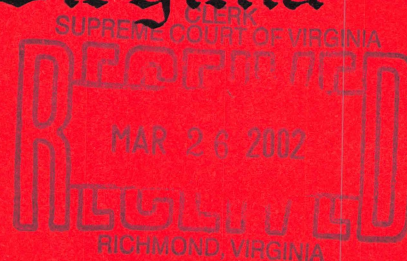


In The
Supreme Court of Virginia

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 II OF II**

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Counsel for Appellee

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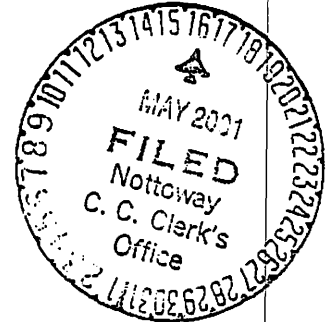
IN THE CIRCUIT COURT FOR THE COUNTY OF NOTTOWAY

LUCILLE P. OVERTON,
Plaintiff,

v.

LAW NO.: 99-31

BLACKSTONE FAMILY PRACTICE
CENTER, INC., CHARLES J. ROSENBAUM,
and HCMF CORPORATION,
t/a HERITAGE HALL HEALTH CARE,
Defendants.



**DEFENDANT'S OBJECTIONS TO
DE BENE ESSE DEPOSITIONS**

COMES NOW, Defendant HCMF Corporation, t/a Heritage Hall Health Care, by counsel, and reserves the right to make the following objections regarding de bene esse depositions:

1. Betty Solomonson

a. This defendant objects to plaintiff's attorney reading from the records of Heritage Hall on the basis that they are hearsay. (Page 62)

b. This defendant objects to the plaintiff's reference to the "wandering incident" on the basis that it is not relevant to the issues in this case. (Page 84)

c. This defendant objects to any reference to any State assessment of the operation of Heritage Hall on the basis that it is not relevant to the issues in this case. (Pages 87 and 88)

d. This defendant objects to any questioning of this witness regarding the policies and procedures of Heritage Hall on the basis that she is not qualified to testify regarding

such policies and procedures. In addition, she had not reviewed the policies and procedures prior to her testimony.

2. Phyllis Corrigan

- a. This defendant objects to the qualifications of this expert.
 - b. This defendant objects to the plaintiff's attorney and the witness reading from Ms. Overton's medical records on the basis that they are hearsay. (Pages 39 - 75)
 - c. This defendant objects to the witness testifying regarding the legality of the medical chart on the basis that she is not qualified to do so. (Pages 84 - 95)
 - d. This defendant objects to this witness providing any causation testimony on the basis that it is outside the scope of her designation. (Page 98)
 - e. This defendant objects to the plaintiff's attorney and the witness reading from the Incident Report on the basis that this contains hearsay information. (Pages 111- 112).
- In addition, this testimony exceeded the scope of my cross-examination.

3. Barry W. Burkhardt

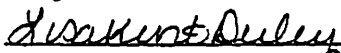
- a. This defendant objects to the plaintiff's attorney reading from the records of Heritage Hall on the basis that they are hearsay (Pages 10 - 11).
- b. This defendant objects to the plaintiff's attorney questioning Dr. Burkhardt regarding the cause of Ms. Overton's fracture on the basis that it is outside the scope of this expert's designation. (Pages 11 - 12, 15 -16, 33 - 34).
- c. This defendant objects to Dr. Burkhardt testifying as to the cause of the plaintiff's fracture on the basis that he cannot state this opinion within a reasonable degree of medical certainty (Pages 16 - 17) .

d. This defendant objects to Dr. Burkhardt testifying regarding the plaintiff's life expectancy on the basis that it is outside the scope of Dr. Burkhardt's designation and it is speculative. (Pages 25 - 26).

HCMF CORPORATION, t/a

HERITAGE HALL HEALTH CARE
By Counsel,

DENTON & FISCELLA



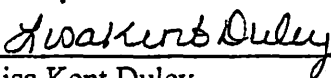
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Richmond, Virginia 23230
(804) 673-4004
(804) 673-6555 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of May, 2001, served a true and correct copy of defendant HCMF Corporation's General Objections to De Bene Esse Depositions by United States mail, postage prepaid, and addressed as follows:

B. G. Stephenson, Esquire
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Fairfax, Virginia 22030
Counsel for Plaintiff

Kelvin L. Newsome, Esquire
Leclair Ryan, P.C.
707 E. Main Street, 11th Floor
Richmond, Virginia 23219
Counsel for Blackstone Family Practice Center, Inc.
and Charles J. Rosenbaum, M.D.



Lisa Kent Duley

Sh-97-007\Gen. Obj. De Bene Esse Dep.

5/16/01

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 OBJECTIONS TO DEFENDANT HCMF'S LIST OF WITNESSES
AND DESIGNATION OF DEPOSITIONS**

COMES NOW the Plaintiff, Horace E. Perdieu, Administrator of the Estate of Lucille P. Overton, deceased, by counsel, and files Plaintiff's Objections to Defendant HCMF's List of Witnesses and Designation of Depositions. In support thereof, Plaintiff respectfully submits the following:

1. Defendant HCMF listed F. Carlos Gonzales, M.D. as a witness in this trial. Plaintiff objects to HCMF's use of Dr. Gonzales, who had been

designated by Plaintiff in the Designation of Experts as an expert witness testifying in support of Plaintiff's case.

2. Plaintiff did not designate any testimony to be read from the deposition of Dr. Gonzales, and Plaintiff is not proffering him as a witness. Defendant HCMF cannot now list him as a witness, nor can select portions of his deposition be read at trial. Dr. Gonzales is not a factual witness, and his only purpose at trial would be to offer expert testimony. Defendant HCMF did not designate him as an expert for the defense, and cannot now use him as such by designating two pages of his deposition.

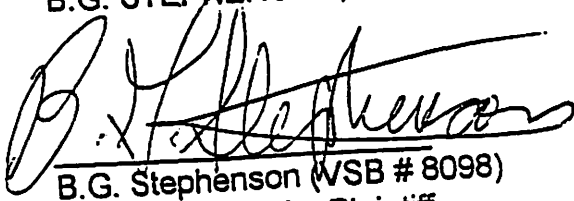
3. Should the Court allow testimony to be read from his deposition over Plaintiff's objections, Plaintiff respectfully requests that the deposition be read in full, and that the entire transcript be made part of the record.

RESPECTFULLY SUBMITTED this 16th 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 (WSB # 8098)

Counsel for Plaintiff

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Telephone: (703) 591-2470

Facsimile: (703) 359-0638

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2001, a true and correct copy of the foregoing sent via facsimile and mailed, first class U.S. Mail, postage prepaid, to the following:

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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,

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 DE BENE ESSE DEPOSITIONS

COME NOW defendants Blackstone Family Practice Center, Inc. and Charles I.
Rosenbaum, M.D., by counsel, and submit the following as their objections to plaintiff's
de bene esse depositions:

Reinald Leidelmeyer, M.D.

(1) Opinions outside the scope of permissible testimony for this witness

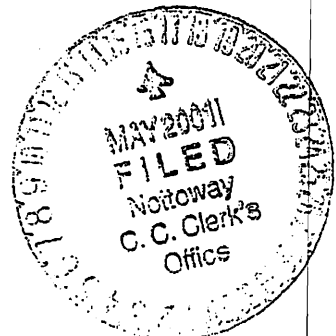
During his discovery deposition, counsel for defendants asked Dr. Leidelmeyer if
he had ever seen Plaintiff's Designation of Experts, and Dr. Leidelmeyer stated that he
had not. Specifically, Dr. Leidelmeyer testified as follows:

Q. Let me hand you Plaintiff's Designation of Experts in this case and ask
you if you have seen and reviewed this document before.

A. I don't think so.

Q. You have not seen this document before?

A. I don't recall.



Leidelmeyer Deposition, at 112 (the relevant portions of Dr. Leidelmeyer's deposition are attached hereto as Exhibit A). Because Dr. Leidelmeyer did not participate in the drafting of Plaintiff's Designation of Experts and, in fact, had never seen it, counsel for defendants asked Dr. Leidelmeyer to state the specific opinions he was rendering in this case. In response, Dr. Leidelmeyer testified as follows:

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

A. What opinion?

Q. Yes.

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

Q. Is that the only - -

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

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

A. I think that's enough.

Leidelmeyer Deposition, at 113. Dr. Leidelmeyer also testified as follows:

Q. Let me ask you this: Other than your opinion that there was a failed diagnosis on January 20th, 1995, and your opinion that Dr. Fowler did not perform an adequate exam after the fall on January 20th, 1995, are you offering any other opinions in this case?

A. In what direction? I think we discussed it at length. This is my opinion.

Q. Are you offering any other opinions in this case?

A. No.

Leidelmeyer Deposition, at 128-29. In sum, Dr. Leidelmeyer testified that he was rendering only two opinions in this case. Despite his sworn testimony, Dr. Leidelmeyer

rendered several additional opinions during his recent *de bene esse* deposition.

Defendants submit that Dr. Leidelmeyer should not be permitted to render any opinions other than the two opinions he rendered during his discovery deposition.

(2) Dr. Leidelmeyer is not qualified to testify as an expert witness

Dr. Leidelmeyer is not qualified to testify as an expert witness in this case for the reasons stated in defendants' previously filed motion *in limine* to exclude Dr.

Leidelmeyer. Defendants will also present additional reasons in support of this objection.

Barry Burkhardt, M.D.

(1) Dr. Burkhardt should not be permitted to render any opinions regarding how Ms. Overton fractured her hip because he has admitted that he does not know.

In his *de bene esse* deposition, Dr. Burkhardt candidly admitted that he does not know how Ms. Overton sustained the fractured hip. Specifically, Dr. Burkhardt testified as follows:

Q. Did you form an opinion as to how she sustained the fractured left hip?

A. No. I mean, I have no idea....

Burkhardt Deposition, at 8 (relevant portions of Dr. Burkhardt's Deposition are attached hereto as Exhibit B). Because Dr. Burkhardt admittedly does not know how Ms. Overton sustained her fractured hip, he should not be permitted to state that she sustained the fracture by falling.

(2) Dr. Burkhardt should not be permitted to render any opinions regarding when Ms. Overton fractured her hip because he cannot testify to a reasonable degree of medical certainty when the fracture occurred.

When asked if he had an opinion "within the realm of reasonable medical certainty as to when the fracture may have occurred," Dr. Burkhardt testified as follows:

“Is it in the realm of medical possibility that if she fell on the 20th or 21st, that she sustained a fracture that I saw her for ten days later that I said was about ten to 14 days old, could it have been sustained at that fall? The answer is yes, it could have.”

Burkhardt Deposition, at 15, 17. In Fairfax Hosp. System, Inc. v. Curtis, 249 Va. 531, 535 (1995), the Court held that “[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.’”

Because Dr. Burkhardt’s opinion is based upon a mere **possibility**, it is inadmissible.

- (3) Dr. Burkhardt should not be permitted to render an opinion regarding whether or not there was some impact on Ms. Overton’s life expectancy due to the fractured hip because it is outside of the scope of his designation.

In response to the question “do you have an opinion as to whether or not there is some impact on her life expectancy,” Dr. Burkhardt testified as follows: “I don’t think there’s any doubt that a hip fracture in an elderly person carries with it a significant increase in mortality. I do not have those exact statistics at the tip of my tongue, but when an older person breaks a hip, there is a significant chance of them dying within a year of the surgery.” Burkhardt Deposition, at 25-26. This testimony is clearly outside the scope of plaintiff’s designation of experts. Moreover, this testimony is irrelevant in light of the fact that Ms. Overton did not die within one year of the surgery. Accordingly, defendants’ objection should be sustained.

- (4) Dr. Burkhardt should not be permitted to testify regarding the appropriateness of Johnston-Willis Hospital's statement of charges.

Dr. Burkhardt should not be permitted to testify regarding the appropriateness of the Hospital's statement of charges because he is not qualified to do so. In fact, Dr. Burkhardt testified in his deposition that "charges vary so much around these days that it's very difficult for even somebody who's in the field to comment on the appropriateness when there's such a variability in them...." Deposition, at 28. In addition to being outside the scope of plaintiff's designation of experts, Dr. Burkhardt's testimony would clearly be speculative, at best. Accordingly, this testimony should be excluded.

- (5) Dr. Burkhardt should not be permitted to testify regarding the age of the fracture because he would be forced to speculate.

Dr. Burkhardt should not be permitted to testify regarding the age of the fracture because he would be forced to speculate. Specifically, Dr. Burkhardt testified as follows:

Q. Were you able to tell from the evidence you had exactly - -

A. No.

Q. - - how old it was?

A. No. Oh, no, you couldn't. I mean, that's where I'm saying to you is that it's an inexact determination.

Burkhardt Deposition, at 34. Because Dr. Burkhardt candidly admits that he cannot tell how old the fracture was, he should not be permitted to speculate.

Phyllis Corrigan, R.N.

- (1) Ms. Corrigan should not be able to render any opinions regarding whether or not the “medical care” rendered to Ms. Overton was proper.

In her *de bene esse* deposition, Ms. Corrigan identified Ms. Overton’s “medical chart” from Heritage Hall to include doctor’s progress notes, among other medical records. She then opined that based on the medical records contained in that chart, Ms. Overton “would have benefited from closer observation to meet her physical and emotional and cognitive needs.” (Corrigan Deposition at 95.)

This testimony is clearly outside of plaintiff’s designation of experts, as Ms. Corrigan was not designated to provide any testimony regarding the medical care rendered to Ms. Overton by any physician. Moreover, this testimony is clearly outside the scope of plaintiff’s proffer of Ms. Corrigan as an expert in the field of nursing. She was not proffered as an expert in the field of family practice medicine, nor is she qualified to give opinion testimony regarding the medical care rendered to Ms. Overton by a family practice physician.

- (2) Ms. Corrigan should not be permitted to render an opinion regarding whether or not family practice physicians should have recognized that Ms. Overton was at a high risk for falls or whether they took any actions before or after her alleged January 1995 falls to prevent further falls.

During Ms. Corrigan’s deposition, she opined that she did not find anything in Ms. Overton’s medical records, which included the doctor’s progress notes, that recognized that Ms. Overton was at a high risk for falls or that anything was noted in those records regarding the prevention of further falls. (Corrigan Deposition at 110.) She

Most importantly, this testimony is contrary to Virginia law according to Virginia Code § 8.01-397.1. According to this statute, "evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eye witnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Thus, the fact that a physician does not write down every finding or absence of findings during the course of a physical examination does not mean that a complete physical examination was not performed.

- (4) Ms. Corrigan should not be permitted to read any medical records into the record.

Ms. Corrigan should not be permitted to read any medical records into the record. This testimony is clearly hearsay and does not fall under any exception to the hearsay rule. (Corrigan Deposition at 39-75.)

CONCLUSION

In light of the foregoing, defendants' objections to plaintiff's *de bene esse* depositions must be sustained.

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

By *d. Elizabeth Phan*
Counsel

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S. Elizabeth Pharr, Esq.
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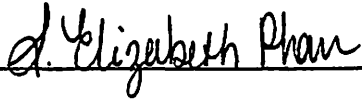
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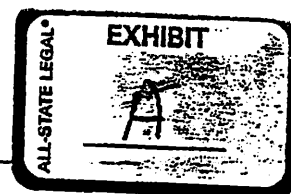
I hereby certify that a true copy of the foregoing was sent via facsimile and U.

S. Mail, postage prepaid, this 15th day of May, 2001 to:

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*Counsel for Defendant, HCMF Corporation,
t/a Heritage Hall Health Care*





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. :

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Deposition of Reinald Leidelmeyer, M.D.

Fairfax, Virginia

17

Friday, March 16, 2001

18

19

20

Reported By: Terri Duncan

21

Job No. 136929

22

1 A One's medical judgment is very often
2 different from someone else's medical judgment,
3 and the quality of it.

4 Q Can we agree that there is no cook book
5 on how to practice medicine?

6 MR. STEPHENSON: Objection.

7 THE WITNESS: A cook book on how
8 to practice medicine? I guess I don't think this
9 word is applicable to medical practice.

10 BY MR. NEWSOME:

11 Q Can we agree that physicians can treat
12 patients in different ways and still practice
13 within the standard of care?

14 A It depends on the case.

15 Q Let me hand you Plaintiff's Designation
16 of Experts in this case and ask you if you have
17 seen and reviewed this document before.

18 A I don't think so.

19 Q You have not seen this document before?

20 A I don't recall.

21 MR. NEWSOME: I will have this
22 marked for identification. I have just handed

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.

1 it's not in the record.

2 Q Is that a medical issue or is it a
3 legal issue?

4 A It's a medical/legal issue when the
5 patient is sued.

6 Q Let me ask you this, Doctor: If a
7 physician treats a patient in compliance with the
8 standard of care but does not document it --

9 A He is hanging.

10 Q -- is it your opinion that that doctor
11 did not treat that patient in compliance with the
12 standard of care?

13 A Yes.

14 Q So, essentially, if it's not written
15 down, it doesn't matter what the doctor did, is
16 that correct?

17 A Correct.

18 MR. STEPHENSON: Objection.

19 BY MR. NEWSOME:

20 Q Other than your opinion that --

21 A And it happened two days in a row.

22 Q Let me ask you this: Other than your

1 opinion that there was a failed diagnosis on
2 January 20th, 1995, and your opinion that
3 Dr. Fowler did not perform an adequate exam after
4 the fall on January 20th, 1995, are you offering
5 any other opinions in this case?

6 A In what direction? I think we
7 discussed it at length. This is my opinion.

8 Q Are you offering any other opinions in
9 this case?

10 A No.

11 MR. STEPHENSON: Do you mean
12 opinions contrary to that?

13 MR. NEWSOME: I just want to know
14 what the doctor's are, what opinions he's giving
15 in this case. And I believe he has told me.

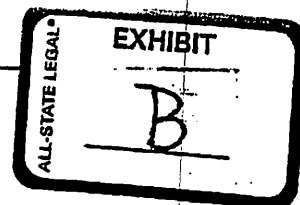
16 THE WITNESS: I believe so too.

17 BY MR. NEWSOME:

18 Q Have you ever been a defendant in a
19 lawsuit?

20 A In what?

21 Q Have you ever been a defendant in a
22 lawsuit?



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF NOTTOWAY COUNTY

3 -----
4 HORACE E. PERDIEU, as Administrator)
5 of the Estate of LUCILLE P.)
6 OVERTON, Deceased,)
7 Plaintiff,)

8 vs.)

9 Law No. CL-031

10 BLACKSTONE FAMILY PRACTICE)
11 CENTER, INC., CHARLES J.)
12 ROSENBAUM, a/k/a C. J. ROSENBAUM,)
13 M.D., JOSEPHINE FOWLER, M.D., and)
14 HCMF CORPORATION, t/a HERITAGE)
15 HALL HEALTH CARE,)
16 Defendants.)
17 -----

18 May 11, 2001

19 CERTIFIED COPY

20 Richmond, Virginia

21 The videotaped deposition of BARRY W.
22 BURKHARDT, M.D., taken at the instance of the
23 Plaintiff, before Carolyn M. O'Connor, RMR, CRR, a
24 Notary Public for the Commonwealth of Virginia at
25 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.

26 COOK & WILEY, INC.
27 Registered Professional Reporters
28 Post Office Box 14582
29 Richmond, Virginia 23221
30 (804) 359-1984

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 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 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 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 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.

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

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.: CL99-031

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 COUNTER-
DESIGNATIONS TO PLAINTIFF'S DEPOSITION DESIGNATIONS**

COME NOW defendants Blackstone Family Practice Center, Inc. and Charles I. Rosenbaum, M.D., by counsel, and submit, for the sake of completeness, the following as their counter-designations to plaintiff's deposition designations:

Josephine Rebecca Fowler, M.D.

Page 18 Line 14

Page 20 Lines 18-21

Page 27 Line 8 - Page 28 Line 4

Page 31 Lines 3-7

Page 38 Lines 13-14

Page 40 Line 22-Page 41 Line 2

Page 43 Lines 13-14

Page 47 Lines 9-17

Page 51 Lines 3-8

Page 54 Line 8-Page 55 Line 17

Page 55 Line 21-Page 56 Line 8

Page 69 Lines 10-13

Page 72 Line 13-Page 74 Line 12

Page 79 Line 22-Page 80 Line 10

Page 108 Line 16

Page 113 Line 22-Page 114 Line 6

Barry W. Burkhardt, M.D.

Defendant; designate all cross-examination of any sort of this witness in the videotaped deposition.

Reinald L. Seidelmeyer, M.D.

Defendant; designate all cross-examination of any sort of this witness in the videotaped deposition

Charles L. Rosenbaum, M.D.

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Phyllis Corrigan

Defendants designate all cross-examination of any sort of this witness in the videotaped deposition

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

By *S. Elizabeth Pharr*
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion *in Limine* to Preclude Testimony of Mary Jo Berner, R.N. was sent via Facsimile and U. S. Mail, postage prepaid, this 16th day of May, 2001 to:

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v/a Heritage Hall Health Care*

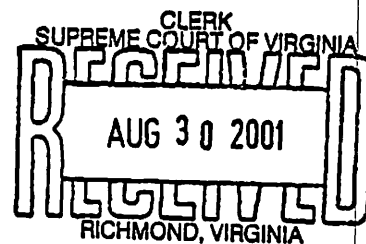
d. Elizabeth Pham

COMMONWEALTH OF VIRGINIA
IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY
Case No. CL-031

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

vs.

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

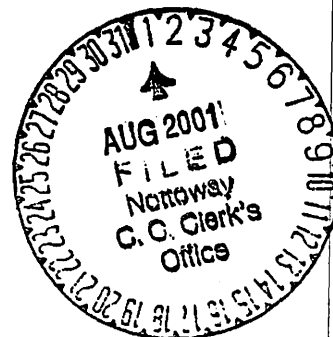


ORIGINAL

May 17th, 2001

Nottoway, Virginia

Complete transcript of hearing and other
incidents in the above, when heard before the
Honorable James Luke, Judge.



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1 APPEARANCES:

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20 Richmond, VA 23230
21 Counsel for HCMF Corporation
22
23
24
25

1 THE COURT: I want to put on the record
2 That Mr. Stephenson, plaintiff's attorney, has
3 subpoenaed a Dr. Damewood. Dr. Damewood has
4 obtained counsel and is objecting pursuant to
5 the Court's subpoena. Before talking with
6 Mr. Pasco, the attorney for the doctor, I
7 thought I would give Mr. Stephenson an
8 opportunity to put on the record why he thinks
9 he needs this witness.

10 MR. STEPHENSON: Dr. Damewood is being
11 called as a fact witness in relation to his
12 examination of Lucille Overton on January 31st
13 of 1995 at which time he examined her and
14 determined that she appeared to have a hip
15 fracture and ordered x-rays to confirm his
16 diagnosis. He has an extensive amount of
17 notes covering a full page of medical records
18 and his handwriting of the doctor is not
19 legible, and when I examined Dr. Rosenbaum he
20 was unable also to decipher all of the notes.

21 I think it is pertinent to the case to
22 determine what he observed in his examination
23 to cause him to diagnose the hip fracture at
24 the time, what he noted as any comments made,
25 if any, by the person who had the hip fracture

1 of Lucille Overton and what he did in
2 conducting a physical examination and what was
3 obvious to him when he conducted that
4 examination that caused him to suspect the hip
5 fracture and to call for x-rays.

