11:12, a.m.

19 BY MR. Stephenson:

20 Q Dr. Leidelmeier, let me ask you now if you
21 would tell me again if you reviewed what has been
22 marked as plaintiff's exhibit 14?

23 A (Witness reviewing document.) Yes.

1 Heritage Hall Nursing Home, certainly, at least, as
2 foundation.

3 MS. DULEY: Well, I would just like my
4 objection to be noted. It's on page 156 of his
5 deposition.

6 (Plaintiff's Exhibit No. 14 was previously
7 marked for Identification.)

8 BY MR. Stephenson:

9 Q Dr. Leidelmeyer, in relation to the care
10 given Mrs. Overton, I first of all want to, as
11 foundation, ask you if you are familiar with what
12 has been marked as plaintiff's exhibit 14, which is
13 incident reports.

14 Would you take a look at exhibit 14 and
15 tell me if you are familiar with --

16 A Yes, I am familiar with that.

17 Q -- that. All right. And tell me what is
18 involved in the incident reports.

19 MS. DULEY: Objection. He cannot testify
20 as to those documents.

21 BY MR. Stephenson:

22 Q I want you to assume that there was an
23 incident report made on January 20th, 1995, related

1 Q Answering over counsel's objection, what
2 is your opinion?

3 A She needed assistance -- ambulatory
4 assistance and assistance with several body
5 functions.

6 MS. DULEY: I would also like to add my
7 objection. It is on the record in his deposition
8 that you agreed, Bev, that he was not going to be
9 offering any testimony regarding Heritage Hall, that
10 the only thing he was being offered to testify was
11 against Dr. Rosenbaum.

12 And I can point you to --

13 MR. Stephenson: Well --

14 MS. DULEY: -- where that is located in
15 his deposition.

16 MR. Stephenson: Well, against the doctor
17 defendants, at least, Dr. Rosenbaum and Blackstone
18 Family Practice Center.

19 MS. DULEY: Well, I think what he was just
20 testifying to was regarding Heritage Hall.

21 MR. Stephenson: Well, I am eliciting
22 testimony from the witness about the overall basic
23 need of care for Mrs. Overton as she entered

1 MS. DULEY: And I would join in that
2 objection.

3 MR. Stephenson: I think it's not
4 inconsistent with the designation.

5 MR. NEWSOME: I believe we've gone beyond
6 the designation. The witness has testified under
7 oath on two -- on two occasions during his
8 deposition. He has only given two opinions in this
9 case. And those opinions are set forth in his
10 depositions. And he is going to be held to those
11 two opinions.

12 But you can continue. I'm just going to
13 move to strike. But you can continue, sir.

14 MR. Stephenson: All right.

15 BY MR. Stephenson:

16 Q Do you have any opinion regarding the need
17 for the care of Mrs. Overton when she was
18 transferred to Heritage Hall Nursing Home?

19 MR. NEWSOME: Okay. Same objection. Move
20 to strike. Beyond the scope of this witness' --

21 THE WITNESS: Yes.

22 MR. NEWSOME: -- permissible testimony.

23 BY MR. Stephenson:

1 she was transferred from --

2 A Yes. It was --

3 Q -- Johnston-Willis Hospital to the
4 Heritage Hall Nursing Home?

5 A Going through -- through this, it was
6 specifically stated that she needed --

7 MS. DULEY: Objection.

8 MR. NEWSOME: That's objection.

9 BY MR. Stephenson:

10 Q All right. I just want you to assume the
11 statements and ask if you have an opinion about her
12 need for care in relation to your answers --

13 A All right.

14 MR. NEWSOME: Let me just make an
15 objection -- a further objection, that this is
16 outside the scope of the testimony that this witness
17 swore that he was giving in this case during his
18 deposition. This is outside the scope of any
19 opinions he was to offer.

20 And I would move to strike any opinions
21 that he has that are beyond what he testified he
22 would be giving in this case.

23 MR. Stephenson: I -- I --

1 significant to him assuming those entries were made
2 and are -- are authentic and are accurate.

3 MR. NEWSOME: Well -- well,
4 Mr. Stephenson, you asked the witnesses here to give
5 expert opinions. And to the extent he has opinions,
6 I think that's what you get out of this witness.

7 MR. Stephenson: That's why I'm asking him
8 to assume the facts on which he may base an opinion.

9 MS. DULEY: I still object. It is hearsay
10 and he cannot testify as to what is in the record.

11 BY MR. Stephenson:

12 Q Doctor --

13 THE WITNESS: Do you mean a medical record
14 is a hearsay, are you saying?

15 BY MR. Stephenson:

16 Q Doctor, just respond to the question.

17 Directing your attention to the document
18 that is marked plaintiff's exhibit 12, including all
19 of the pages in that document, and I want you to
20 assume the authenticity and accuracy of the recitals
21 in the document. Do you have an opinion as to
22 whether or not there were conditions involving
23 Mrs. Overton that related to her need for care as

1 Q And with regard to the entries, I want you
2 to assume that that is a document that was prepared
3 as indicated under the assessment as a Virginia
4 assessment form and that the entries were made by
5 persons who were making entries related to
6 Lucille Overton and her condition at the hospital.
7 Making that assumption that those entries were
8 accurate --

9 A These papers were signed.

10 Q I -- just listen to my question, Doctor.

11 Assuming that the entries were accurate in
12 that, are there some entries that are significant to
13 you?

14 A Yes.

15 Q Tell me what they are.

16 MS. DULEY: Objection.

17 MR. NEWSOME: That's objection.

18 MS. DULEY: He cannot --

19 MR. NEWSOME: He cannot --

20 MS. DULEY: -- read from the record.

21 MR. Stephenson: I'm not asking him to
22 read from the record. I'm asking him to refer to
23 entries in the document and tell me what was

1 Q I will show you what's been marked
2 plaintiff's exhibit number 12 and ask you if you can
3 identify that document.

4 A (Witness examines document.) Um-hum, yes.

5 Q And what is compromised in exhibit 12?

6 I may have given you another one,
7 underneath. Sorry.

8 A It concerns the standards of care in
9 nursing homes.

10 Q Let me have you refer to the entries in
11 the document that says Virginia uniform assessment
12 instrument and tell me if you have reviewed that.

13 A It says, that in the discharge notes from
14 Johnston-Willis that the patient requires --

15 MS. DULEY: Objection.

16 MR. NEWSOME: That's objection; hearsay --

17 MS. DULEY: He cannot read from the
18 document.

19 MR. NEWSOME: Move to strike.

20 MR. Stephenson: All right.

21 BY MR. Stephenson:

22 Q You did review the document?

23 A Yes.

1 BY MR. Stephenson:

2 Q Dr. Leidelmeyer, have you had occasion to
3 review medical records related to Lucille Overton?

4 A Yes.

5 Q Did that include the review of records in
6 relation to her transfer from Johnston-Willis
7 Hospital to --

8 MR. NEWSOME: That's objection to leading.

9 BY MR. Stephenson:

10 Q Well, what did that include?

11 A Well, the whole history of what led to her
12 admission to the nursing home, which was her
13 condition at Johnston-Willis Hospital. There was a
14 transfer --

15 Q I will show you --

16 A -- because -- because she -- she was
17 unable to take care of herself and needed ambulatory
18 and other functional care. And she was transferred
19 to a nursing home after being admitted at the
20 Johnston-Willis Hospital.

21 (Plaintiff's Exhibit No. 12 was previously
22 marked for Identification.)

23 BY MR. Stephenson:

1 MR. NEWSOME: Okay. I have no further
2 questions.

3 THE WITNESS: I don't know what difference
4 does it make. It -- I forgot at -- so -- but the
5 fact is that --

6 MR. Stephenson: There's no question
7 pending. That's all right.

8 THE WITNESS: Okay.

9 MR. Stephenson: To follow-up on that --

10 MR. NEWSOME: Are you finished with the
11 witness' qualifications?

12 MR. Stephenson: Well, I -- I want to
13 follow-up on your question.

14 REDIRECT EXAMINATION

15 ON QUALIFICATIONS

16 BY MR. Stephenson:

17 Q You did, in fact, do what you have
18 testified today in terms of working with
19 Drs. Basackoff (phonetic) --

20 MR. NEWSOME: Objection. It has been
21 asked and answered.

22 MR. Stephenson: Okay.

23 DIRECT EXAMINATION

1 MR. Stephenson: I don't understand the
2 hearsay objection.

3 MR. NEWSOME: That's fine.

4 RECROSS-EXAMINATION

5 ON QUALIFICATIONS

6 BY MR. NEWSOME:

7 Q Dr. Leidelmeyer, you do recall giving your
8 deposition, correct?

9 A Yes.

10 Q And during that deposition, I had asked
11 you about all the jobs that you had performed, is
12 that correct?

13 A That's right.

14 Q And during that deposition, you never
15 mentioned any affiliation --

16 A I remember that.

17 Q Excuse me, Doctor.

18 A Um-hum.

19 Q During that deposition, you never
20 mentioned any affiliation with Dr. Basackoff
21 (phonetic) or Dr. Mehra during the '90s, isn't that
22 correct?

23 A That's correct.

1 MR. NEWSOME: Are you finished with your
2 redirect with respect to his qualifications?

3 MR. Stephenson: No. I'm still examining
4 him. I want to introduce his C.V.

5 MR. NEWSOME: Well, you can do it. I'm
6 going to object. But go ahead.

7 (Plaintiff's Exhibit No. 11 was previously
8 marked for Identification.)

9 BY MR. Stephenson:

10 Q All right. Dr. Leidelmeyer, did you
11 prepare a curriculum vitae?

12 A Yes.

13 Q And that is -- is the curriculum vitae
14 that you prepared? (Indicating.)

15 A Yes.

16 Q And are the representations in there
17 accurate?

18 A Yes.

19 MR. Stephenson: All right. I offer that.

20 MR. NEWSOME: And I'll object as -- as
21 being cumulative and also hearsay.

22 And I have -- Doctor, I have a couple of
23 follow-up questions.

1 Q And you saw the patients and examined
2 them?

3 A And treated them.

4 Q And diagnosed them?

5 A And diagnosed them.

6 Q And you did that in relation to the
7 general practice of medicine?

8 A It's primary care, yes. Sure.

9 Q And primary care?

10 A Yes.

11 Q And they were doing family practice
12 in -- in their clinics?

13 A They practice primary care medicine, yes.

14 Q And you engaged in that practice when you
15 were --

16 MS. DULEY: Objection; leading.

17 THE WITNESS: That's correct.

18 MR. NEWSOME: Objection.

19 BY MR. Stephenson:

20 Q Dr. Leidelmeyer, you --

21 MR. NEWSOME: I have -- are you finished
22 with your redirect?

23 MR. Stephenson: No.

1 A Say that again.

2 Q Your definition of the standard of care
3 for family practice physicians in the Commonwealth
4 of Virginia is, "to do their best according to their
5 knowledge," correct?

6 A Yes. And limitations, yes.

7 Q Okay.

8 MR. NEWSOME: At this time, I have
9 objections to this witness' qualifications to
10 testify.

11 MR. Stephenson: I will do some redirect.

12 REDIRECT EXAMINATION

13 ON QUALIFICATIONS

14 BY MR. Stephenson:

15 Q Doctor Leidelmeyer, in relation to your
16 working with Dr. Mehra and Dr. -- and Dr. Basackoff
17 (phonetic) in their clinics, what were you doing?

18 A Seeing the patients for whatever reason
19 they would come to the clinic.

20 Q And that included any medical --

21 A Just any --

22 Q -- condition?

23 A Anything.

1 That was your sworn testimony, correct?

2 MR. Stephenson: Objection.

3 THE WITNESS: Yes. But it was incomplete.

4 BY MR. NEWSOME:

5 Q Doctor, that was your sworn testimony.

6 MR. Stephenson: Objection.

7 THE WITNESS: Yes. But it was incomplete.

8 BY MR. NEWSOME:

9 Q Doctor, and a positive skin test occurs if
10 a person has been in contact with or infected at any
11 one time with tuberculosis, correct?

12 A Yes.

13 Q Okay. We can agree, can't we, Doctor,
14 that your job at the Fairfax County Health
15 Department was different from that of a doctor at a
16 family practice clinic, correct?

17 A Um-hum, correct.

18 Q Is that a yes?

19 A Yes.

20 Q Okay. Now, Doctor, your definition of the
21 standard of care for family practice physicians in
22 the Commonwealth of Virginia is, "to do their best
23 according to their knowledge," isn't that right?

1 just performing pre-employment physicals and reading
2 positive skin tests, correct?

3 A Not correct.

4 Q Okay. Well, Doctor, you recall giving
5 your deposition on March 16th, 2001?

6 A (No response.)

7 Q Do you recall giving your deposition,
8 Doctor?

9 A Um?

10 Q Do you recall giving a deposition in this
11 case --

12 A Yeah. Yeah. Yeah.

13 Q You do? Okay. And you recall that you
14 swore to tell the truth during that deposition,
15 correct?

16 A Absolutely.

17 Q Okay. During that deposition, you
18 testified as follows, page 66:

19 "QUESTION: You were just doing the
20 physicals, is that correct? -- when you were at the
21 Health Department from 1994 to 1997 and reading the
22 positive skin test, is that correct?

23 "ANSWER: Yes."

1 A That is correct.

2 Q While you were working at the Fairfax
3 County Health Department, you didn't admit any
4 patients to hospitals, isn't that right?

5 A Correct.

6 Q While you were working at the Fairfax
7 County Health Department, you didn't diagnosis and
8 treat patients for fractures, isn't that right?

9 A That's right.

10 Q Okay. While you were working at the
11 Fairfax County Health Department, you never treated
12 nursing home patients, correct?

13 A That's right.

14 Q While you were working at the Fairfax
15 County Health Department, you never trained or
16 supervised residents, correct?

17 A Correct.

18 Q While you worked at the Fairfax County
19 Health Department, you never took call, isn't that
20 correct?

21 A That's right.

22 Q While you were working at the Fairfax
23 County Health Department from 1994 to 1997, you were

1 of them who did -- there were different programs
2 there. There was pediatrics and the -- basically
3 the -- prenatal care and examining women with doing
4 Pap smears and reading the X-rays and -- and doing
5 the tuberculosis program.

6 Q Okay. You were always a part-time
7 employee at the Fairfax County Health Department --

8 A Yes.

9 Q -- isn't that right?

10 A Yes.

11 Q Okay. You worked only three or four hours
12 a day when you worked at the Fairfax County Health
13 Department, correct?

14 A More or less, yes.

15 Q Okay. While you were working at the
16 Fairfax County Health Department, patients did not
17 call that office and specifically ask to see you --

18 A No.

19 Q -- isn't that correct? Is that correct?

20 A That is correct.

21 Q Okay. While you were working at the
22 Fairfax County Health Department, patients did not
23 set appointments with you, isn't that correct?

1 MR. NEWSOME: Okay.

2 CROSS-EXAMINATION

3 ON QUALIFICATIONS

4 BY MR. NEWSOME:

5 Q Doctor, you've never completed a residency
6 program, isn't that right?

7 A That's correct.

8 Q Okay. You've never had any specific
9 training in family practice, isn't that right?

10 A No, I didn't.

11 Q Okay. You have no board certifications of
12 any kind, isn't that right?

13 A That's right.

14 Q You were employed at the Fairfax County
15 Health Department from 1990 until earlier this year,
16 isn't that right?

17 A That's right.

18 Q While you were employed at the Fairfax
19 County Health Department, you worked only three days
20 a week, correct?

21 A No. I think it was one day a week unless
22 one of the physicians that also when -- whatever
23 program I -- I was in or I had to cover with any one

1 Q You were doing that in January of 1995?

2 A Yes.

3 Q Did you also have some other medical
4 association during the period of the '90s?

5 A I worked for the health department.

6 Q Of -- of which?

7 A Fairfax County Mental Health Department.

8 Q Fairfax County Health Department.

9 Where is Dr. Basackoff's (phonetic)
10 clinic?

11 A McLean.

12 Q In McLean. So you've been affiliated with
13 both those doctors --

14 A That's right.

15 Q -- who originally worked with you in your
16 clinic?

17 A That's right.

18 MR. Stephenson: I submit that the doctor
19 is qualified.

20 BY MR. Stephenson:

21 MR. NEWSOME: I will have my voir dire
22 now.

23 MR. Stephenson: Yes.

1 Q For whatever --

2 A If he was there, he used to introduce me
3 as his -- that I was his mentor.

4 Q And were you his mentor?

5 A Well, I -- he worked for me and taught him
6 and --.

7 Q He started with you, and then you turned
8 around and you've been working with him?

9 A That's right. The same with Basackoff
10 (phonetic).

11 Q What were the -- under the same
12 circumstances?

13 A Yes.

14 Q What were you -- strike that.
15 What time frame did that involve?

16 A That was in the '90s.

17 Q Up to what time?

18 A Oh, maybe in '97, '98.

19 Q And from the earlier '90s through '98, you
20 did that on a --

21 A After I closed my clinic, yes.

22 Q And you did that on a regular basis?

23 A Yes.

1 were associated with you in that clinic?

2 A I had doctors working for me, a Dr. Mehra
3 who was board certified in family practice.
4 Dr. Basackoff (phonetic), who was also board
5 certified -- actually Basackoff (phonetic) worked
6 for me in the emergency department also before --

7 Q At the Fairfax Hospital?

8 A -- and when I -- when I stopped, they
9 opened their own walk-in clinics.

10 Q Did you have some association with them
11 after they opened their clinics?

12 A I worked for them in the '90s basically
13 one day a week.

14 Q All right. Tell me about that and how you
15 participated with them.

16 A Well, they had -- had -- Dr. Mehra had
17 what was called Chantilly Family Practice. He --
18 he's still operating there. And I worked there
19 usually one day a week.

20 Q What did you do with him as you worked
21 there?

22 A Take care of his patient that walked in or
23 had appointments there.

1 know, provided the interns and residents for you?

2 A Georgetown University, the University of
3 Virginia and George Washington University. And
4 there were occasionally some outsiders from some
5 other universities in Pennsylvania and elsewhere.

6 Q Did there come a time when you left that
7 position at Fairfax Hospital?

8 A Yes, sir. I resigned, I think, in '82 and
9 opened a walk-in clinic for primary care.

10 Q And did -- what patients did you serve in
11 your walk-in clinic?

12 A Basically anybody who wanted to
13 come -- needed a doctor. The only difference with
14 the function of an emergency department was that I
15 didn't get ambulances.

16 Q So you would receive anyone that came into
17 your clinic for any --

18 A Correct.

19 Q -- any kind of medical care?

20 A Correct.

21 Q How long did you operate that facility?

22 A About ten years.

23 Q Did you have other medical persons that

1 Q Were you involved in their training?

2 A I supervised them. All -- there were more
3 doctors in the emergency department working there.
4 I didn't work there seven days, 24 hours a day
5 but --

6 Q Along with --

7 A -- the physician in charge supervised the
8 interns and residents that had to stay there.

9 Q And were you in a supervisory capacity
10 over all the physicians?

11 A That's right.

12 Q In their training what were the interns
13 and residents in training to do when they
14 participated in the emergency room facility at
15 Fairfax Hospital?

16 A Examine the patients and take the history,
17 examine the patient, come up with a diagnose and
18 discuss it with me or whoever the doctors were in
19 charge.

20 Q Were they answerable to someone in charge
21 at the time?

22 A The physician in charge.

23 Q What was the medical school that, you

1 Q For various medical conditions?

2 A It's the patient who decides there is an
3 emergency. And it's up to us if that's true or not.
4 And so we examine the patient, diagnose the patient,
5 and do whatever is necessary and then either admit
6 them or refer them back to outside physicians.

7 Q Did you have something to do with the
8 emergency organization?

9 A In 1968, I organized the first national
10 meeting of emergency physicians. We had 32
11 physicians from 18 states. And we now have a
12 national organization of more than 20,000 members
13 and emergency medicine is a recognized specialty
14 now.

15 Q And you initiated that?

16 A I initiated that.

17 Q All right. While you were serving in your
18 capacity at Fairfax Hospital in operating its
19 emergency room, did you from time to time have
20 interns and residents that were affiliated with --

21 A After the first couple of years, at all
22 times, there were interns or residents there going
23 through stages at the emergency department.

1 years. And then he took over.

2 Q What physician was that?

3 A Do what?

4 Q What physician was that?

5 A That was doctor -- God, what was his name?

6 I forgot at the moment.

7 Q All right.

8 A It may come to me.

9 Q All right. Tell me about Fairfax Hospital
10 and what kind of facility Fairfax Hospital is.

11 A Fairfax Hospital is a general
12 hospital -- is now the major hospital in Virginia.
13 And it's just a general hospital, suburban hospital.

14 Q What did you do with regard to your
15 services in -- at the emergency room at Fairfax
16 Hospital?

17 A I ran the emergency department.

18 Q What was involved in running the emergency
19 department?

20 A Take care of anybody who would come in day
21 or night.

22 Q For --

23 A For anything.

1 care.

2 Q And that was a full range of medical care?

3 A Full range of medical care.

4 Q What did you do after that?

5 A I came back to the University of Virginia
6 in Charlottesville for three years, did pulmonary
7 diseases there, basically, and had one year of
8 approved residency and internal medicine and
9 pulmonary diseases.

10 Q What did you do after that?

11 A I opened a private practice of primary
12 care in Fairfax, Virginia. And when Fairfax
13 Hospital opened at '60 -- in 1961, they asked me if
14 I was interested in taking care of the emergency
15 department, which I did. And I remained there for
16 about 20-some years and did --

17 Q At the emergency --

18 A -- for a couple of years, I did family
19 practice primary care in my office combined with the
20 emergency department. But then the emergency
21 department became too big and busy that I sold the
22 practice to another physician, who had been and
23 assisted me in my family practice for a couple of

1 Q And were you issued a license --

2 A That's right.

3 Q -- to practice in Virginia?

4 A That's right.

5 Q And have you maintained your medical
6 license in Virginia since that time?

7 A That's right.

8 Q Tell me what your work history has been
9 from the time you --

10 A I worked for the State one year and was
11 drafted into the military. And after basic
12 training, I was stationed in Germany, was commanding
13 officer of a dispensary and was in charge of the
14 medical care of a post of about 4,000 people,
15 including dependents and --.

16 Q That included the military personnel and
17 their families?

18 A Military personnel and dependents, yes.

19 Q And what did you do in relation to their
20 treatment?

21 A I provided medical care. It was a
22 dispensary. I didn't dispense socks or underpants,
23 that you thought the last time. I provided medical

1 Netherlands. Medical school in Leiden University in
2 the Netherlands.

3 Q And did you have any further education
4 after your medical school in the Netherlands?

5 A No.

6 Q Were you licensed to practice in the
7 Netherlands after you --

8 A Yes.

9 Q -- completed your education there?

10 A Yes.

11 Q Did there come a time when you then came
12 to the United States?

13 A Within a week.

14 Q Where did you come when you came to the
15 United States?

16 A I interned at the Johnston-Willis Hospital
17 in Richmond --

18 Q When did you --

19 A -- for a year in 1953 to '54, and passed
20 both parts of the state board at the end of that
21 first year.

22 Q The Virginia State Board?

23 A The Virginia State Board.

1 Heritage Hall.

2 Thereupon,

3 REINALD LEIDELMEYER, M.D.

4 was called as a witness, and after being first duly
5 sworn by the notary, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 ON QUALIFICATIONS

9 BY MR. Stephenson:

10 Q Dr. Leidelmeyer, would state your name and
11 address, please?

12 A Reinald Leidelmeyer, 3405 Saint Pauls
13 Place, Fairfax, Virginia 22031.

14 Q Dr. Leidelmeyer, where do you plan to be
15 on May 18th of 2001?

16 A We have to go farm sitting at a farm
17 somewhere in the valley.

18 Q And that's a prior plan that you're
19 committed to?

20 A Oh, that's been set.

21 Q Would you describe your educational
22 background?

23 A I -- grade school, secondary school in the

1 *P*R*O*C*E*E*D*I*N*G*S*

2 THE VIDEOGRAPHER: Okay. We're now on the
3 record. Today's date is May 1st, 2001. The time
4 is, approximately, 10:37 a.m. I'm the camera
5 operator. My name is Nolan Church. I live in
6 Capital Heights, Maryland. I work for Accurate
7 Stenotypists, located in Fairfax, Virginia.

8 This deposition is being taken at
9 the office of B. G. Stephenson, 4157 Chain Bridge
10 Road, Fairfax, Virginia.

11 The caption of the case is The Estate of
12 Lucille P. Overton, deceased, versus Blackstone
13 Family Practice Center, Inc., et. al.

14 The deponent is Reinald Leidelmeyer. Notice of the
15 deposition is given by the plaintiff.

16 Will all attorneys and court officers
17 please identify themselves?

18 MR. Stephenson: B.G. Stephenson,
19 representing the plaintiff.

20 MR. NEWSOME: Kelvin Newsome, I represent
21 Drs. -- Dr. Rosenbaum and Blackstone Family
22 Practice.

23 MS. DULEY: Lisa Duley, I represent

C-O-N-T-E-N-T-S

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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On Qualifications

REINALD LEIDELMEYER, M.D.	6	17	22, 26	25
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	DIRECT	CROSS	REDIRECT	RECROSS
REINALD LEIDELMEYER, M.D.	26	50	77	85

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

EXHIBIT:	FOR IDENT.	IN EVD.
Plaintiff's Exhibit No. 11	24	--
Plaintiff's Exhibit No. 12	27	--
Plaintiff's Exhibit No. 13	--	--
Plaintiff's Exhibit No. 14	33	--
Plaintiff's Exhibit No. 15	36	--
Plaintiff's Exhibit No. 16	35	--

APPEARANCES (Continued):

FOR THE DEFENDANTS:

(Blackstone Family Practice
Center, Inc., and Dr. Charles Rosenbaum)

KELVIN L. NEWSOME, ESQUIRE

Of: LeClair Ryan, P.C.

707 East Main Street

Eleventh Floor

Richmond, VA 23219

FOR THE DEFENDANTS: (Heritage Hall Health Care)

LISA KENT DULEY, ESQUIRE

Of: Denton & Fiscella

6630 West Broad Street

Suite 290

Richmond, VA 23230

commencing at 10:37 o'clock, a.m., and concluding at 12:04 o'clock, p.m., before Sandra Martin, a Notary Public for the Commonwealth of Virginia, when were present on behalf of the respective parties:

Reported by: Sandra J. Martin

APPEARANCES:

FOR THE PLAINTIFF:

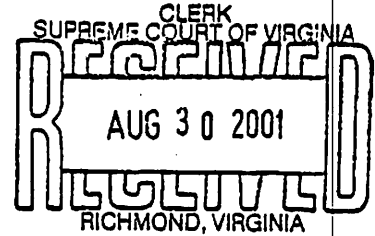
BEVERLY GRAY STEPHENSON, ESQUIRE

Of: B. G. Stephenson, Ltd.

Inns of Court

4157 Chain Bridge Road

Fairfax, VA 22030



VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

THE ESTATE OF LUCILLE P. OVERTON,
deceased,

Plaintiff,

ORIGINAL

vs.

AT LAW NO.: CL-031

BLACKSTONE FAMILY PRACTICE CENTER, INC.,
CHARLES J. ROSENBAUM, a/k/a C.J. ROSENBAUM, M.D.,
JOSEPHINE FOWLER, M.D., and
HCMF CORPORATION, t/a Heritage Hall Health Care,
Defendants.

Fairfax, Virginia

Tuesday, May 1, 2001

De Bene Esse Deposition of

REINALD LEIDELMEYER, M.D.

called for examination by counsel for the plaintiff,
pursuant to notice, at the offices of B.G. Stephenson,
4157 Chain Bridge Road, Fairfax, Virginia 22030,

CERTIFICATE OF NOTARY PUBLIC

I, Sandra J. Martin, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me by machine shorthand and thereafter reduced to typewriting by myself; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Sandra J. Martin, Notary Public for
the Commonwealth of Virginia

My Commission Expires:
May 31, 2004

AFFIDAVIT OF DEPONENT

I have read the foregoing _____ pages, which contain a correct transcript of the answers made by me to the questions therein recorded.

PHYLLIS M. CORRIGAN, R.N.

Subscribed and sworn to before me this _____ day of _____, 2001, in _____, _____.

Notary Public in and for the _____ of _____.

My Commission Expires:

(703) 691-0480
(800) 257-1522
(703) 591-0340 FAX

Notaries for Virginia, Maryland, and D.C.

ACCURATE STENOTYPISTS, INC./RON JOHNSON REPORTERS

P.O. Box 485
Fairfax, Virginia 22030
May 9, 2001

Ronald E. Johnson, CSR
President

Phyllis Corrigan, R.N.
c/o BEVERLY GRAY STEPHENSON, ESQUIRE
B. G. Stephenson, Ltd.
Inns of Court
4157 Chain Bridge Road
Fairfax, VA 22030

Ms. Corrigan:

Re: OVERTON VS. BLACKSTONE, CC OF NOTTOWAY, CL-031

Your deposition has been transcribed and is ready for reading and signing by you, as requested, at our office in Fairfax (or if your deposition was taken in D.C., it may be read and signed there.)

Read the deposition and make the necessary corrections or changes on the enclosed errata sheet -- or on a separate sheet. Please do not write on the original transcript.

If it is not convenient to come to our office, your attorney may have you read his copy of your deposition, in which case you should complete the errata sheet on the reverse side of this letter, sign it, and return it to the above address promptly. It will then be attached to your deposition before it is filed as an official court document. A copy of your corrections, if any, will be provided to all counsel of record.

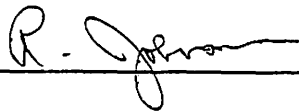
PLEASE CALL THE OFFICE TO MAKE AN APPOINTMENT BEFORE COMING TO
READ YOUR DEPOSITION.

If we do not hear from you in 21 days of the date hereon (or three days before the trial date, whichever occurs first), the unsigned original transcript with a copy of this letter attached will be filed with the court at this time.

Your prompt attention to this is requested.

ACCURATE STENOTYPISTS, INC.
RON JOHNSON REPORTERS

BY: _____



Accurate Stenotypists, Inc.
Ron Johnson, President
P. O. Box 485, Fairfax, VA 22030
Phone: 703-691-0480

Date: 5-9-01

This deposition is being filed with the court and/or attorney who noticed the deposition for the following reason(s):

_____ Deponent was given timely notice that the deposition was ready for signature at our office. Deponent did not appear, nor did we receive a notification that more time was needed to accomplish this. (See attached notice to deponent)

_____ Deponent was sent a copy of the deposition to read, sign and return to us. The deposition was not returned to us.

✓
_____ Deposition was reported/transcribed so near the trial date, it was not possible to give the witness timely notice to read and sign the deposition.

ACCURATE STENOTYPISTS, INC.

BY: R. Johnson

1 MR. STEPHENSON: That's all I have.

2 MS. DULEY: I don't have any further
3 questions.

4 MS. PHARR: No further questions.

5 THE VIDEOGRAPHER: All right. That
6 concludes the deposition. We're going off the
7 record at approximately 12:49.

8 (The deposition was concluded at
9 12:49 o'clock, p.m.)

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1 may seek to elicit any testimony about the standard
2 of care as it pertains to physicians in this case.

3 BY MR. STEPHENSON:

4 Q Do you have an opinion as to whether or
5 not that's proper corrective action?

6 MS. PHARR: Same objection.

7 THE WITNESS: It would be a proper
8 corrective action assuming that the patient's
9 cognitive status -- that she was able to absorb what
10 she was being told and that she would be able to
11 follow through on this advice.

12 BY MR. STEPHENSON:

13 Q And --

14 A But it doesn't say what the staff was
15 going to do to help her or to prevent her from
16 falling again.

17 Q And did you find that -- that
18 Mrs. Overton, you know, had the capacity or did not
19 have the capacity to respond to that directive?

20 A Based on the nursing flow sheets and
21 nurses' notes, this patient -- they keep -- they
22 keep bringing up the fact that the patient was
23 confused.

1 significant to you? (Indicating.)

2 A No. It's PRN.

3 Q P --

4 A PRN --

5 Q -- PR --

6 A PRN means, whenever possible, as soon as
7 possible. As -- as, you know, it's not a
8 designation time -- well, it doesn't mean a specific
9 time. QID would mean you were going to check a
10 patient four times a day. PRN means, whenever
11 necessary.

12 Q Assuming that this was the nature of
13 corrective action to be taken as noted here, do you
14 have an opinion as to whether or not this was a
15 proper corrective action?

16 MS. DULEY: I'm also going to object,
17 because this outside the scope of my
18 cross-examination.

19 MS. PHARR: Same objection. And I also
20 object to the extent that it calls for any testimony
21 that in any way may exceed the scope of her proffer
22 as an expert only as to a registered nurse.

23 And I object to it to the extent that it

1 explain to resident --

2 MS. DULEY: Objection.

3 MS. PHARR: Same objection.

4 MR. STEPHENSON: -- direct --

5 MS. DULEY: You cannot read the record
6 into evidence.

7 MS. PHARR: It is hearsay.

8 MR. STEPHENSON: Counsel, you've got to
9 stop the continuing -- you've made your objection.
10 It's on the record. We will argue the objection to
11 the Court.

12 I am going to ask the question of this
13 witness right now. And I would appreciate your not
14 interrupting the question.

15 Your objection is on the record.

16 BY MR. STEPHENSON:

17 Q The notation of correction -- corrective
18 action taken states in the form --

19 MS. PHARR: Same objection.

20 BY MR. STEPHENSON:

21 Q -- explain to resident to ring for
22 assistance and frequently check, is
23 that -- it looks like some initials. Is that

1 BY MR. STEPHENSON:

2 Q -- to -- to your testifying about doctors.
3 I'm not asking you to do that. I'm saying in terms
4 of the care provided by Heritage Hall, was there
5 anything done that you can see that they did either
6 before she had the first fall reported in the record
7 and after she had the first fall?

8 A No.

9 Q Direct your attention to plaintiff's
10 exhibit seven, which is the incident -- accident
11 report for the resident. Direct your attention to
12 the report of the fall on January 20th, 1995, and on
13 the second page of that there is a -- a space in the
14 form that says, corrective action taken. And did
15 you note that?

16 A Yes, I did.

17 Q Would you look at the corrective action to
18 be taken that's indicated on the form it says,
19 explain --

20 MS. DULEY: Objection.

21 MS. PHARR: Objection; hearsay.

22 BY MR. STEPHENSON:

23 Q The notation in the form that says,

1 falls?

2 A That's correct.

3 Q So did you find anything that the record
4 showed you that was done to recognize that condition
5 and to -- to prevent it?

6 A No, I did not.

7 Q And this was both before and after she had
8 sustained the falls?

9 A After --

10 MS. PHARR: Objection. I'm going
11 to -- I'm going to object to the extent that you're
12 asking her to testify about records, things in the
13 record, which is what you're asking her about which
14 you've already put in front of her included the
15 doctors' progress notes, because she is not been
16 proffered to testify against anything the physicians
17 have done or any notes or records that they made.
18 To that extent, I object to her testimony.

19 BY MR. STEPHENSON:

20 Q Counsel has expressed an ongoing objection
21 to --

22 MS. PHARR: And I object to your
23 testifying.

1 A Yes.

2 Q So that form is filled out for Medicaid,
3 correct?

4 A This goes -- but it does go with the
5 patient to --

6 Q But it is a Medicaid form --

7 A -- it is a Medicaid form.

8 Q Correct?

9 A Yes.

10 Q It is not a transfer form, correct?

11 A Yes.

12 MS. DULEY: I have no further questions.

13 MS. PHARR: No questions.

14 REDIRECT EXAMINATION

15 BY MR. STEPHENSON:

16 Q Mrs. Corrigan, in relation to doing
17 something to prevent falls, other than watching, you
18 mentioned other things that you would do as part of
19 the plan.

20 A Correct.

21 Q And that is because you found that the
22 record showed that everyone should know in the
23 setting that Mrs. Overton was at a high risk for

1 correct?

2 A That is one of the things -- sometimes, it
3 says, yes. And other times, it says, the patient
4 fed herself, I believe.

5 Q She was helped with dressing, correct?

6 A Yes.

7 Q Now, as far as helping with ambulating,
8 the record does indicate that she was helped
9 ambulating, correct?

10 A There are part -- times when it says she
11 ambulate -- most -- there are long periods of time
12 that it says she ambulated ad lib.

13 Q Okay. But somebody --

14 A And there are other times when it said she
15 was assisted.

16 Q Okay. And somebody could ambulate with
17 assistance and also by themselves in the same day,
18 correct?

19 A They can.

20 Q Okay. Now, you've testified regarding
21 exhibit number five. I believe it's been referred
22 to as a transfer. That is not actually a transfer
23 order but a Medicaid form, correct?

1 A That said she got out -- was found out of
2 bed.

3 Q Right.

4 A And then there's another indication
5 that says -- that the patient was getting in and
6 out of the chair and was counseled about
7 trying -- asking for assistance to get out of the
8 bed -- out of the chair -- excuse me.

9 Q Okay. So she was not getting out of the
10 bed frequently, correct?

11 A Not according to the chart.

12 Q Okay. And the chart also indicates that
13 she was helped with bathing once a day, correct?

14 A On their -- yes, on their flow sheets.
15 She was --

16 Q She was --

17 A -- assisted with bathing.

18 Q -- helped with brushing her teeth?

19 A Yes.

20 Q Helped going to the bathroom?

21 A Yes. And it also indicates that there
22 were period of times when she was incontinent.

23 Q She was helped in the dining room,

1 Q So your testimony is that anybody who is a
2 fall risk which we have already agreed could be up
3 to 90 percent --

4 A Up to 90 percent.

5 Q -- should be under observation 24 hours a
6 day?

7 A It could -- not continuous 24 hours, but
8 if you're making rounds, they should be frequent
9 rounds on all patients who are fall risks.

10 Q Okay. But it is possible that somebody
11 could fall when a nurse is not in the room, correct?

12 A That's correct.

13 Q And so it is not possible to watch
14 everybody who is a fall risk at all times?

15 A That is correct.

16 Q There's no indication in the record that
17 Mrs. Overton was getting out of the bed frequently,
18 correct?

19 A There was a -- there is one -- there's at
20 least one place in the chart which says that the
21 patient was out of bed. And there's another place
22 in the chart --

23 Q One time? She was out of bed one time?

1 don't think we send people to the hospital -- to a
2 nursing home just because they are fall risks. I
3 mean it's --

4 Q No. But --

5 A -- because they are required extended care
6 that the hospital is not going to be providing in
7 the hospital due to the present status of the HMOs,
8 what patients will pay for. So when a patient needs
9 extended care, they go to a nursing home or if
10 they're no longer able to take care of themselves in
11 the home setting.

12 Q But frequently, the problems that require
13 them to be in nursing homes; for example, dementia,
14 also make them bigger fall risks, correct?

15 A That's correct.

16 Q And you suggest that someone must watch
17 all patients that are fall risks at all times?

18 A I said they should be under close
19 observation as much as possible, yes.

20 Q Okay. But that does not mean 24 hours a
21 day, correct?

22 A As long as they're fall risks, they still
23 need to be under close observation.

1 Q And typically, once the alarm goes off,
2 the patient could already be on the floor, correct?

3 A That could be a possibility.

4 Q Now, you have no personal knowledge of
5 numbers of falls in nursing homes, correct?

6 A I do not.

7 Q The elderly can break bones in many ways,
8 correct --

9 A Correct.

10 Q -- not just falling? They're not always
11 related to falls, correct?

12 A That's correct.

13 Q And isn't it true that at least 90 percent
14 of nursing home patients are fall risks?

15 A I would estimate -- say yes given the
16 status of most of the patients that I have
17 transferred to nursing homes, probably most of them
18 were fall risks.

19 Q Okay. And that's one of the reasons
20 they're in nursing homes is because of the fall
21 risks?

22 A Well, not only because of that, but it's
23 mainly -- mostly, patients go to the hospital -- I

1 A That's correct.

2 Q Increase bed sores?

3 A Uh-huh.

4 Q A lap buddy prevents movement, correct?

5 A Yes.

6 Q And so that's considered a restraint,
7 correct?

8 A Yes.

9 Q You would also agree with me that
10 patients are -- are often hurt more and more
11 severely -- strike that. Let me start again.

12 Patients are hurt more often and more
13 severely with side rails because they try to climb
14 over them, correct?

15 A That's why we would put an alarm on so we
16 would know if the patient is attempting to climb
17 out, so we could assist them before they injure
18 themselves --

19 Q But an alarm is not going to prevent a
20 fall, correct?

21 A No. But an alarm would alert you to the
22 fact that the patient is trying to get out of the
23 bed with the side rails up.

1 contacted you initially regarding this case,
2 correct?

3 A That is correct.

4 Q Now, you understand that federal law
5 regulates the use of restraints, correct?

6 A I do.

7 Q And one reason is because the -- the
8 dignity of the elderly is important, correct?

9 A That is correct.

10 Q So it's important to give the elderly as
11 much freedom as possible when in a nursing home,
12 correct?

13 A That is correct.

14 Q It's better --

15 A It's -- the same is true for a hospital.

16 Q It's better for them mentally and
17 physically, correct?

18 A It is.

19 Q Restraints can cause agitation, correct?

20 A Correct.

21 Q Increase urinary track infections?

22 A That's correct.

23 Q Increase anxiety?

1 on the record. The time approximately, 12:35.

2 CROSS-EXAMINATION

3 BY MS. DULEY:

4 Q Mrs. Corrigan, again, I'm Lisa Duley,
5 representing Heritage Hall. I'm just going to go
6 through some more questions with you.

7 You've never worked at Johnston-Willis
8 Hospital, correct?

9 A I have not.

10 Q And so you're not familiar with their
11 transfer procedures, correct?

12 A I am not.

13 Q You're friends with Mary Joe Burn,
14 correct?

15 A I've known her -- I actually met her
16 working at Commonwealth Hospital. And we have been
17 Christmas card correspondence pretty much.

18 Q For about 20 years, correct?

19 A Off and on.

20 Q And Mary Joe Burn is the daughter of
21 Mr. Stephenson, the plaintiff's attorney, correct?

22 A That is correct.

23 Q And in fact, Mary Joe Burn was the one who

1 A The record indicated that she was a high
2 risk for falls.

3 Q Is it -- did the report of falls -- was
4 the report of falls then consistent with the
5 evaluation of her being at risk for falls?

6 A Yes.

7 Q And did you find anything in the record
8 that indicated that there was any suitable plan
9 to -- to prevent Mrs. Overton from sustaining those
10 falls?

11 A No.

12 MR. STEPHENSON: Okay. Would you answer
13 other counsels' questions now?

14 Would this be a good time to change the
15 tape?

16 MS. DULEY: Sure.

17 THE WITNESS: Yes.

18 THE VIDEOGRAPHER: All right. We're going
19 off the record at approximately 1:40 -- I'm
20 sorry -- 12:30.

21 (A break was taken from 12:30 o'clock,
22 p.m., until 12:35 o'clock, p.m.)

23 THE VIDEOGRAPHER: All right. We're back

1 did you form an opinion based on the record as to
2 whether or not Mrs. Overton sustained falls?

3 A The record states that she fell -- was
4 found on the floor on two separate occasions, yes.

5 Q And -- and the record shows as you view
6 the record -- strike that.

7 In relation to how it is reported in the
8 record regarding her lying on the left side on the
9 20th and her also lying on the left side again on
10 the 21st, do you have an opinion as to whether or
11 not the characterization of falls is an appropriate
12 characterization?

13 A Yes.

14 Q And -- and you discern from the record
15 that she in fact sustained falls?

16 A Yes.

17 MS. DULEY: Objection.

18 BY MR. STEPHENSON:

19 Q And did you determine from the record also
20 that -- whether or not she was at risk for those
21 falls?

22 A Yes.

23 Q And what did the record indicate?

1 Heritage Hall Nursing Home, received care within the
2 realm of the standard of care that was applicable to
3 her under, you know, her condition as admitted to
4 Heritage Hall?

5 A It's my opinion that she did not receive
6 the fullest attention of the staff, the nursing
7 staff, during her admission to Heritage Hall.

8 Q And is it -- do you have an opinion as to
9 whether or not that resulted in her falling
10 and -- and being injured?

11 A I think --

12 MS. PHARR: Objection.

13 MS. DULEY: Objection.

14 MS. PHARR: This witness has not been
15 designated to provide causation testimony. It's
16 outside the scope of her designation.

17 MS. DULEY: Same objection.

18 MS. PHARR: And, furthermore, she's not
19 qualified to offer that testimony. She is not a
20 medical doctor.

21 BY MR. STEPHENSON:

22 Q Not asking you for medical opinion
23 regarding the injury and treatment of the injury,

1 And -- but, as I said, in the flow sheet,
2 we again have this question about how she -- how
3 that was dealt with, whether she was in fact
4 assisted at all times to get about.

5 Q Do you have an opinion within the realm of
6 reasonable medical certainty based on the
7 information that you glean from the record as to
8 whether or not she was provided adequate care?

9 A Again, I just felt that she could have
10 been under more close observation to prevent any
11 falls.

12 Q And there was no indication that she
13 was --

14 A That was done.

15 Q -- provided that -- that care?

16 MS. DULEY: Objection.

17 BY MR. STEPHENSON:

18 Q Well, was there any indication that she
19 was provided --

20 A No.

21 Q -- that care?

22 So then do you have an opinion as to
23 whether or not Mrs. Overton, as a resident of

1 providing for her care?

2 Do you have an opinion as to whether or
3 not they were negligent?

4 A I felt that they could have provided more
5 care to prevent injuries, yes.

6 Q And you found that the record indicates
7 that she had falls and sustained injury?

8 A It does.

9 Q Do you find any plan that was devised by
10 Heritage Hall in relation to her care that was a
11 suitable plan to deal with her situation as you
12 believe it existed?

13 A Again, as I stated, the -- there is a care
14 plan in the chart. Again, I found questions about
15 how well they followed through -- I had questions
16 about how well they followed through on the care
17 plan that they devised.

18 Q What was the care plan that was devised?

19 A They did note that the patient again had
20 the cognitive changes and that she was incontinent
21 and that she did require being toilet -- toileted,
22 that she did require assistance, that she did need
23 help with bathing.

1 provided her the contemplated care or whether or not
2 they failed to do so?

3 MS. DULEY: I'm going to object. She has
4 not been designated to testify regarding the
5 contents or lack thereof in the record.

6 BY MR. STEPHENSON:

7 Q Do you have an opinion with regard to what
8 you have seen in the records regarding whether or
9 not Mrs. Overton was provided the proper care?

10 A In my opinion, the patient, Mrs. Overton,
11 could have benefited from more closer observation to
12 meet her physical and emotional and cognitive needs.

13 Q Do you have an opinion as to whether or
14 not there was a suitable care plan provided for
15 Mrs. Overton in relation to her residence at
16 Heritage Hall Nursing Home?

17 A There was a care plan formed for
18 Mrs. Overton at Heritage Hall. The ambiguity that I
19 found was whether -- how this was followed through.
20 As I said on the flow sheets, there are some
21 questions, particularly about the ambulation of with
22 or without assistance.

23 Q Was the Heritage Hall negligent in

1 MS. PHARR: And, again, I refer you to her
2 designation in which she is not designated to
3 testify about charts and whether that information is
4 appropriate and to her proffer in which she is
5 offered only as a registered nurse not to comment on
6 anything that may in any way impact the physicians'
7 treatment.

8 Since you have put in front of her
9 doctors' progress notes and she is now about to
10 testify regarding the chart which includes those
11 progress notes and any omissions or entries into
12 those notes, she cannot provide that testimony as it
13 pertains to the chart including those doctors'
14 progress notes.

15 BY MR. STEPHENSON:

16 Q Mrs. Corrigan, ignoring the doctors'
17 progress notes which were produced as part of the
18 chart records of Lucille Overton in this litigation,
19 tell me with regard to the entries involving
20 Heritage Hall Nursing Home and their care of
21 Mrs. Overton as a resident admitted to that facility
22 for the care that she needed, do you have an opinion
23 as to whether or not Heritage Hall Nursing Home

1 because I have not asked her for any opinion
2 regarding the attention given by the doctors to
3 Mrs. Overton. And -- and --

4 MS. PHARR: You have asked her about
5 omissions or entries in medical charts which include
6 doctors' progress notes; therefore, that includes
7 her opinion as to omissions or entries in those
8 doctors' progress notes.

9 MR. STEPHENSON: I submit the witness is
10 entitled to testify of what constitutes the chart --

11 MS. PHARR: She is not entitled to
12 testify --

13 MR. STEPHENSON: -- of the person --

14 MS. PHARR: -- about the medical care --

15 MR. STEPHENSON: -- and what she finds
16 that the regular -- include -- let me finish mine
17 before you interrupt me, please.

18 The witness is very competent to testify
19 about what is compiled in one's chart, records, in
20 the hospital and nursing home setting. And she is
21 so testifying.

22 I will then ask appropriate next
23 questions. And --

1 MS. PHARR: You're asking her whether the
2 medical chart is complete, including the doctors'
3 progress notes, which you have put in front of her.