6 This is a factual issue and I had asked
7 him in a conversation that I had sometime ago
8 if he would just decipher his own notes and
9 send a typed written version of that and he
10 refused to do so with some hostility. And I
11 didn't think I had any reasonable alternative
12 except to issue the subpoena, to have him come
13 and testify factually about his examination
14 and his findings.

15 THE COURT: I'll ask defense counsel if
16 there's any question about whether
17 Mrs. Overton had a fractured hip.

18 MR. NEWSOME: Not one question. As I'd
19 stated, Your Honor, Dr. Rosenbaum actually
20 made the diagnosis after he reviewed the
21 x-ray. No one is going to contest that. Our
22 experts are relying upon Dr. Damewood's note.
23 Actually not really relying on it, the only
24 thing they're relying on is there was a
25 complaint of hip pain on that day and based

1 upon the findings on the x-ray there was a
2 fractured hip diagnosed on January 31st, 1995.
3 No one's contesting that at all.

4 I will just say this, only because I'm
5 aware of what Mr. Stephenson is referring to
6 with respect to his conversation with
7 Dr. Damewood which occurred almost three years
8 ago, as I recall, and in three years it would
9 seem like, especially when given this case
10 when we have four or five de bene esse
11 depositions, to have a deposition for this
12 witness to come in and read what we already
13 know that there's a fracture would have seemed
14 something that would have been more suitable
15 given the patient care issues related to Hot
16 Springs and Dr. Damewood, but I will state I'm
17 not familiar because I don't really have a dog
18 in this fight.

19 THE COURT: I only wanted to hear you say
20 that there was not a question about the x-ray.

21 MR. NEWSOME: Not a question.

22 MR. STEPHENSON: The question is when the
23 break occurred and our position has been that
24 the fracture occurred on the fall that we have
25 documented either on the 20th of January or on

1 January 21st. So that is a principal issue in
2 the case of failing to diagnose it when it
3 occurred in relation to the fall.

4 THE COURT: What's the date of this x-ray?

5 MR. STEPHENSON: The 21st of the January,
6 so it was 10 to 11 days earlier that we had
7 the two falls. That's the significance.

8 THE COURT: And you think that he can pin
9 that down for you?

10 MR. STEPHENSON: I'm not interested in his
11 pinning it down, I'm interested in his
12 findings and what he showed in the way of his
13 examination that disclose to him physically
14 that there was a hip fracture and any other
15 things that were obvious to him in his
16 examination as opposed to the terse note
17 earlier from another resident that said no
18 injury, no treatment, but didn't show anything
19 about any examination.

20 So this was in stark contrast to earlier
21 notes in relation to the falls that occurred.
22 And I might add that the reason that he was
23 examining her at that time is Mr. Perdieu, her
24 son, came in and found her in a deteriorated
25 state of health and demanded the medical

1 attention and that's what prompted the
2 examination to be made at that time.

3 MR. NEWSOME: Just a very brief statement:
4 Dr. Damewood can shed no light on when the
5 fracture actually occurred. There's nothing
6 in his note that was readable. He's not going
7 to come in and say it occurred on the 20th or
8 the 21st. He didn't see her on any of those
9 dates. I don't see how he speaks to any of
10 that.

11 THE COURT: Let's take it off the record.

12
13 (A recess was taken.)

14
15 THE COURT: After talking with Dabney
16 Pasco, counsel for Dr. Damewood, the Court
17 quashed the subpoena. Proceed from there. I
18 don't know where we should begin particularly.
19 I thought surely that at the conference I
20 found some time to work on this, but somehow I
21 didn't do that. I did, several days ago,
22 begin to take a look at the deposition of
23 Betty Solomonson, the defense witness, and
24 what I'm struck by as I begin to look at it is
25 the lengthy examination by Mr. Stephenson of

1 this lady in regard to her qualification. I
2 don't know how we get most of that out, but I
3 think ultimately your conclusion is she's
4 qualified to testify. How much of all that do
5 you think the jury needs to hear?

6 MR. STEPHENSON: You know, the reason for
7 the examination on the qualifications is borne
8 out I think in the subsequent testimony is
9 that she seems to present herself as an
10 administrator qualified to operate a nursing
11 home and then her testimony in giving her
12 opinion goes on into the area of well, I don't
13 think we hold the staff to any standard on
14 being subject to abiding by the procedures and
15 policies of a nursing home and then even
16 purport to know what the procedures and
17 policies of the nursing home were as it
18 related to Heritage Hall.

19 So all of this background in terms of her
20 presenting herself as a qualified witness I
21 thought went to the extent of her
22 qualifications and had something to do with
23 her ultimate credibility. I might add I've
24 been likewise subjected to very extensive
25 examinations of my witnesses in terms of their

1 qualifications.

2 THE COURT: I haven't seen those.

3 MS. DULEY: The most we have taken with
4 any of his witnesses has been five minutes
5 regarding qualifications, at most.

6 THE COURT: I really don't care to go into
7 that in particular, it's the only one that I
8 looked at that I thought that we needed this
9 meeting for this afternoon. I simply don't
10 know how we can deal with two hour, two and a
11 half hour depositions and I don't know what
12 your experience is, but mine is the jury's not
13 going to be around when you get through them.
14 They'll be sitting there, but they won't be
15 present.

16 MR. STEPHENSON: Would the Court suggest
17 that we not have any cross on voir dire?

18 THE COURT: You're asking what I suggest
19 and I don't want to ruin your case. I don't
20 want to take it apart. I guess if you-all
21 agreed that ultimately your expert witnesses
22 are going to be allowed to testify, I don't
23 think the jury is going to be impressed by the
24 efforts to qualify one and the basic questions
25 and all this leads to their being able to

1 offer an opinion. And it's all legal things
2 that we deal with and I don't think lay people
3 are going to pay a lot of attention to that.
4 They want to hear what the doctor has to say.

5 MR. STEPHENSON: If we were all prepared
6 to stipulate to the qualification of experts,
7 I would have no reservation about that.

8 THE COURT: Who are your experts?

9 MR. STEPHENSON: I have Dr. Burkhardt has
10 testified as the surgeon that performed the
11 hip surgery and installed the prosthesis and I
12 have Dr. Liedelmyer who has testified as an
13 expert, and Phyllis Corrigan who is in the
14 nursing end that is going to testify as an
15 expert on de bene esse depositions. I don't
16 have any other experts I would bring on live.
17 They're three that we've done by de bene esse
18 depositions.

19 MS. DULEY: Your Honor, if I might add, I
20 believe one of the things that we wanted to
21 discuss today is whether or not Dr. Liedelmyer
22 and Ms. Corrigan are qualified because we, the
23 defendants, will argue that they are not. And
24 it was our thought that that's something that
25 could be determined, since they're de bene

1 esse depositions have been taken, and that's
2 something that could be determined today
3 rather than take up the jury's time tomorrow
4 arguing.

5 THE COURT: That's the sort of thing that
6 I wanted to get to. I certainly thought we
7 could do it and we have ability to look at the
8 videos. Let's begin somewhere. Can we begin
9 with Liedelmyer?

10 MR. STEPHENSON: I don't have any problem
11 with that, Your Honor.

12 THE COURT: Do we have the tape?

13 MR. NEWSOME: Yes.

14
15 (Video tape being played.)

16
17 THE COURT: And the question is whether or
18 not he had a clinical practice as is required.

19 MR. NEWSOME: There are a couple of
20 questions, but that's definitely a major one,
21 Your Honor. If you'd like I'll start.

22 THE COURT: Okay.

23 MR. NEWSOME: As the Court is well aware
24 in a medical malpractice case, the plaintiff
25 has to present expert testimony to establish

1 the standard of care, a breach of the standard
2 of care and that breach of the causation
3 unless the experts are qualified under
4 8.01-520. It states "A witness shall be
5 qualified to testify as an expert on the
6 standard of care if he demonstrates expert
7 knowledge of the standards of the defendant's
8 specialty under what conduct fails to conform
9 to those standards and if he has had active
10 clinical practice in either the defendant's
11 specialty or related field of medicine within
12 one year of the alleged date of the act or
13 omission. When determining whether an expert
14 qualifies --

15 THE COURT: Let me ask you one thing,
16 within one year of what?

17 MR. NEWSOME: The alleged act or omission.
18 In our case it will be January 31st which will
19 take you to '94 and '96. When you look at
20 that statute it really raises three discrete
21 issues or categories that the expert must meet
22 and the first is whether or not the clinician
23 actually has an active clinical practice and
24 on that issue, Your Honor, the Court needs to
25 determine if the physician actually treats

1 patients.

2 And Your Honor, the issue is a little
3 different right now, but let me give it a
4 shot. Dr. Liedelmyer did not have an active
5 clinical practice at the relevant time which
6 would be January, anywhere between January,
7 '94 and January of '96. I believe his
8 testimony was clear that he practiced one day
9 a week at the Fairfax County health department
10 where he was performing preemployment
11 physicals and reading positive skin tests for
12 TB.

13 In that capacity he clearly, as a
14 part-time employee, was not treating patients,
15 so he was not treating patients therefore he
16 was not actually a clinician at that point.
17 For some reason Dr. Liedelmyer had an epiphany
18 following his deposition that he not only was
19 working one day a week part-time at the
20 Fairfax County health department, but he was
21 also working one day a week with Dr. Mehra and
22 Dr. Basackoff which is something we've never
23 heard before.

24 Obviously when a witness gives his
25 deposition he can also do an errata sheet.

1 First time that we ever heard of it was during
2 his de bene esse deposition, no way to follow
3 up to see if he actually did that or not. I
4 don't want to dwell on that point because,
5 Your Honor, one day a week doing, as he said,
6 diagnoses and treating patients, if we're
7 talking two days a week, or really a day and a
8 half a week, I don't think that's an active
9 clinical practice. We have literally one day,
10 even if we accept his testimony being true,
11 with he's actually treating patients, making
12 diagnoses, general diagnoses, not the
13 diagnoses here.

14 I think given his testimony, if you
15 believe that he has a clinical practice with
16 that one day and these clinics that we first
17 heard of, that's not an active clinical
18 practice. And I will submit to the Court that
19 I have seen no case which says what's active
20 and what's not. Is it one day? Is it three
21 days? I must admit I have no case dealing
22 with that issue and there's only two cases
23 that I found that talk about what clinical
24 practice was. At this point I would submit
25 that the witness, Dr. Liedelmyer, does not

1 have an active clinical practice. That's just
2 the first prong.

3 The second issue is whether or not the
4 witness has an active clinical practice in the
5 defendant's specialty or related field of
6 medicine, which is really two issues; the
7 first is whether or not the witness has an
8 active clinical practice in the defendant's
9 specialty and that's a pretty easy one in this
10 case. Dr. Rosenbaum and Blackstone Family
11 Practice are family practice physicians, a
12 very discrete specialty in medicine and
13 Dr. Liedelmyer is not a family practice
14 physician. He has no residency training, no
15 special training at all in family practice.
16 So clearly he doesn't have an active clinical
17 practice as a family practice physician, so
18 now the only way he can qualify is if you look
19 to see if he has an active clinical practice
20 in a related field of medicine.

21 Until last year that was kind of the
22 sticking point, what is a related field of
23 medicine. There were decisions all over the
24 board, but thankfully last year in the
25 Virginia Supreme Court case of Sami versus

1 Varn, 260 Virginia 280, the Court gave us a
2 lot of guidance on what that provision
3 actually means. In that case the Court ruled
4 obviously quite correctly that an Ob could
5 testify against, excuse me, strike that. An
6 Ob was qualified to testify against an
7 emergency room physician because his clinical
8 practice included the performance of a pelvic
9 exam which was the procedure at issue and
10 that's real important in Sami.

11 What the Court said was what you do is you
12 look to see if a physician in a different
13 specialty, if they actually do the procedure
14 at issue. The Court also went on to state the
15 purpose of the requirement of section
16 8.01-581.20 that an expert have a active
17 clinical practice in the defendant's specialty
18 or related field of medicine is to prevent
19 testimony. And I'm going to quote it, Your
20 Honor, is "To prevent testimony by an
21 individual who has not recently engaged in the
22 actual performance of the procedures at issue
23 in this case."

24 What the Court's showing us in Sami is
25 that you have to look at what the doctor is

1 doing, what is being looked at in your case.
2 So if someone is going to qualify and they're
3 not in that defendant's specialty, they need
4 to be doing what this doctor's doing, and the
5 Court's reading it very strictly, as you can
6 see, from the Court's decision in Sami.

7 Your Honor, in our case you heard a lot of
8 testimony about what Dr. Liedelmyer's been
9 doing over the last 11 years, but the real
10 critical fact that you get from what he said
11 was he was not diagnosing and treating
12 fractures, in the terms of the Sami court, is
13 the procedure at issue. He was not diagnosing
14 and treating fractures, that's crystal clear,
15 and he was not seeing nursing home patients,
16 and our plaintiff's decedent in this case is a
17 nursing home patient. And he was not
18 supervising interns or residents during that
19 11 year period. He was doing nothing that's
20 at issue in this case.

21 I feel like I should just mention another
22 case because what I think it's fairly clear
23 from the supreme court precedent, Sami, and
24 Fairfax Hospital versus Curtis is that the
25 Court's not interested in what you used to do,

1 the Court's look very specifically at what
2 you're doing within one year of the alleged
3 negligent act and in the case of Fairfax
4 Hospital kind of sets that out pretty well.

5 In that case a baby was found in the
6 neonatal intensive care unit facedown in a
7 cardiac arrest. The hospital's expert was
8 precluded on the standard of care on the NICU.
9 What's interesting about this case is that the
10 hospital's expert had been a professor of
11 pediatrics at the University of Virginia for
12 nine years up until 1987 and in fact he worked
13 at a NICU just like the one at Fairfax
14 Hospital, but in 1987 he stopped and he became
15 a transport director for the helicopter unit
16 and the alleged negligent act occurred two
17 years later in 1989.

18 When Dr. Mehra got on the stand, said
19 well, I haven't been doing it in two years,
20 but I still know what the standard of care is,
21 the Court said no, you have to be doing what
22 the defendant's doing within one year of the
23 negligent act. That shows you how strictly
24 the Court's applying the statute, as it well
25 should when you have someone who did the exact

1 job for seven years. He's still familiar with
2 the standard of care, the Court said no, you
3 have to comply strictly with the statute.

4 So here, Your Honor, it's actually pretty
5 clear that Dr. Liedelmyer did nothing that
6 was -- that's at issue in this case within one
7 year of the alleged negligence and I don't
8 state, Your Honor, Dr. Liedelmyer was being
9 very specific when Mr. Stephenson asked him
10 well, even that one day a week that you just
11 remembered, were you doing family practice.
12 He wouldn't admit to it. As you recall, he
13 said no, I was doing primary care because he
14 knows that family practice is a discrete
15 specialty that he wasn't doing and that's the
16 active clinical practice aspect.

17 I think with respect to what he's brought
18 in to testify to the regard of the standard of
19 care, there's even a more fundamental problem
20 with his testimony, if you can believe that,
21 and he doesn't know what the standard of care
22 for family practice physicians in Virginia.
23 It's crystal clear if his testimony, and I'm
24 going to quote the question and the answer to
25 you, and this question was taken from his

1 discovery deposition. Your Honor, the
2 question was, "Your definition of the standard
3 of care for family practice physicians in the
4 Commonwealth of Virginia is, and I quote, 'To
5 do their best according to their knowledge,'
6 correct?"

7 Answer: "Yes, and limitations. Yes."

8 That was his answer, Your Honor. As the
9 Court's well aware, and I will read from the
10 statute which governs what the standard of
11 care is in Virginia, 8.01-581.20 and I will
12 state in the middle of that statute it states
13 the standard of care by which the acts or
14 omissions are to be judged shall be that
15 degree of skill and diligence practiced by a
16 reasonably prudent practitioner in the field
17 of practice or specialty in this Commonwealth.
18 That's what the standard of care is.

19 Your Honor, what's pretty crystal clear
20 from -- let me just read a little further
21 because there's a presumption and I'll read
22 that presumption. "Any physician who is
23 licensed to practice in Virginia shall be
24 presumed to know the statewide standard of
25 care and the specialty or field of medicine in

1 which he is qualified and certified." Your
2 Honor, here's a couple of problems with the
3 presumption; let me just state in particular
4 it says in the specialty or field of medicine
5 in which he's qualified or certified.

6 Dr. Liedelmyer is not qualified or certified
7 as family practitioner so he does not get the
8 presumption. If he did get the presumption,
9 he has clearly rebutted that presumption, Your
10 Honor. His only presumption, his testimony is
11 he does not know what the standard of care is.
12 He has told everybody I do know what the
13 standard of care is.

14 I wish I could have shown you his
15 discovery deposition because I asked him that
16 question, he said, "Hmm, that's a good
17 question," and then he gave me that answer.

18 Just to take that to what's going to
19 happen in this case, the court, after all the
20 evidence is in, is going to instruct the jury
21 and what you're going to say, and I don't want
22 to overstep my bounds, but what I'm trying to
23 stay is you're going to instruct them, you
24 must determine the degree of skill that is
25 required by the defendants by considering the

1 testimony of the expert testimony on that
2 subject. You're going to go on to state that
3 a doctor has the duty to use the degree of
4 skill and diligence in the care of his/her
5 patient that a reasonably prudent doctor in
6 the same field or practice especially in this
7 state that would have used in these
8 circumstances. We know right now that this
9 witness cannot give that testimony. All of
10 his opinions in this case, Your Honor, are
11 based upon an erroneous understanding of what
12 the standard of care is in this case and Your
13 Honor, if he's allowed to testify in this
14 case, the jury's going to say, well, the
15 gatekeeper looked at it. I saw the objection,
16 but he's obviously qualified, he's qualified
17 to give his testimony, so we should give some
18 weight to it, but because he does not know the
19 beginning point, he can't help this jury on
20 the fundamental question in this case.

21 THE COURT: Ms. Duley.

22 MS. DULEY: I don't have anything to add.

23 THE COURT: Mr. Stephenson.

24 MR. STEPHENSON: I did not believe that we
25 were coming back and reciting the whole issue

1 that was before Judge O'Hara in connection --

2 THE COURT: He didn't rule on it and I
3 don't think he saw any of this, did he?
4 Didn't he have extracts or something?

5 MR. STEPHENSON: Yes, he had what was
6 presented to him from a deposition, discovery
7 and all of that aspects.

8 THE COURT: He didn't rule on it.

9 MR. NEWSOME: May I say one thing and then
10 I will shut up? There was no de bene esse
11 deposition to rule on. The reason he did not
12 rule on it is because it was a discovery
13 deposition.

14 MR. STEPHENSON: In the case authority
15 that we have on the ruling of the person who
16 had become a helicopter operator, and that is
17 the authority that he wants to stand on as to
18 whether or not you're engaged in the practice
19 of medicine within the time frame. That
20 certainly is poor authority for what the Court
21 is asked to do and ruling on the
22 qualifications that this man who if you have
23 someone that is qualified, I don't know where
24 you go to find anyone with more credentials
25 than are exhibited by this person who has been

1 in the practice well before there was any
2 so-called specialty of family practice which
3 was always known as general practice. And
4 again, it's treating members of the family.

5 He testified that he's been engaged in the
6 clinical practice of primary care which treats
7 all members of the family. As he started his
8 career back in the military, he began treating
9 all members of the family including dependents
10 of the military personnel, came on back, went
11 through internship when they did it that way
12 at University of Virginia or Johnston-Willis
13 Hospital and then University of Virginia after
14 he returned from the military service. And
15 then he orchestrated the emergency department
16 in Fairfax County, the Fairfax Hospital in
17 Fairfax County and treated all manner of
18 conditions for which people present themselves
19 in an emergency room. And that is the primary
20 care, the practice of medicine in its utmost
21 environment. And then he was responsible for
22 training residents and interns.

23 THE COURT: Let me stop you for this
24 question. The statute says he has to have had
25 a clinical practice within one year of the act

1 or omission. As I understand him, he hasn't
2 had a practice since 1990 unless you can count
3 the work at the Fairfax health department or
4 the one day a week that he did with his
5 doctors, and apparently he missed them in the
6 first deposition.

7 MR. STEPHENSON: He testified that he did
8 a day a week with each of those who were his
9 subjects and also did the work with the
10 Fairfax health department which is dealing
11 with examinations.

12 THE COURT: And the question is does that
13 constitute a clinical practice.

14 MR. STEPHENSON: I don't know if the
15 statute says if you have to own a clinical
16 practice and it does not address how many days
17 a week that you have to spend in it. I know a
18 lot of doctors who take an awful lot of time
19 off and you wonder if they work one day a
20 week. It certainly does not address how much
21 time you have to spend in doing your work. If
22 you can't go in one day a week and stay up on
23 what you're doing in examining and treating
24 patients, you may do it any part of the time
25 and still stay abreast of the nature of the

1 practice.

2 As he goes on and testifies, you know from
3 the way he approaches how you deal with
4 injuries and how he testified, and he goes on
5 and will be testifying in this deposition
6 about how he treated the fractures that came
7 into him to treat either in the clinical part
8 of the practice that he had or in the
9 emergency room environment. And you don't go
10 in and perform surgery yourself when you have
11 broken bones that aren't minor ones. He
12 explained how you treat a finger break, but
13 the other one diagnoses it and examines it and
14 sends him to the specialists that performs
15 surgery.

16 So he certainly has demonstrated that he
17 is well aware of the whole scope of the
18 practice of medicine in treating family. I
19 don't know how we now decide that the general
20 practice of medicine, as it was always called,
21 has suddenly developed a different specialty.
22 And you will hear doctors testify that the
23 family practice is the same as general
24 practice of medicine when you treat all
25 members of the family.

1 THE COURT: I have to go back to what I
2 said, I don't question at some point that he
3 has had such, I question whether he's had it
4 within the parameters of the statute.

5 MR. STEPHENSON: I certainly submit that
6 he has demonstrated -- on the day he was
7 examined he had continued to work up to that
8 very moment in his examination with the
9 position of the health department that had
10 just changed so that he will no longer be
11 doing it at that job, but that involved
12 examination of patients over there on that
13 side in a different scope, whatever the
14 patients presented themselves for as he is in
15 the practice of the subjects that he had with
16 him, Dr. Mara and the other doctor in their
17 clinics, one in Chantilly and one in McLean.

18 THE COURT: I think I've learned all I can
19 from you-all about him. Who is the next one
20 that you want to do?

21 MS. DULEY: Nurse Corrigan.

22 THE COURT: Do you have that?

23 MR. STEPHENSON: I have that.

24
25 (Video tape played.)

1
2 MS. DULEY: Your Honor, our objection to
3 Nurse Corrigan is not wholly dissimilar from
4 the objection to Dr. Liedelmyer. While she
5 was involved in active clinical practice
6 during the requisite time period, she was not
7 involved in a related field. You heard her
8 testify that she's never worked in a nursing
9 home or long-term care facility. Her
10 experience is only in acute care. She's never
11 devised a care plan in a nursing home. She's
12 never determined whether the use of restraints
13 in a nursing home is proper. She has no
14 experience with restraints or safety devices
15 in a nursing home. She's never made decisions
16 in a nursing home regarding restraints. She
17 did not perform the procedures that are at
18 issue with regard to the nursing home during
19 the time period or in reality, never has.

20 In the Sami case which Mr. Newsome
21 referred to earlier, the supreme court states
22 that with regard to 8.01-581.20, "It is
23 sufficient if, in the expert witness's
24 clinical practice, the expert performs the
25 procedures at issue and the standard of care

1 for performing the procedure is the same."

2 First of all, I would argue that she has
3 never performed the procedure at issue. She's
4 never dealt with restraints in a long-term
5 care facility. She's never devised a care
6 plan in a long-term care facility. She
7 testified that she took care of patients for a
8 longer period of time, however, Your Honor,
9 I'm sure you noted that was in the 1980s, so
10 that's not within the requisite time period.

11 Even if we assume for argument sake that
12 that falls within the province of a similar
13 field, it's outside the requisite time period.
14 She said herself the only time she has
15 involvement with a nursing home was for her
16 grandmother and certainly that's not enough.
17 I think all of us have had relatives in
18 nursing homes and if that's all that is
19 required to qualify, then I think we can
20 probably all testify.

21 In addition, and I think probably more
22 importantly is the standard of care in a
23 nursing home is different from the standard of
24 care in a hospital. She has only worked in a
25 hospital. She is not familiar with the

1 standard of care in a nursing home. She
2 herself testified in her deposition that the
3 standard is different in determining the use
4 of restraints in a nursing home and in a
5 hospital.

6 I will proffer to the Court that my
7 experts will testify that the standard of care
8 in a nursing home and in a hospital are
9 completely different. It does not have the
10 same standard of care and that's what is
11 required by the supreme court in the Sami
12 case, that the standard of care for performing
13 the procedure is the same. The testimony will
14 be and has been from Nurse Corrigan herself
15 that the standard is not the same and on that
16 basis, Your Honor, I suggest that she is not
17 qualified and should not be allowed to
18 testify.

19 THE COURT: Mr. Stephenson.

20 MR. STEPHENSON: Your Honor, very
21 interesting that we now have the involvement
22 of this nurse who clearly has testified about
23 her work in dealing with elderly patients in
24 relation to her nursing service and having to
25 formulate care plans for them aside from the

1 acute care that she administered. She of
2 course testified about the involvement of an
3 effort to get patients out of hospitals
4 earlier now than in the 1980s, but she
5 continued to testify about patients coming
6 back immediately for care after the acute
7 problem is over because they have the other
8 conditions.

9 When you try to have it narrowed to the
10 restraint issue, it's my understanding that
11 everybody says now you can't have restraints
12 without orders of the Court, so certainly this
13 witness was not testifying, well, gosh, the
14 only thing you do to care for a patient to
15 prevent her from falling or to hurt themselves
16 in other ways is to impose restraints. I
17 think you heard her testify that the policy
18 against restraints, and you do that as a last
19 resort to prevent someone from hurting
20 themselves.

21 I think you're going to hear testimony
22 also that in the nursing home environment
23 there may be times in fact that you have some
24 policies and procedures and the statute
25 involves if you do it with a court order, that

1 may be one way to provide for some needs of
2 the patient, but we're not contending in this
3 case that the only thing that should have been
4 done for Mrs. Overton is put her in
5 restraints. In fact that's not our position,
6 it's a matter of having some care plan to deal
7 with her situation of being admitted as a
8 patient suffering from dementia, very confused
9 and needing services in all the daily life
10 activities.

11 You certainly heard this witness testify
12 about constant involvement of having patients
13 come from the nursing home into her facility
14 for acute care along with the continued needs
15 to administer the ongoing chronic situation
16 involved with the patients that are served and
17 that this, many times, involved very long-term
18 stays after the acute problem was resolved.

19 You certainly have a wealth of expertise
20 in dealing with these issues and including the
21 transfer of documents or the medical data that
22 are sent with them, receiving the transfer
23 documents from the nursing home dealing with
24 the medical needs of the patient. This has to
25 be as close as you get to something that

1 involves the similar type of need in the
2 medical profession and dealing with that in
3 the total care of the elderly on her unit and
4 especially dealing with the care of the
5 elderly on her unit and including her
6 administering all of the daily care required
7 of her patients and then having assistance.
8 And she was in charge of that, in formulating
9 a plan that needed to be done providing for
10 all their medical needs. How qualified do you
11 need to be as a witness that can testify in
12 these matters.

13 MS. DULEY: May I respond?

14 THE COURT: Briefly.

15 MS. DULEY: Ms. Corrigan may have a wealth
16 of information and I'm not saying she's not a
17 qualified nurse, however her qualifications do
18 not fall within the statute as interpreted by
19 Sami. And again, most importantly, it still
20 does not get over the threshold problem that a
21 nursing home and a hospital have a different
22 standard of care. And she is not familiar
23 with the nursing home standard of care having
24 never worked in one.

25 THE COURT: I listened to this lady who

1 has never worked in a long-term facility and
2 questions come to my mind. She cares for
3 elderly and has done that for years, but she
4 has cared for the elderly in a hospital
5 generally, I think, are patients who she
6 describes them as acute care patients are
7 bedridden. In a nursing home generally
8 they're ambulatory. If they're not
9 ambulatory, this lady was not in that
10 category.

11 I can't see that she has any experience in
12 this specific field which is caring for
13 patients in a nursing home and I don't think
14 she's qualified to testify. I don't think she
15 reaches that standard of care. The Court will
16 not allow her to be qualified as an expert.

17 Are there others we can review? There
18 were others that Judge O'Hara looked at, are
19 they going to be in court?

20 MR. STEPHENSON: Yes. If you will note my
21 exception.

22 THE COURT: Yes, sir. They're the only
23 video depositions that you have; is that
24 right?

25 MR. STEPHENSON: I have Dr. Burkhart.

1 MR. NEWSOME: There's no issue to his
2 qualifications as a treater.

3 MR. STEPHENSON: If I may put one other
4 ground on the record with respect to the
5 motion to disqualify this witness as an
6 expert, kindly note that a nursing home is not
7 identified in the statute as one of the care
8 facilities to which this rule applies and it
9 only comes in under the general category of
10 other medical facility, so I --

11 THE COURT: What rule? When you say this
12 rule.

13 MR. STEPHENSON: Under the statute that
14 says you have to be in the practice of that or
15 similar specialty within the period of a year.
16 There are a number of identified medical
17 facilities that are named that that applies to
18 and it has a general category after that.
19 Nursing homes are not one of those mentioned
20 within the statute that the Court has asked to
21 use in ruling out the expert.

22 THE COURT: I understand your argument and
23 we've put it on the record, but I feel that
24 having listened to her I reached the same
25 conclusion that she's not qualified to testify

1 in this case as an expert. And in looking at
2 the situation with the Dr. Liedelmyer, there's
3 a very great question as to whether he has any
4 clinical practice during the period of time.
5 He worked for this health department, he
6 filled in a day a week, he says, for a couple
7 of doctors. I think at one time he had had a
8 clinical practice as a general practitioner.
9 I would not -- I don't think it has any effect
10 that he was never a family practice physician.
11 He was a general practitioner, which I would
12 think is approximately the same thing at the
13 time he was practicing.

14 The Court's of the opinion that he did not
15 have a clinical practice and I might add he
16 never had any, testifies to no experience
17 treating and diagnosing fractures. He must
18 have seen some in his practice, but I don't
19 hear much from him about that. I can't allow
20 his testimony either. Is there anything else
21 that we can accomplish this afternoon?

22 MS. DULEY: The only thing, I didn't know
23 if you wanted to address the objections that
24 we made in Dr. Burkhart's deposition.

25 THE COURT: Is he going to be present?

1 MR. NEWSOME: No, Your Honor.

2 MS. DULEY: We don't object to his
3 qualifications, but there are some pretty
4 significant objections regarding his opinions.

5 MR. NEWSOME: I just cite the Court to the
6 Fairfax County Hospital versus Curtis case
7 where the doctor attempted to give an opinion
8 based upon a possibility and the Court said in
9 order to render an expert opinion in a medical
10 case, you need to get out of the realm of
11 possibility and make it a probability. And
12 he's saying at one point late, literally as I
13 cited in here, and I cited it word for word,
14 he says, "Were you able to tell from the
15 evidence that you had --"

16 And he says, "No."

17 "How old it was, the fracture?"

18 Answer: "No. Oh, no, you couldn't."
19 He's saying things like, but then he goes on
20 to say well, it could have been 10 days old,
21 could have been 14 days old and what's clear
22 is he doesn't know. And that's okay, but he
23 certainly shouldn't be able to tell this jury
24 that this fracture, one, occurred on a certain
25 date when he says oh, no, you couldn't tell

1 and then he goes on to say well, it could have
2 happened, I don't know how it happened, but
3 people fracture hips from falls, so yeah, it
4 could happen from the fall. He just does not
5 know.

6 He saw her post-fracture and essentially,
7 not essentially he did the prosthesis and
8 that's just part of it. Then there are some
9 other issues related to fact that he was
10 giving some opinions that weren't in the
11 designation. He's asked to comment on the
12 fact that if someone has a fracture could that
13 shorten their life expectancy. To go further
14 he says, his answer was "Sure. I mean there's
15 a strong -- there is a probability of sorts
16 that someone could die within the first year."
17 That was his answer. She didn't die within
18 the first year so not only is it outside the
19 scope, but it's not helpful to this jury given
20 that's not the circumstances of our case.
21 That one kind of came from left field.

22 He did respond, and it's not relevant to
23 what happened in this case, whether or not
24 people have a probability, whether the
25 literature out there says someone with a hip

1 fracture could die within the first year. I'm
2 familiar with what he's talking about, but it
3 has nothing to do with this case. Ms. Overton
4 actually passed four years later from
5 unrelated causes. That's not causation
6 testimony, that's just flipping something out.

7 THE COURT: It's not unusual to have
8 witnesses on depositions to make statements
9 and comments that are not responsive to the
10 questions that were asked. There are various
11 ways of dealing with that.

12 MR. NEWSOME: He was asked that, though,
13 Your Honor.

14 THE COURT: I couldn't tell from what you
15 were saying. Those things you fast forwarded
16 through or redacted in some way.

17 MR. STEPHENSON: I have heard so much
18 disingenuous presentation from this counsel
19 that it's absolutely unbelievable that he
20 continues to distort the record of what was
21 asked and said by this witness. In terms of
22 his just misleading the Court on the nature of
23 the testimony of Dr. Burkhart about the age of
24 the fracture, he had in his medical records at
25 the time he did the surgery the notation that

1 there was an appearance of a fracture that
2 could be up to two weeks old or 14 days old.
3 He continued to, when he was asked about --
4 when he was shown the record of the fall that
5 occurred on the 20th and on the 21st, if that
6 was consistent with his findings from the
7 medical evidence that he had in relation to
8 doing the surgery and the old blood and the
9 other distortions of the tissue around the
10 bone area that had fractured from which he
11 deduced at that time that there was an age of
12 the fracture, and then when he said could it
13 be pinned down to exactly that time. He said
14 no, not exactly, this is an approximate
15 period.

16 When he's asked directly, well, do you
17 know what caused the break, could have been,
18 but then he says at the end sure, somebody
19 could have slugged her in the side and broke
20 it. He's not there as a factual witness to
21 determine how a fracture occurred, we're not
22 calling upon him to do that. His testimony is
23 certainly there from the outset about the age
24 of the fracture and when it occurred.

25 MR. NEWSOME: Your Honor, I'm not going to

1 get into who said what, that's why when I make
2 a reference to the deposition I attach the
3 pages. There's no question as to what was
4 said. All this said, these questions weren't
5 magically asked. I didn't ask these
6 questions.

7 THE COURT: The question is what we do
8 about it and from what I heard you saying a
9 moment ago, except for the fact that it will
10 take seconds, I don't think it has much
11 relevance to anything. Anybody that is going
12 to know that unless the man saw a fall or it
13 had just happened. And the more questions you
14 ask the more you tend to make him go off in
15 all directions.

16 MR. NEWSOME: I didn't ask him any of the
17 questions.

18 THE COURT: I didn't mean you asking the
19 questions. If he says I don't know, that
20 would get it over with.

21 MR. STEPHENSON: And he did.

22 THE COURT: Then if that's the only
23 objection to his testimony, then I'd say leave
24 it alone. I think it's easier than trying to
25 fool with it.

1 MR. STEPHENSON: I had an objection to
2 defendant's list of the witnesses that I faxed
3 yesterday to both counsel on listing.

4 MR. NEWSOME: I've never seen it.

5 MR. STEPHENSON: This is listing now a
6 witness that I had earlier identified and was
7 deposed, Dr. Gonzalez, and I did not put him
8 on the witness list for me, and now counsel
9 chooses to take an excerpt from his deposition
10 and submit that for the witness. I would
11 oppose counsel using an excerpt from a
12 deposition of an expert that I had proffered
13 and using that for any purpose with the
14 counsel not having indicated that this witness
15 would be proffered as an expert on their
16 behalf.

17 MS. DULEY: Your Honor, in fact I did list
18 him as an expert witness in my expert
19 designation. I reserved the right to call any
20 experts that had been previously designated by
21 the plaintiff and in fact Dr. Gonzalez was
22 designated by the plaintiff in his
23 designation. So the fact that plaintiff's
24 attorney decided not to put him on his witness
25 list, I did put him on my witness list when it

1 was due and then designated portions of his
2 deposition that I wanted to read a couple days
3 ago when we had agreed that we would designate
4 those.

5 MR. STEPHENSON: But not a portion of a
6 deposition out of context that was a discovery
7 deposition, Your Honor, that is presented on
8 their side.

9 MS. DULEY: Your Honor, we had an
10 agreement that among the three attorneys
11 involved that we would designate deposition
12 testimony on May 15th and that
13 counterdesignations were due on May 16th. Mr.
14 Stephenson certainly had the opportunity to
15 counterdesignate portions of Dr. Gonzalez's
16 deposition yesterday and failed to do so.

17 MR. STEPHENSON: I would designate the
18 whole deposition in this opposition. I don't
19 think you can allow them to take one little
20 extract from a deposition and read it in.

21 THE COURT: Not knowing what it is, what
22 the extract is, but being suspicious by
23 nature, I would think that that's probably a
24 valid objection to it.

25 MS. DULEY: I've got it if you'd like to

1 read it.

2 THE COURT: If you're going to use it, I
3 would think you'd go ahead and use all of it.
4 Taken out of context most everything gets a
5 different snap. If you want to use it, use it
6 all.

7 MR. NEWSOME: Your Honor, I just have one
8 issue, it brings the interesting point that
9 Judge O'Hara brought up at our hearing in the
10 motions in limine. And I believe the Court
11 recalls that there is Dr. John Martin who
12 Judge O'Hara stated that he would not qualify
13 as a witness and to that extent that he was
14 proffered as an expert at trial, it would be
15 subject to a motion by defendants. And I'm
16 just bringing this up only because I don't
17 know, I guess, I don't want to be in that
18 situation tomorrow, but if I am in that
19 situation.

20 THE COURT: Of what?

21 MR. NEWSOME: Dr. Martin is the expert,
22 the doctor who retired in 1987 who testified
23 that he retired in 1987 and he stated he
24 hadn't had an active clinical practice since
25 1987. On that basis Judge O'Hara was clear

1 that he's not going to qualify and if he does,
2 the Court may be entertaining a motion for
3 sanctions by counsel.

4 THE COURT: I don't have a clear -- Judge
5 O'Hara did not say he wasn't qualified. I've
6 got his notes.

7 MR. NEWSOME: Your Honor --

8 MR. STEPHENSON: I have my recollection,
9 too, and it certainly differs from yours.

10 MR. NEWSOME: The whole context that he
11 mentioned that, I will reserve any comment,
12 was merely trying to be helpful to opposing
13 counsel right now, but if that's the position
14 you want to take, that's fine.

15 THE COURT: I don't know whether he's
16 going to call Dr. Martin and I will tell you
17 that Judge O'Hara has a question about it, but
18 I think he's reserved it to hearing him. That
19 was the take I got on it, he didn't think he
20 could rule on it until he heard Dr. Martin
21 testify as to his qualifications.

22 MR. NEWSOME: That's fine. I wasn't
23 trying to say that he had ruled definitively.
24 I'm not saying that he had ruled, but we'll
25 just go forward.

1 MR. STEPHENSON: I didn't put on the
2 record my exception to the rule on Phyllis
3 Corrigan. I'd like to note my exception.

4 THE COURT: Your exception is noted.

5 MS. DULEY: Your Honor, I have a couple
6 motions in limine that probably will not take
7 more than five minutes total if you'd like to
8 hear those now versus in the morning.

9 THE COURT: Anybody object to doing them
10 now?

11 MR. STEPHENSON: Might as well proceed, I
12 guess.

13 MS. DULEY: Two of them are in reference
14 to what I believe the plaintiff, Mr. Perdieu,
15 might say. He said in his deposition that he
16 knew his mother was in pain because she was
17 groaning. I believe he can testify that she
18 was groaning, but I do not believe he can
19 testify that groaning equals pain. I think he
20 cannot testify what was in his mother's mind,
21 nor I don't think he can interpret for the
22 jury what the groans mean. I have no problem
23 with him saying I came in, I observed her, she
24 was groaning, but I do have a problem with him
25 saying I know she was in pain because she was

1 groaning.

2 As long as we're on that subject, he also
3 testified in his deposition that his mother
4 said no one should have to go through this and
5 I would object to that as being hearsay and do
6 not believe that he should be allowed to
7 testify regarding what his mother told him.

8 THE COURT: Mr. Stephenson. On the first
9 point, he knows she was in pain because she
10 was groaning.

11 MR. STEPHENSON: I accept that, Your
12 Honor.

13 THE COURT: And you accept the fact that
14 he needs to take out the medical opinion.

15 MR. STEPHENSON: I accept that one. On
16 the second point, though, I would respectfully
17 differ in that this was a statement of a res
18 geste nature that was made at the scene when
19 he appeared there and it was at the time that
20 he came in and saw her in a condition of
21 distress. She now has departed this life and
22 it is not something that we can bring her back
23 on, and under the rule that you accept this as
24 an exception to the hearsay rule, I would
25 respectfully submit that he should be entitled

1 to relate that statement that she made under
2 those conditions at that time.

3 THE COURT: The statement was supposed to
4 have been made when Mr. Perdieu first
5 approached his mother after the hip was
6 broken, didn't know it at the time.

7 MR. STEPHENSON: After he came in and saw
8 her in the deteriorated condition on the 30th
9 of January.

10 THE COURT: Do you have any response to
11 his saying that the second one is res geste?
12 It's clearly hearsay, no question about that.

13 MS. DULEY: I believe that if you read his
14 deposition it was taken in the context of a
15 number of things that were said in a
16 conversation. It was not an excited utterance
17 that was said, oh, my gosh, no one should have
18 to go through this, which, in my
19 understanding, it has to be a split second,
20 something that comes out of your mouth because
21 of something that you're feeling right at that
22 moment. As I read his deposition it sounded
23 to me like it was, again, like something that
24 came out throughout the conversation that they
25 were having. It was not a reaction to a

1 stimulus at the time, it was a comment that
2 she made.

3 MR. STEPHENSON: Mr. Perdieu and I would
4 be happy to proffer what his testimony would
5 be on that point with his stating the
6 circumstances under which that utterance was
7 made.

8 MS. DULEY: I would submit that we really
9 don't need a proffer, we've got his
10 deposition.

11 MR. STEPHENSON: Frequently deposition
12 testimony taken out of context and not
13 pursuing further the circumstances under which
14 that utterance was made is not necessarily
15 indicative of how the comment came to be.

16 THE COURT: It's the same old problem, you
17 get into it and at some point you say, well,
18 did she say anything and she answers and the
19 objections, everybody's out of their seat, but
20 the cat is also out of the bag. Then I can
21 tell the jury to disregard it or whatever and
22 the thing about this is that bothers me more
23 than whether it's admissible is what does it
24 mean. She said no one would have to go
25 through this. Well, through what? And you

1 can't pursue it. I'll rule on that one
2 tomorrow before Mr. Perdieu testifies.

3 MS. DULEY: Just one more, there was an
4 incident on the day that -- the first day that
5 Mrs. Overton fell January 20th where the nurse
6 notes that she was found outside of the
7 facility and I would just like to preclude
8 that from coming in on the basis that its
9 prejudicial value outweighs its probative
10 value. It's not relevant.

11 MR. STEPHENSON: I understand there being
12 concern about the prejudicial nature of this
13 lady being allowed to wander outside the
14 facility and not being dealt with as it was
15 contemplated that she would be dealt with, but
16 the wandering incident is relevant for several
17 reasons. It certainly confirms that she was
18 suffering from dementia, that given her mental
19 state she was not being properly supervised in
20 being allowed go out and wander on the street.

21 It shows that Heritage Hall did not comply
22 with their contractual commitment to
23 Mrs. Overton to give her the due care and
24 supervision that she was admitted to receive
25 and it goes to the pattern of the behavior in

1 the nursing home which shows a basic pattern
2 of neglect of their duties. So I think that
3 is a very significant item in her medical
4 records along with the falls that they also
5 didn't choose to do anything about. That
6 occurred on the same day that she had the
7 first fall and the next day she has the second
8 fall. So it's all part of this overall
9 process of not providing her the adequate
10 care.

11 THE COURT: I think that one has to come
12 in. I realize it's prejudicial, but that's
13 the nature of the case.

14 MS. DULEY: I would just like my objection
15 to be noted.

16 MR. NEWSOME: I have just one issue given
17 what we just heard. We had heard with
18 Dr. Liedelmyer and the fact that it seems like
19 at least plaintiff doesn't want to put any
20 weight to his sworn discovery deposition. Is
21 Dr. Martin going to come up with new opinions
22 tomorrow? And I think at some point I think
23 we're at least entitled to hear is he coming
24 with new things outside of his deposition? Is
25 he going to have new jobs?

1 MR. STEPHENSON: I filed an affidavit that
2 dealt with, at the motion in limine, that
3 dealt with what he has been doing in the
4 relevant period of time.

5 MR. NEWSOME: And looking at his family
6 members.

7 MR. STEPHENSON: And friends and also be
8 the doctor for the 300 member softball league.

9 THE COURT: So it hasn't changed.

10 MR. STEPHENSON: No, I think it's
11 consistent. I would add more recently, and I
12 would present this to the court, he's engaged
13 in teaching a class in safety, I'll call it,
14 or procedures that's for the softball league,
15 but still part of the duties. And he's
16 written a medical or some safety procedure for
17 them, but that's all part of this overall
18 surface.

19 THE COURT: All right, anything further?

20 MR. NEWSOME: No, Your Honor.

21 MR. STEPHENSON: I had some equipment that
22 I was going to arrange to have present to play
23 these tapes. I take it that these are
24 excluded, but I have one to introduce. Is
25 there any equipment here for that purpose?

1 MR. NEWSOME: It's ours.

2 THE COURT: That will be available. I
3 reckon the defense will let you use it.

4 MR. NEWSOME: We don't need it now, we
5 just wanted to make sure that Dr. Liedelmyer
6 was heard. We don't have any videos.

7 THE COURT: I think these folks will get
8 it to the courtroom and he says it can stay
9 here.

10 MR. STEPHENSON: If that's understood then
11 I cannot have one come provided --

12 THE COURT: We'll see to it that you have
13 one.

14 MR. STEPHENSON: -- provided that some
15 good person knows how to insert it, can cut it
16 on.

17 MS. DULEY: Have we come to a conclusion
18 as to what we're going to do with Nurse
19 Solomonson's deposition? If we play the whole
20 thing that will take up half of the
21 defendant's time allotted.

22 THE COURT: No, I haven't dealt with it.

23 MS. DULEY: I know we discussed it, but I
24 didn't think --

25 THE COURT: That was the only one that I

1 had had part of it that I had taken a look at.
2 I would suggest that when we stop tomorrow
3 maybe we'll take a look at that.

4 MS. DULEY: One other brief thing; I would
5 ask the same thing as to Nurse Berne that the
6 codefendants have asked regarding Dr. Martin
7 and that is whether or not she's going to come
8 up with some new things that she's been doing
9 because she, too, retired in 1988.