4 She cannot give that testimony. She has
5 not been proffered as an expert witness as to any
6 actions or omissions by the physicians in this case.

7 MR. STEPHENSON: But I have asked the
8 witness what is included and let me just ask you
9 that way --

10 MS. PHARR: And you have asked her -- she
11 has answered the doctors' notes are included.

12 She cannot provide testimony because she
13 has not been designated nor proffered nor does she
14 have a medical degree nor is she a doctor to provide
15 any testimony that in any way reflects on the
16 standard of care of doctors in this case, including
17 what may or may not have been included in those
18 doctors' medical notes.

19 MR. STEPHENSON: I don't know how many
20 times you can object to an unasked question --

21 MS. PHARR: I'm only objecting to the
22 question that was asked --

23 MR. STEPHENSON: -- of the witness,

1 MS. PHARR: Objection. Same objection;
2 hearsay and this witness has not been offered --

3 MR. STEPHENSON: Let me withdraw -- let me
4 withdraw that question as framed.

5 BY MR. STEPHENSON:

6 Q Whatever the patient has -- and/or
7 resident of the nursing home has had done in
8 relation to treatment and care constitutes part of
9 the chart records of the patient, does it not?

10 MS. DULEY: Objection.

11 MS. PHARR: Objection; leading. And this
12 witness has not been proffered to provide any
13 testimony that may in any way impact the standard of
14 care of the physicians. This is beyond the scope of
15 her designation and beyond the scope of her proffer
16 as an expert witness.

17 MR. STEPHENSON: To the extent that any
18 part of the question would be leading, I will
19 rephrase the question.

20 In response to your objection about her
21 opining about the quality of the medical service
22 provided from doctors, I am not asking her to give
23 any opinion regarding that.

1 she's not going to testify about anything that goes
2 to standard of care of the doctors.

3 MR. STEPHENSON: All right. We will go
4 back on the record.

5 (This ends the off video discussion.)

6 THE VIDEOGRAPHER: All right. We're back
7 on the record. The time approximately, 12:17.

8 BY MR. STEPHENSON:

9 Q Mrs. Corrigan, I want to direct your
10 attention to the chart of the resident in the
11 nursing home setting. There are several ways that
12 the chart is compiled. And I believe you've
13 testified that that includes incident reports,
14 evaluations that are done by the staff and -- and
15 nurses' notes that are continuing. And it also
16 has to the extent that there is medical attention
17 provided, you know, to that person by medical
18 persons outside the nursing home, do you find that
19 that also constitutes part of the chart?

20 A Yes.

21 Q And for the complete chart that includes
22 everything that, you know, impacts the --

23 MS. DULEY: Objection.

1 records -- if it is not in that chart that includes
2 the doctors' records, then it was not done.

3 That does go directly to the doctors' care
4 and any alleged violations by your other experts as
5 to what was or was not done.

6 So by putting those doctors' records and
7 by the previous testimony you've already allowed her
8 to give, you are not going to be allowed to ask her
9 that question, because it does go to your theory of
10 what the violations of the standard of care. You
11 did it with Leidelmeyer, and you did it with Martin.
12 If it's not in the chart, it isn't there.

13 This is testimony because of the record
14 you put in front of her that goes to the doctors.
15 And she is not proffered as an expert witness to
16 testify as to anything that goes to any alleged
17 deviations of the standard of care by the
18 physicians.

19 So -- I mean, I know you are going to
20 proceed the way you are going to proceed. But I'm
21 just telling you, the way you've conducted this
22 exam, you are going to have that question precluded
23 by your own testimony given in this deposition that

1 not in the chart, it doesn't exist?

2 And the chart that you have asked her
3 about includes the doctors' progress notes. So I'm
4 not going -- I'm going to continue to maintain my
5 objection -- I just want to point that out to you.

6 The question you're asking is going to be
7 excluded because you've already put in front of her
8 the doctors' progress notes.

9 MR. STEPHENSON: But I submit that part of
10 nursing home records --

11 MS. PHARR: That --

12 MR. STEPHENSON: -- as presented to us
13 includes doctors' progress notes.

14 MS. PHARR: That may be true, Bev.

15 MR. STEPHENSON: I'm not asking her to
16 opine whether or not the doctors' were --

17 MS. PHARR: No. But you are. You are
18 because you're saying that --

19 MR. STEPHENSON: -- involving in her care.

20 MS. PHARR: What you're asking her is: If
21 it is not in the chart -- meaning what you just
22 said, the nursing home chart, which you just said
23 included the nursing home records and the doctors'

1 asking her a question that is outside the scope of
2 her proffer and outside the scope of her designation
3 as to any alleged standard of care issues as to the
4 physicians.

5 Let's go off the record for a second.

6 THE VIDEOGRAPHER: Going off the record.

7 The time approximately, 12:15.

8 (The following discussion was held off the
9 video record but was taken by the court
10 reporter:)

11 MS. PHARR: Bev, I just want to point this
12 out off the record, you have put in front of her the
13 doctors' progress notes. And by doing that, you are
14 having this testimony apply to the notes that she
15 has looked at, which the doctors' notes.

16 This testimony will be excluded, because
17 you've said on the record, she is not going to be
18 proffered against the physicians. So I just want to
19 point that out. You can continue to ask her those
20 questions --

21 MR. STEPHENSON: I'm not proffering her
22 testimony as to --

23 MS. PHARR: You're asking her: If it's

1 of care issues that go to the physicians in this
2 matter. She cannot give that testimony.

3 MS. DULEY: I object to the form of the
4 question.

5 MR. STEPHENSON: With regard to form, let
6 me rephrase.

7 BY MR. STEPHENSON:

8 Q Mrs. Corrigan, within the realm of
9 reasonable medical certainty in your experience
10 through your working life in your profession as a
11 registered nurse, is a patient's chart a formal
12 medical record that is maintained?

13 A Yes, it is.

14 Q And is the chart, in your opinion,
15 considered the documentation of what is done
16 and -- and what is not done with regard to the
17 medical attention --

18 MS. DULEY: Objection to form.

19 MS. PHARR: Objection.

20 MR. STEPHENSON: -- related to -- to the
21 particular party that is charted?

22 MS. PHARR: Objection. That question does
23 go directly to my prior objection, which is, you are

1 her designation. So I object to that extent.

2 BY MR. STEPHENSON:

3 Q All right. Tell me again within your
4 opinion what the chart is and --

5 A The chart, in my opinion, is a legal
6 document.

7 MS. DULEY: I'm going to -- objection --

8 MS. PHARR: Objection.

9 MS. DULEY: -- she is not an attorney.

10 MS. PHARR: Same objection.

11 BY MR. STEPHENSON:

12 Q Is this the official document?

13 A It is the official document of the
14 patient's care in a given facility.

15 Q And is it maintained for that purpose?

16 A It is.

17 Q If it's not in the chart, do you have an
18 assumption about whether or not something was done
19 or not done if it doesn't appear in the chart?

20 MS. DULEY: Objection.

21 MS. PHARR: Objection. To the extent that
22 this is outside the scope of her designation and
23 outside the scope of her proffer as to any standard

1 speculation.

2 MS. PHARR: Same objection.

3 MR. STEPHENSON: No. It does not. I
4 submit that this witness, you know, is an expert and
5 deals in that area. And she understands the
6 charting and is quite competent --

7 MS. PHARR: Bev, you don't need to
8 testify --

9 MR. STEPHENSON: -- to testify.

10 MS. PHARR: -- we have objected.

11 MR. STEPHENSON: Well, you're testifying.

12 So I'm -- I'm responding to your objections.

13 MS. PHARR: We have said objections.

14 BY MR. STEPHENSON:

15 Q All right. Would you tell me whether or
16 not you have an opinion within the realm of
17 reasonable medical certainty within your profession
18 regarding the -- the validity of charts?

19 MS. PHARR: Objection. I'm going to also
20 object on the grounds that to the extent that this
21 testimony goes to any alleged standard of care
22 issues related to the physicians, this is outside
23 the scope of her proffer and outside the scope of

1 formulate a plan for her care related to her
2 assessment for being at risk for falls?

3 A Yes. The chart indicates that she -- the
4 hospital -- the -- excuse me -- that Heritage Hall
5 knew that this patient was a high risk for falls.

6 Q What purpose does the chart serve?

7 A The chart is a record of everything that
8 occurs in a -- in a patient's care while she is in a
9 facility.

10 Q And does that record have significance?

11 A It has significance because -- when
12 I attended a course on the legal aspects of nursing,
13 the one thing the attorney who conducted --

14 MS. DULEY: Objection.

15 MS. PHARR: Objection; relevance.

16 THE WITNESS: -- if it wasn't in the
17 chart, it wasn't done.

18 MS. DULEY: Objection.

19 BY MR. STEPHENSON:

20 Q All right. Do you -- is that understood
21 in your -- in your profession, that the chart is
22 the -- is the real word or that's the official --

23 MS. DULEY: Objection; calls for

1 Q What kind of symbol do you use for that?

2 A We just used in our facility green dots.
3 Some places use stars. In California, we used red
4 dots. Just different things to -- so it would be a
5 simple -- it would just be a check to the staff that
6 the patient was a risk patient for falls.

7 Q And that's something that the people knew
8 about internally as a directive --

9 A It would be an internal. It would not be
10 external.

11 Q If you know your person that you're caring
12 for is apt to fall, do you do anything in providing
13 some, you know, cushion approach to --

14 MS. DULEY: Objection; leading.

15 MR. STEPHENSON: -- to it or not?

16 Is that ever done?

17 THE WITNESS: It has been done. I did not
18 do it myself. I -- there is things in the
19 literature that says you can put some cushions on
20 the floor. It would depend on the facility and the
21 space allotted.

22 Q Do you have an opinion as to whether or
23 not the record shows that there was a need to

1 home setting, tend to become more dysfunctional
2 mentally once the sun sets.

3 Those -- if this patient was wandering at
4 night, it would have been my practice to bring the
5 patient out to where I could see her and try
6 to -- give her things to do while she was awake so
7 that she -- be it something to read, just something
8 to occupy her hands.

9 Q In terms of the bed facility itself, do
10 you have any practice regarding the height of the
11 beds?

12 A Bed in the low position, bed rails up, bed
13 alarm on so if the patient was attempting to get out
14 of bed, the alarm -- there would be a buzz that
15 would go off.

16 We also had a simple practice to make
17 everyone aware that this patient that it would not
18 be -- unless you were in a facility, you would -- it
19 would not be something that -- to affect her
20 privacy, but just a little -- some kind of a symbol
21 on the door or on the patient's record to let
22 patient (sic) know that this patient was a high
23 risk.

1 support, and trying, again, because of her altered
2 mental status, trying to -- to keep reorienting to
3 her -- to her time and place.

4 Q With regard to having her in a room by
5 herself or in some other way to observe her, is
6 there anything that could have been implemented in
7 that regard?

8 A If the patient was getting up out of bed
9 frequently or getting up out of the chair without
10 assistance frequently, she could have been moved to
11 a place where she would be in view of the -- the
12 personnel on duty at that time. So that they could
13 see -- be more aware of what she was doing and
14 assist her if she needed help.

15 Q Tell me how you go about, you know, that
16 kind of -- of plan.

17 A Given the setup, she could be placed in
18 any kind of a comfort chair and brought out to the
19 nurses' station. If she is awake and alert -- she
20 was awake rather.

21 And there is a syndrome called sundowning
22 syndrome. A lot of elderly patients, particularly
23 if they are in a setting that is not their usual

1 what their needs are, they will get up out of bed or
2 out of a chair and try to get to the bathroom.

3 Again, the use of -- she needed to get
4 around with assistance. She didn't -- she couldn't
5 ambulate on her own. All of these were clues that
6 this patient was a high risk for injury in -- be
7 it -- and it would be -- she would be a high risk
8 for injury whether she was in a nursing home or a
9 hospital.

10 And every -- my opinion was that they
11 should have done more to protect her from injuring
12 herself.

13 Q Do you have an opinion within the realm of
14 reasonable medical certainty as to some measures
15 that could have been utilized that were
16 not -- apparently were not by Heritage Hall?

17 A I would have had bed rails up, a bed
18 alarm, frequent observation, frequent trying to
19 reorient the patient frequently to the time and the
20 place, making sure that she was toilet and -- taken
21 to the toilet as frequently as possible, assisting
22 her with bathing, anything, particularly, with
23 ambulation, because she couldn't ambulate without

1 also in evidence.

2 MS. PHARR: Objection; hearsay.

3 MS. DULEY: Objection; hearsay.

4 BY MR. STEPHENSON:

5 Q Mrs. Corrigan, in examining the records
6 related to Lucille Overton from her admission to
7 Heritage Hall in January of 1995, until her
8 discharge, have you formed any opinion regarding the
9 care provided, you know, by Heritage Hall in terms
10 of what her needs were in that facility?

11 A Based on all the information that I was
12 able to glean both from the chart, it just appears
13 to me that once the hospital ascertain -- or excuse
14 me -- the nursing home ascertained that this patient
15 was a high risk for fall, they should have
16 in -- they don't indicate that they implemented any
17 kind of specifics to prevent the patient from
18 falling or from harming -- hurting herself.

19 And there were a number of indications
20 here, both the altered mental status, the fact that
21 the patient was -- was incontinent, that the fact
22 that the patient -- and frequently when a patient is
23 incontinent, they -- if they can't relate

1 MS. PHARR: Objection; hearsay.

2 Furthermore, this witness has not been
3 offered to comment on physicians' notes, physicians'
4 treatment or any standard of care issues related to
5 physicians. This is outside the scope of her
6 designation and outside the scope of her witness
7 proffer.

8 MR. STEPHENSON: The
9 objection -- objection is inappropriate, because the
10 witness is not testifying about, you know, what
11 doctors did and what they didn't do. She's only
12 referring to the records --

13 MS. PHARR: Which are hearsay at this
14 point.

15 MR. STEPHENSON: -- of this person
16 being -- indicating that Mrs. Overton was seen by
17 the doctor.

18 BY MR. STEPHENSON:

19 Q So on that basis, you did review that part
20 of the --

21 A Yes, I did.

22 Q -- of the document?

23 MR. STEPHENSON: All right. I offer this

1 Yes, I have.

2 Q Do you -- can you describe what that is?

3 A Yes. They are the doctors' progress
4 notes.

5 Q Does that form part of the medical records
6 of Lucille Overton?

7 A Yes, it does.

8 Q And in your setting, do you have the
9 medical record that's compiled of nurses' notes,
10 doctors' notes and all other matters that
11 are -- that are obtained that form the total record?

12 A Yes.

13 Q And you review this as part of the total
14 record?

15 A Yes.

16 Q Do you find any entries there that -- that
17 tie into the nurses' notes about the incident and
18 when the incidents occurred as reflected in the
19 notes; namely, on January 20th and January 21st?

20 A As stated in the nurses' notes and then
21 repeated in the Heritage -- in the physicians'
22 progress notes, the patient was seen by a
23 physician --

1 MR. STEPHENSON: I also offer into
2 evidence the nurses' notes. I don't think we're
3 finished with them, but --

4 MS. PHARR: Objection; hearsay.

5 MS. DULEY: I would object to the previous
6 document coming in.

7 MR. STEPHENSON: Ten.

8 (Opposing counsel are reviewing the
9 documents.)

10 (Plaintiff's Exhibit No. 10 was previously
11 marked for Identification.)

12 MS. PHARR: Can we go off the record for a
13 minute?

14 THE VIDEOGRAPHER: We're going off the
15 record. The time approximately, 12:00, o'clock.

16 (Discussion was held off the record.)

17 THE VIDEOGRAPHER: Okay. We're back on
18 the video record. The time approximately 12:02.

19 BY MR. STEPHENSON:

20 Q Mrs. Corrigan, I will show you now what
21 has been marked as plaintiff's exhibit ten and ask
22 you if you have seen that document.

23 A (Witness is reviewing the document.)

1 MS. DULEY: Objection.

2 MR. STEPHENSON: My question is: What the
3 document states, not, you know, what is this
4 witness' determination of the accuracy of the
5 statements.

6 BY MR. STEPHENSON:

7 Q But you are relying on the authenticity, I
8 take it, of the record when you review the record
9 and refer to it?

10 A That's correct.

11 Q Assuming that the records maintained by
12 Heritage Hall had some accuracy, in fact, would this
13 be significant to you in terms of forming an opinion
14 as to whether or not Mrs. Overton was receiving
15 adequate care?

16 A It just stated that she had complained of
17 pain in her hip --

18 MS. PHARR: Objection; hearsay.

19 THE WITNESS: -- and leg.

20 BY MR. STEPHENSON:

21 Q With regard to the entirety of the
22 records -- and before I pose that question, let me
23 have you also refer to plaintiff's exhibit ten.

1 record, the care of plan.

2 Q Is that a --

3 A The record doesn't -- I initiate the
4 care -- I would initiate a care plan. And then that
5 would become a part of the official patient record.

6 Q Is that an ongoing process?

7 A Yes, it is.

8 Q Mrs. Corrigan, are there entries that
9 follow the entry that states there was a fall on the
10 21st of January?

11 A There are several other entries
12 pursuant to the fact that the patient did
13 contain -- complained several times --

14 MS. PHARR: Objection; calls for
15 speculation.

16 THE WITNESS: -- of pain in her left leg
17 and hip.

18 BY MR. STEPHENSON:

19 Q And you are discerning that from your
20 examination of this document?

21 A Yes, I did.

22 Q And the document states that the --

23 MS. PHARR: Objection; hearsay.

1 physician and the nursing staff and anyone else who
2 has any direct input -- all of the -- anything that
3 is done for the hospital -- done for a patient goes
4 into their file. And that file is kept in the
5 medical records department.

6 Q And is that regular practice?

7 A It is.

8 Q And does that constitute part of the
9 official record?

10 A It is.

11 Q And -- and medical record?

12 A And medical record.

13 Q What use is made of those records in your
14 medical care facilities?

15 A My use of a medical record would be as I
16 stated earlier to review -- if we were doing chart
17 reviews to assess what the patient was receiving,
18 the care, according to the hospital's practice.

19 Q And do those records play a part in what
20 you do in forming plans of care?

21 A Oh, the record that goes to the medical
22 records contains the plans of care. They
23 are -- they become -- it becomes part of the medical

1 Q In medical settings, are there records
2 that are maintained as part of medical records?

3 A Yes, there are. And these are considered
4 legal documents.

5 MS. DULEY: Objection. She -- is she an
6 attorney?

7 MS. PHARR: She is not an attorney.

8 THE WITNESS: No. I'm sorry. But I
9 did --

10 MS. DULEY: I -- I object to her saying
11 what is and is not a legal document. She's not an
12 attorney. And she's not here to give a legal
13 opinion.

14 MR. STEPHENSON: All right.

15 MS. PHARR: And she hasn't been proffered
16 to do that.

17 BY MR. STEPHENSON:

18 Q Mrs. Corrigan, in relation to records of
19 persons receiving medical care, are there records
20 that are maintained as official records?

21 A Yes, there are.

22 Q And -- and they're compiled by -- by whom?

23 A The patient's record is compiled by the

1 patient had fallen, was considered to be in altered
2 mental status, that she did have some cognitive
3 difficulties and still was able to leave the
4 facility and wander out onto a street in the town of
5 Blackstone, Virginia, and that there -- and was
6 found four hours after the fall, the first fall, out
7 on the street.

8 BY MR. STEPHENSON:

9 Q What is the next item that you found to be
10 significant, if you did find one?

11 A That the next day the patient fell again.
12 And this time, she did complain of pain in her left
13 leg.

14 Q And that's what the record indicates?

15 A And that's what the record that I reviewed
16 indicated.

17 Q Mrs. Corrigan, with regard to records, are
18 there official medical records maintained of -- of
19 residents in nursing homes?

20 MS. DULEY: Objection.

21 MS. PHARR: Objection; calls for
22 speculation.

23 BY MR. STEPHENSON:

1 witness to authenticate any documents and that is
2 just an -- not a well-taken objection at all.

3 MS. DULEY: But she is reading from the
4 documents which assumes that they are in evidence
5 which they are not.

6 MR. STEPHENSON: I certainly want her to
7 take information from the document that provides the
8 basis for her opinion --

9 MS. PHARR: She can --

10 MR. STEPHENSON: -- I'm not asking her to
11 generate the information. I'm asking her to assume
12 the information that has been provided to her
13 is -- is genuine information.

14 BY MR. STEPHENSON:

15 Q Mrs. Corrigan, would you proceed to -- to
16 respond to the question that was pending about the
17 significance of the entry in the document that
18 indicated Mrs. Overton was found on the street, you
19 know, wandering --

20 MS. PHARR: Objection.

21 MR. STEPHENSON: -- at that time?

22 MS. PHARR: Objection; hearsay.

23 THE WITNESS: My opinion is that the

1 documents.

2 MS. DULEY: Uh-huh.

3 MR. STEPHENSON: And I want to have this
4 witness not have to verify the information in the
5 document. And I'm not asking her to do that. And
6 none of my questions are having her determine the
7 accuracy of the documents, but what they show is
8 very significant to the witness expressing her
9 opinions so --

10 MS. PHARR: Well, Bev, that -- that may
11 very well be true, but the information contained in
12 those documents is hearsay. And unless you can
13 present a witness that will take them out of the
14 realm of hearsay, they're hearsay. And all this
15 testimony is hearsay.

16 You can ask her what her opinions are and
17 what the basis of her opinions are. But she cannot
18 testify about what is in these medical records.
19 That is hearsay.

20 As an expert witness she is here to give
21 her opinions, not to authenticate documents that she
22 cannot authenticate.

23 MR. STEPHENSON: I'm not asking the

1 asked her to do, as to identify --

2 MS. PHARR: That is hearsay.

3 MR. STEPHENSON: -- what items in the
4 document that she found significant in
5 her -- forming opinions that she has formed.

6 MS. DULEY: You can ask her, her opinions.
7 She cannot read the document into evidence.

8 BY MR. STEPHENSON:

9 Q Well, what is the significance of the
10 entry that she was found wandering outside the
11 facility --

12 MS. DULEY: Objection; not relevant.

13 MS. PHARR: Objection; hearsay.

14 MR. STEPHENSON: Proceed. They're very
15 relevant. And we have to assume --

16 THE WITNESS: My opinion is --

17 MR. STEPHENSON: Let me stop a moment.

18 MS. DULEY: Let's stop the record.

19 MR. STEPHENSON: I have the continuing
20 hearsay objection to documents that have been
21 provided by Heritage Hall in the discovery process
22 and have been produced as documents that purported
23 to be in response to the request for production of

1 MS. DULEY: Objection; not relevant.

2 THE WITNESS: -- that this patient --

3 MS. DULEY: And hearsay.

4 THE WITNESS: -- wandered out of the
5 facility --

6 MR. STEPHENSON: Proceed.

7 THE WITNESS: -- at 9:00 o'clock -- she
8 fell at 5:00. She wandered out of the facility and
9 was found on Sixth Street, again, bringing into
10 question her cognitive state at that time.

11 The next entry that is a trigger is that
12 this patient again fell at 10:00 on the 21st --

13 MS. DULEY: I've got a continuing
14 objection to this witness reading a document --

15 MS. PHARR: Same objection.

16 MS. DULEY: -- that she did not write.

17 MR. STEPHENSON: I -- the witness is
18 testifying pursuant to my question --

19 MS. DULEY: No. She is reading the
20 document.

21 MR. STEPHENSON: -- what is
22 significant -- well, she is picking up items that
23 are contained in the document, which is -- I've

1 that comes out is the note about her first fall,
2 which occurred at 5:10 a.m. on the 20th.

3 BY MR. STEPHENSON:

4 Q The 20th of January?

5 A Yes.

6 Q '95?

7 A Right. That she was -- and it just
8 describes where she was --

9 Q May -- may I stop you?

10 A Yes.

11 Q And ask you, you know, how you discern
12 that that is the time? Is that based on the --

13 A It's based on the entry in the chart, in
14 the record that I have in front of me.

15 Q And assuming that the entry was made
16 accurately, you look at the chart to determine, you
17 know, the time as well as the description of what
18 occurred?

19 A The time, the date and the description.
20 There is a follow-up that she was seen regarding the
21 fall, at -- by her -- by her physician at that -- on
22 that date, which was the 20th of January. There is
23 also a late entry --

1 that counsel is --

2 MS. PHARR: Can I see that again?

3 MR. STEPHENSON: -- severely mistaken
4 in --

5 MS. PHARR: I may be. And let me refresh
6 my memory.

7 I'll withdraw my objection except for the
8 hearsay objection.

9 THE WITNESS: I'm sorry. Could you repeat
10 the -- ask that question again?

11 BY MR. STEPHENSON:

12 Q Mrs. Corrigan, with regard to the nurses'
13 notes that are the subject of exhibit nine, do you
14 have an opinion with regard to entries in the
15 nurses' notes covering the period of residence of
16 Mrs. Overton at Heritage Hall Nursing Home with
17 regard to her condition?

18 A Yes. The admitting note mentions again
19 that the patient was in altered mental status and
20 that she was incontinent of bowel --

21 MS. DULEY: Objection; hearsay.

22 THE WITNESS: -- and bladder. It also, as
23 you go through the -- the record, the next thing

1 MS. DULEY: Objection. Do you want her to
2 read the documents or do they speak for themselves?

3 MR. STEPHENSON: I will allow the document
4 to speak for itself.

5 BY MR. STEPHENSON:

6 Q But as you have found entries in the
7 document that are significant to you, I ask you
8 whether you have an opinion or not as to whether or
9 not there are significant references in the
10 document?

11 MS. PHARR: Objection. This witness was
12 not proffered as anything other than a nursing care
13 specialist. She was not proffered to give any
14 opinions based on any doctors' progress notes.
15 Therefore, this is outside of the scope of her
16 proffer and outside the scope of her designation.

17 THE WITNESS: I'm not looking at --

18 MR. STEPHENSON: Counsel, she is not
19 examining for your information --

20 THE WITNESS: -- looking at doctors' --

21 MR. STEPHENSON: -- let me respond.

22 -- doctors' progress notes. She is
23 examining nurses' notes that are this exhibit so

1 has been marked as plaintiff's exhibit number nine.
2 And I represent to you that this sequence of
3 documents is labeled nurses' notes under the
4 Heritage Hall label, beginning with the date of
5 1-4-95 and with the last date being 1-31-95.

6 I represent to you that these are
7 documents that were produced in the course of this
8 litigation by Heritage Hall, the defendant. And I
9 want you to assume that they were, you know,
10 produced as records of Lucille Overton as she was a
11 resident in the nursing home of Heritage Hall during
12 that period and ask you if you have -- ask you
13 whether or not you have seen this document and
14 it's --

15 A (Witness is reviewing the document.)

16 Yes, I have.

17 Q And tell me what is contained in the
18 document.

19 MS. PHARR: Objection; hearsay.

20 THE WITNESS: This document contains an
21 admission note. And then daily notations on various
22 shifts, talking about her mental status, her -- what
23 some of her vital signs if --

1 THE WITNESS: The significance is
2 that the patient was a risk patient
3 that -- this -- basically, what this does to me is,
4 it bolsters the risk assessment for falls, because
5 she has now fallen on the 20th, and then she
6 now -- and then she fell again on the 21st.

7 So it just is a further indication that
8 this patient was at a high risk for falls.

9 BY MR. STEPHENSON:

10 Q And that she had in fact --

11 A And that she had in fact fallen.

12 Q -- fallen?

13 MR. STEPHENSON: I offer this in evidence.

14 MS. PHARR: Objection; hearsay.

15 MS. DULEY: Object to hearsay.

16 MR. STEPHENSON: This is the nurses'
17 notes.

18 (Pleading's Exhibit No. 9 was previously
19 marked for Identification.)

20 (Opposing counsel are reviewing the
21 documents.)

22 BY MR. STEPHENSON:

23 Q Mrs. Corrigan, I will show you now what

1 Q Okay.

2 A And -- so I -- so I trust the
3 record --

4 Q Okay.

5 A -- I don't trust the record.

6 Q That's fine.

7 Mrs. Overton's first complaint of hip pain
8 was not until January 31st, isn't that correct?

9 A I have no idea. She had pain after the
10 fall.

11 Q Doctor, do you -- can you show me in the
12 record any -- any complaint of hip pain prior to
13 January 31st, 1995?

14 Take your time.

15 Can you show me anywhere prior to
16 January 31st?

17 A I think it's not worth answering really.

18 Q Okay. Because -- it's nowhere in the
19 document.

20 A Where did the fracture come from on the
21 31st, out of the clear sky while she was lying on
22 the bed?

23 MR. NEWSOME: I move to strike.

1 BY MR. NEWSOME:

2 Q Doctor, you --

3 A I think it's in the record, but whatever.

4 Q Well, Doctor, you keep stating

5 that -- that Mrs. Overton was bedridden and that she

6 couldn't do anything --

7 A After the fall.

8 Q -- from the time of those falls. Well,

9 Doctor --

10 A After the fall.

11 Q -- if you look at -- isn't it true that on

12 January 25th, 1995, Mrs. Overton was alert? She was

13 up in her wheelchair, isn't that true?

14 A If it's in the record.

15 Q Okay. Isn't it true that as late as

16 January 28th, 1995, Mrs. Overton was alert. She was

17 up in a wheelchair, is that correct?

18 A What is this all going to prove?

19 Q Isn't that true, Doctor?

20 A If it's in the record, but what's

21 all -- what difference does it make? A diagnosis

22 was missed --

23 Q Doctor --

1 A -- of a broken hip, was missed.

2 Q Doctor, isn't it true that as late as
3 January 29th, 1995, Mrs. Overton was alert, up in a
4 wheelchair, rolling herself around?

5 MR. Stephenson: Objection. Where -- show
6 him where that is.

7 BY MR. NEWSOME:

8 Q Isn't that true?

9 Do you want to see it, Doctor?

10 It's in the medical records --

11 MR. Stephenson: No. Show me where it is.

12 MR. NEWSOME: -- January 29th, 1995, at
13 0800, alert, up in wheelchair, rolling self around.

14 BY MR. NEWSOME:

15 Q Isn't that what the record states, Doctor?

16 A It doesn't mean a thing to me.

17 Q It doesn't mean a thing to you.

18 And it states that there was no distress
19 noted, isn't that correct?

20 MR. Stephenson: No. Show him where
21 that --

22 BY MR. NEWSOME:

23 Q Isn't that correct, Doctor?

1 A Say what?

2 Q And it states, no distress noted, on
3 January 29th, 1995, that's what it shows, isn't that
4 correct?

5 A Yeah. There are all kinds of things that
6 show -- and not show.

7 Q And in fact, Doctor, it states that on the
8 29th -- January 29th, 1995, Mrs. Overton ate
9 one-hundred percent of her breakfast and she drank
10 all of her liquids, isn't that correct?

11 A If it's in the record.

12 Q And it states that also on January 29th,
13 that she ate one-hundred percent of her lunch and
14 that she drank all of her liquids, isn't that
15 correct?

16 A If you say so -- or the record say so.

17 Q Okay. Doctor --

18 A Where did this bright, young intern come
19 from that --

20 Q Doctor --

21 A -- immediately after examining her ordered
22 an X-ray?

23 MR. NEWSOME: I move to strike this

1 doctor's testimony.

2 THE WITNESS: Yes, I believe that.

3 MR. Stephenson: Okay. Just answer his
4 questions.

5 MR. NEWSOME:

6 Q Doctor, you -- you've -- you've, at least,
7 attempted to give some testimony regarding
8 causation. Isn't it true that you have no training
9 as an orthopedic surgeon?

10 A (No response.)

11 Q Isn't that true, Doctor?

12 A That's true.

13 Q Okay. Isn't it true you have no
14 certification whatsoever as an orthopedic surgeon?

15 A You know what you suffer from --

16 Q Is that true, Doctor?

17 A -- do you know what you suffer from --

18 MR. Stephenson: No.

19 THE WITNESS: -- you suffer from the
20 Wizard of Oz syndrome. You have to have a paper on
21 the wall to know what you are doing. That causes
22 the people and the patients to rising medical costs
23 that they cannot afford.

1 I have treated hundreds of broken bones
2 over the years in the emergency department.
3 And -- and I need a paper on the wall to prove that
4 I'm competent to do that?

5 BY MR. NEWSOME:

6 Q Doctor, isn't it true that you have no
7 certification --

8 A That's absolutely true.

9 Q -- whatsoever --

10 A That's absolutely true.

11 Q -- as an orthopedic surgeon?

12 A Yeah.

13 MR. Stephenson: Objection. He's not
14 proffering himself as an orthopedic surgeon.

15 BY MR. NEWSOME:

16 Q Isn't it true, Doctor, that you have not
17 performed a hip prosthesis in your career?

18 A Oh, come on. What a stupid question is
19 that?

20 Q Is that true, Doctor?

21 MR. Stephenson: We -- we'll so stipulate.

22 MR. NEWSOME: Well, look -- look, I'm
23 doing my examination here.

1 BY MR. NEWSOME:

2 Q Isn't it true, Dr. Leidelmeyer, that
3 you've never performed --

4 A I do know surgery.

5 Q You do know surgery?

6 A That's right.

7 Q And Dr. Leidelmeyer, isn't it true that a
8 physician complies with the standard of care if the
9 physician performs -- strike that.

10 After a nursing home patient falls, isn't
11 it true that a physician complies with the standard
12 of care, if the physician performs an examination
13 that includes flexion and extension of the knee?

14 A It wasn't done after the fall. It wasn't
15 done after the fall. There is nothing in the record
16 that it was done.

17 Q Doctor --

18 A Five days later.

19 Q Doctor, assume for me that a nursing home
20 patient --

21 A I don't assume anything.

22 Q Doctor, for purposes of this question --

23 A No.

1 Q Doctor, let me ask you this --

2 MR. Stephenson: Let him ask you the
3 question.

4 BY MR. NEWSOME:

5 Q If Dr. Fowler had performed an examination
6 that included flexion and extension of the knee
7 following the second fall, would that -- wouldn't
8 that have complied with the standard of care?

9 A No.

10 Q That wouldn't have complied with the
11 standard of care?

12 A No.

13 Q Well, Doctor, let's -- let's just look at
14 your deposition --

15 A I wouldn't dare to flexion, even if I
16 think there is a fractured hip.

17 Q You wouldn't?

18 A No.

19 Q Okay. Well, let's -- let's just look and
20 see what -- what you said in your sworn testimony
21 during your deposition, page 121, line 14:

22 "QUESTION: What examination should have
23 been performed on that occasion?

1 "ANSWER: She would have been lying on the
2 bed, all covers should have been removed -- I mean,
3 blankets, sheets, whatever. And they would have
4 looked at the legs. And they would have seen it if
5 it was broken.

6 "But then you could have just slightly
7 tried to rotate the leg back" --

8 A Correct.

9 Q "And the patient would have said if it had
10 been broken."

11 That's what you said should have been
12 done.

13 A It has nothing to do with the knee.

14 Q Well, we've admitted -- we've already
15 established, Doctor, haven't we --

16 A No.

17 Q -- that if you -- if you bend and --

18 A No. Not at all.

19 Q -- extend the knee --

20 A No. Absolutely not.

21 Q -- that you would expect to get some hip
22 pain.

23 A Not if I expect -- suspect a fractured

1 hip. I wouldn't flex that knee for anything.

2 Q But you would bend her leg back, is that
3 correct?

4 A No. No. Absolutely not.

5 MR. Stephenson: Objection. That's not
6 his testimony.

7 THE WITNESS: I have examined hundreds of
8 fractured knee -- hips. I would not bend the knee.
9 I can rotate the straight -- straighten leg, but not
10 flex the knee. (Indicating.)

11 BY MR. NEWSOME:

12 Q Oh, okay.

13 Well, Doctor, you were recently terminated
14 from your job at the Fairfax County Health
15 Department, isn't that right?

16 A No. No.

17 Q It's not true. Well, Doctor, let's look
18 at your --

19 A Yes. Yes, I was -- but I was not
20 terminated. The program had changed.

21 Q Well, Doctor, let's look at your sworn
22 testimony again. We seem to have a problem with you
23 telling the truth today.

1 MR. Stephenson: Objection.

2 MR. NEWSOME: Right.

3 MR. Stephenson: That's absolutely
4 unfounded.

5 BY MR. NEWSOME:

6 Q Page 158 of your sworn testimony, line 17:

7 "QUESTION: You were terminated, isn't
8 that correct?

9 "ANSWER: That's right."

10 That was your sworn testimony.

11 A No. No. No. That was not my testimony.
12 Because the program was changed and -- and -- and
13 the job -- the job was terminated.

14 MR. Stephenson: Counsel, if you read on,
15 I think he clearly explained that --

16 MR. NEWSOME: I would say, look --

17 MR. Stephenson: -- in the -- in the
18 deposition, so you are selecting that and then he
19 went on to --

20 MR. NEWSOME: I just -- move to strike.
21 Counsel, he's answering questions.

22 MR. Stephenson: Well, then --

23 MR. NEWSOME: His testimony is what it is.

1 BY MR. NEWSOME:

2 Q And Doctor --

3 MR. Stephenson: Then put the whole
4 deposition testimony --

5 MR. NEWSOME: You're being --

6 MR. Stephenson: -- in regarding that
7 subject into the record then.

8 MR. NEWSOME: Excuse me, Counsel. Excuse
9 me.

10 BY MR. NEWSOME:

11 Q And Dr. Leidelmeyer, you're being paid
12 \$500 an hour for your testimony here today, isn't
13 that right?

14 A If you pay me. I'm sure it's going to be
15 pulling teeth. But if you pay me, then it's \$500 an
16 hour.

17 Q You're being paid \$500 for the testimony
18 you're giving today?

19 A I haven't seen a check yet.

20 Q Is that correct?

21 A Yes.

22 MR. NEWSOME: I have no more questions for
23 this witness.

1 MR. Stephenson: Dr. Leidelmeyer --

2 MS. DULEY: Bev, I briefly have a couple
3 questions.

4 MR. Stephenson: Oh, excuse me.

5 I was acting on your saying you didn't
6 intend to ask any.

7 BY MS. DULEY:

8 Q Mrs. Overton had a respiratory infection
9 from January 25th to January 31st, correct?

10 A That's what I said. She was
11 deteriorating, yes.

12 Q Okay. So the respiratory infection had
13 nothing to do with the broken hip, correct?

14 A I don't say -- she was bedridden
15 and -- because of -- of circulatory problems in
16 a -- in debilitated patients pneumonia is a very
17 common complication.

18 Q So with the respiratory infection, you
19 would expect her not to feel good, correct?

20 A It's up to her.

21 Q You would --

22 A She was debilitated. You cannot trust her
23 statements.

1 Q She was prescribed antibiotics for the
2 respiratory infection, correct?

3 A If the record says so.

4 Q She had a cough that was positive for dark
5 yellowish sputum, correct?

6 A Sputum, yes.

7 Q Sputum.

8 MS. DULEY: I don't have any further
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. Stephenson:

12 Q Following up on that, Dr. Leidelmeyer, if
13 a patient is generally lying in bed following a
14 fracture, is the respiratory infection one of the
15 complications that can occur?

16 A Very well possible. With poor
17 circulation, people -- debilitated patients lying in
18 bed, pulmonary problems are very common.

19 Q And is a part of the -- the deterioration?

20 A Oh, absolutely.

21 Q I want to direct your attention now to
22 exhibit 15 and the nurses' notes on the -- the 20th
23 and directing your attention to the note on the

1 21st. Is there any entry related to whether or not
2 there was a complaint of pain?

3 A Leg pain -- left leg pain.

4 MS. DULEY: Objection.

5 THE WITNESS: Hearsay -- hearsay this
6 time?

7 MR. Stephenson: No. Now, Doctor, it's
8 all right. Just answer my questions.

9 THE WITNESS: Oh. Okay.

10 BY MR. Stephenson:

11 Q I want you -- and do you note the time on
12 the record that that occurred?

13 MS. DULEY: Objection.

14 BY MR. Stephenson:

15 Q Can that -- can you tell from that -- on
16 the 21st?

17 A 9:05, the 21st.

18 Q Now, I want you to look at another entry
19 on the 21st. And I point to that one. And
20 is -- that entry was made at what time?

21 A 1450.

22 MS. DULEY: Continuing objection. He
23 cannot read from the medical record.

1 BY MR. Stephenson:

2 Q All right. Is there some entry on --

3 A Complaining of left-sided pain.

4 MS. DULEY: Objection.

5 BY MR. Stephenson:

6 Q I direct your attention to an entry on the
7 22nd of January.

8 A Complaining of left leg pain --

9 MS. DULEY: Continuing objection. He
10 cannot --

11 THE WITNESS: -- the 22nd.

12 MS. DULEY: -- excuse me. I would like to
13 get my objection on the record.

14 It is hearsay. He cannot read from the
15 record.

16 MR. Stephenson: All right.

17 THE WITNESS: Which part of the record is
18 hearsay?

19 MR. Stephenson: Let me -- no. Let
20 me -- that's -- all right. Let me respond to that.

21 Counsel, this is proper redirect
22 examination on the inquiry made of the witness
23 regarding, do you find any entries related to her

1 having complained of pain or there being pain, any
2 pain association --

3 MR. NEWSOME: Well, let me -- let me
4 just -- just -- I make an objection. This is
5 improper redirect.

6 The issue was whether or not there was any
7 entry in the record of any left hip pain prior to
8 January 31st, 1995. And that was the question.

9 The question -- the issues that you're
10 getting into were not really dealt with in the
11 direct. This is improper redirect.

12 If you find anywhere where there is
13 an -- a complaint of left hip pain prior to the
14 31st, I would appreciate it if your -- if Mr. -- if
15 Dr. Leidelmeyer could show it to us.

16 MR. Stephenson: That's what I'm trying to
17 elicit from him.

18 MR. NEWSOME: Well, show me left hip pain.

19 BY MR. Stephenson:

20 Q Dr. Leidelmeyer, when you -- how do you
21 describe the pain associated with a broken hip?

22 A It can be all over the leg.

23 Q And is a -- left leg pain consistent with

1 a manifestation of pain --

2 A Trauma to the left leg, yes. Sure.

3 Q Is that -- do you have an opinion as to
4 whether or not that would indicate to you some
5 problem with -- with the hip?

6 A As I said --

7 MR. NEWSOME: Excuse me. I'd just object
8 as this being, again, outside of the scope of this
9 witness' --

10 THE WITNESS: Can I answer?

11 MR. NEWSOME: Excuse me, Doctor. Excuse
12 me, Doc. --

13 MR. Stephenson: No. No. Wait until he
14 finishes objecting.

15 MR. NEWSOME: Again, my objection is, this
16 is outside the scope of this witness' proffered
17 testimony.

18 And it's also outside of the scope
19 of -- of the -- of the cross-examination. So this
20 is improper redirect. And I will move to strike.

21 BY MR. Stephenson:

22 Q Would you proceed to answer over his
23 objection?

1 A Repeat the question.

2 Q The question was whether or not you have
3 an opinion as to the nature of pain that would
4 emanate from a fractured hip.

5 MR. NEWSOME: Same objection.

6 THE WITNESS: Of a debilitated 77-year-old
7 after a fall, the pain can be anywhere along the
8 leg.

9 BY MR. Stephenson:

10 Q And do you have an opinion as to whether a
11 notation related to complaint of left leg pain would
12 relate to --

13 MR. NEWSOME: Same objection.

14 THE WITNESS: Yes. Trauma to the left
15 leg.

16 BY MR. Stephenson:

17 Q With regard to the overall physical
18 condition and mental condition of Mrs. Overton as a
19 patient suffering from a fractured hip resulting
20 from a fall, do you have an opinion as to whether or
21 not the patient would have the capability of fully
22 expressing the manifestations of pain?

23 MR. NEWSOME: I would just object --

1 THE WITNESS: I doubt it.

2 MR. NEWSOME: -- object as to it being
3 outside of the scope of the testimony.

4 THE WITNESS: I doubt it.

5 BY MR. Stephenson:

6 Q If you --

7 A I think she -- she already from the
8 initial transfer -- she was transferred because she
9 was mentally and physically not capable to function
10 properly.

11 THE WITNESS: Can I make a phone call?

12 Is this going to take any longer?

13 MR. Stephenson: No. No -- just -- we're
14 about through, Doctor.

15 BY MR. Stephenson:

16 Q With regard to examination and diagnosis
17 of person's with fractures, is the treatment after
18 the discovery of a fracture rendered by surgeons or
19 rendered by those who examine and care --

20 A It depends on the fracture. A fractured
21 finger is treated by the -- usually by the one who
22 finds it. A fractured hip is going to a surgeon.
23 Most fractured -- fractures of -- of extremities go

1 to orthopedic surgeons.

2 Fractures of the spine go to
3 neurosurgeons.

4 Q And is that --

5 A They're all referred out, but minor
6 fractures can sometimes be taken care of. But they
7 have to be minor. No.

8 Q But you detect the fractures, and then
9 send them to the specialist?

10 A Refer them, yes.

11 If this has happened to the patient at
12 home, an ambulance would have been called. And she
13 would have gone to the emergency department.

14 Q And that's what ultimately was done with
15 Mrs. Overton?

16 A That's right. Immediately --

17 Q When -- well --

18 A -- after the new doctor came.

19 Q All right.

20 MR. Stephenson: I wanted to offer all the
21 exhibits marked in evidence.

22 MR. NEWSOME: And those -- I object as
23 hearsay.

1 I have a few quick follow-ups.

2 RECROSS-EXAMINATION

3 BY MR. NEWSOME:

4 Q Dr. Leidelmeyer, in the record, it's
5 pretty clear that when Mrs. Overton had a complaint
6 of left leg pain, she voiced that complaint to the
7 nursing staff, isn't that correct?

8 A I have no idea.

9 Q You've reviewed the records, haven't you,
10 Doctor?

11 A Well, that's hearsay you said -- you
12 repeated it -- the record said that.

13 Q But Doctor, don't -- isn't it true that
14 the records reflect that when Mrs. Overton had a
15 complaint of left knee pain --

16 A Left leg pain.

17 Q Left knee pain -- left leg pain --

18 A Left leg pain. Yeah. You -- you
19 specifically said that your question was referred to
20 knee and so Mr. Stephenson couldn't ask about the
21 hip.

22 Q Doctor --

23 A We are talking about left leg pain.

1 Q In all due respect, Dr. Leidelmeyer --

2 A Yes. Please.

3 Q -- I'd be -- most appreciate if you would
4 allow the lawyers to be lawyers and if you would
5 continue to be a physician, which is why you're here
6 today.

7 Doctor, isn't it true that when
8 Mrs. Overton had complaints of left leg pain, she
9 voiced those complaints to the nursing home staff?

10 A Probably.

11 Q Okay. And is it true that on the 31st,
12 when Mrs. Overton had complaints of left hip pain,
13 she voiced that to Dr. Damewood, who is a resident?

14 A I don't know about that.

15 MR. Stephenson: Objection. If you would
16 refer to that, we would appreciate it.

17 MR. NEWSOME: I don't -- I don't need to
18 do that. I believe my --

19 BY MR. NEWSOME:

20 Q Assume, Doctor, that --

21 A No.

22 Q Assume, Doctor, that -- that Mrs. Overton
23 had voiced her left hip pain on the 31st, as she had

1 her left leg pain --

2 MR. Stephenson: Objection. That's not
3 having anything --

4 THE WITNESS: I don't assume anything.
5 She is confused.

6 MR. Stephenson: Well, Doctor, wait.
7 Doctor -- no.

8 THE WITNESS: He's asking me the
9 questions. Go ahead. I'm sorry.

10 MR. Stephenson: I want to state my
11 objection. Hold it, please.

12 Object to the inquire as lacking
13 foundation.

14 MR. NEWSOME: That's fine, Counsel.

15 MR. Stephenson: There seems to be no
16 predicate for, you know, that in terms of any
17 expression to -- of -- of Mrs. Overton on the 31st.

18 All right. Go ahead and answer his
19 question over my objection.

20 THE WITNESS: I did.

21 BY MR. NEWSOME:

22 Q Doctor, as you look at January 31st, at
23 10:00 a.m., it says, "patient complain of pain."

1 And it goes on to say, "pelvic/left hip area."

2 Do you see that, Doctor?

3 Mrs. Overton -- isn't it true that
4 Mrs. Overton when she actually had a complaint of
5 left hip pain on the 31st, actually voiced that
6 complaint to the physician who -- who actually
7 examined her on the January 31st, 1995, isn't that
8 true, Doctor?

9 A And lo and behold, an old fracture was
10 found.

11 MR. Stephenson: No -- if you know.

12 BY MR. NEWSOME:

13 Q Doctor, let me ask you this one more time.
14 Isn't it true that when Mrs. Overton experienced
15 left hip pain on the 31st of January, she voiced
16 that complaint to the physician who --

17 A That's what the record says, yes.

18 Q -- examined her.

19 Thank you, Doctor.

20 And Doctor, you're aware that Mrs. Overton
21 smoked a half-a-pack of cigarettes for 55 years?
22 Are you aware of that?