10 THE COURT: Any change in Nurse Berne's
11 situation?

12 MR. STEPHENSON: Not any new nursing home
13 employment now other than what she would
14 continue to do what she's testified in
15 relation to the family involvement and doing
16 consulting work, and I think that's what she
17 said.

18 THE COURT: No change.

19 MR. STEPHENSON: In her testimony.

20 MS. DULEY: That's fine.

REPORTER'S CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in the above-referenced matter.



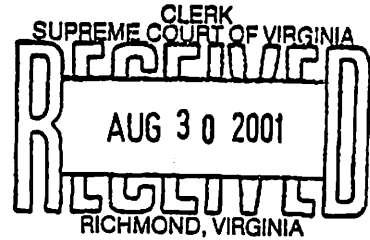
Keith Williamson, RPR
Commonwealth of Virginia at Large

COMMONWEALTH OF VIRGINIA
IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY
Case No. CL-031

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

vs.

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



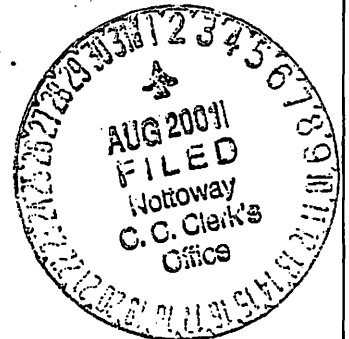
VOLUME I

ORIGINAL

May 18th, 2001

Nottoway, Virginia

Complete transcript of testimony and other
incidents in the above, when heard before the
Honorable James Luke, Judge, and a jury.



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1 THE COURT: Good morning, ladies and
2 gentlemen. We're here this morning for the
3 case of Horace Perdieu, administrator of the
4 estate of Lucille Overton, versus Blackstone
5 Family Practice and Dr. Charles Rosenbaum and
6 Heritage Hall Nursing Home. I am Judge Jim
7 Luke, I come to Nottoway this morning to help
8 Judge Warren out. I normally sit in Brunswick
9 and Greenville, Sussex and Surry and Prince
10 George, across the Southside and it's nice to
11 be in Nottoway County. Mr. Stephenson,
12 Ms. Duley, Mr. Newsome, are you-all ready to
13 call the jury?

14 MS. DULEY: Yes, Your Honor.

15 THE COURT: No preliminary matters that we
16 haven't taken care of.

17 MR. STEPHENSON: I don't believe so at
18 this time.

19 THE CLERK: If I call your name, please
20 come forward and the sheriff will seat you
21 there on the front row. Deneen Washington,
22 Jason Moore, Sr., Ambrose Oliver, Frank
23 Walker, Jr., Ella Johnson, Judy Coghill, Donna
24 Spivey, Peggy Carlo, Matthew Rowe, Riley
25 McDaniel, Courtney Quicke, Beverly Hobbs,

1 Rodney McComas, Edna Saul, Bobby Hatcher,
2 Matthew Patterson, Carlie Greeley, Jr. If
3 you'll stand and raise your right hand,
4 please.

5 THE COURT: Ladies and gentlemen, this
6 case is a case against Blackstone Family
7 Practice, Dr. Rosenbaum and Heritage Hall.
8 The plaintiff in this case is Horace Perdieu
9 who is seated directly in front of you and
10 nearest me at counsel table. Mr. Perdieu is
11 administrator of the estate of Lucille
12 Overton. Mr. Perdieu and Mrs. Overton's
13 estate is represented by Mr. B.G. Stephenson.
14 Mr. Stephenson is seated directly in front of
15 you, practicing law in Fairfax, Virginia.

16 The defendants, Blackstone Family Practice
17 and Dr. Rosenbaum, are represented by
18 Mr. Kelvin Newsome. Mr. Newsome is seated on
19 this end of counsel table and with Mr. Newsome
20 is Elizabeth Pharr also practicing law with
21 him in the firm of LeClair, Ryan in Richmond,
22 and seated with them also is Dr. Rosenbaum.
23 Heritage Hall is represented by Lisa Duley.
24 Ms. Duley also practices in the city of
25 Richmond.

1 I have some questions to ask you-all
2 concerning your qualifications to sit on this
3 or any jury, the first of which is whether
4 each of you are at least 18 years of age and
5 have you lived in Nottoway County for the last
6 six months, in the Commonwealth for the last
7 12 months and are each of you citizens of the
8 United States? May I assume that none of you
9 has ever been convicted of a felony and that
10 none of you have a case pending in the current
11 term of this court, the circuit court of
12 Nottoway County? Do any of you know or are
13 you related by blood or marriage to either
14 Mr. Perdieu, Mrs. Overton, Dr. Rosenbaum?
15 Have any of you ever worked for or with
16 Mr. Perdieu or for Blackstone Family Practice
17 or Heritage Hall? Any of you friends, clients
18 or former clients of either of the lawyers,
19 Mr. Stephenson, Mr. Newsome, Ms. Pharr,
20 Ms. Duley? Any of you been a patient of
21 Dr. Rosenbaum? And broaden that to Blackstone
22 Family Practice.

23 I'm not going to ask you individually, the
24 lawyers probably will. Quite a few have been
25 patients of Blackstone Family Practice, but

1 not of Dr. Rosenbaum. Anyone have any
2 interest in the trial or the outcome of this
3 case? Ever heard of it? Does anyone know of
4 any bias or prejudice which would keep you
5 from being able to give a fair trial to both
6 the plaintiff and the defendant?

7 This is a case alleging that Mrs. Overton
8 did not get the care that she should have
9 gotten. It's alleged to have occurred
10 approximately the 20th, 21st of January, 1995.
11 She was treated by Blackstone Family Practice
12 and was a patient in Heritage Hall. Anyone
13 know of any reason whatsoever why you should
14 not sit on this case? Mr. Stephenson will
15 have some questions for you.

16 MR. STEPHENSON: May I start with the
17 front row of the hands that said they were
18 patients of Blackstone Family Practice?

19 THE COURT: Just those of you on the front
20 row.

21 MR. STEPHENSON: Yes.

22 THE COURT: I think it would be helpful if
23 they just give us their name.

24 MR. STEPHENSON: Yes, if you would do
25 that.

1 THE JURY: Donna Spivey.

2 THE JURY: Judy Coghill.

3 THE JURY: Jason Moore.

4 MR. STEPHENSON: Ms.. Coghill, how long
5 have you been a patient of Blackstone Family
6 Practice?

7 THE JURY: Two years.

8 MR. STEPHENSON: What doctor has treated
9 you there?

10 THE JURY: Dr. Hall and Dr. Bunday who is
11 no longer there.

12 MR. STEPHENSON: Do you have any reason to
13 think that you couldn't judge fairly a claim
14 that involves Blackstone Family Practice as a
15 defendant?

16 THE JURY: No, sir.

17 MR. STEPHENSON: How about Ms. Spivey.

18 THE JURY: I don't remember the doctor's
19 name and that was when I was injured at work
20 and that's been over a year ago.

21 MR. STEPHENSON: Any reason that you
22 couldn't judge fairly a claim that involves
23 their service or alleged disservice?

24 THE JURY: No.

25 MR. STEPHENSON: Mr. Moore.

1 THE JURY: I don't remember the doctor's
2 name, but all my kids go there.

3 MR. STEPHENSON: And they're regularly
4 treated?

5 THE JURY: Regularly treated.

6 MR. STEPHENSON: Do you think that would
7 affect your judgment in a case that involves
8 alleged misconduct by Blackstone Family
9 Practice?

10 THE JURY: I don't think so. I got a
11 great aunt that's in the old folk's home and
12 my kids get treated by Blackstone Family
13 Practice, so I'm kind of like mutual.

14 MR. STEPHENSON: Where is the home?

15 THE JURY: The old folks home, Heritage
16 Hall.

17 MR. STEPHENSON: So you have someone
18 that's now a resident in Heritage Hall in your
19 family?

20 THE JURY: Yes.

21 MR. STEPHENSON: Would you have any
22 hesitation in judging fairly a claim against
23 Heritage Hall in alleging that they didn't
24 provide the service that was expected by the
25 resident?

1 THE JURY: I don't think I would have any
2 prejudice against either one of them.

3 MR. STEPHENSON: How about on the second
4 row?

5 THE JURY: Rodney McComas. I haven't been
6 to Blackstone Family Practice in probably 10
7 years, so I have very little memory of the
8 doctors and such.

9 MR. STEPHENSON: Who treated you?

10 THE JURY: I don't have any idea.

11 MR. STEPHENSON: Any reason that you could
12 not judge fairly a case that involved them as
13 a defendant?

14 THE JURY: No.

15 MR. STEPHENSON: You've not had any
16 relationship with Dr. Rosenbaum?

17 THE JURY: No, sir.

18 MR. STEPHENSON: Any of the others know
19 Dr. Rosenbaum?

20 THE JURY: I've heard the name before, but
21 I don't know why.

22 MR. STEPHENSON: How about the next
23 person?

24 THE JURY: Courtney Quicke. I've been
25 going to the family practice center all my

1 life. I've never been seen by Dr. Rosenbaum.
2 Jimmy Harris has been my primary doctor.

3 MR. STEPHENSON: Does that in any way
4 cloud your judgment in terms of being called
5 upon to deal with a claim that involves
6 Blackstone Family Practice?

7 THE JURY: No, sir.

8 THE JURY: I've been going to Blackstone
9 Family Practice ever since it opened and
10 Dr. Jimmy Harrison is my doctor and I've never
11 seen Dr. Rosenbaum.

12 MR. STEPHENSON: And you've never seen him
13 there.

14 THE JURY: I've seen his face, but I don't
15 know him personally.

16 MR. STEPHENSON: What was your name?

17 THE JURY: Riley McDaniel.

18 MR. STEPHENSON: Do you have any reason
19 that would involve your judgment in a case
20 that had Blackstone Family Practice as a
21 defendant?

22 THE JURY: No, sir.

23 MR. STEPHENSON: Do you have any
24 relationship with Heritage Hall?

25 THE JURY: No, sir.

1 THE JURY: Peggy Carlo and I also have
2 been a patient and Dr. James Harris is my
3 doctor. I do know Dr. Rosenbaum, he has
4 treated my mother and he has talked to me on
5 different occasions, things to do with my
6 mother. Andrew Walker is her doctor.

7 MR. STEPHENSON: Dr. Rosenbaum treated
8 your mother?

9 THE JURY: No, he's never treated her, he
10 just comes in to give his opinions.

11 MR. STEPHENSON: Does that relationship
12 give you any problem with the judging fairly
13 of this case?

14 THE JURY: I don't think so, no.

15 THE JURY: Carlie Greeley.

16 MR. STEPHENSON: Mr. Greeley, tell me
17 about your relationship to either
18 Dr. Rosenbaum or Blackstone Family Practice.

19 THE JURY: I have been a patient of
20 Blackstone Family Practice in the past, but
21 it's been over five years and I used to see
22 Dr. Harris, but I don't use Blackstone Family
23 Practice regularly.

24 MR. STEPHENSON: Is there any reason you
25 couldn't judge this case fairly involving

1 Blackstone Family Practice and Dr. Rosenbaum
2 as a defendant?

3 THE JURY: No, sir.

4 MR. STEPHENSON: Do you have any
5 relationship to Heritage Hall?

6 THE JURY: No, sir.

7 THE JURY: Edna Saul, and I have seen
8 Dr. Rosenbaum on one occasion and it was over
9 a year ago. I don't see any reason why it
10 would prejudice my opinion.

11 MR. STEPHENSON: Are you a regular patient
12 at Blackstone Family Practice?

13 THE JURY: No, last time I went was a year
14 ago and I just happened to see Dr. Rosenbaum.

15 MR. STEPHENSON: And did you go to see him
16 specifically, or was he just the doctor there
17 that treated you?

18 THE JURY: He was the doctor there that
19 treated me that day.

20 MR. STEPHENSON: Was it any other person
21 that raised their hand? If I didn't ask one
22 of you about your relationship at Heritage
23 Hall, would you tell me any family members
24 that's a resident there?

25 THE JURY: Courtney Quicke, and my wife

1 was an employee at Heritage Hall. She no
2 longer is.

3 MR. STEPHENSON: When was she there?

4 THE JURY: I would say '92, '93, '94,
5 somewhere in that range.

6 MR. STEPHENSON: What did she do there?

7 THE JURY: I believe she was director of
8 admissions.

9 MR. STEPHENSON: What was her name?

10 THE JURY: Myra Quicke.

11 MR. STEPHENSON: Do you believe that would
12 affect your judgment in this case?

13 THE JURY: I do not.

14 MR. STEPHENSON: Anyone else have any
15 relationship with, either a member of their
16 family or directly with either Blackstone
17 Family Practice Center, Dr. Rosenbaum or
18 Heritage Hall? Including a person other than
19 your children are patients of Blackstone
20 Family Practice, anyone else other than
21 personally been treated by Blackstone Family
22 Practice or Dr. Rosenbaum?

23 THE COURT: Mr. Newsome.

24 MR. NEWSOME: Good morning, ladies and
25 gentlemen, my name is Kelvin Newsome and here

1 with my partner, Elizabeth Pharr, we have the
2 pleasure of representing Dr. Charlie Rosenbaum
3 and Blackstone Family Practice. There are
4 going to be a number of names of folks that
5 you're going to hear today and I'm just going
6 to ask if any of you have heard these names.
7 A Dr. Josephine Fowler, anyone heard of her?
8 Dr. Paul Evans? Dr. John Cardea? Dr. Barry
9 Burkhart?

10 THE JURY: Dr. Burkhart, he treats my
11 father.

12 MR. NEWSOME: Is he currently treating
13 him?

14 THE JURY: Yes.

15 MR. NEWSOME: Is there any reason why the
16 fact that your father has been treated by
17 Dr. Burkhart, would that affect your ability
18 to render a judgment that's fair to both
19 parties?

20 THE JURY: No.

21 MR. NEWSOME: Anyone ever heard of Loretta
22 Parrish? Doris Coleman? A Dr. John Martin?
23 A Dr. George Damewood? Betty Humphreys?

24 THE JURY: I know Ms. Humphreys, my wife
25 and Betty used to work together.

1 MR. NEWSOME: Would that affect your
2 ability to render fair judgment in this case?

3 THE JURY: No, sir.

4 THE JURY: I know her. I know my wife
5 knows her and I've heard of her before. You
6 said if you heard of them.

7 MR. NEWSOME: Would it impact your
8 ability?

9 THE JURY: I've heard of her.

10 MR. NEWSOME: Anyone heard of Linda Baker?
11 Anyone heard of Betty Solomonson? A Dr. Phil
12 Rizk, ever heard of him? Have any of you ever
13 served on a jury before? Ms. Spivey, when did
14 you serve on the jury? What was the case
15 about?

16 THE JURY: Drunk driving.

17 MR. NEWSOME: Anything about that
18 experience would affect you today?

19 THE JURY: No.

20 MR. NEWSOME: Anyone else?

21 THE JURY: Yes, I served last year and I
22 think it was a car accident or something.

23 MR. NEWSOME: Anything about that affect
24 you?

25 THE JURY: No.

1 MR. NEWSOME: And the second row.

2 THE JURY: I never got picked. I was
3 summonsed twice and I never got picked.

4 MR. NEWSOME: Ms. Hobbs?

5 THE JURY: Also on a murder trial.

6 MR. NEWSOME: Anything about that
7 experience affect you today to serve as a
8 juror?

9 THE JURY: No.

10 MR. NEWSOME: Mr. Quicke?

11 THE JURY: Yes, sir, I served on a jury,
12 probably 10 or 15 years ago and I honestly
13 don't remember the case.

14 MR. NEWSOME: Mr. McDaniel?

15 THE JURY: It was an attempted murder case
16 about 10, 15 years ago and it wouldn't have an
17 affect on me.

18 MR. NEWSOME: Have any of you filed a
19 lawsuit before? Mr. Moore.

20 THE JURY: I filed a lawsuit with an
21 insurance company with a car accident, I was
22 hit the 21st of April, rear-ended.

23 MR. NEWSOME: Anything about that
24 situation would affect you today?

25 THE JURY: Not as far as I know.

1 THE JURY: I've got a lawsuit pending with
2 a mobile home dealer and it's still being drug
3 through the courts.

4 MR. NEWSOME: Would that affect you?

5 THE JURY: No.

6 MR. NEWSOME: Any of you sitting on the
7 panel right here know each other? Mr. Oliver.

8 THE JURY: Yeah, Matthew Rowe.

9 THE JURY: Ms. Johnson, I know Oliver.

10 MR. NEWSOME: How do you know each other?

11 THE JURY: High school.

12 MR. NEWSOME: Are you friends now? Are
13 you still friends?

14 THE JURY: Yes, sir.

15 MR. NEWSOME: Who else knows someone else?
16 Mr. Quicke.

17 THE JURY: I know Mr. McDaniel. I know
18 Edna, Mr. Greeley, just growing up in
19 Blackstone.

20 MR. NEWSOME: Who else raised their hand?

21 THE JURY: I know Mr. Hatcher back there.

22 THE JURY: I know Mr. Quicke, Mr. McDaniel
23 and that's all.

24 MR. NEWSOME: Have any of you ever had a
25 lawsuit filed against you? This case you're

1 going to hear about a fractured hip in this
2 case. Has anyone had a member of their family
3 or themselves, anyone had a fractured hip?
4 Has any of you ever been employed by a law
5 firm? Is there anything that you've heard
6 from me or Mr. Stephenson or the Court that at
7 this point that would affect your ability to
8 render a decision that's fair to all parties?

9 If you believe based upon the evidence
10 that the plaintiff has not proven his case
11 against Dr. Rosenbaum and Blackstone Family
12 Practice, can all of you put aside any
13 sympathy that you may feel for them and award
14 a defense verdict? Can everybody do that?
15 Thank you for your patience, I appreciate the
16 time.

17 THE COURT: Ms. Duley.

18 MS. DULEY: Thank you, Your Honor. Good
19 morning, ladies and gentlemen, my name is Lisa
20 Duley and I am here with Betty Humphrey at
21 Heritage Hall. She is the director of nursing
22 and going to be sitting with me throughout
23 trial. I'm going to be going last throughout
24 the day, so I guess it's good because
25 hopefully I'll be a little bit shorter, but

1 please don't think that I don't count because
2 I'm going last. I think most of my questions
3 have been covered, but I'm going to follow up
4 on a couple of things. Is there anyone here
5 who has ever had a family member in any
6 nursing home, not just Heritage Hall but any
7 nursing home? We'll do what we did before,
8 we'll start from the front row and we'll move
9 back. Ms. Spivey.

10 THE JURY: My grandmother.

11 MS. DULEY: Is she still in a nursing
12 home?

13 THE JURY: No, she's passed away.

14 MS. DULEY: What nursing home was she in?

15 THE JURY: Heritage Hall nursing home.

16 THE JURY: Judy Coghill, my grandfather,
17 he was in a nursing home in North Carolina and
18 it was a good experience.

19 MS. DULEY: Who was next? I can't
20 remember who had their hands up. Mr. Moore.

21 THE JURY: I got a couple of aunts and
22 cousins.

23 MS. DULEY: I know you said you had your
24 aunt at Heritage Hall, but you've got other
25 relatives in other nursing homes?

1 THE JURY: Yes.

2 MS. DULEY: Any good or bad experiences?

3 THE JURY: Once or twice I heard some bad
4 things about a few of the nursing homes.

5 MS. DULEY: Did you hear anything bad
6 things about Heritage Hall?

7 THE JURY: I heard a couple of things
8 about Heritage Hall.

9 MS. DULEY: Would the things that you have
10 heard cloud your ability to be fair and
11 impartial?

12 THE JURY: No, not unless I see it myself.

13 MS. DULEY: Mr. Thomas.

14 THE JURY: I had an uncle in a nursing
15 home in Ashland. I didn't hear anything bad
16 about his stay, but he's out now.

17 MS. DULEY: So you believe you'd be able
18 to render a fair and impartial verdict?

19 THE JURY: Yes.

20 MS. DULEY: Move on to the back row.

21 Mr. Hatcher.

22 THE JURY: My grandmother, she's deceased.

23 MS. DULEY: Where was she?

24 THE JURY: South Boston.

25 MS. DULEY: Was it a good or bad

1 experience for you?

2 THE JURY: Good.

3 MS. DULEY: Mr. Patterson.

4 THE JURY: My grandmother was in Heritage
5 Hall, we kept her in there for a month. It
6 wasn't a good experience, but she's deceased
7 now.

8 MS. DULEY: Is there anyone here, whether
9 you've ever had a relative in a nursing home
10 or not, that has feelings towards nursing
11 homes one way or another, just from things
12 that you've heard, just any feelings that you
13 might have that you feel may affect your
14 ability to be fair and impartial, either good
15 or bad? Is there anyone here who has either a
16 close family member or if you yourself have
17 any specialized medical experience, nurse,
18 paramedic, doctor, nurse practitioner,
19 anything like that? Has anyone here or a
20 close family member ever been involved in a
21 medical malpractice lawsuit?

22 You are going to hear evidence today that
23 Mrs. Overton fell while she was staying at
24 Heritage Hall. Is there anyone here who
25 believes that just because Mrs. Overton fell

1 while she was at Heritage Hall, it must be
2 Heritage Hall's fault?

3 THE JURY: They're understaffed, I believe
4 it would be Heritage Hall's fault because
5 that's the problem that I ran into with my
6 grandmother and their concern of it was retire
7 her in bed. There wasn't much other choice
8 but to maybe get a nurse's aide in there to
9 look after her.

10 MS. DULEY: If you hear that she fell at
11 Heritage Hall, is that going to affect your
12 judgment?

13 THE JURY: It will affect my judgment. We
14 brought my grandmother and looked after her
15 for four years. She had no bedsores unlike
16 she had at Heritage Hall.

17 MS. DULEY: We've talked about a number of
18 things, is there anyone here who, based on
19 what you've heard, believes that for whatever
20 reason that they feel that they cannot render
21 a fair and impartial verdict? Anything? I
22 mean you don't have to tell me what it is, if
23 you don't like the suit I have on today,
24 anything that you can think of that we just
25 haven't talked about today that makes you feel

1 like you cannot render a fair verdict today?

2 THE JURY: I have personal problems. My
3 grandfather passed away two weeks ago. I was
4 hit by a car. I had one grandmother that just
5 got out of the hospital two days and another
6 grandmother has just been put into a hospital,
7 so I'm very hectic right now. On top of that
8 I got a court case supposed to be starting up
9 from the rear end, where we got rear-ended and
10 right now I got medical bills and attorney
11 agreements and several other things going on.
12 So it's kind of hectic on me, also three kids.

13 MS. DULEY: Is there anyone here who feels
14 that the plaintiff is entitled to a judgment
15 just because they've brought suit? Thanks, I
16 don't have any further questions. May we
17 approach, Your Honor?

18 THE COURT: Yes, you may.

19 MS. DULEY: I would ask that Mr. Moore and
20 Mr. Patterson be excused for cause and
21 Mr. Moore's the one who says he's got all
22 those problems going on.

23 THE COURT: Mr. Stephenson?

24 MR. STEPHENSON: Well, I'm concerned about
25 the relationship with Mr. Quicke and his wife

1 and the relationship to Heritage Hall,
2 although he looks like a gentleman.

3 THE COURT: He gave me all his answers,
4 but I couldn't pick up that he hardly even
5 knew these people and she's worked there
6 sometime. And I understand what you're
7 saying.

8 MR. STEPHENSON: And his wife; she was
9 director of admissions. I'm a little
10 concerned about that.

11 THE COURT: Is that the only one?

12 MR. STEPHENSON: Well, there was someone
13 else. I guess I'm looking at who was treated
14 by Dr. Rosenbaum one time, I think.