23 A So what? So what?

1 Q Are you way of that, Doctor?

2 A No.

3 Q Well, Doctor, let me show you in her
4 history and physical it states, "used to smoke
5 half-a-pack a day for 55 years."

6 A So she did well.

7 Q Okay. And then -- you're also aware,
8 aren't you, Doctor, that the month before,
9 Mrs. Overton presented to Heritage Hall that she had
10 suffered respiratory failure following a surgical
11 procedure?

12 A If the record says that, that's the way it
13 was.

14 Q So the fact that Mrs. Overton suffered a
15 respiratory infection while she was at Heritage Hall
16 is not surprising, isn't that correct?

17 A Now we know where the fractured hip came
18 from --

19 Q Isn't that correct, Doctor?

20 A -- from smoking.

21 Q Isn't that correct, Doctor?

22 A I have no idea really.

23 MR. NEWSOME: Okay. I have no more

1 questions for this witness.

2 THE WITNESS: Good.

3 MR. Stephenson: No further questions.

4 THE VIDEOGRAPHER: That concludes the
5 deposition. We're going off the record at
6 approximately 12:04.

7 (The deposition was concluded at
8 12:04 o'clock, p.m.)

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Accurate Stenotypists, Inc.
Ron Johnson, President
P. O. Box 485, Fairfax, VA 22030
Phone: 703-691-0480

Date: 5-9-01

This deposition is being filed with the court and/or attorney who noticed the deposition for the following reason(s):

____ Deponent was given timely notice that the deposition was ready for signature at our office. Deponent did not appear, nor did we receive a notification that more time was needed to accomplish this. (See attached notice to deponent)

____ Deponent was sent a copy of the deposition to read, sign and return to us. The deposition was not returned to us.

✓ Deposition was reported/transcribed so near the trial date, it was not possible to give the witness timely notice to read and sign the deposition.

ACCURATE STENOTYPISTS, INC.

BY: R. Johnson

(703) 691-0480
(800) 257-1522
(703) 591-0340 FAX

Notaries for Virginia, Maryland, and D.C.

ACCURATE STENOTYPISTS, INC./RON JOHNSON REPORTERS

P.O. Box 485
Fairfax, Virginia 22030
May 3, 2001

Ronald E. Johnson, CSR
President

REINALD LEIDELMEYER, M.D.
c/o BEVERLY GRAY STEPHENSON, ESQUIRE
B. G. Stephenson, Ltd.
Inns of Court
4157 Chain Bridge Road
Fairfax, VA 22030

Dr. Leidelmeyer:

Re: OVERTON VS. BLACKSTONE, CC OF NOTTOWAY, CL-031

Your deposition has been transcribed and is ready for reading and signing by you, as requested, at our office in Fairfax (or if your deposition was taken in D.C., it may be read and signed there.)

Read the deposition and make the necessary corrections or changes on the enclosed errata sheet -- or on a separate sheet. Please do not write on the original transcript.

If it is not convenient to come to our office, your attorney may have you read his copy of your deposition, in which case you should complete the errata sheet on the reverse side of this letter, sign it, and return it to the above address promptly. It will then be attached to your deposition before it is filed as an official court document. A copy of your corrections, if any, will be provided to all counsel of record.

PLEASE CALL THE OFFICE TO MAKE AN APPOINTMENT BEFORE COMING TO
READ YOUR DEPOSITION.

If we do not hear from you in 21 days of the date hereon (or three days before the trial date, whichever occurs first), the unsigned original transcript with a copy of this letter attached will be filed with the court at this time.

Your prompt attention to this is requested.

ACCURATE STENOTYPISTS, INC.
RON JOHNSON REPORTERS

BY: R. Johnson

AFFIDAVIT OF DEPONENT

I have read the foregoing _____ pages, which contain a correct transcript of the answers made by me to the questions therein recorded.

REINALD LEIDELMEYER, M.D.

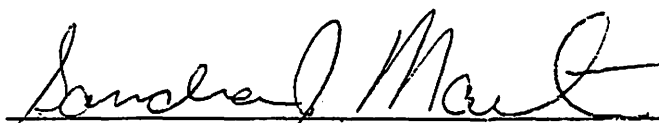
Subscribed and sworn to before me this _____ day of _____, 2001, in _____, _____.

Notary Public in and for the _____ of _____

My Commission Expires:

CERTIFICATE OF NOTARY PUBLIC

I, Sandra J. Martin, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me by machine shorthand and thereafter reduced to typewriting by myself; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Sandra J. Martin, Notary Public for
the Commonwealth of Virginia

My Commission Expires:
May 31, 2004

SUBPOENA FOR WITNESS (CIVIL) -

ATTORNEY ISSUED VA. CODE §§ 8.01-407, 16.1-265; Supreme Court Rules 1:4; 4:5;
Commonwealth of Virginia

Case No.: CL-031

.....
HEARING DATE AND TIME

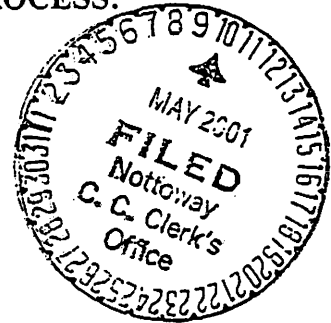
County of Nottoway Circuit Court, P.O. Box 25, Nottoway, Virginia

Estate of Lucille P. Overton v. Blackstone Family Practice, Inc., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Paul E. Evans, M.D.
310 Maxwell Lane
Newport News, VA 23606



TO the person summoned: You are commanded to appear

- ☐ in the Circuit Court of Nottoway County
- ☐ at 328 W. Courthouse Road, Nottoway, Virginia

on May 18, 2001 at 9:00 A.M. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of Charles I. Rosenbaum, M.D.

Kelvin Newsome, Esquire (VSB: 34478)
S. Elizabeth Pharr, Esquire (VSB: 44439)
707 East Main Street, 11th Floor
Richmond, VA 23219 (804) 783-7536

04/30/01

DATE ISSUED

S. Elizabeth Pharr
SIGNATURE OF ATTORNEY

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME:

ADDRESS:

☐ **PERSONAL SERVICE**

Tel.

No.

Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:

☐ Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

☐ not found

....., Sheriff

By....., Deputy Sheriff

DATE

CERTIFICATE OF COUNSEL

I, S. Elizabeth Pharr, Esquire, counsel for Charles I. Rosenbaum. M.D., hereby certify that a copy of the foregoing subpoena for witness was mailed to B. G. Stephenson, Esquire, Inns of Court, 4157 Chain Bridge Road, Fairfax, Virginia 22030, counsel of record for plaintiff and Lisa Kent Duley, Esquire, Denton & Fiscella, 6630 W. Broad Street, Suite 290, Richmond, Virginia 23230 counsel of record for co-defendant HCMF Corporation, on the 30th day of April, 2001.



SIGNATURE OF ATTORNEY

The Marston Agency, Inc.

5/ 2/01

P. O. Box 29940
Richmond, VA 23242
(800) 308-7790 - (804) 784-0111 (Richmond)

RETURN ON SERVICE

Plaintiff: Estate of Lucille P. Overton
Defendant: Blackstone Family Practice, Inc., et al
Serve: Paul E. Evans, MD
310 Maxwell Lane

Court: Nottoway Circuit Court
Case: CL-031
Return Date: 5/18/01
Return Time: 09:00 AM

Contact: Newport News, VA 23606
LeClaire Ryan, PC
707 East Main Street
11th Floor
Richmond, VA 23219

Phone: 7577832003

Type(s) of Writs

(R205535)

Witness Subpoena

Witness/Defendant Paul E. Evans, MD was served according to law, as indicated below:

- () By delivering a copy of the above described process in writing to him/her in person.
() Being unable to make personal service and not finding the above mentioned person at his/her usual place of abode by delivering a copy of the said process and giving information of it's purport at his usual place of abode to _____ who is member of his/her family and is the _____ of the above mentioned person, other than a temporary sojourner or guest, and who is the age of 16 years or older.
(X) Being unable to make a personal service and not finding the above mentioned person at his/her usual place of abode nor any member of his/her family the age of 16 years or older at said abode by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode.
() At usual place of business or employment during business hours, by delivering the above specified paper(s) and giving information of it's purport to the person found there in charge of such business or place of employment. Name of person I found in charge: See Remarks
() Copy mailed to judgement debtor on the date below after serving the garnishee unless a different date is shown below.
() Certified Mail
() Not found
() Served on Secretary of the Commonwealth

I, Ronald E. Barnett hereby certify under penalty of perjury that I am over the age of 18 and not a party or otherwise interested in the subject matter in controversy.

Served Date: 5-4-01 Served Time: 1422

[Signature]
Signature of Process Server

Notary

State of: VA County/City of: Henri

I, the undersigned, a Notary Public in and for the above-mentioned jurisdiction, hereby certify that before me appeared the Process Server, who, under oath, stated that service was made as stated above. Sworn and subscribed before me this 8 day of May 2001

[Signature]
Notary Public

My Commission Expires: 8/31/03

Type of Service: A Auth. Attempts: 1 Order: RR30736 1 Day Rush: No 2 Day Rush: No
Attempts -1- -2- -3- -4- -5- -6-

Date:						
Time:						

SUBPOENA FOR WITNESS (CIVIL) -

ATTORNEY ISSUED VA. CODE §§ 3.01-407; 16.1-265; Supreme Court Rules 1:4, 4:5
Commonwealth of Virginia

Case No.: CL-031

MAY 18, 2001 10:00 a.m.
HEARING DATE AND TIME

COUNTY OF NOTTOWAY CIRCUIT COURT Court

328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA (Box 25, Nottoway, Virginia)

ADDRESS OF COURT

OVERTON, ESTATE OF LUCILLE P. v. ~~BLACKSTONE~~ BLACKSTONE FAMILY PRACTICE, INC., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Betty Pomfrey c/o HERITAGE HALL

NAME

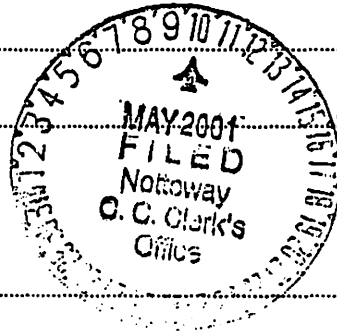
900 SOUTH MAIN STREET

STREET ADDRESS

BLACKSTONE, VIRGINIA

CITY

STATE



ZIP

TO the person summoned: You are commanded to appear

☒ in the NOTTOWAY COUNTY CIRCUIT Court

☒ at 328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA

ADDRESS (DEPOSITION USE IN CIRCUIT COURT ONLY)

on FRIDAY, MAY 18, 2001 at 10:00 A.m. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of

OVERTON, ESTATE OF LUCILLE P.

PARTY NAME

B.G. STEPHENSON

NAME OF ATTORNEY

8098

VIRGINIA STATE BAR NUMBER

4157 CHAINBRIDGE ROAD

OFFICE ADDRESS

703 591-2470

TELEPHONE NUMBER OF ATTORNEY

FAIRFAX, VIRGINIA 22030

OFFICE ADDRESS

~~703 591-2470~~ (703) 359-0638

FACSIMILE NUMBER OF ATTORNEY

MAY 7, 2001

DATE ISSUED

B.G. Stephenson
SIGNATURE OF ATTORNEY

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of the court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME: <u>Betty Pomfrey do Heritage Hall</u>	
ADDRESS: <u>900 S. Main St.</u> <u>Blacksburg VA 23224</u>	
<input checked="" type="checkbox"/> PERSONAL SERVICE	Tel. No. _____
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above: _____	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> not found	<u>L. J. Parrish</u> , Sheriff
<u>9 May 01</u> DATE	by <u>R. L. Jones</u> , Deputy Sheriff

CERTIFICATE OF COUNSEL

I, B.G. STEPHENSON, counsel for OVERTON, ESTATE OF LUCILLE P., hereby certify

that a copy of the foregoing subpoena for witness was mailed, first-class, postage prepaid
DELIVERY METHOD
KELVIN NEWSOME / S. ELIZABETH PHARR
to and LISA KENT DULEY, counsel of record for DEFENDANTS

on the 7th day of May, 2001
[Signature]
SIGNATURE OF ATTORNEY

B.G. STEPHENSON

SUBPOENA FOR WITNESS (CIVIL) -

Case No.: CL-031

ATTORNEY ISSUED VA. CODE §§ 8.01-407; 16.1-265; Supreme Court Rules 1:4, 4:5
Commonwealth of Virginia

MAY 18, 2001

10:00 AM

HEARING DATE AND TIME

COUNTY OF NOTTOWAY CIRCUIT COURT

Court

328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA (Box 25, Nottoway, Virginia)

ADDRESS OF COURT

OVERTON, ESTATE OF LUCILLE P.

v. ~~XXXX~~

BLACKSTONE FAMILY PRACTICE, INC., et al

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

LORETTA PARRISH c/o HERITAGE HALL

NAME

900 SOUTH MAIN STREET

STREET ADDRESS

BLACKSTONE

VIRGINIA

23824

CITY

STATE

ZIP

TO the person summoned: You are commanded to appear

☒ in the NOTTOWAY COUNTY CIRCUIT☒ at 328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA

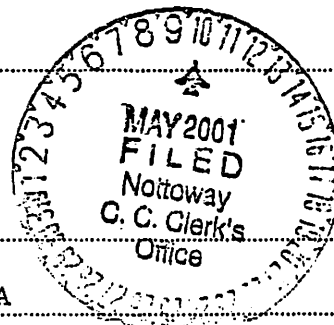
ADDRESS (DEPOSITION USE IN CIRCUIT COURT ONLY)

FRIDAY

MAY 18th

10:00 A

on _____, _____ at _____ m. to testify in the above-named case.



This subpoena is issued by the attorney for and on behalf of

OVERTON, ESTATE OF LUCILLE P.

PARTY NAME

B.G. STEPHENSON

8098

NAME OF ATTORNEY

VIRGINIA STATE BAR NUMBER

4157 CHAINBRIDGE ROAD

703 591-2470

OFFICE ADDRESS

TELEPHONE NUMBER OF ATTORNEY

FAIRFAX, VIRGINIA 22030

~~703 591-2470~~ (703) 359-0638

OFFICE ADDRESS

FACSIMILE NUMBER OF ATTORNEY

MAY 7, 2001

DATE ISSUED

SIGNATURE OF ATTORNEY

B.G. STEPHENSON

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

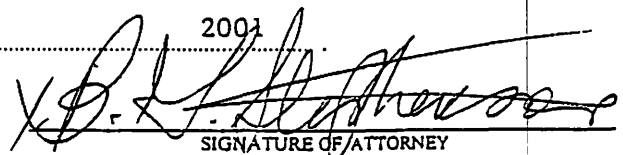
If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of the court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME: <u>Loretta Parrish / 100 Highway Hall</u>	
ADDRESS: <u>Blackstone 900 S. Main St</u> <u>Blackstone VA 23824</u>	
<input checked="" type="checkbox"/> PERSONAL SERVICE	Tel. No. _____
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above: _____	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> not found	<u>L. J. Parrish</u> , Sheriff
<u>9 May 01</u> DATE	by <u>R. L. T.</u> , Deputy Sheriff

CERTIFICATE OF COUNSEL

I, B.G. STEPHENSON, counsel for OVERTON, ESTATE OF LUCILLE P., hereby certify that a copy of the foregoing subpoena for witness was mailed, first-class, postage prepaid DELIVERY METHOD KELVIN NEWSOME / S. ELIZABETH PHARR to and LISA KENT DULEY, counsel of record for DEFENDANTS on the 7th day of MAY, 2001.


SIGNATURE OF ATTORNEY

B.G. STEPHENSON

2001-05-10-034
003

SUBPOENA FOR WITNESS (CIVIL) -

ATTORNEY ISSUED VA. CODE §§ 8.01-407; 16.1-265; Supreme Court Rules 1:4, 4:5
Commonwealth of Virginia

Case No.: CL-031

MAY 18, 2001 10:00 a.m.
HEARING DATE AND TIME

COUNTY OF NOTTOWAY CIRCUIT COURT Court

328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA (Box 25, Nottoway, Virginia)
ADDRESS OF COURT

OVERTON, ESTATE OF LUCILLE P. v. ~~BLACK~~ BLACKSTONE FAMILY PRACTICE, INC., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

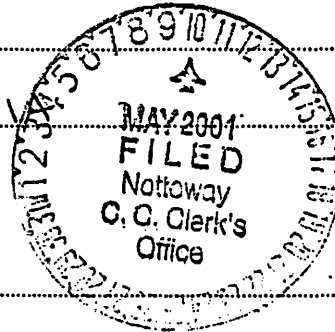
You are commanded to summon

JENNIFER HODGES, R.N. c/o HERITAGE HALL
NAME

900 SOUTH MAIN STREET
STREET ADDRESS

BLACKSTONE VIRGINIA
CITY STATE

23824
ZIP



TO the person summoned: You are commanded to appear

☒ in the NOTTOWAY COUNTY CIRCUIT Court

☒ at 328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA
ADDRESS (DEPOSITION USE IN CIRCUIT COURT ONLY)

on FRIDAY, MAY 18, 2001 at 10:00 a.m. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of

OVERTON, ESTATE OF LUCILLE P.

PARTY NAME

B.G. STEPHENSON

8098

NAME OF ATTORNEY

VIRGINIA STATE BAR NUMBER

4157 CHAINBRIDGE ROAD

703 591-2470

OFFICE ADDRESS

TELEPHONE NUMBER OF ATTORNEY

FAIRFAX, VIRGINIA 22030

~~703 591-2477~~ (703) 359-0638

OFFICE ADDRESS

FACSIMILE NUMBER OF ATTORNEY

MAY 7, 2001

DATE ISSUED

SIGNATURE OF ATTORNEY

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of the court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME: <u>Jennifer Hodges do Heptage Hall</u>	
ADDRESS: <u>Blackstone VA 23824 900 S. Main St Blackstone VA 23824</u>	
<input checked="" type="checkbox"/> PERSONAL SERVICE	Tel. No. _____
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above: _____	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> not found	<u>L. J. Pank</u> , Sheriff
DATE <u>4 May 01</u>	by <u>R. L. Jones</u> , Deputy Sheriff

CERTIFICATE OF COUNSEL

I, B.G. STEPHENSON, counsel for OVERTON, ESTATE OF LUCILLE P, hereby certify that a copy of the foregoing subpoena for witness was mailed, first-class, postage prepaid that a copy of the foregoing subpoena for witness was mailed, first-class, postage prepaid DELIVERY METHOD
KELVIN NEWSOME / S. ELIZABETH PHARR
to and LISA KENT DULEY, counsel of record for DEFENDANTS
on the 7th day of MAY, 2001

B.G. Stephenson
SIGNATURE OF ATTORNEY

B.G. STEPHENSON

2001-05-10-024
004

SUBPOENA FOR WITNESS (CIVIL) -

ATTORNEY ISSUED VA. CODE §§ 8.01-407; 16.1-265; Supreme Court Rules 1:4, 4:3
Commonwealth of Virginia

Case No.: CL-031

MAY 18, 2001

10:00 AM

HEARING DATE AND TIME

COUNTY OF NOTTOWAY CIRCUIT COURT

Court

328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA (Box 25, Nottoway, Virginia)

ADDRESS OF COURT

OVERTON, ESTATE OF LUCILLE P.

v. ~~BLACK~~

BLACKSTONE FAMILY PRACTICE, INC., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

DORIS COLEMAN c/o HERITAGE HALL

NAME

900 SOUTH MAIN STREET

STREET ADDRESS

BLACKSTONE
CITY

VIRGINIA
STATE

23824

ZIP

TO the person summoned: You are commanded to appear

☒ in the NOTTOWAY COUNTY CIRCUIT

Court

☒ at 328 WEST COURTHOUSE ROAD, NOTTOWAY, VIRGINIA

ADDRESS (DEPOSITION USE IN CIRCUIT COURT ONLY)

on FRIDAY

MAY 18, 2001

at 10:00 A.

m. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of

OVERTON, ESTATE OF LUCILLE P.

PARTY NAME

B.G. STEPHENSON

8098

NAME OF ATTORNEY

VIRGINIA STATE BAR NUMBER

4157 CHAINBRIDGE ROAD

703 591-2470

OFFICE ADDRESS

TELEPHONE NUMBER OF ATTORNEY

FAIRFAX, VIRGINIA 22030

OFFICE ADDRESS

~~703 591 2477~~ (703) 359-0638

FACSIMILE NUMBER OF ATTORNEY

MAY 7, 2001

DATE ISSUED

B.G. Stephenson
SIGNATURE OF ATTORNEY

B.G. STEPHENSON

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of the court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME: <u>Doris Coleman</u>	
ADDRESS: <u>900 S. MAIN St.</u> <u>Blackstone VA 23824</u>	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No. _____
<input checked="" type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input checked="" type="checkbox"/> Delivered to ^{Supervisor} family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above: <u>Deek Kendall</u> <u>Administrator</u> <u>29 40A</u>	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> not found	<u>L. J. Pennish</u> , Sheriff
<u>9 May 01</u> DATE	by <u>R.L. Jones</u> , Deputy Sheriff

CERTIFICATE OF COUNSEL

I, B.G. STEPHENSON, counsel for OVERTON, ESTATE OF LUCILLE P., hereby certify that a copy of the foregoing subpoena for witness was mailed, first-class, postage prepaid DELIVERY METHOD KELVIN NEWSOME / S. ELIZABETH PHARR DEFENDANTS to and LISA KENT DULEY, counsel of record for _____, on the 7th day of MAY, 2001

X. B. Stephenson
SIGNATURE OF ATTORNEY

335

B.G. STEPHENSON

SUBPOENA FOR WITNESS (CIVIL) -

ATTORNEY ISSUED VA. CODE §§ 8.01-407, 16.1-265; Supreme Court Rules 1:4; 4:5;
Commonwealth of Virginia

Case No.: CL-031

.....
HEARING DATE AND TIME

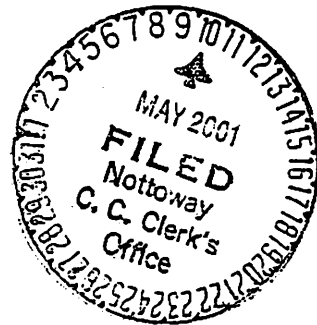
County of Nottoway Circuit Court, P.O. Box 25, Nottoway, Virginia

Estate of Lucille P. Overton v. Blackstone Family Practice, Inc., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

John A. Cardea, M.D.
Medical College of Virginia
Department of Orthopaedic Surgery
1200 East Broad Street
West Hospital, 9th Floor East Wing
Richmond, VA 23219



TO the person summoned: You are commanded to appear

- ☐ in the Circuit Court of Nottoway County
- ☐ at 328 W. Courthouse Road, Nottoway, Virginia

on May 18, 2001 at 9:00 A.M. to testify in the above-named case.

This subpoena is issued by the attorney for and on behalf of Charles I. Rosenbaum, M.D.

Kelvin Newsome, Esquire (VSB: 34478)
S. Elizabeth Pharr, Esquire (VSB: 44439)
707 East Main Street, 11th Floor
Richmond, VA 23219 (804) 783-7536

04/30/01
.....
DATE ISSUED

S. Elizabeth Pharr
.....
SIGNATURE OF ATTORNEY

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 5 calendar days before your appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If you are served with this subpoena less than 5 calendar days before your appearance is required, you may wish to contact the attorney who issued this subpoena and the clerk of court.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME:

ADDRESS:

☐ **PERSONAL SERVICE**

Tel.

No.

Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:

.....

☐ Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

☐ not found

....., Sheriff

By....., Deputy Sheriff

DATE

CERTIFICATE OF COUNSEL

I, S. Elizabeth Pharr, Esquire, counsel for Charles I. Rosenbaum. M.D., hereby certify that a copy of the foregoing subpoena for witness was mailed to B. G. Stephenson, Esquire, Inns of Court, 4157 Chain Bridge Road, Fairfax, Virginia 22030, counsel of record for plaintiff and Lisa Kent Duley, Esquire, Denton & Fiscella, 6630 W. Broad Street, Suite 290, Richmond, Virginia 23230 counsel of record for co-defendant HCMF Corporation, on the 30th day of April, 2001.



SIGNATURE OF ATTORNEY

The Marston Agency, Inc.

5/2/01

P. O. Box 29940
Richmond, VA 23242
(800) 308-7790 - (804) 784-0111 (Richmond)

RETURN ON SERVICE

Plaintiff: Estate of Lucille P. Overton
Defendant: Blackstone Family Practice, Inc., et al
Serve: John A. Cardea, MD
MCV - Orthopaedic Surgery
1200 East Broad Street
Richmond, VA 23219
Contact: LeClaire Ryan, PC
707 East Main Street
11th Floor
Richmond, VA 23219

Court: Nottoway Circuit Court
Case: CL-031
Return Date: 5/18/01
Return Time: 09:00 AM
Phone: 7577832003

Type(s) of Writs

(R205534)

Witness Subpoena

Witness/Defendant John A. Cardea, MD was served according to law, as indicated below:

- ☐ By delivering a copy of the above described process in writing to him/her in person.
- ☐ Being unable to make personal service and not finding the above mentioned person at his/her usual place of abode by delivering a copy of the said process and giving information of it's purport at his usual place of abode to _____ who is member of his/her family and is the _____ of the above mentioned person, other than a temporary sojourner or guest, and who is the age of 16 years or older.
- ☐ Being unable to make a personal service and not finding the above mentioned person at his/her usual place of abode nor any member of his/her family the age of 16 years or older at said abode by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode.
- ☒ At usual place of business or employment during business hours, by delivering the above specified paper(s) and giving information of it's purport to the person found there in charge of such business or place of employment. Name of person I found in charge: See Remarks
- ☐ Copy mailed to judgement debtor on the date below after serving the garnishee unless a different date is shown below.
- ☐ Certified Mail
- ☐ Not found
- ☐ Served on Secretary of the Commonwealth

I, B C Tutwiler hereby certify under penalty of perjury that I am over the age of 18 and not a party or otherwise interested in the subject matter in controversy.

Served Date: 5-3-01 Served Time: 12:17

Signature of Process Server

Notary

State of: VA

County/City of: Henrico

I, the undersigned, a Notary Public in and for the above-mentioned jurisdiction, hereby certify that before me appeared the Process Server, who, under oath, stated that service was made as stated above. Sworn and subscribed before me this 4 day of

May 2001

Notary Public

My Commission Expires: 8-31-03

Nancy B. FFith, R M Secretary

Type of Service: A Auth. Attempts: 1 Order: RR30736 1 Day Rush: No 2 Day Rush: No
Attempts -1- -2- -3- -4- -5- -6-

Date: _____
Time: _____

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

PLAINTIFF'S SUPPLEMENTAL
WITNESS LIST

COMES NOW the Plaintiff, Horace E. Perdieu, Administrator of the Estate
of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's
Supplemental Witness List.


1. Ola Powers (by deposition testimony)

RESPECTFULLY SUBMITTED this 11th day of May, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.

A handwritten signature in dark ink, appearing to read "B.G. Stephenson", is written over a horizontal line.

B.G. Stephenson (VSB # 8098)

Counsel for Plaintiff

4157 Chain Bridge Road

Fairfax, Virginia 22030

Telephone: (703) 591-2470

Facsimile: (703) 359-0638

5/11/01

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, *hand delivered and* to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

Kelvin Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003


B.G. Stephenson

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. PVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care

Defendants.

Law No.: CL-031

PLAINTIFF'S LIST OF EXHIBITS

COMES NOW the Plaintiff, Horace E. Perdieu, as Administrator of the Estate of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's List of Exhibits. These exhibits are for use at trial in the above-captioned matter, scheduled to begin on May 18, 2001, at 10:00 a.m.

[Including Exhibits From Three De Bene Esse Depositions]

From Betty G. Solomonson Deposition:

1. Johnston-Willis Hospital Transfer Records
2. Package of Heritage Hall Records pertaining to Lucille Overton (62 pages) including Admission and Plan of Care Record, Admission Nursing Assessment, Physical Restraint Assessment Form, and other Assessment Records, Nurses Notes, Doctor's Progress Notes, Admission Assessment of Risk For Falls, Resident Care Record, and other data.

From Phyllis M. Corrigan Deposition:

3. CV of Phyllis M. Corrigan
4. Heritage Hall Admission Agreement with Lucille Overton (14 pages)
5. Johnston-Willis Hospital Transfer Records, including Virginia Assessment Instrument, and subsequent Admission Record of Johnston-Willis Hospital for subcapital hip fracture and Attendant Medical Records pertaining to hip surgery
6. Heritage Hall Admission Assessment of Risk for Falls
7. Heritage Hall Incident/Accident Reports of 1/20/95 and 1/21/95 pertaining to Lucille Overton
8. Weekly Resident Care Reports relative to Lucille Overton
9. Heritage Hall Nurses Notes pertaining to Lucille Overton from 1/4/95 to 1/31/95
10. Heritage Hall Doctor's Progress Notes pertaining to Lucille Overton

From Deposition Testimony of Reinald Leidekmeyer, M.D. (Through #16):

11. Curriculum Vitae of Reinald Leidekmeyer, M.D.
12. Transfer Records of Johnston-Willis Hospital with Virginia Uniform Assessment Instrument
13. Heritage Hall Admission Assessment of Risk for Falls, pertaining to Lucille Overton
14. Heritage Hall Incident/Accident Reports of falls of Lucille Overton on 1/20/95 and 1/21/95
15. Heritage Hall Nurses Notes pertaining to Lucille Overton from 1/5/95 to 1/31/95
16. Heritage Hall Doctor's Progress Notes pertaining to Lucille Overton from 1/5/95 to 1/31/95

17. Medical Agreement between HCMF and Blackstone Family Practice Center
18. Heritage Hall Admission Agreement between HCMF Corporation and Lucille Overton
19. Johnston-Willis Hospital Transfer documents, Virginia Uniform Assessment Instrument
20. Power of Attorney from Lucille P. Overton to Horace E. Perdieu
21. Admission Assessment of Risk for Falls
22. Admission and Discharge Record
23. Physical Restraint Assessment Form
24. Incident Report dated 1/20/95
25. Incident Report dated 1/21/95
26. Weekly Resident Care Records
27. Nurses Notes from 1/4/95 to 1/31/95
28. Licenses of Josephine R. Fowler for Intern-Resident
29. Nursing-Summary and Social Service Progress Notes
30. Doctor's Progress Notes from 1/5/95 to 1/31/95
31. Commonwealth of Virginia Statement of Deficiencies for Heritage Hall
32. Virginia Code § 32.1-138
33. Virginia Code § 54.1-2961
34. 42U.S.C. § 1395i-3
35. Heritage Hall Weekly Resident Care Records
(5pages)
36. Johnston-Willis Hospital Operative Notes for Lucille Overton dated 2/01/95, including records of Barry W. Burkhardt, M.D., and Radiology Reports, and Surgical Pathology Report

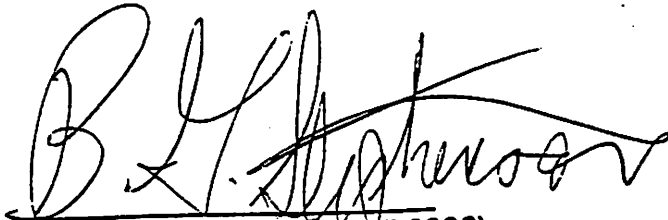
37. Statement of Johnston-Willis hospital dated 2/12/95 in the amount of \$28,017.32
38. Medical Records of Barry W. Burkhardt, M.D.
39. Statement of Barry W. Burkhardt and other Medical Providers in relation to Overton's hip surgery
40. Exhibits which are marked in De Bene Esse Deposition of Barry W. Burkhardt scheduled for May 11, 2001, which will be numbered sequentially beginning with this number
41. Other exhibits which may be provided by Defendants

RESPECTFULLY SUBMITTED this, 10th day of May, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON

By Counsel.

B.G. STEPHENSON, LTD.

A handwritten signature in black ink, appearing to read "B.G. Stephenson", with a long horizontal flourish extending to the right.

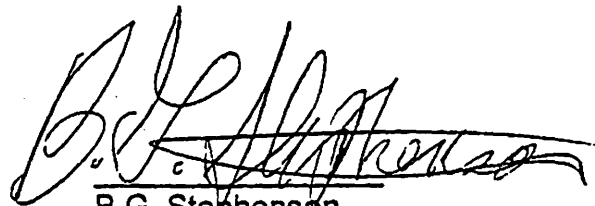
B.G. Stephenson (VSB # 8098)
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-0638
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

Kelvin Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003


B.G. Stephenson

6/14/01
VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031

PLAINTIFF'S SUPPLEMENTAL
EXHIBIT LIST

COMES NOW the Plaintiff, Horace E. Perdieu, Administrator of the Estate of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's Supplemental Exhibit List. This supplement is numbered such that it may be added on to the previously filed Exhibit List.

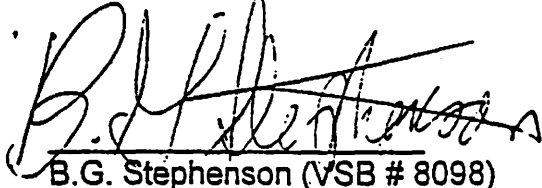
42. Va. Code Ann. 54.1-2961

RESPECTFULLY SUBMITTED this 15th day of May, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.

A handwritten signature in dark ink, appearing to read "B.G. Stephenson", is written over a horizontal line.

B.G. Stephenson (VSB # 8098)

Counsel for Plaintiff

4157 Chain Bridge Road

Fairfax, Virginia 22030

Telephone: (703) 591-2470

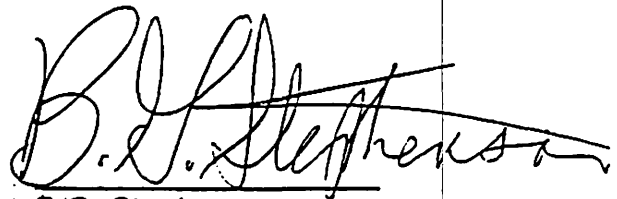
Facsimile: (703) 359-0638

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

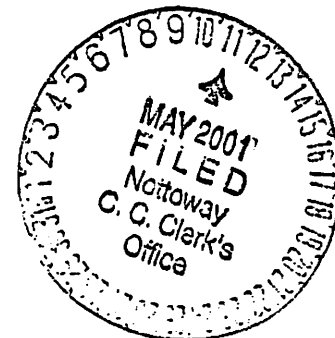
Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

Kelvin Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003


B.G. Stephenson

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY



HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

Law No.: CL-031

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS


COMES NOW the Plaintiff, Horace E. Perdieu, Administrator of the Estate
of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's Proposed
Jury Instructions.

RESPECTFULLY SUBMITTED this 10th day of May, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel.

B.G. STEPHENSON, LTD.

A large, stylized handwritten signature in dark ink, appearing to read 'B.G. Stephenson', is written over a horizontal line.

B.G. Stephenson (VSB # 8098)

Counsel for Plaintiff

4157 Chain Bridge Road

Fairfax, Virginia 22030

Telephone: (703) 591-2470

Facsimile: (703) 359-0638

INSTRUCTION # 1

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

INSTRUCTION # 2

In considering the weight to be given to the testimony of an expert witness, you should consider the basis for his opinion and the manner by which he arrived at it and the underlying facts and data upon which he relied.

INSTRUCTION # 3

When one of the parties or its representative testifies unequivocally to facts within his or her own knowledge, those statements of fact and the necessary inferences from them are binding upon that party. He cannot rely on other evidence in conflict with his or her own testimony to strengthen his case.

However, you must consider the testimony as a whole, and you must consider a statement made in one part of the testimony in the light of any explanation or clarification made elsewhere in the testimony.

INSTRUCTION #

4

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

VA Model Jury Instructions
Volume I # 2.100

INSTRUCTION # 5

When a party has the burden of proof on an issue, then he must prove that issue by greater weight of all the evidence. This is sometimes called the preponderance of the evidence. It is that evidence which you find more convincing. The testimony of one witness whom you believe can be the greater weight of the evidence.

INSTRUCTION # 6

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case. In order to prove negligence, Plaintiff must meet the following elements:

- (1) Was there a duty of care?
- (2) Did any of the Defendants breach this duty?
- (3) If any of the Defendants were negligent, was the negligence a proximate cause of the accident?
- (4) If the plaintiff is entitled to recover, what is the amount of her damages?

INSTRUCTION #

7

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

- (1) Plaintiff may recover against one, all, or some of the Defendants if you find that Defendants breached their duty of reasonable care to Plaintiff;
- (2) Plaintiff may also recover against Heritage Hall if you find that Heritage Hall breached its contractual obligation to provide the care which it undertook to provide for Lucille Overton in the Admission Agreement.
- (3) Plaintiff may also recover against Heritage Hall if you find that it violated either the Federal or State requirements imposed upon nursing homes related to the care services provided to their residents.

Your decision on these issues must be governed by the instructions that follow.

VA Model Jury Instructions
Volume I # 3.000

(as modified)

INSTRUCTION # 8

A proximate cause of an accident, injury, or damage is a cause which in natural and continuous sequence produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

VA Model Jury Instructions
Volume I # 5.000

INSTRUCTION #

9

You shall find your verdict for the Plaintiff and against either one or more of the Defendants if the Plaintiff has proved by the greater weight of the evidence that:

- (1) Either one or more of the Defendants were negligent; and that
- (2) Either one or more of the Defendants' negligence was a proximate cause of the plaintiff's injury and damages.

INSTRUCTION # 10

An employer is liable for all damages proximately caused by the negligence of his employee while acting within the scope of his employment.

INSTRUCTION # 11

In order to recover against Heritage Hall, Plaintiff has the burden of proving by the greater weight of the evidence that the employees of Heritage Hall were negligent while acting within the scope of employment, and that this negligence proximately caused damage to the plaintiff.

INSTRUCTION # 12

A physician has a duty to use the degree of skill and diligence in the care and treatment of his patient that a reasonably prudent doctor in the same field of practice or specialty in this State would have used under the circumstances of this case.

If a physician fails to perform this duty, then he is negligent. Furthermore, a physician has a duty to supervise other persons who examine or treat his patient in his stead.

INSTRUCTION # 13

A nursing home care facility has the duty to exercise reasonable care and attention for a resident's safety as her mental and physical condition, if known, may require.

If a nursing home fails to perform this duty, then it is negligent.

INSTRUCTION #

14

If you find your verdict for the plaintiff, then in determining the damages to which she is entitled, you may consider any of the following which you believe by the greater weight of the evidence were caused by the negligence or other violative conduct of Defendants or either of them resulting in such damages:

- (1) any bodily injuries she sustained and their effect on her health according to their degree and probable duration;
- (2) any physical pain and suffering, as well as mental anguish she suffered;
- (3) any disfigurement or deformity and any associated humiliation or embarrassment;
- (4) any inconvenience caused;
- (5) any medical expenses incurred in the treatment of her injuries;
- (6) any permanent condition and the effect thereof.

Your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of Defendant's negligence, or unlawful conduct.

INSTRUCTION #

15

If you find your verdict for the plaintiff, then she is entitled to recover as damages all of the losses she sustained, which are a direct and natural result of the breach of contract with her and which she has proved by the greater weight of the evidence. The losses must have been reasonably foreseeable by the parties when they entered into the contract.

INSTRUCTION #

16

Ordinarily, a breach of contract does not give rise to an action for negligence. However, a contract may create a relationship out of which grows the duty to use care in the performance of a responsibility prescribed by the contract. The breach of that duty may constitute negligence.

INSTRUCTION #

12

The provisions of the contract between Mrs. Overton and the defendant, Heritage Hall, states that Heritage Hall will treat Mrs. Overton with due care and caution, exercise reasonable care in the treatment of Mrs. Overton in light of her condition, and to observe the policies and procedures to protect her rights. If you find that the defendant had these duties to Mrs. Overton, as imposed by the contract, then you must next examine whether those duties were breached.

----- the contract

INSTRUCTION # 18

In returning a verdict on the plaintiff's claim for breach of contract, you must assign damages. If you find that the defendant Heritage Hall had these duties and breached them, if that breach caused injury to Mrs. Overton, you must assign an amount for damages. If you do not find that the contract has been breached, then you do not assign any damages on this issue.

---- the contract

INSTRUCTION # 19

You should also consider an award of damages based upon Mrs. Overton's pain and suffering. In determining how much to award in damages, look at the physical pain resulting from Mrs. Overton's condition that was unrelieved because of the defendants' negligence. Take into account the length of time during which Mrs. Overton was subjected to the pain and suffering. This amount of damages is in your discretion as the jury.

Louisell and Williams,
Medical Malpractice
(Matthew Bender 1975)
§ 18.04 – Pain & Suffering and § 18.08
and
Norton V. Hamilton
92 Ga. App. 727 (1955)

INSTRUCTION # 20

The duties that a nursing home owes to its residents are enumerated in a Virginia statute. Among these are the following:

- (1) The patient (or as in this case, her attorney-in-fact) must be fully informed and have the opportunity to participate in the planning of medical treatment.
- (2) The patient must be treated with consideration, respect, and full recognition of dignity and individuality.

Plaintiff contends that these duties were breached by Heritage Hall. If you find that either or both of these duties were breached, you must then look to causation and damages.

INSTRUCTION #

21

The duties that a nursing home owes to its residents are also enumerated in a Federal Statute. Among these duties are the following:

- (1) The nursing home must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of quality of life.
- (2) The nursing home must have a written care plan for the resident, which is comprehensive, accurate, and standardized. The care plan must describe the resident's capability to perform daily life functions, and identify medical problems and risks. An assessment of the resident must be conducted and used in formulating the care plan.
- (3) The nursing home must require that the medical care of every resident be provided under the supervision of a physician.
- (4) Residents have the right to choose their physician.

Plaintiff contends that these duties were breached by Heritage Hall. Namely, that Heritage Hall was negligent in failing to provide a proper care plan, and failed to properly implement any plan for her care, failing to provide medical care under the supervision of a physician, and failing to care for Mrs. Overton in a manner that maintained or enhanced her quality of life. You may find that Defendants breached all of these duties, or some of them, or one, or none at all.

INSTRUCTION #

22

If you find that defendant Heritage Hall owed duties to Mrs. Overton, and breached those duties by failing to provide a suitable care plan or failed to properly implement any care plan, failing to take into account her assessment for risk of falls, and/or by failing to provide medical care under the supervision of a physician, you must then look at whether these breaches caused harm and injury to the plaintiff; and then you must assign an amount of damages resulting from these failures.

INSTRUCTION # 23

If you find that Defendant Dr. Rosenbaum was negligent, by failing to supervise the resident Josephine Fowler in the examination of Mrs. Overton, you must then look at whether this breach of duty caused harm and injury to the plaintiff; and then you must assign an amount of damages resulting from his failure to supervise the treatment of Lucille Overton by the resident.

INSTRUCTION # 74

If you find that the defendants breached their duties to Mrs. Overton by failing to prevent her falls, and further failing to timely diagnose and treat her broken hip, you may award damages to Plaintiff including damages for pain and suffering, as well as damages for costs of treatment.

INSTRUCTION # 25

If you find that Defendant Blackstone Family Practice Center was negligent in failing to provide proper medical care, in failing to supervise the resident Josephine Fowler, and in breaching its contract to provide a physician and medical services to Plaintiff Lucille Overton, you may award damages to Plaintiff including damages for pain and suffering, as well as damages for costs of treatment.

VIRGINIA:

IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator)
of the Estate of LUCILLE P.)
OVERTON, Deceased,)
Plaintiff,)

vs.) Law No. CL-031

BLACKSTONE FAMILY PRACTICE)
CENTER, INC., CHARLES J.)
ROSENBAUM, a/k/a C. J. ROSENBAUM,)
M.D., JOSEPHINE FOWLER, M.D., and)
HCMF CORPORATION, t/a HERITAGE)
HALL HEALTH CARE,)
Defendants.)

May 11, 2001

CERTIFIED COPY

Richmond, Virginia

The videotaped deposition of **BARRY W. BURKHARDT, M.D.**, taken at the instance of the Plaintiff, before Carolyn M. O'Connor, RMR, CRR, a Notary Public for the Commonwealth of Virginia at Large, beginning at 4:15 p.m., at West End Orthopaedic Clinic, 1400 Johnston-Willis Drive, Richmond, Virginia; said deposition taken pursuant to the Rules of the Supreme Court of Virginia.

COOK & WILEY, INC.
Registered Professional Reporters
Post Office Box 14582
Richmond, Virginia 23221
(804) 359-1984

1 APPEARANCES:

2 B. G. Stephenson, Esquire
 3 B. G. STEPHENSON, LTD.
 4 4157 Chain Bridge Court
 Fairfax, Virginia 22030
 Counsel for the Plaintiff

5
 6 Kelvin L. Newsome, Esquire
 LECLAIR RYAN
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15 I N D E X

16 PAGE

17 BARRY W. BURKHARDT, M.D.

18 By Mr. Stephenson.....3
 19 By Mr. Newsome.....31
 20 By Mr. Stephenson.....33
 By Ms. Duley.....35

21 E X H I B I T S

22 (Not Attached)

23 NUMBER

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1 BARRY W. BURKHARDT, M.D., called by the
2 Plaintiff, first being duly sworn, testified as
3 follows:
4

5 EXAMINATION BY MR. STEPHENSON:

6 Q Dr. Burkhardt, would you state your name
7 and address, please.

8 A Yes, Barry W. Burkhardt, 1400
9 Johnston-Willis Drive, Richmond, Virginia.

10 Q Dr. Burkhardt, you have some plans to be
11 somewhere on May 18 of 2001?

12 A I do, Virginia Orthopedic Society meets
13 starting on that day.

14 Q And where does that meet?

15 A That meets in Williamsburg.

16 Q And that's where you intend to be on
17 May 18?

18 A Yes, I've made plans to attend that for
19 some time.

20 Q Dr. Burkhardt, would you describe your
21 educational background.

22 A I graduated from Kenyan College,
23 undergraduate in biology. I did four years at Tufts
24 University School of Medicine and got my M.D. I came
25 back down here to Richmond, Virginia, to the Medical

1 College of Virginia and did an internship and a
2 first-year residency in general surgery. I went into
3 the military for three years, and then I came back
4 and did three years of orthopedic residency training,
5 graduating in 1980, and went into practice with West
6 End Orthopaedic in that year and have been with them
7 ever since.

8 Q And you're -- you practice the specialty
9 of orthopedic surgery?

10 A That's correct.

11 Q You're licensed in the state of Virginia?

12 A I am.

13 MR. STEPHENSON: I submit the doctor's
14 qualified. No *voir dire*?

15 Q Dr. Burkhardt, did there come a time when
16 you had occasion to treat Lucille Overton?

17 A Yes, I did, I saw her on -- I think it was
18 February 1, 1995.

19 Q Would you describe the condition for which
20 you were called upon to treat her.

21 A I will, but before I go on, I think the
22 date actually was January 31, was when I saw her in
23 the emergency room. The actual procedure that we did
24 was February 1. I was called to see her in the
25 emergency room at Johnston-Willis Hospital, where she

1 was evaluated and found to have a femoral neck
2 fracture of her left hip.

3 Q And she was transported to the emergency
4 facility of Johnston-Willis Hospital?

5 A That is correct.

6 Q Do you know from where she was
7 transferred?

8 A I think that she was -- I don't have that
9 information here. I'm supposing that she came from
10 the nursing home that she went back to, but I'm not
11 100-percent sure.

12 Q But at any rate you saw her first in the
13 emergency room on the 31st of January, 1995?

14 A I did.

15 Q What did you ascertain in seeing her at
16 that time regarding her condition?

17 A Again, I don't have my emergency room
18 notes. All I have is my office notes, but at that
19 time she was thought to have had -- was diagnosed as
20 having a femoral neck fracture of her left hip. It
21 was displaced out of position. I can describe that
22 to you, if you'd like.

23 Q Would you describe that, please.

24 A Basically, it's one of two types of
25 fractures that occur around the hip. The hip is a

1 ball-and-socket type joint, and if you think of the
2 ball as an ice cream cone with the ball being the ice
3 cream and the cone being the leg, what she did is she
4 knocked the ice cream off the cone, so that there was
5 no continuity between her cup portion of her hip
6 joint and the ball portion. The ball went off the
7 cup.

8 And in those types of fractures in older
9 people, we usually do a procedure that's called a
10 bipolar hip prosthesis. That's, if you will, a half
11 of a total hip joint replacement, where a new ball is
12 put in place of her ball, and that ball is thrown
13 away, and we cement usually a stem with a ball on the
14 end of it. It has another ball on top of it, and it
15 fits inside of the patient's normal acetabulum, or
16 cup, and they're able to get up and walk on it from a
17 physiological standpoint fairly quick and are able to
18 mobilize very well.