15 THE COURT: That was Edna Saul, I think,
16 not a regular patient. She went there for
17 some reason.

18 MR. STEPHENSON: I don't have any problem
19 for cause on that.

20 THE COURT: It's not how I feel, I think
21 you're entitled to have him struck for cause
22 and Moore and Patterson, certainly Moore's got
23 to go, no question about that.

24 MR. STEPHENSON: I think he has ample
25 reasons.

1 THE COURT: I'll grant you Patterson. I
2 think after the things he said. And one good
3 thing we have is all these folks have sat here
4 and heard the answers so if we bring three up
5 it shouldn't take us long.

6 MS. DULEY: Do we need to tell them that
7 it's going to go through to Monday?

8 THE COURT: I guess in fairness I should.
9 I'll do that. Before I go any farther with
10 this, it's just been suggested to me that I
11 should inform you-all that there's a
12 possibility that this case will go through to
13 Monday. That doesn't mean we'll sit here
14 Saturday and Sunday, it means it may be a
15 second day of it on Monday. And I tell you
16 that because you need to know, in all
17 fairness, before you start to sit on it. I'll
18 ask now if that creates any great problem for
19 any of you-all that we've been talking to.
20 Thank you. Mr. Moore, Mr. Patterson and
21 Mr. Quicke, you-all are excused. Thank you.
22 Mr. King, if you'll call the next three names.

23 THE CLERK: Marshall Crowder, Lovelace
24 Moore, Ellis Corley, II. Raise your right
25 hand.

1 THE COURT: Good morning to you-all. I
2 think you heard all the introductions that
3 came earlier and I'm not going to go back
4 through that, but I must ask you certain
5 questions that I introduced the lawyers and I
6 hope you-all heard it. Are each of you-all at
7 least 18 years of age? Lived in Nottoway
8 County for the last six months? Lived in
9 Virginia for the last 12 months? And citizens
10 of the United States? May I assume that none
11 of you have been convicted of a felony? None
12 of you has a case pending in this court. Any
13 of you know or are you related by blood or
14 marriage either to Mr. Perdieu, Mrs. Overton,
15 Dr. Rosenbaum?

16 THE JURY: I know Dr. Rosenbaum. He come
17 down on the football team and coached.

18 THE COURT: Anybody ever worked for
19 Blackstone Family Practice, Heritage Hall?
20 Friends, clients or former clients of either
21 of the lawyers? Have any interest in the
22 trial or the outcome of this case? Ever heard
23 of it? Know of any reason, any bias, any
24 prejudice which would keep you from giving a
25 fair trial both to the plaintiff and the

1 defendant? Know of any reason why you should
2 not sit on this case? Mr. Stephenson has some
3 questions for you.

4 MR. STEPHENSON: Mr. Corley, tell me about
5 your relationship with Dr. Rosenbaum.

6 THE JURY: I've seen him. I had my
7 tonsils had been taken out, he gave me a
8 referral to a Richmond doctor.

9 MR. STEPHENSON: Did you see him at the
10 Blackstone Family Practice?

11 THE JURY: Yes, sir.

12 MR. STEPHENSON: Have you been attended by
13 any other doctors at Blackstone Family
14 Practice?

15 THE JURY: A few others, Dr. Harris.

16 MR. STEPHENSON: Are you a patient of
17 Blackstone Family Practice?

18 THE JURY: Yes, sir.

19 MR. STEPHENSON: And you're a regular
20 patient there?

21 THE JURY: Yes, sir.

22 MR. STEPHENSON: What was your other
23 relationship with Dr. Rosenbaum in relation to
24 the ball team?

25 THE JURY: He just helped out. He was,

1 like, the sports doctor.

2 MR. STEPHENSON: And you think that that
3 relationship would have some prejudice toward
4 rendering a judgment if you were called to
5 render a judgment against him?

6 THE JURY: I don't think it would.

7 MR. STEPHENSON: But it may?

8 THE JURY: It might.

9 MR. STEPHENSON: Do you have any
10 relationship to Heritage Hall?

11 THE JURY: No.

12 MR. STEPHENSON: Mr. Crowder, may I ask
13 you if you know Dr. Rosenbaum or been a
14 patient of his at any time?

15 THE JURY: No, sir, I don't even know him.

16 MR. STEPHENSON: How about Blackstone
17 Family Practice?

18 THE JURY: I've been there one time 20
19 years ago.

20 MR. STEPHENSON: Who was the doctor there?

21 THE JURY: It was one of them young
22 interns, I forget what his name was.

23 MR. STEPHENSON: And did you see any
24 doctor that wasn't an intern at Blackstone
25 Family Practice?

1 THE JURY: No, sir.

2 MR. STEPHENSON: Do you have any
3 relationship to Heritage Hall with anybody
4 that you know that's a resident there or a
5 member of your family?

6 THE JURY: No, sir.

7 MR. STEPHENSON: Do you know of any reason
8 that you couldn't render a fair and impartial
9 decision in this case to either party?

10 THE JURY: No.

11 MR. STEPHENSON: Mr. Moore, I'd like to
12 ask you the same questions, if you have any
13 relationship with either Dr. Rosenbaum or
14 Blackstone Family Practice.

15 THE JURY: No, never been a patient.

16 MR. STEPHENSON: And do you know any of
17 the doctors there?

18 THE JURY: I've heard names, but I don't
19 know any of them.

20 MR. STEPHENSON: How about any
21 relationship to Heritage Hall, any relative
22 that's a resident there?

23 THE JURY: No.

24 MR. STEPHENSON: Know of any reason why
25 you can't render a fair and impartial judgment

1 in this case?

2 THE JURY: No.

3 MR. NEWSOME: Good morning, my name is
4 Kelvin Newsome. First I want to ask you-all,
5 you-all heard everything that I said before.
6 Was there anything that I said that affected
7 you one way or another? Nothing? Nothing you
8 heard? Mr. Corley, if you listened to the
9 evidence in this case, could you render a fair
10 judgment despite the fact that you know
11 Dr. Rosenbaum?

12 THE JURY: Yes..

13 MR. NEWSOME: You had mentioned,
14 Mr. Crowder, you had mentioned that you'd been
15 treated by an intern at Blackstone Family
16 Practice?

17 THE JURY: Yes.

18 MR. NEWSOME: Did you have a good
19 experience?

20 THE JURY: Yes, sir.

21 MR. NEWSOME: Any of you ever been
22 involved in a lawsuit in any way? I want to
23 go through my list here, I know you heard it.
24 I'm going to go through my list a little
25 quicker. If you know any name, let me know.

1 Dr. Josephine Fowler? Dr. Paul Evans?
2 Dr. John Cardea? Dr. Barry Burkhardt? Loretta
3 Parrish? Doris Coleman? Dr. George Damewood?
4 Betty Pomfrey? Jennifer Hodge? Dr. Phil
5 Rizk? Betty Solomonson? Any of you ever been
6 on a jury?

7 THE JURY: Been a long time.

8 MR. NEWSOME: Have any affect on you one
9 way or another?

10 THE JURY: No.

11 MR. NEWSOME: Have any of you ever been
12 dissatisfied with medical care that you
13 received? Any of your family members been
14 dissatisfied with medical care they received?
15 Any reason why you couldn't be fair and
16 impartial in this case? If you believe that
17 based upon the evidence the plaintiff does not
18 prove their case against Dr. Rosenbaum and
19 Blackstone Family Practice, can you put aside
20 any sympathy you may feel and render a verdict
21 for the defense? Can you do that? Thank you
22 very much. I have no more questions.

23 MS. DULEY: I think I'll approach this the
24 same way Mr. Newsome did, the three of you, of
25 any of the questions that I asked the panel

1 before you-all were seated, is there anything
2 that you feel like you wouldn't need to raise
3 your hand for? Relatives in nursing homes,
4 close friends in nursing homes, either here or
5 somewhere else? Any close family members or
6 friends that have medical backgrounds? Any
7 feelings one way or another about nursing
8 homes? Were you raising your hand down there?

9 THE JURY: I have heard some things about
10 nursing homes.

11 MS. DULEY: About nursing homes in
12 general?

13 THE JURY: Yes, nursing homes in general.

14 MS. DULEY: Would any of the things that
15 you've heard about nursing homes in general
16 affect your ability to render a fair and
17 impartial verdict?

18 THE JURY: It may.

19 MS. DULEY: You guys have moved around on
20 me. Who are you?

21 THE JURY: Ambrose Oliver.

22 MS. DULEY: Anyone else want to change an
23 answer that they gave earlier? I don't have
24 any further questions, Your Honor.

25 THE COURT: Anything further from anybody?

1 Any motions?

2 MR. STEPHENSON: Mr. Corley expressed a
3 relationship with Dr. Rosenbaum. In spite of
4 his answers to Mr. Newsome's answers to the
5 contrary, I just think the relationship is too
6 tight.

7 THE COURT: He said he could and then he
8 said he didn't know and then he said he could.

9 MR. STEPHENSON: I think there's enough
10 relationship there to --

11 THE COURT: I don't think being a coach
12 for a baseball team --

13 MR. STEPHENSON: I was talking about his
14 experience of being a patient. He's a
15 continuing patient of Blackstone Family
16 Practice.

17 MR. NEWSOME: You can't get people off the
18 jury, there are a lot of folks that are
19 patients.

20 MS. DULEY: I'm a little concerned about
21 Mr. Oliver's last answer.

22 THE COURT: Only thing that bothers me is
23 I didn't have him in another room. You
24 realize that I put 16 people out and give you
25 four strikes and one alternate because we're

1 going over a weekend.

2 MS. DULEY: I think we can agree on them.

3 THE COURT: I think Corley is all right
4 and I think the Oliver guy, listening to the
5 other folks.

6 MR. NEWSOME: I think these folks are
7 trying to be really honest.

8 THE COURT: I deny your motion. If you
9 want to put it on the record, I'll tell him
10 when.

11 MR. STEPHENSON: Respectfully note my
12 exception. Corley described that he was a
13 patient, a continuing patient of Blackstone
14 Family Practice Center, also been treated by
15 Dr. Rosenbaum and didn't hesitate in
16 expressing whether or not he could render a
17 fair and impartial verdict.

18 THE COURT: Your exception is noted.
19 Okay, I think we're ready to circulate the
20 list. Ladies and gentlemen, those of you who
21 we've been talking to, I'm going to take this
22 opportunity to tell you how this case will
23 proceed. There are 16 of you seated in the
24 front of the courtroom now, eight of you will
25 serve as today's jury. To get from 16 to

1 eight each of the lawyers will in turn strike
2 names, four for this side and four for this
3 side to get down to the eight. The remainder,
4 those who have been called this morning and
5 who have not been questioned and the eight who
6 are struck will be excused and the remaining
7 eight will be today's jury.

8 The case will begin, it will begin with
9 opening statements by the lawyers. It's an
10 opportunity for them to tell you what their
11 case is about. The opening statements are
12 followed by the evidence in the case, it then
13 becomes my job to instruct you as to the law
14 of the case, and after you hear closing
15 arguments you will retire to consider your
16 verdict and to do that you apply the facts
17 which you have heard in the courtroom to the
18 law which the judge has given you and reach a
19 verdict.

20 I told you the case would begin with
21 opening statements. The opening statements
22 are for the lawyers to tell you what they
23 expect to prove. They don't always do that,
24 but the statements are valuable for this
25 purpose, they give you a road map so that you

1 have an idea what to listen for. You don't
2 always hear it, but you have an idea what the
3 case is about and to listen. For that reason
4 I encourage you to listen to them.

5 They're followed by the evidence. The
6 evidence will come to you in various forms
7 today. Generally it will come to you from a
8 live witness telling you about what happened.
9 We're using this district courtroom and it
10 doesn't have the things that circuit
11 courtrooms normally have and it doesn't have a
12 big witness box. The eight of you who serve
13 are going to sit in these eight chairs. The
14 witnesses will come in that form. There's
15 going to be one or two doctors who will
16 testify to you through a video deposition.
17 They've already given their evidence, it will
18 be on a television screen and you will hear
19 them in that form.

20 Evidence may also be exhibits such as
21 photographs or charts or things of that
22 nature. What I say and what the lawyers say
23 is not evidence, it comes to you from other
24 people. It's your job to determine which
25 witnesses are more believable and weigh their

1 testimony accordingly.

2 We want you to be good jurors and I think
3 that there are only a couple of things that
4 you really need to do for that to happen, and
5 the first is that you listen to the case
6 throughout the day and the second is that you
7 apply your common sense to what you hear. And
8 if you do those things you'll be good jurors
9 and I think you'll go away with a feeling of
10 satisfaction.

11 From time to time there will be recesses
12 in the case. I ask that you not talk about
13 the case during recesses, lunch recess, that
14 you not be around others who might be talking
15 about it. I will try to give you breaks at
16 reasonable times. Should I not do that, I'm
17 well aware of the fact that you can't listen
18 if you're not comfortable, so please don't be
19 bashful, if you need a break, let it be known.
20 Also, if you can't hear, let it be known. You
21 can't decide the case if you can't hear the
22 witnesses.

23 I will give you further instruction before
24 you begin your deliberation as to how you go
25 about that. Things are a little tight here,

1 you will have as a jury room Judge Warren's
2 chambers and the sheriff will show you where
3 the bathrooms are and we'll try our best to
4 look after you under these circumstances. The
5 good part for you-all is that you're going to
6 have a very nice courtroom with modern
7 facilities. Today is part of the price for
8 getting that, that we have to do it here.
9 Thank you. Ready to call them?

10 MR. NEWSOME: Yes, Your Honor.

11 MR. STEPHENSON: Yes, Your Honor.

12 THE CLERK: When I call your names, please
13 have a seat in the jury box: Frank Walker,
14 Jr., Judy Coghill, Beverly Hobbs, Rodney
15 McComas, Edna Saul, Bobby Hatcher, Carlie
16 Greeley, Jr., Lovelace Moore.

17 THE COURT: Ladies and gentlemen, is that
18 your jury?

19 MR. NEWSOME: Yes, Your Honor.

20 MR. STEPHENSON: Yes, sir.

21 THE COURT: Please swear the jury.

22 THE CLERK: Ladies and gentlemen of the
23 jury, if you'll stand, please, raise your
24 right hand.

25 THE COURT: To the rest of you ladies and

1 gentlemen who were summonsed here this morning
2 for jury duty, we thank you very much for
3 coming. You're excused from this jury. Is
4 there another date to give these folks?

5 THE CLERK: They've already got it.

6 THE COURT: We thank you very much for
7 your willingness to serve. We're going to
8 recess for 10 minutes.

9
10 (A recess was taken.)

11
12 MS. DULEY: Your Honor, can we approach
13 the bench for a quick issue?

14 THE COURT: Certainly.

15 MS. DULEY: During the break my paralegal
16 told me that this guy Patterson who was the
17 guy who was talking about how bad nursing
18 homes are, was giving this guy Bobby Hatcher
19 about how bad nursing homes were and he's on
20 the jury. So I don't know what you want to do
21 about it.

22 THE COURT: You mean while he was sitting
23 out here?

24 MS. DULEY: Yes, before we were going
25 through all this. They were sitting next to

1 each other. I'm just concerned about what
2 this guy Matthew Patterson said to him because
3 he was the one who said he'd had a horrible
4 experience and apparently he was giving this
5 guy an earful.

6 MR. STEPHENSON: Your Honor, I don't know
7 how we can control what people comment to each
8 other. It may have been many other comments
9 made in a different direction.

10 THE COURT: I think I agree with
11 Mr. Stephenson, I don't see how we can do
12 anything about it. This man gave appropriate
13 answers all the way through. He said he had
14 no bad experience. I don't think someone
15 bending his ear is going to make a difference.
16 Do you want to put on the record your
17 objection to that person?

18 MS. DULEY: No, that's okay. I just
19 wanted to bring it to your attention.

20 THE COURT: You-all want to get a podium
21 up here or do without it?

22 MR. NEWSOME: That's okay, I don't need
23 it. Did we move to sequester the witnesses?

24 THE COURT: We have not.

25 MS. DULEY: Quite frankly, I didn't know

1 where to tell them to go.

2 THE COURT: I think the sheriff has a
3 plan. They said it might take a minute to get
4 them.

5 MR. NEWSOME: Okay.

6 MS. DULEY: Will we take a lunch break at
7 1:00?

8 THE COURT: Whenever it's convenient. Not
9 in the middle of a witness.

10 MR. NEWSOME: Okay, ready to roll.

11 THE COURT: Bring the jury back in.
12 Ladies and gentlemen, I told you-all earlier
13 that the case would begin with opening
14 statements of the lawyers. It's now
15 Mr. Stephenson's opportunity to present his
16 opening statement to you.

17 MR. STEPHENSON: Ladies and gentlemen of
18 the jury, I'm Barry Stephenson, I represent
19 the plaintiff in this case which is now the
20 estate of Lucille Overton.

21 THE COURT: We need to do something with
22 these witnesses. We didn't do it, we talked
23 about it. I apologize for interrupting you.
24 Who are your witnesses that are in the
25 courtroom?

1 MR. STEPHENSON: I don't believe I have
2 any witnesses at the moment.

3 MR. NEWSOME: I don't have any. I don't
4 know if there are any in here now.

5 MS. DULEY: Your Honor, it was my
6 understanding that the witnesses the plaintiff
7 is going to be calling today from Heritage
8 Hall.

9 MR. STEPHENSON: Yes, if the Heritage Hall
10 persons that are subpoenaed are my witnesses,
11 I would like them to rise and be identified.

12 THE COURT: Can you call them by name so
13 we know that we have them?

14 MR. STEPHENSON: Loretta Harris, Pomfrey,
15 all the witnesses from Heritage Hall.
16 Ms. Hodge and Coleman.

17 THE COURT: You three witnesses stand. Is
18 that just those three?

19 MR. STEPHENSON: Yes, sir.

20 THE COURT: If you'll give your attention
21 to the sheriff, they're going to show you
22 where to go and you'll be brought back in to
23 testify. Now, I don't know how long that will
24 be, but that's the only three in the courtroom
25 right now. Again, I apologize for

1 interrupting you, but we needed to do that.

2 MR. STEPHENSON: As I was about to say, I
3 represent the estate of Lucille Overton by her
4 personal representative, Horace Perdieu, who
5 is the son of the departed Lucille Overton.
6 She died on October 9th of 1999, but prior to
7 that we had a situation that gave rise to the
8 claim that we're here for today. Mrs. Overton
9 was a lady in her late 70s when she was
10 hospitalized for a period of time for a
11 medical condition at Johnston-Willis Hospital
12 in Richmond, and she had a bowel obstruction
13 and she had some other complications
14 associated with that including respiratory
15 problems that caused her to be a person that,
16 when she was released from the hospital, that
17 needed care that she could not get in the home
18 environment anymore. And so she was placed in
19 Heritage Hall, the nursing home, and
20 transferred there from Johnston-Willis
21 Hospital on January 4th of 1995.

22 Accompanying her at that time were the
23 transfer records that showed her medical
24 condition that required her to have the care
25 that was to be provided to her by Heritage

1 Hall Nursing Home for which she had been
2 admitted for that purpose. And in the
3 documents which are part of the medical
4 records, it was noted that she required
5 personal assistance.

6 MS. DULEY: Your Honor, I'm going to
7 object. He's reading hearsay information
8 into -- during his opening statement. I think
9 that's inappropriate.

10 MR. STEPHENSON: I'm describing what I
11 expect our proof to be, Your Honor.

12 THE COURT: And I take it you may
13 continue, I just remind the jury I told
14 you-all this is what Mr. Stephenson expects to
15 prove, it's not evidence.

16 MR. STEPHENSON: And at that time she
17 required assistance in six of her seven daily
18 life activities and she was constantly
19 confused. She required supervision, she had
20 been restrained by a Posey vest while she was
21 at Johnston-Willis Hospital to show the
22 severity of her condition for which she needed
23 treatment. The records will show that we
24 expect to have before you that she was noted
25 as not being able to administer medicines.

1 She was confused. She had a diagnosis of
2 dementia. She needed help in eating,
3 toiletry, bathing, all of those areas where
4 she had daily life activities. It was
5 certainly observed that she could not be left
6 alone safely and she required supervision in a
7 nursing home.

8 At the time of her admission she was also
9 assessed by the nursing home as being a person
10 having a high risk for falls and that
11 assessment is part of her record at Heritage
12 Hall Nursing Home. In spite of her being
13 admitted with those needs, there was never any
14 proper care plan implemented that provided the
15 assistance that she was admitted to receive at
16 Heritage Hall Nursing Home. On the 20th of
17 January following her admission on the 4th of
18 January in 1995 she was found lying on the
19 floor in her bedroom on her left side and a
20 fall noted. And she had assistance requested
21 from a call for medical attention from
22 Blackstone Family Practice and a resident in
23 training over there was then on a rotation and
24 came in and saw her and there's a short, swift
25 note in the medical records that no treatment

1 required. There's also a notation that on
2 that same day of the 20th she was found
3 wandering outside of the nursing home on the
4 street.

5 On the following day, January 21st, she
6 was found lying on the floor on her left side
7 in the dining room having sustained another
8 fall and that's just a very terse note with
9 the same resident saying no injury, no
10 treatment required. Following that she had a
11 deterioration in her health condition further
12 with congestion and other matters which she
13 was lying until her son, who is sitting here
14 at the table today, Mr. Perdieu, came in on
15 the 30th to see her. He had received a report
16 previously that she had fallen, but had
17 sustained no injury and he was not prompted to
18 come from his home in Fairfax, Virginia to see
19 her until he came in on the 30th and came in
20 and found her in a further state of
21 deterioration from what he had admitted her
22 for at Heritage Hall.

23 He insisted that she receive medical
24 attention and at that time she was examined by
25 a Dr. Damewood, another resident from

1 Blackstone Family Practice, who discovered
2 that she had a broken hip which had not been
3 diagnosed earlier, and then there were x-rays
4 that confirmed that on the 31st of January of
5 1995.

6 She was then transported back to
7 Johnston-Willis Hospital in Richmond and had a
8 hip replacement done by Dr. Burkhardt who
9 performed the surgery on her and she had
10 complications through the surgery and had a
11 cardiac arrest and was revived during that
12 process. She then had the hospital treatment
13 for that condition and was hospitalized at
14 Johnston-Willis until the 8th of February and
15 then had a follow-up. She had been in another
16 nursing home in northern Virginia and then
17 received rehabilitation for the problem over
18 that period of time and then had the following
19 recovery experiences which was not to be ever
20 any full recovery because this was a permanent
21 condition. She then departed this life, as I
22 said, in 1999.

23 Our position in this case is that she was
24 under a contract for service with Heritage
25 Hall to receive proper care as a resident

1 there, that she did not get that service, that
2 they didn't do anything to prevent her from
3 falling. With all of the information
4 available to them, that's what she needed and
5 they neglected her care at Heritage Hall.
6 Moreover, she didn't get the proper medical
7 attention by being served by the resident who
8 was in training and didn't do this under
9 supervision of her mentor, the physician that
10 was responsible for providing the supervision
11 during the training process and as a result
12 the diagnosis was missed.

13 She fell and broke the hip. When do we
14 think that occurred? The medical information
15 in the surgical process performed by
16 Dr. Burkhardt showed him that there was an
17 aging of the fracture by virtue of what he
18 found in the old blood and then he dated it as
19 occurring approximately 10 days to 14 days
20 earlier from his experience medically, so that
21 she either sustained that fracture in the fall
22 that occurred on the 20th or the 21st and then
23 lay there without any treatment for that
24 period of time until finally we had a
25 diagnosis on the 31st of January following

1 those falls.

2 What is further significant,
3 Dr. Rosenbaum, who is further a defendant, was
4 the medical director under agreement that he
5 had with Heritage Hall. As a part of that
6 agreement Dr. Rosenbaum was listed as
7 Mrs. Overton's attending physician, but you're
8 going to hear in the evidence that in spite of
9 his being listed as her primary care
10 physician, he never attended Ms. Overton,
11 never saw her during that period that she was
12 at Heritage Hall until he read x-rays over at
13 Blackstone Family Practice that were taken on
14 the 31st of January which he then confirmed
15 that showed the hip fracture.

16 He did not have any consultation with the
17 resident who came in and saw her not only on
18 the 20th and the 21st, but some days following
19 for her other complaints for which she was
20 deteriorating at the time. The evidence will
21 show that Josephine Fowler, who was this
22 resident, didn't remember attending this
23 patient and didn't know anything except what
24 appeared in the notes she'd made which she
25 subscribed to because she identified the note

1 that she had made, but she failed to seek any
2 consultation. She failed to receive any
3 consultation from the doctor that should have
4 been in charge and should have been attending
5 his patient because he was listed as the
6 attending physician. Now he has told us that
7 he is listed as attending physician generally
8 in relation to his capacity at Heritage Hall.
9 If he wants to be the attending physician
10 under the arrangement he has, he needs to
11 discharge those duties, and when you fail to
12 discharge those duties we maintain that he has
13 a liability and the Blackstone Family Practice
14 has the liability as the entity that was
15 involved in the overall service. I might add
16 that Blackstone Family Practice is listed as
17 the second physician of Lucille Overton.
18 Mr. Perdieu, in his testimony, if I expect to
19 tell you that he never authorized her to be
20 treated by the resident and didn't know that
21 she was being treated by the resident and not
22 the primary physician.

23 So I submit to you that we're here to ask
24 you to return a verdict, as the evidence will
25 show you, for injury both from the standpoint

1 of not being properly attended with the
2 service that she should have received from
3 Heritage Hall and not being attended by the
4 medical side of it, but should have detected
5 and diagnosed this injury that occurred to her
6 that caused her to have a hip replacement
7 surgery. And with that, I will let my
8 opposing counsel make their statements.

9 THE COURT: Thank you, sir. Mr. Newsome.

10 MR. NEWSOME: Your Honor, I'm going to
11 take a quick second to set up a few things.
12 Good morning, ladies and gentlemen. Again, my
13 name is Kelvin Newsome, I'm here with
14 Elizabeth Pharr and we represent Dr. Rosenbaum
15 and Blackstone Family Practice. I know
16 you-all aren't here on your own free will, but
17 we do appreciate you being here and giving us
18 your attention today. The way this trial is
19 going to work is the plaintiff will get to put
20 on their entire case before you hear any of
21 the defense evidence. We just ask that you
22 listen carefully, that you listen to all the
23 evidence before you form any opinions in this
24 case.

25 Briefly, Ms. Overton was admitted to

1 Heritage Hall on January 4th, 1995 and during
2 the course of her stay at Heritage Hall she
3 fractured her hip at some point. I want to
4 mention that Mrs. Overton has passed four
5 years after she was at Heritage Hall, but the
6 reason she has passed had nothing to do with
7 why we're here today. I just wanted to point
8 that out. There's no connection between her
9 unfortunate demise and the reason we're here
10 today.

11 During the course of this trial you're
12 going to hear a lot of terms, some of them
13 medical, some of them legal and I just want to
14 go through a few of the real important ones
15 that I want you to focus on so whenever you
16 hear these terms you-all know what they are,
17 and it will be helpful when you're listening
18 to the evidence and so you can make a decision
19 at the end of this case.

20 The first phrase that I want you to be
21 aware of is standard of care. The standard of
22 care will tell you that a physician has the
23 duty to do what a reasonably prudent family
24 practice physician would do, would have done
25 under the circumstances of this case. That's

1 important. That's what you look at to
2 determine if anything was wrong and what the
3 doctor has to do is what's reasonable. That's
4 what this case is about, whether what the
5 doctor did was reasonable.

6 You're going to hear a term that relates
7 to the examinations that were performed on
8 Ms. Overton. You're going to hear flexion and
9 extension of the leg and knee. And flexion
10 and extension is bending and straightening of
11 the knee. As you see here when you flex and
12 extend the knee, it necessarily involves the
13 hip. Keep that in mind. That's real
14 important.

15 Now, you heard Mr. Stephenson refer to
16 failure to diagnose in his opening and you're
17 going to hear that again, but let me tell you
18 what failure to diagnose means. Failure to
19 diagnose occurs when a physician examines the
20 patient and the patient exhibits the signs and
21 symptoms of a hip fracture and the physician
22 fails to recognize that the patient has a hip
23 fracture. Again, when the patient is
24 examined, you have to look and see was the
25 patient exhibiting signs and symptoms of a hip

1 fracture. That's the important point, and I'm
2 going to refer you to that as we go through
3 this.

4 Now, I said signs and symptoms. You're
5 probably wondering what are the signs and
6 symptoms of a hip fracture. Glad you asked.
7 Complaints of pain when the leg is moved.
8 Complaints of pain when the knee is flexed.
9 See how the hip is moving when I move the
10 knee, it causes pain if you have a hip
11 fracture and the leg may be rotated outwardly.
12 Every time there's an examination performed
13 you should look and see during the exam was
14 Ms. Overton exhibiting these signs and
15 symptoms that will let you know if the
16 physician should have recognized that there
17 was a hip fracture.

18 Now, we've heard all these terms and let's
19 see how these terms are going to fit into the
20 case that we're here on today. January 4th,
21 1995 Ms. Overton was admitted to Heritage
22 Hall. On January 20th Ms. Overton was found
23 on her left side. So the nursing staff when
24 they found her, they examined her and
25 determined that there was no apparent injury.

1 Their process is if the patient is found lying
2 on the floor or if they've fallen, they will
3 put them on a list to be seen by a physician.

4 January 20th Dr. Josephine Fowler was
5 assigned to Heritage Hall that day to see
6 patients. Let me tell you a little bit about
7 Dr. Fowler. In January of 1995 Dr. Fowler was
8 a licensed medical doctor at that time. She
9 was in her second year training at Blackstone
10 Family Practice in a residency program. What
11 you will hear is prior to the time Dr. Fowler
12 actually came to Heritage Hall on the 20th,
13 she had already examined hundreds of patients
14 during medical school and during her
15 internship year. Prior to the time that she
16 had came to Heritage Hall that morning, she
17 had diagnosed many patients with hip
18 fractures. You'll hear that she checked
19 Ms. Overton's entire body. She checked her
20 for external injuries, she also rotated her
21 limbs, her arms, her knees and as she did
22 flexion and extension of her knee and that
23 there were no complaints of pain from
24 Ms. Overton. What you'll also see is on
25 January 20th Mrs. Overton is walking during

1 the exam.

2 The next day Ms. Overton was found in the
3 dining room on her left side, she had fallen.
4 The nursing home staff examined her,
5 determined that she had no apparent injuries
6 and as they do, they put her name on the list
7 to be seen by a physician. Dr. Fowler again
8 came over to examine Ms. Overton. She did the
9 same examination she did the day before, she
10 checked her out. She check her for external
11 injuries, she also checked her limbs, she
12 checked her arms, leg, her hips. She
13 performed flexion and extension of the hip.
14 Based upon the lack of findings on that
15 examination, Dr. Fowler concluded that there
16 was no apparent injury and no treatment
17 required. Again, no signs and symptoms of a
18 hip fracture exhibited on that day.

19 On January 23rd Ms. Overton was also on
20 the list again to be seen. On that day
21 Ms. Overton was a little sluggish so when
22 Dr. Fowler came over to examine Ms. Overton,
23 she actually checked her and looked at her
24 medication and said she's on Benadryl, perhaps
25 Benadryl is making her a little sluggish, I'll

1 come back and provide treatment for her the
2 next day. There are no complaints of pain
3 reported during that exam.

4 On the 24th Dr. Fowler came over to see
5 Ms. Overton again. Ms. Overton was also on
6 the list because Ms. Overton had complained to
7 the nursing staff that she was having left
8 knee pain. When Dr. Fowler got to see
9 Ms. Overton, Ms. Overton told her that she
10 wasn't experiencing any pain at that point,
11 but as Dr. Fowler had done on each occasion
12 before then, she still checked her entire
13 body. She checked her for external injuries,
14 tenderness, swelling and rotated her limbs,
15 arms and she concluded that she had good
16 flexion, good extension while she was lying
17 down.

18 Then after the examination, even though
19 Dr. Fowler was bending and straightening out
20 her knee and rotating her limbs, Ms. Overton
21 still said I'm having no pain in my knee and
22 she didn't make any complaints of hip pain.
23 Dr. Fowler also checked Ms. Overton for her
24 alertness because she had been sluggish the
25 day before. She noted that Ms. Overton had

1 been more alert that day.

2 The next day Dr. Fowler came to see
3 Ms. Overton again. She had developed a cough.
4 She checked her heart and her lungs and
5 because Ms. Overton was coughing, she seemed
6 to have an upper respiratory infection, she
7 prescribed an antibiotic to prevent her from
8 getting sick, so she gave her an antibiotic.
9 The 25th of January is the last day that
10 Dr. Fowler ever saw Ms. Overton and you will
11 hear that there's no evidence in the record
12 from January 25th until the 31st there are no
13 complaints of pain by Ms. Overton that the
14 staff noted. No one from Blackstone Family
15 Practice was called during January 25th until
16 the 31st and on the 31st the evidence will
17 show that Ms. Overton was complaining of left
18 hip pain for the first time and the nursing
19 staff let Blackstone Family Practice know that
20 Ms. Overton needed to be seen. And
21 Dr. Damewood, who is also a resident, came
22 over to examine Ms. Overton based upon her
23 complaint of hip pain and he performed an
24 examination of Ms. Overton and when he flexed
25 and extended her left knee, she said my hip is

1 in pain.

2 Dr. Damewood then had Ms. Overton go over
3 to Blackstone Family Practice to be x-rayed
4 and the x-ray showed that she had a femoral
5 neck fracture. The femoral neck is right
6 here, right where the leg had been bent and
7 straightened. You can see if you're bending
8 and straightening the knee, that if there's a
9 hip fracture, the person should exhibit some
10 pain. That's what we're talking about.
11 That's where the fracture was. And then
12 actually Dr. Rosenbaum actually read the x-ray
13 and made the diagnosis.

14 Now that you've heard essentially what the
15 evidence is going to show, let me talk about
16 the issue that you-all have to address. The
17 issue is whether or not the care and treatment
18 provided by Dr. Fowler was reasonable.
19 Remember what I told you, standard of care,
20 what the doctor has to do. The doctor has to
21 do what's reasonable under the circumstances.
22 That's what you're hear for. That's the only
23 issue that you have to address for
24 Dr. Rosenbaum and Blackstone Family Practice.
25 Because you've already heard a few things from

1 Mr. Stephenson and you'll probably hear a few
2 more things during this trial, let me tell you
3 what are not issues for Dr. Rosenbaum and
4 Blackstone Family Practice when the fracture
5 occurred. Remember what the issue is, was
6 Ms. Overton exhibiting the signs and symptoms
7 of a fracture when she was being treated and
8 examined. That's the issue. You're going to
9 hear from Dr. Burkhardt, Dr. Burkhardt is going
10 to tell you that he believes the fracture is
11 over two weeks old. Then he's going to
12 eventually say I really don't know when it
13 occurred. That's not really important because
14 it's not when she had the fracture, it's when
15 the signs and symptoms were exhibited to the
16 physician examining the patient. Dr. Fowler
17 was a medical doctor at the time she saw
18 Ms. Overton. The issue is did she provide
19 reasonable care. That's the issue, not her
20 status.

21 Supervision of Dr. Fowler. That's not an
22 issue, was she supervised. Sure she has been
23 supervised. You will hear expert testimony
24 regarding the supervision and you will hear
25 that the supervision that Dr. Fowler had was

1 appropriate, but again, it's not the issue,
2 the issue is did she do what was reasonable.

3 Documentation. You heard Mr. Stephenson
4 say a short, swift note. Documentation. What
5 you write down isn't an issue. The issue is
6 what you did. Focus on what was done, not
7 whether you wrote it down. Dr. Rosenbaum.
8 Dr. Rosenbaum is listed as the attending
9 physician on Ms. Overton's chart. He never
10 saw her. Not an issue. The issue is whether
11 the physician that saw her did what was
12 reasonable. And preventing the fall, I just
13 want you to know it's not an issue for
14 Dr. Rosenbaum and Blackstone Family Practice,
15 there's going to be no testimony that they
16 should have prevented Ms. Overton or really if
17 anyone should have prevented her from falling,
18 but that's an issue who you're going to hear
19 from Ms. Duley, counsel for the nursing home.
20 She'll address that issue.

21 I've told you what the issue was, now
22 you're probably wondering what's going to help
23 me. I'm going to listen to some testimony,
24 but what's going to help me to determine
25 whether the care and treatment provided by

1 Dr. Fowler was reasonable. You're going to
2 have to rely on the testimony of expert
3 witnesses. The plaintiff is going to have
4 experts and the defendants are going to have
5 experts. You're going to have to listen real
6 closely to these experts. You're going to
7 look to see do they have a basis for knowing
8 what they're saying. You can also look to see
9 why they're testifying.

10 Let's see who the plaintiff is going to
11 bring to trial. Plaintiffs are going to bring
12 Dr. John Martin. As you recall Dr. Fowler,
13 Dr. Rosenbaum are family practice physicians.
14 Dr. Martin has no residency training in family
15 practice medicine. Dr. Martin is not board
16 certified in any specialty. Dr. Martin has
17 been retired since 1987. Probably wondering
18 why he's testifying. You're also going to
19 hear that Dr. Martin is Mr. Stephenson's
20 fraternity brother from college. Dr. Martin
21 is the family physician for Mr. Stephenson and
22 his family, and you're also going to hear that
23 Dr. Martin is a client of Mr. Stephenson and
24 he'll tell you that he and Mr. Stephenson are
25 good friends. You're going to have to compare

1 Dr. Martin and his credentials with the
2 experts for the defendants.

3 We're going to bring Dr. Paul Evans. He
4 is board certified in family practice.

5 Dr. Evans has a CAQ, which is a certificate of
6 added qualifications, in geriatrics.

7 Dr. Evans is an expert on how you care for
8 elderly folks. Dr. Evans is a director of
9 Riverside Family Practice program for 16
10 years. He knows how residency programs are
11 run. He's going to tell you about that. He's
12 going to tell you that everything here was
13 done just like it is in Virginia and in the
14 country. Dr. Evans is the associate director
15 of geriatrics at Riverside Family Practice.
16 He teaches other physicians from all over the
17 state how to care for elderly people. He's
18 trained over 200 family practice residents.

19 You're also going to hear from Dr. John
20 Cardea, board certified in orthopedic surgery.
21 He's the national board examiner for
22 orthopedic surgery. He administers the test
23 to determine who becomes an orthopedic
24 surgeon. Dr. Cardea has performed over 5,000
25 hip prosthesis replacement surgeries. He's

1 performed it over 5,000. You're going to hear
2 from Dr. Cardea who trained Dr. Burkhart.
3 Dr. Burkhart is going to tell you when he has
4 a tough case and he needs a second opinion, he
5 turns to Dr. Cardea.

6 Again, you've heard a lot here. Just want
7 to remind you one more time what the issue is
8 in this case, it's whether or not the care and
9 treatment provided by Dr. Fowler was
10 reasonable. Remember the signs and symptoms
11 of a hip fracture. As you recall I asked as
12 jurors that if the plaintiff did not prove his
13 case against Dr. Rosenbaum and Blackstone
14 Family Practice if you could return a defense
15 verdict and after all the evidence is in,
16 we're going to ask you to return a defense
17 verdict. Thank you very much for your time.

18 THE COURT: Ms. Duley.

19 MS. DULEY: Thank you, Your Honor. Good
20 morning again, ladies and gentlemen. My name
21 is Lisa Duley and I'm here representing
22 Heritage Hall Nursing Home. I'm going to ask
23 you to keep one other thing in mind, I know
24 you're going to have a lot of things going
25 through your head, but I would like for you to

1 remember one really important thing as far as
2 Heritage Hall goes and that is the elderly are
3 like children. The elderly are like young
4 children in many ways. They need help
5 dressing. They need help eating. They need
6 help getting in and out of bed. They also
7 need help with their mind.

8 Like young children the elderly often have
9 to be reminded of their limitations. They
10 need to be reminded where they are, who they
11 are. They can be confused easily and often
12 times they have to have things explained to
13 them over and over again, just like young
14 children do. One very important thing to
15 remember about the elderly is the elderly
16 fall. Just like young children the elderly
17 fall. As I'm sure you-all know you can walk
18 down the street with a young child holding
19 their hand, they're going to trip up and fall.
20 You're standing there with them, you're
21 holding onto their hand, they're still going
22 to fall.

23 The witnesses that you will hear from
24 today and Monday from Heritage Hall will
25 explain to you what they did in order to

1 prevent bad things from occurring to the
2 residents. They will tell you that they do
3 their best to keep the residents safe. You
4 will hear from some experts who will tell you
5 that the elderly are like young children.
6 They will explain to you the characteristics
7 that make the elderly similar to young
8 children. They're unsteady on their feet and
9 they're easily confused. The experts that
10 will testify will further tell you that no
11 matter how careful you are, no matter how many
12 people are watching, the elderly can still
13 fall. You cannot prevent all falls.

14 When Mrs. Overton arrived at Heritage
15 Hall, she was assessed as a potential fall
16 risk. And one other thing that you will hear
17 from experts and that is the majority of
18 nursing home residents are fall risks.
19 Mrs. Overton was assessed as a fall risk. You
20 will hear from Linda Baker who is a nurse at
21 Heritage Hall, she was a nurse when
22 Mrs. Overton was admitted. She wrote a care
23 plan for Mrs. Overton. Linda Baker will come
24 and tell you what a care plan is and how the
25 care plan that she wrote was written

1 specifically for Mrs. Overton. She will
2 explain to you the things that are on the care
3 plan that are there to ensure the safety of
4 Mrs. Overton.

5 The nurses will testify that it is their
6 duty to implement their care plan. You will
7 hear from the nurses at Heritage Hall and they
8 will tell you that Mrs. Overton was assisted
9 in her bathing, she was assisted in eating,
10 she was assisted with her mobility and they
11 will explain to you that all of these are very
12 important ways that will help prevent falls.
13 Nothing is a sure fire method, they cannot be
14 prevented, but all of these things add up and
15 they do the best they can to prevent them.

16 The plaintiff's experts are going to
17 testify that she should have had a bed rail or
18 she should have had a bed alarm or a seat
19 alarm or that there just should have been more
20 people around. Their experts will concede
21 that a bed alarm does not prevent a fall, a
22 bed rail does not prevent a fall, in fact a
23 bed rail can make a fall worse, and having
24 more people watch will not prevent a fall.

25 Mr. Stephenson has mentioned an incident

1 where Mrs. Overton left the facility, and I
2 just want to clear things up and let you know
3 what the testimony is going to be. She did
4 leave the facility. The key is how long was
5 she gone and how did she leave. Heritage Hall
6 has an alarm system on all of their doors.
7 When one of the doors is opened, an alarm goes
8 off throughout the building. When
9 Mrs. Overton walked out that door, the alarm
10 went off and it was 30 to 60 seconds before a
11 nurse was able to get to the door. The
12 nursing note says found on 6th Street. Well,
13 if you're familiar with Heritage Hall, you
14 know that the side door is practically on 6th
15 Street, so it does not take more than 30 to 60
16 seconds to walk from the door to 6th Street.

17 This raises another important point and
18 that is that Heritage Hall does not tie down
19 their residents. They don't cage their
20 residents up like animals. It is important
21 for the elderly to have their freedom. Many
22 of them don't want to be in nursing homes to
23 begin with. They certainly don't want to be
24 locked up in a room or tied down to a chair.
25 It is very important for them to be able to

1 walk throughout the nursing home and have
2 their freedom. The alarms are on the door for
3 a safety measure. It allows them to have
4 their freedom, but it also allows them to know
5 if someone has walked out of their facility.

6 The experts are also going to tell you
7 that the elderly can break their bones in many
8 ways. Their bones are more fragile and they
9 can break in many ways. Mr. Newsome has
10 talked about some of the experts that are
11 going to be testifying. He has mentioned
12 Dr. Martin who is coming on behalf of
13 Mr. Stephenson. One thing that he did not
14 tell you about Dr. Martin that I would like to
15 point out and that is Dr. Martin has not
16 worked in a nursing home since 1965, almost 30
17 years ago.

18 Dr. Rizk will come and testify on behalf
19 of Heritage Hall. Dr. Rizk is a board
20 certified internist, practices in Richmond.
21 He was the director of a nursing home in
22 Henrico County from approximately 1992 through
23 1998. When these witnesses are testifying, I
24 would just remind you to keep these
25 credentials in mind.

1 Mr. Newsome also pointed out to you the
2 standard of care for doctors and I will tell
3 you that the standard of care is the same for
4 the nurses, but where he had doctors you just
5 need to insert nurses. Did the nurses do what
6 reasonably prudent nurses would have done in a
7 similar situation. And that is the issue in
8 this case for Heritage Hall, did the nurses at
9 Heritage Hall do what reasonably prudent
10 nurses would have done in a same or similar
11 circumstance.

12 At the end of this case I'm going to have
13 the chance to talk to you again and I will
14 suggest to you now and at that time I will
15 remind you that the nurses at Heritage Hall
16 did comply with the standard of care, they did
17 do what reasonably prudent nurses would have
18 done in the same situation and I'm going to
19 ask you to return a verdict in favor of
20 Heritage Hall. Thank you.

21 THE COURT: Mr. Stephenson, we will start
22 with the first witness now unless someone
23 needs a break. My preference is to continue,
24 but I want you-all's opinion. Mr. Stephenson,
25 you may call your first witness.

MR. STEPHENSON: I call Ms. Pomfrey.

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BETTY POMFREY

was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Would you state your name and address, please?

A My name is Betty Pomfrey, I live at 981 Cedaron Road in Blackstone, Virginia.

Q Where are you employed?

A Heritage Hall.

Q What is your position there?

A I'm the director of nursing.

Q How long have you held that position?

A Fourteen years.

Q What did you do prior to that?

A I worked for the National Institutes of Health, I was working for a grant.

Q Did you come into Heritage Hall as the director of nursing, or did you have some other position previously?

A I was the ADON for three months and that's the assistant director of nursing.

Q What's your educational background?

A I graduated from high school and I went to

1 Stuart Circle School of Nursing and attended RPI
2 and graduated from Stuart Circle School of Nursing.

3 Q Were you the director of nurses at
4 Heritage Hall in January of 1995?

5 A Yes, sir.

6 Q As a director of nurses have you served in
7 any other capacity at Heritage Hall?

8 A I don't understand the question.

9 Q Do you have any other positions, committee
10 memberships or anything?

11 A I serve on the quality assurance
12 committee. I serve on the risk management
13 committee.

14 Q What do you do on the quality assurance
15 committee?

16 A We discuss ways to improve care.

17 Q And do you have policies and procedures
18 that you follow at Heritage Hall?

19 A Yes, sir.

20 Q How are those policies and procedures
21 originated?

22 A We follow the federal guidelines and the
23 state guidelines and the guidelines of the company,
24 which is Heritage Hall.