19 Q Is that the kind of procedure that you
20 performed?

21 A That is.

22 Q Tell me about her condition and what was
23 required in the surgical process.

24 A Again, I do not have notes in front of me
25 that go over my hospital record of her exact

1 condition at that time. As best I can recall, she
2 was a little bit confused and she was frail, and she
3 had a painful left hip, and any motion of that hip
4 caused pain. We -- after proper medical evaluation,
5 I think one of the medical consultants we had see her
6 was a Dr. Rod Smith for pulmonary problems, was
7 seeing her. And she was deemed an adequate risk for
8 surgery, was taken to the operating room on the 1st
9 of February, 1995, and underwent the insertion of
10 this bipolar left hip prosthesis.

11 Q Tell the Court, please, what you do in
12 connection with that prosthesis.

13 A Actually what we do to put it in?

14 Q Yes.

15 A An incision is made on the side of the hip
16 and somewhat towards the back end of the buttocks,
17 about six, seven inches in length. The dissection is
18 carried down through the muscle to reach the bone.
19 There is usually a capsule around the hip joint,
20 which is incised and entered. And in the case of
21 fresh fractures, a brightish-colored red blood is
22 encountered at that time, and the fracture --

23 Q Did you see that kind of indication --

24 A No.

25 Q -- with Mrs. Overton?

1 A It was a much darker color to it, and it
2 was a clear indication that it was an older fracture
3 than just an acute fracture.

4 Q How was that indicated to you?

5 A By both the presence of the color of the
6 fluid around the fracture, as well as the ends of the
7 bone tend to have a little more of a softer, not
8 quite as sharp edged appearance to them as well as a
9 feel to them; and it indicated a fracture, in my
10 opinion, of anywhere from ten to 14 days old.

11 Q And that was an opinion that you formed at
12 the time you --

13 A At the time of the surgery, yes.

14 Q -- did the surgery?

15 A That's correct.

16 Q Did you form an opinion as to how she
17 sustained the fractured left hip?

18 A No. I mean, I have no idea. I know that
19 fractures like this occur when people fall, and
20 that's when we see them most often. They also can
21 occur if they have a pathological process. Normally
22 you make that diagnosis when somebody tells us they
23 felt a pain in their hip, then they fell, and we are
24 able to see a -- and when we go in and look at the
25 bone and we send it to pathology, we see some

1 underlying disease that would indicate a weakening of
2 the bone, where it actually broke before they fall.
3 Most people, however, don't have that mechanism.
4 They have the mechanism where you are unstable for
5 whatever reason or they trip and they fall down, and
6 from a ground-level fall, hit the side of their hip
7 and the bone breaks.

8 Q Is that the usual way that you find --

9 A In her --

10 MR. NEWSOME: Excuse me, I object to the
11 form of that question.

12 Q Do you have an opinion as to, you know,
13 whether or not that is a typical way that you sustain
14 a break?

15 MR. NEWSOME: Excuse me, I object to the
16 form of the question and move to strike in that
17 it's not relevant to this case.

18 Q Let me ask you some other questions
19 preliminarily, then, if I may, Dr. Burkhardt. I want
20 to direct your attention to some records under
21 Plaintiff's Exhibit 2 that has been previously marked
22 and identified under a list of exhibits.

23 MR. NEWSOME: May I see those?

24 MR. STEPHENSON: Yes.

25 MR. NEWSOME: Are these the Heritage Hall

1 notes, the Heritage Hall notes?

2 MR. STEPHENSON: Among other notes, yes.

3 MR. NEWSOME: I believe if the doctor
4 looked at these at the time, that's the
5 predicate.

6 MR. STEPHENSON: Well, I'm asking him
7 about some items that are contained in here as
8 a predicate for my next questions.

9 Q Dr. Burkhardt, I want to make reference to
10 some entries in the nurse's notes that are part of
11 Plaintiff's Exhibit 2 and with specific reference to
12 entries in the nurse's notes that are -- and I will
13 let you look at this exhibit -- on an entry made on
14 January 20 of 1995.

15 A Uh-huh.

16 Q And I direct your attention to that. That
17 states that --

18 MS. DULEY: Objection; hearsay.

19 Q I want you to assume that there was an
20 entry made in the nurse's notes by the nurse
21 attending Mrs. Overton in the Heritage Hall Nursing
22 Home on the 20th of January, 1995. And directing
23 your attention to the note that reads "found lying on
24 left side on floor" --

25 MS. DULEY: Objection; hearsay.

1 Q -- "in the room." I want you to assume
2 that that entry was made, you know, consistent with
3 business records that were maintained, you know, by
4 the nurses that were attending Mrs. Overton on that
5 date. I also want you to read the entry that was
6 made as of the 21st that said --

7 MR. NEWSOME: Objection; hearsay and move
8 to strike.

9 Q -- that on the 21st, an entry in the
10 nurse's notes says "brought back to nurse's
11 station" --

12 MS. DULEY: Continuing objection.

13 Q -- "reported resident fell in large dining
14 room and was found lying on her left side." I want
15 you to assume that, in fact, Mrs. Overton, the person
16 that you treated, fell in her room on the 20th of
17 January, and I want you to assume that the entries
18 are correct, that she fell and was found lying on her
19 side in the dining room on the 21st of January. Do
20 you have an opinion regarding when the fracture may
21 have been sustained, assuming that it was sustained
22 in relation to her fall?

23 MR. NEWSOME: Excuse me, I object to this
24 question to the extent it clearly contains
25 hearsay, and it's also outside of the scope of

1 this designation that we have for
2 Dr. Burkhardt; and I also believe that
3 Dr. Burkhardt did not rely on this information
4 in the care and treatment that he provided to
5 Ms. Overton. On that basis I would move to
6 strike any responsive testimony.

7 MS. DULEY: And I would join in that
8 objection.

9 THE WITNESS: And I, as the witness, am a
10 little confused.

11 MR. STEPHENSON: You ignore the objections
12 and continue to respond to my question, because
13 we will deal with the objections otherwise,
14 Doctor.

15 MR. NEWSOME: To the extent the doctor
16 formed that opinion or is willing to render any
17 sort of opinion. He's not required to render
18 an opinion that he does not hold or did not
19 hold at the time.

20 Q Dr. Burkhardt, let me ask you another
21 predicate question. I want to now mark our next
22 exhibit. I think I've identified that by exhibit
23 number.

24
25 (Exhibit 36 is marked.)

1 A This is a set of records. It's not just
2 the operative report. It's the discharge summary.

3 Q Yes, I want you to tell me what's in that
4 exhibit that's marked.

5 A It's basically a copy of my operative
6 report from February 1, 1995, which is the operation
7 where I inserted what's called a bipolar, or in this
8 case the trade name for it here was a self-centering
9 response hip prosthesis, which is the same thing,
10 what I've commonly referred to as a bipolar or
11 self-centering response hip prosthesis, and it also
12 is a copy of a discharge -- correction -- yeah,
13 discharge summary dated January 31 -- correction,
14 dated February 8, 1995.

15 Q Is that the time she was discharged from
16 Johnston-Willis Hospital?

17 A That is correct.

18 Q And the surgery was performed on --

19 A The 1st of February.

20 Q -- the 1st of February?

21 A And it also contains a consultation report
22 from a Rodney Smith, my medical evaluation that was
23 done preoperatively, and it also contains x-ray
24 reports of the patient's chest x-ray and left hip
25 dated January 31, 1995. It also contains a pathology

1 report dated February 1, 1995, which is a copy of the
2 pathology report of the bone that was sent to the
3 laboratory that we took out, the -- what I referred
4 to as the ball. It's commonly sent to look for
5 pathologic processes and so forth that may have
6 affected the nature of the fracture.

7 Q Dr. Burkhardt, were these records compiled
8 at the time the treatment was given Mrs. Overton?

9 A They were.

10 Q And do they accurately reflect what
11 was -- the condition reported at the time?

12 A They do.

13 Q In your report did you make some reference
14 to the age of the fracture?

15 A I believe I did. Let me look for it. The
16 actual statement that I made was the capsule was
17 exposed. It was entered and no fresh blood was
18 encountered, indicating it was probably an older
19 fracture. There was some dark fluid in there, but it
20 was not bright, red blood. The ends of the bones had
21 some scar tissue around them, and it definitely had
22 an appearance of a fracture that was probably over
23 two weeks old.

24 Q Was that your opinion at the time?

25 A That's correct.

1 Q Now, directing your attention to
2 entries -- and I want you to assume that, in fact,
3 Mrs. Overton fell on January 20 and she fell again on
4 January 21. With that assumption, do you have an
5 opinion within the realm of reasonable medical
6 certainty as to when the fracture may have occurred,
7 you know, consistent with other information that you
8 had discovered in relation to the time that you
9 treated her?

10 MR. NEWSOME: I object to this question to
11 the extent it --

12 MR. STEPHENSON: You need to let me finish
13 my question before you interpose the objection.

14 MR. NEWSOME: Are you finished,
15 Mr. Stephenson?

16 MR. STEPHENSON: I'm finished with that
17 question.

18 MR. NEWSOME: Okay. Well, that's why I'm
19 objecting now, sir. I object to that question
20 to the extent that it is not an opinion that
21 Dr. Burkhardt formed at the time of his care
22 and treatment or it's also based upon
23 information that he did not rely upon at the
24 time of his treatment, and also to the extent
25 it's asking Dr. Burkhardt to speculate as to

1 the actual date of a fracture.

2 With that objection, you are more than
3 welcome to answer, sir.

4 A Yes.

5 MS. DULEY: I would like to join in the
6 objection, in addition add that it is something
7 that is not in Dr. Burkhardt's designation.

8 MR. NEWSOME: Exactly.

9 MS. DULEY: And I object that --

10 MR. STEPHENSON: I believe it's within the
11 scope of his designation, about his talking
12 about the age of the fracture and matters
13 consistent with his medical records.

14 MR. NEWSOME: Well, I don't believe,
15 Mr. Stephenson, that these nursing notes from
16 Heritage Hall are part of Dr. Burkhardt's
17 medical chart, and I also don't see that in the
18 designation. It's clearly not in there.

19 THE WITNESS: The patient records that
20 you-all are referring to were not available to
21 me at the time that I did the surgery and were
22 only made available to me several years later,
23 but I am familiar with them because I was asked
24 to look them over.

25 MR. NEWSOME: I understand.

1 THE WITNESS: So I do -- I don't have any
2 idea what you guys are talking about as far as
3 what I can and can't do, but I was asked a
4 fairly straightforward question: Is it in the
5 realm of medical possibility that if she fell
6 on the 20th or 21st, that she sustained a
7 fracture that I saw her for ten days later that
8 I said was about ten to 14 days old, could it
9 have been sustained at that fall? The answer
10 is yes, it could have.

11 Q And it is your opinion that it was?

12 A That has to predicate that I have
13 knowledge of everything this lady did from the
14 time -- over the last two weeks -- over the last two
15 weeks before she entered the hospital. It is
16 consistent that it occurred at that time. I don't
17 say for sure that it did. I mean, she could have
18 walked a tightrope, too.

19 In all likelihood -- she was in a nursing
20 home, she was under the care of nurses and doctors
21 there, and it's documented that she fell ten days
22 before I saw her, and I saw a fracture that was ten
23 days to 14 days old. It most likely happened then.

24 Q So the fact that she would have fallen in
25 the time period that we stated, either on the 20th

1 for the 21st, the evidence that you found was
2 consistent with her fracture being sustained in that
3 time period?

4 MR. NEWSOME: Again, I object to the form
5 of that question to the extent it's leading,
6 and also it misrepresents the doctor's
7 testimony.

8 Q Doctor, then, tell me in your words what
9 your opinion is regarding whether or not the fracture
10 consistent with the evidence that you found in
11 relation to her medical condition at the time you
12 performed the surgery would have been consistent with
13 her having sustained a fracture on either the 20th of
14 January or January 21st preceding the time that you
15 performed the surgery.

16 MR. NEWSOME: Again, that question has
17 been asked and answered, subject to the
18 objections.

19 Q In that form, you know, to --

20 A I mean, I thought I answered it pretty
21 well, but --

22 MR. NEWSOME: You did.

23 Q I did, too.

24 A Okay, then we'll consider it answered,
25 then.

1 Q Dr. Burkhardt, what complications, if any,
2 were there in relation to the surgery?

3 A Intraoperatively, the lady underwent a
4 cardiac arrest at the time of the insertion of the
5 methyl methacrylate, which is the bone cement that we
6 use to cement them in. It's not an unusual problem.
7 It's related to -- how shall I put this? It's not an
8 unusual problem to have a drop in their blood
9 pressure at the time of insertion of methyl
10 methacrylate. It's a little unusual to have a
11 cardiac arrest. She was successfully resuscitated
12 from that and was -- and recovered from her surgery
13 very well.

14 Q Can you describe her general condition at
15 the time that you were called upon to treat her for
16 the broken hip.

17 A I'm a little limited in what I have
18 available to me, but I had a chest x-ray report that
19 will help refresh my memory that showed that she had
20 some atelectasis, which is a -- not a full expansion
21 of the lungs that can be due to congestion and was
22 identified and treated by our pulmonary doctor,
23 Dr. Rod Smith.

24 Q Was Dr. Rod Smith brought in as a
25 consultant by you, or would that have been a normal

1 process?

2 A Both are correct. It is -- it's normal
3 for me, when I operate on somebody who's in their
4 '70's in her general frail condition, for me to
5 always have a medical doctor see the patient. And
6 the type of medical doctor I pick sometimes depends
7 upon the conditions that are most prevalent. If a
8 person has a renal disease, I get a renal doctor. If
9 they have a cardiac disease as a main manifestation,
10 I get a cardiologist. If it looks like it's
11 pulmonary problem they are most likely to have, I get
12 a pulmonary to see them. In this case I determined
13 that pulmonary was the best medical doctor to see
14 her.

15 Q And why was that?

16 A Again, I'm somewhat supposing, because I
17 don't have every, single record I have here, but it
18 was because my assessment of her at the time,
19 probably majorly determined by her chest x-ray.

20 Q Was there a reason to have a chest x-ray?

21 A We do that on almost every patient who has
22 major surgery of her age.

23 Q And the chest x-ray indicated what, if
24 anything?

25 A Atelectasis, which is --

1 Q Can you describe that.

2 A Which is a sticking together of part of
3 the lung, not a complete expansion of the lung. It's
4 secondary to congestion. This is a little bit out of
5 my field, so you have to bear with me. This is
6 something that when I see the report atelectasis, I
7 don't have to treat it. I merely have to know to who
8 to go get to get it treated, and that's what we did.

9 Q And when you saw that, you called in the
10 consultant to treat that?

11 A That is correct.

12 Q Tell me what this meant in terms of her
13 experience in going through the surgical process and
14 her recovery and any rehabilitation for her?

15 MR. NEWSOME: I object to the form of the
16 question.

17 A I'm not sure I understand totally, though.
18 What does it mean?

19 Q Yeah. Let me withdraw that question and
20 ask you a couple that may be a little less complex.
21 In relation to her surgery --

22 A Uh-huh.

23 Q -- were there any other complications than
24 you have described?

25 A Again, all I have is what is in front of

1 me here. Let me look through again to see if I can
2 identify -- I have my office notes here and a few of
3 the reports from the hospital, but I don't have
4 every, single note that came to me.

5 Q Well, with regard to what you have, if
6 that refreshes your recollection in any way, would
7 you look there and see if you can --

8 A Sure, that's what now I'm doing. From
9 Dr. Rod Smith's note, I know there were several here
10 that were mentioned, postoperative respiratory
11 insufficiency --

12 MR. NEWSOME: Excuse me for one second,
13 Doctor. I just object to the doctor reading
14 from Dr. Smith's note for the simple reason he
15 didn't author that note, and it would be
16 hearsay.

17 Q Dr. Burkhardt, you did --

18 MR. NEWSOME: And I would move to strike
19 any testimony based on his reliance on what
20 Dr. Smith said or did.

21 Q Did Dr. Smith assist you in the surgical
22 process?

23 A No. Well, he assisted me in the
24 postoperative process of taking care of this lady,
25 yes.

1 Q And you called upon him to do that?

2 A Yes.

3 Q And you called upon him for some reason?

4 A Yes, she had a cardiac arrest
5 intraoperatively. That was a pretty good reason, and
6 she had some respiratory problems that we thought to
7 have led up to that, that had something to do with
8 her cardiac arrest, and I think the atelectasis -- I
9 really do feel a little uncomfortable answering those
10 types of medical questions as an orthopedist. I wish
11 I could do a better job for you, but it's a little
12 out of my field.

13 Q But you saw what you needed to prompt you
14 to call in --

15 A Exactly.

16 Q -- someone else to assist you?

17 A That is true.

18 Q Postoperative what was involved in the
19 care of Mrs. Overton?

20 A The patient had to -- I think went in the
21 unit overnight, and she was attended for her medical
22 needs by Dr. Rod Smith. From an orthopedic
23 standpoint, when she was cleared by him to undergo
24 some therapy, she was gotten up out of bed and
25 underwent some physical therapy to get her to start

1 the attempt at rehabilitation towards walking.

2 Q Can you describe the ultimate
3 rehabilitation process.

4 A Ultimate rehabilitation is to try to
5 obtain as high a degree of ambulation as you can with
6 a given patient. We describe ambulation on a scale
7 of one through five.

8 Q Can you describe her expectancy of
9 ambulation with regard to the parameters that you --

10 A Right.

11 Q -- use?

12 A The average person at her age that has a
13 hip fracture loses two ambulatory levels. There's no
14 way you can absolutely predict whether somebody will
15 be in the average, above average or below average.

16 Q But the norm is that they will --

17 A Lose --

18 Q -- sustain a loss of ambulatory power?

19 A Yes, with a No. 5 being the way you or I
20 walk, and a zero is non-walker, wheelchair,
21 bedridden.

22 Q Do you have an opinion as to what her
23 prospects were following her surgery?

24 A As I said, I really can't make that
25 assessment. I never saw her walk before, because she

1 had a broken hip when she came in to me, and I might
2 have a better idea if I saw some physical therapy
3 notes from six years ago that are probably somewhere
4 in the medical records. I don't have those available
5 to me now.

6 Q With regard to this type of fracture in a
7 person of the age of Mrs. Overton, does -- do you
8 have an opinion as to whether or not there is some
9 impact on her life expectancy?

10 MR. NEWSOME: I just object to this
11 question to the extent it's clearly outside of
12 the scope of even the designation of
13 Dr. Burkhardt; and it's also asking this
14 witness, Dr. Burkhardt, to speculate; and I
15 move to strike any responsive testimony.

16 MS. DULEY: I would join in that
17 objection.

18 Q Without your speculating, do you have a
19 basis for an opinion on what --

20 A I don't think there's any doubt that a hip
21 fracture in an elderly person carries with it a
22 significant increase in mortality. I do not have
23 those exact statistics at the tip of my tongue, but
24 when an older person breaks a hip, there is a
25 significant chance of them dying within a year of the

1 surgery.

2 Q Dr. Burkhardt, let me mark this, and then
3 I'll ask you about it.

4 MR. NEWSOME: Are you going to let us look
5 at it, Mr. Stephenson?

6 MR. STEPHENSON: Yes.

7 MR. NEWSOME: Has this been produced in
8 discovery?

9 MR. STEPHENSON: I think this is
10 Dr. Burkhardt's statement for services.

11 MR. NEWSOME: Well, let me ask you one
12 more time, Mr. Stephenson, has the document
13 that you have just presented to me -- has it
14 been produced in discovery?

15 MR. STEPHENSON: That particular document
16 has not been produced in discovery, I don't
17 believe, although I think we had attached
18 medical expenses that I thought, you know,
19 included Dr. Burkhardt's statement.

20 MR. NEWSOME: I'm just merely asking a
21 question.

22 MR. STEPHENSON: I won't mark the
23 document.

24 Q Let me ask you, Dr. Burkhardt, what were
25 your charges for your operative services to

1 Mrs. Overton?

2 A I really didn't know it until I asked my
3 nurse to pull up this document just a few minutes
4 ago, and from six years ago the charges that went
5 through on this patient were \$2,300.

6 Q That was your charges as a surgeon?

7 A That's correct.

8 MR. NEWSOME: Mr. Stephenson, I feel I
9 have to ask this: Are you going to attempt to
10 have Dr. Burkhardt opine on the charges that
11 Johnston-Willis Hospital --

12 MR. STEPHENSON: I'm just going to ask him
13 whether or not they were reasonable and
14 necessary charges with regard to her hospital
15 stay.

16 MR. NEWSOME: You're going to ask the
17 doctor to opine on charges that were not his
18 charges; is that correct?

19 MR. STEPHENSON: That's correct.

20 MR. NEWSOME: Okay. Well, I will clearly
21 move to strike any responsive testimony.

22 Q Mrs. Overton, according to your testimony,
23 was hospitalized at Johnston-Willis from January 31
24 of 1995 to February 8 of 1995?

25 A That's correct.

1 Q I want to show you a statement from
2 Johnston-Willis Hospital for services rendered to her
3 during that period, and you tell me whether or not
4 you're familiar with that as charges.

5 A In this day and age, with charges --

6 MR. NEWSOME: Excuse me for one second,
7 Doctor. I didn't mean to cut you off --

8 THE WITNESS: Sure.

9 MR. NEWSOME: -- but as I have stated, I
10 am objecting to the doctor opining on the
11 charges that Johnston-Willis incurred.

12 MS. DULEY: I'll join in that objection.

13 A I just was going to comment on some
14 philosophical standpoint that, you know, charges vary
15 so much around these days that it's very difficult
16 for even somebody who's in the field to comment on
17 the appropriateness when there's such a variability
18 in them, but this looks to me like what was the
19 average charges of six years ago perhaps for this
20 length of stay.

21 MR. STEPHENSON: I'd like to mark this and
22 proffer this as an exhibit.

23 MR. NEWSOME: And we will object for the
24 reasons stated.

25 MS. DULEY: Join in the objection.

(Exhibit 37 is marked.)

Q These charges did not include the pathologist charge?

A There are a few charges that are separate from the hospital's charges. Some of those are the pathology department, some are the radiology, that's correct.

Q And the radiology department?

A Uh-huh, those are the two.

Q And of Dr. Smith?

A Yeah. Actually, a consultant would be a separate charge as well.

Q So all of those are additional charges beyond the charge that you had for your surgery?

A That is correct.

Q Do you have an opinion based on the condition of Mrs. Overton regarding the rehabilitation that was necessary to her follow-up postoperatively?

MR. NEWSOME: Doctor, again -- go ahead.

A I'm not sure I understand the question.

Q Let me ask you the question a little better.

A Yeah.

1 Q With regard to Mrs. Overton's condition as
2 she was released from Johnston-Willis Hospital on
3 February 8, 1995, did she require further medical
4 attention following her release from the hospital?

5 A Yes, very much so. I mean --

6 Q Describe what additional medical attention
7 she required.

8 A Basically, the most important area is in
9 the area of physical therapy, that they have physical
10 therapists come in and work with her. She -- her
11 major problem when she came in here was pain in her
12 hip, and that pain had been for the most part taken
13 care of, but she needed to be rehabilitated in the
14 process of walking and getting around, and that
15 required some added assistance.

16 Q How would that assistance be --

17 A Rendered through --

18 Q -- provided?

19 A A physical therapist would usually provide
20 that.

21 Q And did she require some care in the
22 process of her postoperative recovery?

23 A There's an incision that has a dressing on
24 it that needs to be changed as needed, proper
25 nutrition, giving her her medications that she would

1 normally receive, and her physical therapy. I think
2 that's about it.

3 Q Dr. Burkhardt, would you answer the other
4 counsel's questions.

5 A Sure.

6
7 EXAMINATION BY MR. NEWSOME:

8 Q Good afternoon, Dr. Burkhardt. My name is
9 Kelvin Newsome. I represent Dr. Rosenbaum and
10 Blackstone Family Practice. I do have a couple
11 questions for you, sir. In your op note, you stated
12 that you believed the fracture was probably over two
13 weeks old, correct?

14 A That's correct.

15 Q And, Dr. Burkhardt, at the time you
16 performed the surgery on Ms. Overton, you didn't have
17 her nurse's notes from Heritage Hall; isn't that
18 correct?

19 A No, I did not.

20 Q Okay. And at the time you performed the
21 surgery on Ms. Overton, you didn't have the progress
22 notes from Heritage Hall; is that correct?

23 A That's correct.

24 Q Okay. And, Doctor, can we agree that
25 Ms. Overton's fracture could have occurred at some

1 point other than the 20th or the 21st of January?

2 A That is correct.

3 Q Do you know Dr. John Cardea?

4 A I do.

5 Q Did Dr. John Cardea train you as an
6 orthopedic surgeon?

7 A He did.

8 Q Do you refer patients to Dr. Cardea for
9 treatment?

10 A I do.

11 Q Do you refer patients to Dr. Cardea for
12 second opinions?

13 A I do.

14 Q Do other physicians in your practice at
15 West End Opthopaedic refer patients to Dr. Cardea for
16 treatment?

17 A They do.

18 Q Do other physicians at your practice, West
19 End Opthopaedic, refer patients to Dr. Cardea for
20 second opinions?

21 A Yes, he's the chief of the department of
22 orthopedics at the teaching hospital in our city. He
23 would be somebody that we utilize for all of the
24 things that you mentioned.