25 Q Did you have such policies and procedures

1 in place in January of 1995?

2 A Yes, sir.

3 MS. DULEY: Your Honor, I'm going to
4 object, I don't think the policies and
5 procedures are relevant to this lawsuit.

6 MR. STEPHENSON: I certainly think that
7 we'd want to know whether they were following
8 the policies and procedures in the care of
9 Mrs. Overton. I would want to know what they
10 are. They claimed that they gave her the care
11 that was required.

12 THE COURT: I think that's relevant, but
13 what the policies and procedures I don't see.
14 It seems to me what you're looking for is
15 whether she received proper care or not,
16 whether they say they're going to give proper
17 care. So I would ask to move on to what was
18 done and sustain the objection. And I don't
19 have to admonish the jury that you've not
20 heard the answer.

21 MR. STEPHENSON: I have my exhibit
22 designated as Exhibit 18 and I would like to
23 proffer that.

24 THE COURT: Are you familiar with
25 Mr. Stephenson's exhibits?

1 MR. NEWSOME: No, Your Honor. We would
2 just like to see them.

3 THE COURT: Is that all of them?

4 MR. STEPHENSON: Yes, it should be.

5 THE COURT: And you have them numbered?

6 MR. STEPHENSON: This should be listed as
7 No. 18.

8 MS. PHARR: Your Honor, I'm not sure if
9 you're aware of what Exhibit 18 is, but it
10 contains countless hearsay. It has some
11 minutes from the policy and procedure
12 committee, the resident care policies and
13 procedures manual, the organization of the
14 department of nursing service minutes, the
15 orientation checklist, the dining room
16 resident procedure, physical restraint
17 assessment form, the Heritage Hall admission
18 agreement. These are authored by a variety of
19 different individuals, are signed by a variety
20 of different individuals none of whom are here
21 today and in fact it is my understanding that
22 Ms. Pomfrey had no participation in the
23 creation of any of these and her signature
24 does not appear on any of them, and so we
25 would object on those grounds.

1 MR. STEPHENSON: If the Court, please, I
2 believe under the second page of this exhibit,
3 resident care policies and procedures, there
4 is a signature of Betty Pomfrey, director of
5 nurses and I would submit --

6 THE COURT: There are lots of other things
7 that were just read off.

8 MR. STEPHENSON: I'd ask the witness of
9 whether these are records that are theirs,
10 part of their business records.

11 THE COURT: Do they have to do with
12 Ms. Overton?

13 MR. STEPHENSON: They have to do with
14 whether or not they were following the
15 policies that I want to ask them about in
16 relation to Mrs. Overton.

17 MS. PHARR: Again, we would just point out
18 these are irrelevant to the issue in this case
19 which is did Mrs. Overton receive a reasonable
20 medical care while she was at Heritage Hall.
21 These policies and procedures don't speak to
22 whether she received reasonable medical care,
23 therefore they're irrelevant.

24 MR. STEPHENSON: I think that we have to
25 start from someplace whether they're committed

1 to do under their policies and procedures and
2 whether they have any application to the care
3 of their residents.

4 THE COURT: I don't think I can let you go
5 through stack after stack of procedure manuals
6 that may or may not have anything to do with
7 this case. The issue again goes back to
8 whether she received the proper standard of
9 care in Virginia, not according to what
10 Heritage Hall may have as their directive. I
11 will not allow the exhibit to come in. You
12 may continue to question Ms. Pomfrey. Your
13 exception is noted.

14 MR. STEPHENSON: Thank you, Your Honor.

15 BY MR. STEPHENSON:

16 Q Ms. Pomfrey, are you familiar with any
17 policy related to dining room residents and whether
18 you permit them to be in the dining room with
19 attendants?

20 MS. DULEY: I'm going to object. He's
21 talking about policy and procedures again.

22 THE COURT: I think what was done with
23 Mrs. Overton is relevant. What the procedure
24 was is not.

25 MR. STEPHENSON: Your Honor, I would

1 submit that if they have a policy and they
2 have -- let me take that and come back to it
3 because I want to establish first of all that
4 we have an agreement with Mrs. Overton with
5 relation to Heritage Hall and that agreement
6 involves their application of certain policies
7 to her residence. I now would like to have
8 marked a Heritage Hall agreement with
9 Mrs. Overton and introduce that, if I may,
10 through this witness.

11 MS. DULEY: What exhibit is it?

12 MR. STEPHENSON: I think it's also part of
13 Exhibit 18 somewhere.

14 THE COURT: Are you familiar with this?

15 MS. PHARR: Yes. We would object to it to
16 its relevance. The admission agreement
17 doesn't establish whether or not the medical
18 care that was provided to Mrs. Overton was
19 reasonable, only an expert can establish that
20 the care was or was not reasonable. This
21 agreement can't do that therefore it's
22 irrelevant. We also object on the grounds
23 that it's hearsay.

24 THE COURT: But the agreement this case
25 rests in contract, also, and this is the

1 contract.

2 MS. DULEY: I don't think he can get the
3 contract in through this witness.

4 THE COURT: That may be, but this is not
5 inadmissible.

6 MS. DULEY: She had nothing to do with
7 this. Her signature is not on here. It is
8 certainly hearsay as to this witness, Your
9 Honor.

10 MR. STEPHENSON: I'm hearing hearsay
11 objections to business records.

12 THE COURT: Well, she said only that this
13 witness had nothing to do with it, that she
14 couldn't vouch for it.

15 MR. STEPHENSON: I don't know until I ask
16 her.

17 THE COURT: Correct. She didn't sign it,
18 how do you want to offer this?

19 MR. STEPHENSON: I just want to establish
20 that that's the contractual relationship that
21 involves the admission of Mrs. Overton to
22 Heritage Hall as a resident and it has
23 provisions of what the responsibilities are at
24 Heritage Hall for her care.

25 THE COURT: The objection is that this

1 lady is not a party to it, she didn't sign it.

2 MR. STEPHENSON: I would like to ask the
3 witness whether or not she can verify that
4 this is a true copy of the Heritage Hall
5 admission agreement involving Ms. Overton's
6 residency.

7 THE COURT: Any reason for not letting
8 this come in and get it over with?

9 MS. DULEY: May we approach, Your Honor?

10 THE COURT: Yes.

11 MS. DULEY: We believe that he is not
12 going to get it through any witness and for
13 something to come in, that he's not going to
14 get it from any witness. The person from
15 Heritage Hall that signed it is not listed as
16 a witness.

17 MR. STEPHENSON: Are they disclaiming that
18 there was no admission of Mrs. Overton?

19 MS. DULEY: No, but it's his burden of
20 proof, Your Honor.

21 THE COURT: I thought you-all would have
22 these things straightened out before now. We
23 don't have a chance of trying this case at
24 this pace. I thought you-all had worked on
25 exhibits.

1 MS. DULEY: We did and we objected. We
2 filed objections.

3 MR. NEWSOME: If I may say one thing, I'm
4 just making a suggestion, perhaps counsel can
5 get together at lunch after this witness and
6 see if we can work things out on some issues
7 that are coming up. We can see who
8 Mr. Stephenson is going to call and see if we
9 can work things out. I understand the Court's
10 frustration. If we can get through these
11 things and maybe things can go a little bit
12 faster.

13 THE COURT: I don't know whether you can
14 get it in or not. I don't think you can get
15 it in who never signed it, who is not listed
16 on there anywhere and frankly, I don't know
17 why you need it.

18 MR. STEPHENSON: Well, I submit that it's
19 a contractual document that expresses the
20 liability and it's signed by Chris Orange on
21 behalf of Heritage Hall and I asked her
22 whether or not that's his signature.

23 THE COURT: But that won't get it in.

24 MR. STEPHENSON: I may have some
25 admissions.

1 THE COURT: I would like you to move on.
2 I mean we've spent 30 minutes and hadn't had
3 the first question asked yet.

4 BY MR. STEPHENSON:

5 Q Can you tell me what the policy is of
6 Heritage Hall regarding maintaining nurse's notes
7 in relation to your residents?

8 MS. DULEY: Your Honor, I'm going to
9 object again. I mean we are doing the same
10 thing over and over and I hate to keep
11 standing up and objecting. I think you've
12 already ruled on this just in a different
13 context.

14 THE COURT: The problem is,
15 Mr. Stephenson, everybody wants to know what
16 was done, not what the policy was and I think
17 that's where you need to go.

18 BY MR. STEPHENSON:

19 Q May I show you this document?

20 MR. STEPHENSON: And let me ask if I can
21 mark the nurse's notes, and mark this as
22 Exhibit 15.

23 THE COURT: What is this?

24 MR. STEPHENSON: The nurse's notes that
25 pertain to Mrs. Overton from her admission on

1 January 4th through January 31st.

2 THE COURT: Mark it as Plaintiff's Exhibit
3 1.

4 MS. DULEY: I'm going to object to it
5 coming into evidence.

6 THE COURT: He asked that it be marked.

7 (Exhibit 1: Nurse's notes)

8 BY MR. STEPHENSON:

9 Q I want to show you what has been marked as
10 Plaintiff's Exhibit 1 and ask you if you can
11 identify this document for me, or series of
12 documents?

13 A This says Heritage Hall, yes, sir.

14 Q And is that nurse's notes that pertain to
15 the resident, Lucille Overton, the period that she
16 was a resident from January 4th to January 31st?

17 A It says 1/4/95. It says Lucille Overton
18 on the bottom and the last intake is 1/31/95, yes,
19 sir.

20 Q And are they nurse's notes that are kept
21 in the regular course of business at Heritage Hall
22 regarding your residents?

23 A We keep nurse's notes on our residents.

24 Q And are they official documents related to
25 your residents?

1 A Yes, sir.

2 Q And you keep those with respect to all of
3 your residents?

4 A Yes, sir.

5 MR. STEPHENSON: With that testimony I'd
6 offer this as an exhibit.

7 MS. DULEY: And we would object, Your
8 Honor, it's hearsay. There is nothing on here
9 written by Ms. Pomfrey.

10 THE COURT: What do you say to that?

11 MR. STEPHENSON: The witness has just
12 testified as director of nurses that this is
13 the normal business record kept with regard to
14 Lucille Overton and it's a regular business
15 record. And it's certainly an exception in a
16 hearsay rule and they come in as business
17 records of the facility.

18 THE COURT: I agree. It may be admitted.

19 BY MR. STEPHENSON:

20 Q Are you familiar with any of the
21 activities involving Ms. Overton when she was at
22 Heritage Hall?

23 A Are you asking me if I remember
24 Ms. Overton?

25 Q Yes.

1 A No, sir.

2 Q So you have no recollection of
3 Mrs. Overton at all?

4 A No.

5 Q Have you reviewed her chart records?

6 A Have I reviewed them? No, sir. Have I
7 looked at them? Yes, sir.

8 Q What chart records have you looked at?

9 A Her name and the date she was there.

10 Q And have you reviewed any nurse's notes?

11 A No, sir. Well, except the ones that you
12 had.

13 Q You have reviewed these previously?

14 A No, sir.

15 MR. STEPHENSON: I want to mark this
16 document, it's labeled weekly resident care
17 report as Exhibit No. 2 then, if I may.

18 THE COURT: You haven't shown that it was
19 an official business record. I don't think
20 it's up to me to assume that you can do that.
21 Do you have an objection to it?

22 MS. DULEY: Yes, Your Honor, same
23 objection.

24 (Exhibit 2: Weekly resident care report)

25

1 BY MR. STEPHENSON:

2 Q Can you identify this document?

3 A At the top it says weekly resident care.
4 It says Heritage Hall on the bottom. There are
5 signatures.

6 Q And whose signature's on it?

7 A I can't read them, sir, except for one,
8 one says Vanessa Taylor. I can't read the other
9 signatures.

10 Q Do you know who Vanessa Taylor?

11 A She's a CNA.

12 Q And she works at Heritage Hall?

13 A Yes.

14 Q And are these records compiled in the
15 regular course of business at Heritage Hall?

16 A They are filled out on each shift, yes,
17 sir.

18 Q And they are the weekly care reports
19 related to the resident involved?

20 A Weekly resident care sheet, yes, sir.

21 Q What do these weekly care sheets show?
22 What is the purpose of those?

23 A It has a list completely down the left
24 side and then it has the shifts across the top and
25 then it tells whether or not these things were done

1 for the resident.

2 Q And what is it that is told by those
3 records that's done to the resident?

4 A I don't understand what you're asking.

5 Q Let me ask you specifically: There's a
6 top notation that says ambulation ad lib and
7 there's a second one that says with assistance.
8 Third one, up in chair. Fourth one, up in
9 bathroom, and with regard to those what is the
10 meaning of those notations?

11 A Ambulation ad lib means the person moves
12 around on his own. With assistance means someone
13 watches them. Up in the chair means that during
14 the course of the day the person may be in the
15 chair. Up to the bathroom, the residents may go to
16 the bathroom by themselves or someone may assist
17 them, and walk in dining room means they can walk
18 into the dining room.

19 Q And that's a record that's kept on an
20 ongoing basis for each of your residents?

21 A ADL sheets are kept on an ongoing basis.

22 Q And that's part of your regular chart
23 records?

24 A Yes, sir.

25 Q I take it that Lucille Overton's name is

1 noted on each page of these records?

2 A The first three have it written, the last
3 ones were typed.

4 Q And so someone typed that in Heritage
5 Hall?

6 A I didn't say that, sir. We do not type
7 our ADL sheets.

8 Q When you say we, does that sometimes get
9 done?

10 A Sir, I can't answer that. The first three
11 have her name handwritten which is what I'm used
12 to. I can't promise you that it's never been done.

13 Q Would you look at the records and tell me
14 whether or not they show any inconsistencies in the
15 ad lib as opposed to with assistance?

16 A I don't know what you're asking me.

17 Q Did Mrs. Overton require assistance in her
18 movements?

19 A Sir, I don't remember Mrs. Overton. I can
20 read what this sheet says.

21 MS. DULEY: Your Honor, I'm going to
22 object as to hearsay.

23 THE COURT: Let me see this.

24 MR. STEPHENSON: I would proffer also that
25 these were documents that were provided on

1 discovery from the records of Heritage Hall
2 related to Lucille Overton.

3 THE COURT: The Court finds it to be a
4 business record and I'll note your exception.

5 BY MR. STEPHENSON:

6 Q I want to direct your attention to the
7 weekly resident care records that appear to be --
8 looking at the periods from the 20th of January
9 forward. And can you look at those records and
10 tell me what they indicate to you in terms of her
11 being up ad lib as opposed to being up with
12 assistance, or whether or not the records indicate
13 that she was up at all in the period following --
14 beginning on January 20th through the 31st?

15 A Do you want me to tell you whether or not
16 there are checks in the column, what the columns
17 are?

18 Q Yes, I want to see what these records
19 reflect.

20 A All the way down?

21 Q No, just the top of her being up ad lib or
22 with assistance.

23 A On 1/20 there's a check from 7:00 to 3:00
24 and 3:00 to 11:00.

25 Q What does the check mean?

1 A That she was up and about.

2 Q On the 21st?

3 A Yes.

4 Q During what time?

5 A 7:00 to 3:00.

6 Q What does it show after that regarding?

7 A The 3:00 to 11:00 does not have a check.

8 Q What does that mean?

9 A It does not have a check.

10 Q Well, in terms of the integrity of your
11 records, what is the significance of that?

12 A It's not checked, sir.

13 Q Does that mean she wasn't up anyway if
14 it's not checked?

15 A Sir, I can't tell you that. I'm telling
16 you that it's not checked.

17 Q What do you direct your people to do as
18 director of nurses with regard to filling these
19 chart records out?

20 A They are taught to fill out the records on
21 a daily basis.

22 Q And if they don't fill them out, what does
23 that mean?

24 A That means they don't fill them out.

25 Q Does it mean that she wasn't up at all if

1 there's a blank?

2 A No.

3 Q How do you show that in the record?

4 A I can't answer that.

5 Q How about the following date?

6 A On the 22nd there is nothing in ad lib.

7 On the 23rd there is nothing in ad lib. 24th there
8 is nothing in ad lib. 25th there is nothing.

9 26th, 27th, 28th there is nothing ad lib.

10 Q With regard to those days ending on the
11 22nd, can you tell me on what days there's any
12 indication that she was up with assistance?

13 A 24th, 25th and the 28th.

14 Q During what period?

15 A 7:00 to 3:00 and 3:00 to 11:00 on the
16 24th, 7:00 to 3:00 on the 25th, 7:00 to 3:00 and
17 3:00 to 11:00 on the 28th.

18 Q Assuming those records there is not much
19 movement?

20 A There are checks.

21 Q But only with assistance in that time
22 period?

23 A Yes.

24 Q And none showing that she was up ad lib?

25 A There are no checks in those columns.

1 Q If you'd refer to previously Exhibit 6
2 which would be our next Exhibit No. 3 to mark.

3 (Exhibit 3: Admission assessment)

4 BY MR. STEPHENSON:

5 Q I show you what now has been marked as
6 Exhibit 3 and ask you if you can identify that
7 document?

8 A It says Heritage Hall and at the bottom it
9 says, "Admission Assessment of Risk for Falls."

10 Q And what is the significance of that
11 document?

12 A These documents are filled out on
13 residents to assist telling staff who is and who is
14 not at risk for fall.

15 Q And what do the documents show with regard
16 to Lucille Overton?

17 A On 1/11 it has a two, confusion and
18 dementia. It has a one, urological disease. It
19 has a two in bowel and incontinence. It has a two
20 in bladder incontinence. It has a two in unsteady
21 gait. It has a two in productive device. It has a
22 two in hypnotics and it has a total score of 13.

23 Q And what does the score of 13 mean?

24 A She is a risk for falls.

25 Q And in a subsequent evaluation she was

1 still noted as being a risk for falls?

2 A On the 25th the score was 9 and on the
3 26th it was 13.

4 Q And that is also high scores for risk of
5 falls?

6 A Yes, sir.

7 Q In fact on the 25th the risk had been
8 confirmed, she'd already fallen twice, at least
9 twice on the 20th and 21st, did she not?

10 A I don't have the record in front of me,
11 but the evidence says the 21st.

12 Q And this is also part of the resident's
13 chart records?

14 A Yes.

15 MR. STEPHENSON: I ask that be admitted,
16 Your Honor.

17 MS. DULEY: I'll just have a continuing
18 objection, Your Honor, to all these documents
19 as hearsay.

20 THE COURT: To all these things that have
21 been so far classified as business records.

22 MS. DULEY: Yes, sir.

23 BY MR. STEPHENSON:

24 Q When you have a resident that sustains a
25 fall, do you prepare an incident report?

1 A Yes, sir.

2 MR. STEPHENSON: Mark the next exhibit and
3 ask if she can identify this document.

4 (Exhibit 4: Accident report)

5 A Accident report for resident.

6 Q And what does that represent?

7 A Person reporting is Doris Coleman, LPN.

8 The name of the resident is Lucille Overton. She's
9 a female, date of injury 1/25/95, time is 10:25
10 a.m. Found lying on left side on floor in room.
11 Assisted off floor. Range of motion within normal
12 limits. There was no person involved. There was
13 no other person who saw the incident occur. The
14 person was, before the incident, disoriented and
15 senile and I can't read what that says. What is
16 the statement that caused it. I can't read that
17 statement.

18 Q And there's an attachment to it on the
19 second page?

20 A This is the back of the form, yes, sir.
21 It says none apparent for the injury. It has her
22 vital signs which were explained apparent injury,
23 physician notified and the signature is Dr. Fowler,
24 M.D. at 1/20/95. The responsible party notified
25 was Roy Perdieu, son. No treatment at this time.

1 Corrective action; explained to resident to
2 reinforce assistance and check PRN and it's signed
3 by Joe Newcomb and Doris Coleman.

4 Q Doris Coleman is one of your nurses?

5 A Yes, sir.

6 Q And the others are also employees of
7 Heritage Hall?

8 A No, sir, Mr. Newcomb is no longer there.

9 Q But he was at the time?

10 A Yes, sir.

11 Q Is the corrective action taken appropriate
12 action under the circumstances for Lucille Overton
13 regarding her admission to Heritage Hall for her
14 problem and her dementia condition?

15 MS. DULEY: I'm going to object, that
16 calls for an expert opinion and she's not been
17 proffered as an expert in this case.

18 THE COURT: The Court agrees. Sustain the
19 objection.

20 BY MR. STEPHENSON:

21 Q How does one determine what the corrective
22 action would be after a fall?

23 MS. DULEY: Same objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. STEPHENSON:

1 Q Was there any plan that you can describe
2 for me, to your knowledge, as the administrator of
3 nurses that was applied to Mrs. Overton in relation
4 to her caring for her condition for which she was
5 admitted at Heritage Hall including the assessment
6 made by Heritage Hall of her propensity for
7 falling?

8 A She has a plan of care.

9 Q Describe that.

10 A I can't, sir. I don't have it in front of
11 me.

12 Q You know what the suit is about and you
13 have been dealing with this for a long time, you
14 tell me you can't address any plan of care?

15 A Sir, I can give you a general knowledge.
16 I cannot tell you what her care of plan is.

17 Q Give me your general knowledge.

18 MS. DULEY: That's not relevant to this
19 case.

20 THE COURT: This goes back to where we've
21 been two or three times and the issue here is
22 whether in the general standard of care for a
23 patient of this type in a nursing home like
24 this was followed, not what this nursing
25 home's policy was.

1 MR. STEPHENSON: I'm trying to learn, if I
2 may, what they did in relation to complying.

3 THE COURT: But this lady doesn't know
4 that.

5 MR. STEPHENSON: I accepted as the
6 director of nurses she had that knowledge.
7 May I mark this? I want to mark the next
8 exhibit.

9 (Exhibit 5: Incident report)

10 BY MR. STEPHENSON:

11 Q I show you what's been marked as
12 Plaintiff's Exhibit 5 and ask you if you can tell
13 me what that is.

14 A Heritage Hall incident/accident report for
15 residents.'

16 Q And that belongs to Lucille Overton?

17 A Yes.

18 Q And the accident occurring on what date?

19 A 1/21/95.

20 Q Can you just tell me what was the report
21 about?

22 A Description of incident, fell in large
23 dining room, noted lying on the left side.

24 Q So when you read that in the report what
25 do you discern from it?

1 A She fell in the dining room.

2 Q And that report was prepared in accordance
3 with your direction to chart the patient's
4 incident?

5 A I don't understand.

6 Q This is a regular charting exercise?

7 A This is an incident and accident report.

8 Q And that's part of the chart records of
9 your residents?

10 A We fill out an incident and accident
11 report on anyone who has an occurrence.

12 Q So there was an occurrence that prompted
13 the incident report for the 21st of January of
14 1995?

15 A Yes, sir.

16 Q And what else does the record show
17 regarding that fall? She was found in the dining
18 room having fallen?

19 A It says, "Fell in the large dining room,"
20 and it says the person who saw the injury was Debby
21 Hodge. It says, "What person other than the
22 injured saw the incident," and then it says, "Fully
23 identify" and it says that Debby Hodge saw her
24 fall.

25 Q Did you have other notes regarding the

1 causes of the fall?

2 A No, sir.

3 Q What does it say regarding her condition?

4 A It says the condition of the resident is
5 that she's disoriented.

6 Q And confused?

7 A Well, no, sir, it's checked disoriented.
8 It says what is the resident's statement and it
9 says that she was disoriented and confused. She
10 didn't make a statement.