25 Q What is Dr. Cardea's reputation in the

1 community as an orthopedic surgeon?

2 A He's an excellent orthopedic surgeon.

3 Q Is Dr. Cardea a nationally renowned
4 orthopedic surgeon?

5 A That's awful --

6 MR. STEPHENSON: Objection. I don't --

7 MR. NEWSOME: I'll withdraw the question.

8 MR. STEPHENSON: -- think this goes to any
9 of the direct examination. I move to strike
10 all --

11 A I had a good answer to that one, but it's
12 probably not appropriate. His mother thinks so.

13 Q That's fair. Okay, that's fair.

14 MR. NEWSOME: I don't have any other
15 questions for Dr. Burkhardt.

16 Q Thank you very much, sir.

17 MS. DULEY: I don't have any questions.

18
19 EXAMINATION BY MR. STEPHENSON:

20 Q Dr. Burkhardt, in relation to your
21 determination of exactly when the break occurred from
22 the medical evidence that you found in relation to
23 the age of the fracture, given information that
24 involved a fall on the 20th and on the 21st, does
25 that provide you additional assistance in forming an

1 opinion as to when the break may have occurred?

2 MR. NEWSOME: Again, this has been gone
3 over on several occasions, and I believe the
4 doctor has given his very candid answers as to
5 that question. Again, it's been asked and
6 answered.

7 A It could have occurred on those dates. I
8 must admit, in the process of this deposition, I'm
9 able to look at some things even a little closer, and
10 my opinion at the time I think is always the best
11 opinion; and then as you look back on something, you
12 know, six years later, you have other things that
13 affect your decision, information that comes to light
14 and so forth. It could have happened on the 20th or
15 21st. My notes say 14 days. It didn't say ten to 14
16 days. We might be quibbling about a small number of
17 days.

18 Q Were you able to tell from the evidence
19 you had exactly --

20 A No.

21 Q -- how old it was?

22 A No. Oh, no, you couldn't. I mean, that's
23 where I'm saying to you is that it's an inexact
24 determination.

25 Q And so you have a range of time that you

1 base that on?

2 A You do, but the range I happened to pick
3 at the time I was best able to determine it was 14
4 days, not ten days.

5 Q But sometime in the past?

6 A Sometime in the past.

7 MR. NEWSOME: I believe the doctor has
8 answered these questions.

9 Q In any event, is it your opinion that it
10 was not a fresh break on the day that you --

11 A That is --

12 Q -- first saw her?

13 A That is for certain.

14 Q That's all I have.

15 MR. NEWSOME: I don't have any more
16 questions.

17 MS. DULEY: I have one question.

18
19 EXAMINATION BY MS. DULEY:

20 Q Would you also agree, Dr. Burkhardt, that
21 it could have happened some other way, not
22 necessarily a fall?

23 A Yes. I mean, it's a little unusual.
24 Somebody could hit her. I mean, a direct blow to
25 that area could do it. The most common way is a

1 fall. And I mean, we talked a little about
2 pathologic fractures that occur because the bone is
3 weakened, but yes, oh yes.

4 MS. DULEY: No further questions.

5
6 (The deposition ends at 5:03 p.m.)
7
8
9

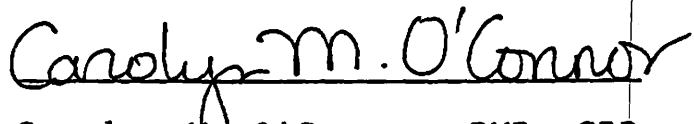
10 AND FURTHER THIS DEPONENT SAITH NOT
11 SIGNATURE WAIVED BY AGREEMENT
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1 COMMONWEALTH OF VIRGINIA,
2 CITY OF RICHMOND, to wit:
3

4 I, Carolyn M. O'Connor, a Notary Public
5 for the Commonwealth of Virginia at Large, do hereby
6 certify that the foregoing deposition of BARRY W.
7 BURKHARDT, M.D. was duly sworn to before me at the
8 time and place set out in the caption hereto.

9 Further, that the transcript of the
10 deposition is true and correct, and that there were
11 two exhibits filed with me during the taking hereof.

12 Given under my hand this 13th day of
13 May, 2001.

14
15 

16 Carolyn M. O'Connor, RMR, CRR
17 Notary Public for the
State of Virginia at Large

18 My Commission expires:
19 May 31, 2005
20
21
22
23
24
25

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON,
deceased,

Plaintiff,

v.

Blackstone Family Practice Center, Inc.,
Charles J. Rosenbaum, a/k/a
C.J. Rosenbaum, M.D.,
Josephine Fowler, M.D.,
and HCMF Corporation, t/a
Heritage Hall Health Care,

Defendants.

Law No.: CL-031



PLAINTIFF'S SUPPLEMENTAL
PROPOSED JURY INSTRUCTIONS

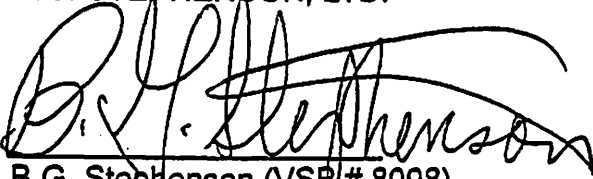
COMES NOW the Plaintiff, Horace E. Perdieu, Administrator of the Estate of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's Supplemental Proposed Jury Instructions. These instructions are numbered such that they will be added to the previously filed Plaintiff's Proposed Jury Instructions.

RESPECTFULLY SUBMITTED this 1th day of May, 2001.

HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased

By Counsel

B.G. STEPHENSON, LTD.

A handwritten signature in dark ink, appearing to read "B.G. Stephenson", is written over a horizontal line.

B.G. Stephenson (VSB # 8098)

Counsel for Plaintiff

4157 Chain Bridge Road

Fairfax, Virginia 22030

Telephone: (703) 591-2470

Facsimile: (703) 359-0638

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2001, a true and
hand delivered and
correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid,
to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

Kelvin Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
(804) 783-2003


B.G. Stephenson

INSTRUCTION # _____

If you find that the Plaintiff is entitled to be compensated for her damages, and if you further believe by the greater weight of the evidence that one or more of the Defendants acted under circumstances amounting to a willful and wanton disregard of the Plaintiff's rights, then you may also award punitive damages to the Plaintiff to punish one or more of the Defendants for their actions and to serve as an example to prevent others from acting in a similar way.

If you award punitive damages, you must state separately in your verdict the amount you allow as compensatory damages and the amount you allow as punitive damages.

VMJI 9.080
(modified)

INSTRUCTION # _____

The resident Josephine Fowler, who initially examined Mrs. Overton, was operating under a temporary license to practice medicine in Virginia. This license is regulated by a Virginia statute, and among the requirements is that the "resident shall be responsible and accountable at all times to a licensed member of the staff."

If you find that Dr. Fowler was not in compliance with this statute, and that Defendant Rosenbaum did not supervise her, you may find the following:

1. That Defendant Rosenbaum was negligent in sending Dr. Fowler to examine his patient, without supervising her or checking her diagnosis.
2. That Defendant Blackstone Family Practice Center, Inc. was negligent under the doctrine of respondeat superior. Another instruction describes the liability of an employer for an employee's negligence.

INSTRUCTION # _____

Defendant Blackstone Family Practice Center, Inc. had an agreement with Defendant Heritage Hall. This agreement made Defendant Rosenbaum the Medical Director of Heritage Hall, and Defendant Blackstone agreed to provide medical care for the residents of Heritage Hall (including Mrs. Overton). Therefore, in terms of Plaintiff's claim that Defendants were negligent in misdiagnosing Mrs. Overton, you may find that one or more of the Defendants are liable for her injuries because Defendants are connected by the Agreement.

The Agreement

VIRGINIA:

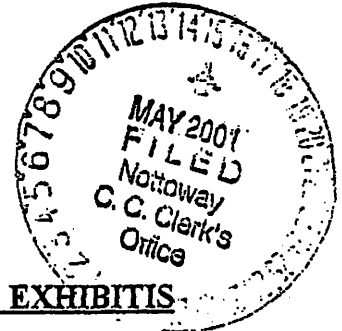
IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

THE ESTATE OF LUCILLE P. OVERTON, :
deceased, :
Plaintiff, :

v. :

LAW NO.: CL-031

BLACKSTONE FAMILY PRACTICE :
CENTER, INC., CHARLES J. ROSENBAUM, :
a/k/a C. J. ROSENBAUM, M.D., :
and HCMF CORPORATION, :
t/a Heritage Hall Health Care, :
Defendants. :



OBJECTIONS TO PLAINTIFF'S WITNESSES AND EXHIBITS

COME NOW, HCMF Corporation, t/a Heritage Hall Health Care, by counsel and for its objections to the plaintiff's list of exhibits and witnesses filed in the above-case states the following:

1. Defendant objects to R. Leidelmeyer, MD, Phyllis Corrigan, R.N., John Martin, MD and Mary Jo Berne, RN on the basis that they are not qualified to testify as prescribed by Va Code §8.01 - 581.20.
2. Defendant objects to "Johnston -Willis Hospital Transfer Records" on the basis that they are not transfer records and on the basis that they are hearsay.
3. Defendant objects to plaintiff's exhibit 2 on the basis that it is hearsay.
4. Defendant objects to plaintiff's exhibit 3 on the basis that it is cumulative.
5. Defendant objects to plaintiff's exhibit 4 on the basis that it is hearsay.
6. Defendant objects to plaintiff's exhibit 5 on the basis that it is hearsay.
7. Defendant objects to plaintiff's exhibit 6 on the basis that it is hearsay.
8. Defendant objects to plaintiff's exhibit 7 on the basis that it is hearsay.
9. Defendant objects to plaintiff's exhibit 8 on the basis that it is hearsay.

10. Defendant objects to plaintiff's exhibit 9 on the basis that it is hearsay.
11. Defendant objects to plaintiff's exhibit 10 on the basis that it is hearsay.
12. Defendant objects to plaintiff's exhibit 11 on the basis that it is hearsay.
13. Defendant objects to exhibit 12 on the basis that they are not transfer records and on the basis that they are hearsay.
14. Defendant objects to plaintiff's exhibit 13 on the basis that it is hearsay.
15. Defendant objects to plaintiff's exhibit 14 on the basis that it is hearsay.
16. Defendant objects to plaintiff's exhibit 15 on the basis that it is hearsay.
17. Defendant objects to plaintiff's exhibit 16 on the basis that it is hearsay.
18. Defendant objects to plaintiff's exhibit 17 on the basis that it is hearsay.
19. Defendant objects to plaintiff's exhibit 18 on the basis that it is hearsay.
20. Defendant objects to exhibit 19 on the basis that they are not transfer records and on the basis that they are hearsay.
21. The defendant objects to plaintiff's exhibit 20 on the basis that it is not relevant.
22. The defendant objects to plaintiff's exhibits 21 - 27 on the basis that they are hearsay.
23. The defendant objects to plaintiff's exhibits 29 - 30 on the basis that they are hearsay.
24. The defendant objects to plaintiff's exhibit 31 on the basis that it is hearsay, not relevant and not previously disclosed in discovery.
25. The defendant objects to plaintiff's exhibits 32 - 34 on the basis that they invade the province of the court's power to determine the law in this case.
26. The defendant objects to plaintiff's exhibits 35 - 39 on the basis that they are hearsay.

HCMF CORPORATION
t/a HERITAGE HALL HEALTH CARE

By Counsel

DENTON & FISCELLA

Lisa Kent Duley
Lisa Kent Duley, Esquire
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
(804) 673-4004
Fax (804) 673-6555

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of May, 2001, a true and correct copy of the foregoing
Objections to Plaintiff's Witnesses and Exhibits was mailed, postage prepaid to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, VA 22030
Counsel for Plaintiff

Kelvin Newsome, Esquire
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
Richmond, VA 23219
Counsel for Dr. Charles Rosenbaum and
Blackstone Family Practice Center, Inc.

Lisa Kent Duley
Lisa Kent Duley

ch:97-007/obj2wit&exhi

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

HORACE E. PERDIEU, as Administrator of
The Estate of Lucille P. Overton, deceased

Plaintiff,

v.

At Law No.: CL-031

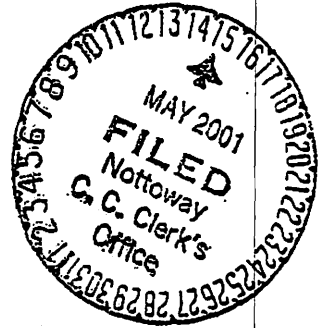
BLACKSTONE FAMILY PRACTICE CENTER,
INC., et al.

Defendants.

**DEFENDANTS BLACKSTONE FAMILY PRACTICE CENTER, INC.
AND CHARLES I. ROSENBAUM, M.D.'S OBJECTIONS TO
PLAINTIFF'S LIST OF EXHIBITS**

COME NOW defendants Blackstone Family Practice Center, Inc. ("Blackstone Family Practice") and Charles I. Rosenbaum, M.D. ("Dr. Rosenbaum"), by counsel, and submits the following as their objections to plaintiff's list of exhibits:

1. Defendants object to Exhibit 1 on the ground that it contains hearsay statements.
2. Defendants object to Exhibit 2 on the ground that it contains hearsay statements.
3. Defendants object to Exhibit 3 on the grounds that it is cumulative and contains hearsay statements.
4. Defendants object to Exhibit 4 on the ground that it contains hearsay statements.
5. Defendants object to Exhibit 5 on the ground that it contains hearsay statements.



6. Defendants object to Exhibit 6 on the ground that it contains hearsay statements.
7. Defendants object to Exhibit 7 on the ground that it contains hearsay statements.
8. Defendants object to Exhibit 8 on the ground that it contains hearsay statements.
9. Defendants object to Exhibit 9 on the ground that it contains hearsay statements.
10. Defendants object to Exhibit 10 on the ground that it contains hearsay statements.
11. Defendants object to Exhibit 11 on the grounds that it is cumulative and contains hearsay statements.
12. Defendants object to Exhibit 12 on the ground that it contains hearsay statements.
13. Defendants object to Exhibit 13 on the ground that it contains hearsay statements.
14. Defendants object to Exhibit 14 on the ground that it contains hearsay statements.
15. Defendants object to Exhibit 15 on the ground that it contains hearsay statements.
16. Defendants object to Exhibit 16 on the ground that it contains hearsay statements.

17. Defendants object to Exhibit 17 on the ground that it contains hearsay statements.
18. Defendants object to Exhibit 18 on the ground that it contains hearsay statements.
19. Defendants object to Exhibit 19 on the ground that it contains hearsay statements.
20. Defendants object to Exhibit 20 on the grounds that it is irrelevant and cumulative.
21. Defendants object to Exhibit 21 on the ground that it contains hearsay statements.
22. Defendants object to Exhibit 22 on the ground that it contains hearsay statements.
23. Defendants object to Exhibit 23 on the ground that it contains hearsay statements.
24. Defendants object to Exhibit 24 on the ground that it contains hearsay statements.
25. Defendants object to Exhibit 25 on the ground that it contains hearsay statements.
26. Defendants object to Exhibit 26 on the ground that it contains hearsay statements.
27. Defendants object to Exhibit 27 on the ground that it contains hearsay statements.

28. Defendants object to Exhibit 28 on the ground that it is irrelevant and contains hearsay statements.

29. Defendants object to Exhibit 29 on the ground that it contains hearsay statements.

30. Defendants object to Exhibit 30 on the ground that it contains hearsay statements.

31. Defendants object to Exhibit 31 on the grounds that it is irrelevant and contains hearsay statements.

32. Defendants object to Exhibit 32 on the grounds that it is irrelevant, invades the province of the Court, confusing and is otherwise not the proper subject for an exhibit.

33. Defendants object to Exhibit 33 on the grounds that it is irrelevant, invades the province of the Court, confusing and is otherwise not the proper subject for an exhibit.

34. Defendants object to Exhibit 34 on the grounds that it is irrelevant, invades the province of the Court, confusing and is otherwise not the proper subject for an exhibit.

35. Defendants object to Exhibit 35 on the ground that it contains hearsay statements.

36. Defendants object to Exhibit 36 on the ground that it is irrelevant and contains hearsay statements.

37. Defendants object to Exhibit 37 on the ground that it contains hearsay statements. Defendants also object to this exhibit to the extent he cannot establish proximate cause.

38. Defendants object to Exhibit 38 on the ground that it contains hearsay statements.

39. Defendants object to Exhibit 39 on the ground that it contains hearsay statements.

40. Defendants object to Exhibit 40 on the ground that it contains hearsay statements.

41. Defendants reserve the right to object to any exhibits not specifically listed by the plaintiff and any demonstrative evidence after having an opportunity to examine such evidence.

**CHARLES I. ROSENBAUM, M.D. and
BLACKSTONE FAMILY PRACTICE
CENTER, INC.**

By Kelvin L. Newsome
Counsel

Kelvin L. Newsome, Esq.
S. Elizabeth Pharr, Esq.
LeClair Ryan, P.C.
707 East Main Street, 11th Floor
Richmond, Virginia 23219
Telephone : (804) 783-2003
Facsimile: (804) 783-2294
*Counsel for Blackstone Family Practice Center, Inc.
and Charles I. Rosenbaum, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent via facsimile and U.

S. Mail, postage prepaid, this 14th day of May, 2001 to:

B. G. Stephenson, Esquire
4157 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff, Lucille P. Overton

Lisa Kent Duley, Esquire
Denton & Fiscella
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*

Kevin L. Neumann

5/15/01

VIRGINIA:

IN THE CIRCUIT COURT FOR NOTTOWAY COUNTY

**HORACE E. PERDIEU, as Administrator
of the Estate of LUCILLE P. OVERTON.
deceased,
Plaintiff,**

v.

LAW NO.: CL-031

**BLACKSTONE FAMILY PRACTICE
CETNER, INC., CHARLES J. ROSENBAUM,
a/k/a C.J Rosenbaum, M.D., JOSEPHINE
FOWLER, M.D., and HCMF CORPORATION,
t/a Heritage Hall Health Care
Defendants.**

**PLAINTIFF'S DESIGNATION OF
DEPOSITION TESTIMONY**

COMES NOW the Plaintiff, Horace E. Perdieu, as Administrator of the Estate of Lucille P. Overton, deceased, by counsel, and hereby files Plaintiff's Designation of Deposition Testimony for use at trial. Plaintiff reserves the right to utilize other testimony that may be designated by Defendants; further, Plaintiff reserves the right to use any other testimony, whether or not it has been designated here, in rebuttal of testimony and other evidence offered by Defendants, and for impeachment.

In designating deposition testimony to be used at trial, Plaintiff has endeavored in part to remove some of the voluminous objections of defense counsel, as such objections will be dealt with at the pretrial conference on Thursday, May 17, 2001.

I. Josephine Rebecca Fowler, M.D.

- Page 4: Line 11 – Page 5: Line 16
- Page 6: Line 12 – Page 10: Line 20
- Page 11: Line 8 – Page 18: Line 13
- Page 19: Line 4 – Line 9
- Page 20: Line 7 – 17
- Page 28: Line 5 – Line 19
- Page 32: Line 16 – Page 38: Line 12
- Page 39: Line 2 – Page 40: Line 21
- Page 43: Line 6 – Line 12
- Page 44: Line 7 – Page 45: Line 8
- Page 46: Line 17 – Page 48: Line 8
- Page 50: Line 22 – Page 51: Line 2
- Page 56: Line 13 – Line 21
- Page 62: Line 10 – Line 21
- Page 69: Line 14 – Page 70: Line 8
- Page 71: Line 21 – Page 72: Line 12
- Page 76: Line 20 – Page 77: Line 21
- Page 78: Line 12 – Line 16
- Page 80: Line 15 – Line 17
- Page 81: Line 3
- Page 105: Line 18 – Page 107: Line 10

- Page 107: Line 18 – Page 109: Line 15
- Page 113: Line 3 – Line 21
- Page 115: Line 11 – Line 19
- Page 131: Line 10 – Page 132: Line 4
- Page 133: Line 8 – Page 134: Line 5

II. Phyllis Corrigan

- Page 6: Line 2 – Page 25: Line 14
- Page 28: Line 1 – Line 15
- Page 29: Line 15 – Page 31: Line 8
- Page 31: Line 16 – Page 32: Line 6
- Page 32: Line 7 – Line 12
- Page 33: Line 3 – Line 13
- Page 34: Line 12 – Page 35: Line 11
- Page 35: Line 21 – Page 37: Line 2
- Page 37: Line 22 – Page 38: Line 3
- Page 38: Line 20 – Page 40: Line 12
- Page 41: Line 20 – Page 42: Line 4
- Page 42: Line 10 – Line 16
- Page 42: Line 20 – Page 43: Line 20
- Page 44: Line 6 – Line 13

- Page 45: Line 4 – Page 46: Line 16
- Page 47: Line 16 – Page 48: Line 8
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- Page 51: Line 20 – Page 52: Line 7
- Page 52: Line 10 – Page 53: Line 22
- Page 54: Line 12 – Page 55: Line 13
- Page 55: Line 17 – Line 20
- Page 56: Line 5 – Page 57: Line 9
- Page 57: Line 11 – Page 58: Line 10
- Page 58: Line 13 – Page 59: Line 10
- Page 59: Line 19 – Page 60: Line 17
- Page 60: Line 20 – Line 21
- Page 61: Line 1 – Line 13
- Page 61: Line 22 – Page 62: Line 18
- Page 62: Line 20 – Line 23
- Page 64: Line 11 – Line 20
- Page 64: Line 22 – Page 65: Line 23
- Page 66: Line 2
- Page 66: Line 4 – Line 12
- Page 69: Line 14 – Line 19
- Page 69: Line 21
- Page 69: Line 23 – Page 70: Line 16
- Page 71: Line 17 – Page 73: Line 13

- Page 73: Line 16 – Line 22
- Page 74: Line 6 – Line 17
- Page 74: Line 19 – Page 75: Line 3
- Page 75: Line 19 – Page 76: Line 23
- Page 77: Line 18 – Page 78: Line 1
- Page 78: Line 4 – Page 82: Line 13
- Page 82: Line 15: Page 83: Line 9
- Page 85: Line 3 – 6
- Page 85: Line 11 – Line 16
- Page 86: Line 7 – Line 17
- Page 86: Line 20 – Line 21
- Page 90: Line 8 – Line 20
- Page 95: Line 6 – Page 97: Line 15
- Page 97: Line 17 – Page 98: Line 7
- Page 98: Line 21 – Page 99: Line 16
- Page 99: Line 18 – Line 100: Line 11
- Page 109: Line 15 – Page 110: Line 6
- Page 110: Line 19 – Line 21
- Page 111: Line 1 – Line 19
- Page 112: Line 16 – Line 18
- Page 112: Line 20 – Page 113: Line 15
- Page 114: Line 3 – Line 5
- Page 114: Line 7 – Page 115: Line 1

- Page 115: Line 5 – Line 7.

III. Barry w. Burkhardt, M.D.

Plaintiff designates all direct and redirect examination of this witness in the videotaped deposition.

III. Reinald Leidelmeyer, M.D.

Plaintiff designates all direct and redirect examination of this witness in the videotaped deposition.

IV. Charles I. Rosenbaum, M.D.

Plaintiff designates testimony from deposition taken of this witness on August 13, 1998, as may be appropriate in lieu of live testimony from this witness at trial and as may be appropriate in rebuttal and impeachment.

RESPECTFULLY SUBMITTED this _____ day of _____, 2001.

**HORACE E. PERDIEU, as
Administrator of the Estate of
LUCILLE P. OVERTON, deceased**

By Counsel.

B.G. STEPHENSON, LTD.

B.G. Stephenson (VSB # 8098)
Counsel for Plaintiff
4157 Chain Bridge Road
Fairfax, Virginia 22030
Telephone: (703) 591-2470
Facsimile: (703) 359-0638

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2001, a true and correct copy of the foregoing was mailed, first class U.S. Mail, postage prepaid, to the following:

Lisa Kent Duley, Esq.
Lynne J. Fiscella, Esq.
DENTON & FISCELLA
6630 West Broad Street
Suite 290
Richmond, Virginia 23230
(804) 673-4004

S. Elizabeth Pharr, Esq.
LeCLAIR RYAN
707 East Main Street
11th Floor
Richmond, Virginia 23219
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B.G. Stephenson