11 Q Because she was confused?

12 A It says disoriented.

13 Q Is that --

14 MS. DULEY: I'm going to object.

15 THE COURT: I sustain it. It calls for an
16 opinion.

17 BY MR. STEPHENSON:

18 Q She was brought back to her room on a bed
19 and is that a report that should be reliable?

20 A I don't know what it says, sir. It says
21 emergency measure, she was brought back to the
22 room, she was put on the bed, the resident was
23 notified and her vital signs were taken.

24 Q Any other check?

25 A The patient was apparently without injury,

1 Dr. Fowler checked her, no treatment required.

2 Q And was any corrective action taken
3 according to this?

4 A The CNAs were instructed to continue to
5 report the falls immediately.

6 Q Now, is this a satisfactory way to deal
7 with falls just to continue to report them?

8 MS. DULEY: Objection, Your Honor, calls
9 for an expert opinion again.

10 MR. STEPHENSON: I'm talking about what
11 this nursing home does, Your Honor, not an
12 expert opinion. She's the director.

13 THE COURT: You asked a question that
14 would call for an expert opinion and when you
15 ask is that a proper way to deal with it, and
16 the objection is sustained.

17 BY MR. STEPHENSON:

18 Q Do you have any instruction that deals
19 with repetitive falls and what action your staff is
20 detecting?

21 MS. DULEY: Your Honor, I'm going to
22 object again, this is going back to the
23 policies and procedures.

24 THE COURT: Sustained.

25 MR. STEPHENSON: Note my exception.

1 THE COURT: Noted.

2 MR. STEPHENSON: Mark the next exhibit as
3 the doctor's progress notes.

4 MS. PHARR: We're going to object. This
5 is clearly hearsay as to this particular
6 witness. These notes are written by a variety
7 of different doctors including Dr. Fowler.

8 MR. STEPHENSON: Again, I want to
9 establish from the witness that these are
10 regular records kept by Heritage Hall in the
11 course of their business in relation to their
12 residents. We're not getting them from the
13 doctor's files.

14 THE COURT: These appear to be a attending
15 physician's notes; is that correct?

16 MR. STEPHENSON: That's right, that are
17 attending on call the residents of Heritage
18 Hall, but constitutes part of the chart
19 records.

20 THE COURT: That's the question as to
21 whether or not they're Heritage Hall's
22 business records or the doctor's records.

23 MR. STEPHENSON: They were produced as
24 part of the Heritage Hall's records.

25 THE COURT: Meaning they gave you a copy

1 of them because they had them. I don't think
2 they're Heritage Hall business records, I
3 think that the doctor/treater there, he wrote
4 his notes on a form that says Heritage Hall
5 because that's where she was, but I don't
6 believe they're their records and I don't
7 think you can put the doctor's notes in
8 through this lady. Objection is sustained.

9 MR. STEPHENSON: May I ask the witness
10 whether or not she knows if they are part of
11 the chart record or not?

12 THE COURT: You can ask her, but I clearly
13 don't think that they are business records of
14 that nursing home.

15 MR. STEPHENSON: In spite of there being
16 Heritage Hall records being maintained as part
17 of the chart records?

18 THE COURT: They have a copy in their
19 place of business.

20 MR. STEPHENSON: Note my exception.

21 THE COURT: Yes, sir, exception is noted.

22 BY MR. STEPHENSON:

23 Q Directing your attention to Plaintiff's
24 Exhibit No. 1, which I respectfully note are the
25 nurse's notes that have been introduced as part of

1 the business records of Heritage Hall, with regard
2 to the notation of January 21st, 1995, can you tell
3 the Court and the jury, please, what that says?

4 A 1/21/95, do you want the 9 a.m.?

5 Q Yes, if you would tell me about the
6 entries.

7 A "Brought back to nurse's station, reported
8 by Hodge LPN. Resident fell in large dining room
9 and was found lying on the left side. Placed on
10 bed in room. Complained of left leg pain.
11 Respiration 22, temperature 98.2 rectally."

12 Q And was that a complaint of left leg pain
13 after she was brought back from the dining room
14 following the fall there?

15 A It says, "Placed on bed in room,
16 complained of left leg pain."

17 Q And that was at what hour of the day on
18 the 21st?

19 A 9:05.

20 Q Is there anything in the entry on January
21 21st of '95 about complaining of some pain by
22 Mrs. Overton?

23 A 14:50 complained of left side pain,
24 1/21/95.

25 Q And there was an order placed for Tylenol.

1 I want you to note again the date of the 22nd, the
2 following day, and tell me if there's an entry on
3 that date associated with complaint of pain?

4 A 1/22/95, nine o'clock, Tylenol given for
5 complaints of left leg pain.

6 MR. STEPHENSON: I'm going to let the rest
7 of the record speak for itself, Your Honor.

8 THE COURT: Thank you.

9 BY MR. STEPHENSON:

10 Q Is it your responsibility to execute the
11 resident care policies and procedures at Heritage
12 Hall as director of nurses?

13 A I don't understand what you're asking.

14 Q I'm asking in your position as director of
15 nurses, is it your responsibility to execute the
16 resident care policies? Who's responsible for
17 carrying out the policies?

18 A Everybody in the facility. I overview it.

19 Q So it's under your direction?

20 A Yes, sir.

21 Q Do you then take some responsibility
22 updating those as required to conform to the
23 federal and state legislative requirements?

24 MS. DULEY: Your Honor, we're going down
25 the same road again and I'm going to object

1 that it's not relevant to the care of
2 Mrs. Overton.

3 THE COURT: And the Court still agrees
4 that it is not relevant. Sustain the
5 objection.

6 BY MR. STEPHENSON:

7 Q Do you have some direction to your nurses
8 regarding charting of your residents that comes
9 under your authority?

10 MS. DULEY: Your Honor, it's the same
11 question just asked a different way.

12 MR. STEPHENSON: It's a different
13 question, Your Honor.

14 THE COURT: What's your question again?

15 MR. STEPHENSON: The question is whether
16 she gives some direction to the nurses under
17 her charge regarding the charting of the
18 residents.

19 THE COURT: Sustain the objection.

20 MR. STEPHENSON: Exception noted.

21 THE COURT: Yes, sir.

22 BY MR. STEPHENSON:

23 Q Maybe we covered this in the inquiry, but
24 I'd like to ask the witness about the care plan,
25 again, for particular residents. And do you know

1 what you do in formulating a care plan with someone
2 admitted such as Mrs. Overton?

3 A I do not write the care plans, sir.

4 Q Who writes the care plan?

5 A The resident plan coordinator.

6 Q Do you have any input in it?

7 A No, sir, I review it.

8 Q What do you do when you review it?

9 A I review it. If I don't think it's
10 accurate, then I go back over it.

11 Q Did you ever review one related to
12 Mrs. Overton?

13 A I can't answer that. I don't know.

14 Q With regard to Mrs. Overton wandering out
15 of the facility, is that an incident that would
16 require an incident report?

17 A Yes, sir.

18 Q Do you know why one wasn't prepared in
19 relation to that incident?

20 A I can't answer that, sir.

21 MR. STEPHENSON: Again, I have pulled one
22 page out for what I have proffered as a series
23 of pages from the original Exhibit 18. If I
24 may mark it.

25 (Exhibit 6: Heritage Hall document)

1 BY MR. STEPHENSON:

2 Q I show you what has been marked as
3 Plaintiff's Exhibit 6 and ask you to identify that.

4 A It says dining room resident and rec room
5 residents.

6 Q Can you tell me whether or not that
7 represents a policy regarding those rooms and their
8 use by residents at Heritage Hall?

9 MS. DULEY: Your Honor, once again, I'm
10 going to object.

11 THE COURT: It goes back to the policy of
12 the nursing home, not to the care of
13 Mrs. Overton. Objection is sustained.

14 MR. STEPHENSON: I'd like to put a ground
15 on what we're talking about is Mrs. Overton
16 being left unattended in the dining room when
17 the policy would have been --

18 MS. DULEY: Your Honor, I'm going to
19 object to his statements.

20 THE COURT: Sustained. I sustain that
21 objection and the objection sustained
22 previously to the policy is again set forth.

23 MR. STEPHENSON: May I have a moment for
24 consultation, Your Honor?

25 THE COURT: Yes.

1 MR. STEPHENSON: I may be within the same
2 ambit, the objection has been sustained, but I
3 would proffer a question to the witness about
4 any corrective measures and the propriety of
5 corrective measures that are taken with regard
6 to addressing the needs of the residents. I
7 don't want to go beyond the objection that has
8 been sustained.

9 THE COURT: You want to ask her whether
10 any corrective measures --

11 MR. STEPHENSON: Appropriate corrective
12 measures that may be taken and it is their
13 policy with regard to corrective measures, and
14 I respect the judge's ruling on that.

15 THE COURT: Well, if it breaches to what
16 the policy was, the objection will be
17 sustained.

18 MR. STEPHENSON: With that exception I'm
19 through with this witness.

20 THE COURT: Do you have questions of
21 Ms. Pomfrey?

22 MS. DULEY: I do, Your Honor.

23 THE COURT: I'll let you do them after
24 lunch.

25 MS. DULEY: That's fine.

1 THE COURT: Ladies and gentlemen, we're
2 going to recess for lunch. I don't know
3 Nottoway courthouse well enough to know how
4 far you've got to go or what you want to do,
5 but you-all do. Can you be back in an hour?
6 We'll recess until two o'clock and the sheriff
7 will show you where to come when you come
8 back.

9
10 (A recess was taken.)

11
12 MS. DULEY: Your Honor, I just wanted to
13 let you know that in the interest of time we
14 have decided not to -- I'm going to reserve my
15 cross of this witness until Monday.

16 MS. PHARR: And we'll do the same, Your
17 Honor.

18 THE COURT: Who is your next witness?

19 MR. STEPHENSON: I call Jennifer Hodges.
20 I'm a little confused on the marking of some
21 of these exhibits. If I may get that
22 straightened out.

23 THE COURT: Who did you wish to call?

24 MR. STEPHENSON: Jennifer Hodges.
25

JENNIFER HODGES

was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Ms. Hodge, would you state your name and address, please?

A Jennifer Hodges, 1700 10th Street, Victoria, Virginia.

Q And it is Hodges, not Hodge?

A Yes.

Q Are you employed by Heritage Hall?

A Yes, sir.

Q And what is your capacity there?

A I'm an LPN.

Q How long have you been associated with Heritage Hall?

A A year and a half.

Q Have you had anything to do with the policies and procedures and executing those at Heritage Hall?

A Some of them on a day-to-day basis.

MS. DULEY: Your Honor, we're going down the same road again with the policies and procedures and I'm going to object.

1 THE COURT: What's the relevance of this,
2 Mr. Stephenson?

3 MR. STEPHENSON: Let me withdraw that.

4 BY MR. STEPHENSON:

5 Q You are not a -- your name is not Hodge
6 then?

7 A No, sir, it's an E-S on the end.

8 Q And you are not the D. Hodge, LPN in 1995?

9 A No, I was in high school.

10 MR. STEPHENSON: I think I have the wrong
11 person that responded to the subpoena because
12 we issued that subpoena for Hodge, so I would
13 excuse this witness.

14 THE COURT: So I'm sure no one else does.
15 You're excused and you may leave.

16 MR. STEPHENSON: And I would respectfully
17 like to note that it was a different party
18 that we intended to have served with the
19 subpoena that was at the home at that time. I
20 call Loretta Parrish.

21

22

23

24

25

1 LORETTA PARRISH

2 was duly sworn and testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. STEPHENSON:

6 Q Good afternoon, Ms. Parrish. Would you
7 state your name and address?

8 A Loretta C. Parrish, 5740 East Courthouse
9 Road, Crewe, Virginia.

10 Q Are you employed by Heritage Hall?

11 A Yes, sir.

12 Q What is your capacity there?

13 A I'm a licensed medical nurse.

14 Q How long have you been with Heritage Hall?

15 A Be 11 years in July.

16 Q And you were employed there in that same
17 capacity in January of 1995?

18 A Yes, sir.

19 Q Did you attend to a patient or resident
20 there at Heritage Hall by the name of Lucille
21 Overton during that time?

22 A Yes, sir.

23 Q And what did you do in relation to caring
24 for her and attending to her, if you remember?

25 A I don't remember the patient.

1 Q I want to show you what has been put into
2 evidence as Plaintiff's Exhibit 1 and ask you if
3 you can look at that and tell me from your
4 knowledge if you know what that is?

5 A This is nurse's notes.

6 Q Are they the kind of records that are kept
7 by the nurses at Heritage Hall?

8 A Yes, sir.

9 Q And you keep those with respect to each
10 resident?

11 A With their own personal --

12 THE COURT: May I ask you again to speak
13 up? You need to talk to them. Thank you.

14 A Each one have their own chart.

15 Q And that's a part of the chart records?

16 A Yes.

17 Q And they're chart records that are
18 regularly kept with regard to the residents at
19 Heritage Hall?

20 A Yes.

21 Q How many residents are there at Heritage
22 Hall?

23 A We have 180 bed capacity.

24 Q And is that pretty well filled?

25 A Pretty much.

1 Q And how many people do you have attending
2 that 180 or so beds?

3 A I don't know.

4 Q How many persons do you attend to in
5 relation to your duties?

6 A Sixty.

7 Q Some 60 at a time?

8 A Yes.

9 Q Do you have other people that also
10 attended others while you're on duty?

11 A Yes.

12 Q How many others are with you when you
13 attend to 60 residents?

14 A I can't give an exact number.

15 Q Well, you are going to leave here and go
16 to work today, right?

17 A Yes.

18 Q What will you be doing when you go to work
19 today?

20 MS. DULEY: I'm going to object, what does
21 today have to do with the care that
22 Mrs. Overton received in 1995?

23 MR. STEPHENSON: I'm trying to help her
24 identify how many people are being served and
25 what number of other people that she's trying

1 to recall, I think, Your Honor, that would be
2 working with her so that we have some
3 reference to how many people were on the shift
4 with her serving the residents when she was
5 attending to Mrs. Overton.

6 THE COURT: Can you answer that, how many
7 people are on a shift with you?

8 THE WITNESS: A direct number?

9 THE COURT: Approximately.

10 THE WITNESS: I would say approximately
11 10.

12 BY MR. STEPHENSON:

13 Q And those 10 are tending to some 60
14 people?

15 A Yes.

16 Q Now, was that the ratio as you can recall
17 it in 1995? Would you have that kind of staff
18 then, or do you have more now or less?

19 A I recall probably that same amount.

20 Q I want to direct your attention to what
21 appears to be entries under your name in the
22 nurse's notes that we have just been talking about
23 and ask you if you can look at that exhibit and
24 tell me if you have entries that you made in the
25 nurse's notes back in 1995 related to Lucille

1 Overton?

2 A Did I have entries?

3 Q Did you make entries into those records?

4 A Yes.

5 Q And what kind of entries did you make and
6 what prompted you to put anything in her record at
7 that time? Let me help you along a little bit. I
8 want to direct your attention to an entry that
9 appears to have been made on the 20th of January,
10 1995 and I'd like you to particularly look at the
11 date there and tell me what entries you made in the
12 nurse's notes on that day.

13 A Okay, January 25, '95 seen by M.D.
14 regarding a fall. No apparent injury. See
15 physician property sheets.

16 Q Is that your note?

17 A Yes.

18 Q Was that based on something that you did
19 or something someone told you?

20 A She had had a previous fall and we always
21 follow up on her falls and having her seen by the
22 doctors.

23 THE COURT: The question was did you write
24 that as a result of your checking on her.

25 THE WITNESS: I don't understand the

1 question.

2 BY MR. STEPHENSON:

3 Q When you made that note in the nurse's
4 notes, which I understand are official records that
5 you keep with regard to each resident, did you make
6 that note because it's something you observed, or
7 did somebody else tell you about that to cause you
8 to put that note in?

9 A This is something that I know that
10 happened.

11 Q What did you know that happened?

12 A I know that she had a previous fall and I
13 know we have to check her frequently and do vital
14 signs from a fall. We check the vital signs and
15 check the patient and when they be seen by the
16 doctor, by me being the charge nurse, I know when
17 the doctor is going to see her.

18 Q Were you the charge nurse on that day?

19 A Yes, I would say.

20 Q And were you the one that called for her
21 to have medical attention?

22 A Yes.

23 Q What did you do to seek medical attention
24 for Mrs. Overton on January 20th of 1995?

25 A We have a doctor's book. Anytime a

1 patient need to be seen by the doctor, we let the
2 doctor know. We put it in the book to be seen.
3 When a resident have a fall, we check them for any
4 injury or anything from a fall and we document on
5 it.

6 Q What do you do to check them when they
7 have a fall?

8 A Well, I go in and if someone tell me, says
9 so and so or somebody's on the floor or somebody
10 fell, then they know not to touch them. So I'll go
11 in and evaluate or assist them and that way I be
12 checking their body, extremities, the parts of the
13 body and see if there's any abnormality as far as a
14 bone sticking out or a broken area or something
15 like that. I look at the facial expression, I
16 listen to complaints and then if I don't have any
17 and don't notice anything different, then the
18 doctor will see them.

19 Q You call the doctor? Do you initiate a
20 call for the doctor to come?

21 A If it's an emergency. Only if it's an
22 emergency.

23 Q Otherwise how do you handle it, does
24 somebody come over on the rounds and you say come
25 see this person that fell?

1 A Like I said, I put it in the doctor's
2 book. The doctor has the only book that we put
3 notes in.

4 Q Where is this doctor's book kept?

5 A At the nurse's desk.

6 Q And how does someone follow up on what you
7 put in the doctor's book?

8 A They always read -- the supervisor always
9 read what's in the doctor's book and let them know
10 what patients are going to be seen.

11 Q Is the doctor going around and seeing a
12 whole bunch of patients in making a round in the
13 nursing home?

14 A I'd say yes.

15 Q Is that the way it occurred?

16 A Yes.

17 Q And do you have a number of intern
18 residents that are with Blackstone Family Practice
19 that come in and make those rounds?

20 A We have doctors that come in and make
21 rounds.

22 Q And frequently they're the residents from
23 Blackstone Family Practice?

24 A Yes.

25 Q And in fact was there a resident that came

1 in and saw Mrs. Overton on January 20th of 1995,
2 was that Dr. Fowler?

3 A Yes.

4 Q Now I want to direct your attention to
5 another entry that has the date of 1/20/95, and it
6 looks like a different time period, and ask you if
7 you can tell me about that. And it's headed by a
8 statement that says late entry. Can you tell me
9 about that?

10 A This was at 10:35.

11 Q In the morning?

12 A Well, she had fallen at 5:10 that morning
13 and then it was 10:30 when the doctor seen her the
14 same day and a late entry was 9:05 that day in the
15 morning that she went outside of the facility.

16 Q Was the late entry and the time you
17 described the time the late entry was made, or did
18 you note the time that she had earlier that day
19 gone outside?

20 A Earlier she had gone outside.

21 Q And you made the entry sometime later in
22 the day?

23 A No, the times are there, 10:30 and 10:35.

24 Q Why do you write late entry?

25 A Because this is the time that she actually

1 went out. I didn't write it here at 5:10 when she
2 was found, that morning I didn't put it there, I
3 wrote when she was seen by the doctor first, but I
4 should have put it right here from five o'clock to
5 nine o'clock.

6 Q What did you do with regard to her
7 wandering out, did you take any steps related to
8 that?

9 A We checked her and I checked her and got
10 vital signs on her and made my incident report.

11 Q Was there an incident report made with
12 regard to her wandering outside?

13 A Yes.

14 Q Do you know why one has never been
15 produced that related to that?

16 MS. DULEY: Your Honor, that's outside the
17 scope of this witness's knowledge.

18 THE COURT: I don't think she could answer
19 that question. I agree.

20 BY MR. STEPHENSON:

21 Q Did you make an incident report?

22 A Yes.

23 Q Do you know what was stated in the
24 incident report?

25 A No, not really.

1 Q I want to direct your attention to another
2 entry on the following day of January 21st, 1995
3 and can you tell me about that one?

4 A You want me to read this out?

5 Q Yes, tell me what that says.

6 A "Brought back to nurse's station.

7 Resident fell in large dining room and was found
8 lying on the left side. Placed on bed in room,
9 complaining of left leg pain. Vital signs taken."

10 Q Did you take the vital signs then?

11 A Yes.

12 Q Did you do anything else?

13 A Checked her as I usually do. I checked
14 her.

15 Q Did you call for a doctor, or was that
16 also the routine entry in the book to be seen when
17 the doctor made some rounds?

18 A If it's no injury note or if I didn't see
19 any injury or anything abnormal, like I said, we
20 put it in the doctor's book to be seen.

21 Q And is that what happened on this
22 occasion, to your knowledge?

23 A I only know what's documented. I can't
24 say that would happen.

25 Q Is it fair to say that what you did

1 appears in the documents?

2 A Yes.

3 Q And if you didn't do it, it didn't appear
4 in the document?

5 MS. DULEY: I'm going to object, Your
6 Honor, that's a mischaracterization.

7 THE COURT: Well, the lady has said that
8 she doesn't recall this except for refreshing
9 her memory with the notes. She has no
10 specific recollections. I agree that she
11 can't go beyond what those notes say.

12 MR. STEPHENSON: I'm asking her further,
13 if I may.

14 THE COURT: But she can't go further.

15 MR. STEPHENSON: I'm trying to elicit from
16 the witness whether or not the practice is if
17 you don't put it in the record it didn't
18 happen.

19 BY MR. STEPHENSON:

20 Q Is that a fair statement?

21 MS. DULEY: I'm going to object, Your
22 Honor.

23 THE COURT: I think that record has to
24 speak for itself. I don't think she can
25 interpret it. I sustain the objection.

1 BY MR. STEPHENSON:

2 Q I want to direct your attention to another
3 entry on that same date that you apparently also
4 made after the other one. What does that say?

5 A Where I notify the son of the fall?

6 Q Well, that and --

7 A She complained of left side pain,
8 telephone order for Tylenol.

9 Q And did you initiate the telephone order
10 for Tylenol?

11 A Yes.

12 Q And that was very shortly after you made
13 the other entry that you had of she complained of
14 left leg pain?

15 MS. DULEY: I'm going to object, he is
16 taking out pieces of what this witness has
17 written. If he wants her to read what's
18 written, he ought to ask her to read
19 everything that's written. He's just taking
20 out the pieces.

21 MR. STEPHENSON: I have no objection to
22 that. She may proceed to read it all. No
23 problem.

24 BY MR. STEPHENSON:

25 Q Read your other entries that you made in

1 the nurse's note records pertaining to Mrs. Overton
2 throughout the time that you attended to her when
3 she was at Heritage Hall in January of 1995. Tell
4 the Court and the jury, please, what input you had
5 in her care during that period as reflected in the
6 nurse's notes.

7 A What date do you want me to start reading?

8 Q Start from where you were on the 21st and
9 take it on down through the rest of the time period
10 that she is at Heritage Hall.

11 A "January 21st, '95, 9:05, brought back to
12 nurse's station. Reported by D. Hobbs. Resident
13 found in large dining room laying on left side.
14 Placed on bed, complained of left leg pain," and I
15 got her vital signs, "temperature 98.2." That was
16 9:05. Same day at ten o'clock, "Seen by M.D.
17 regarding fall. No apparent injuries. See
18 incident report. 1:30, Roy Perdieu, son, notified
19 resident fall. At 2:50 resident complained of left
20 side pain. Telephone order written for Tylenol."

21 Q Going to the subsequent pages, and tell me
22 about other entries that you have that pertain to
23 the care that you gave her while she was there in
24 January, '95.

25 A On the 22nd, nine o'clock, "Tylenol 650

1 milligrams given. Complained of left leg pain.
2 Temperature was 99, pulse 70, respiration 20.
3 Blood pressure 120 over 70."

4 Q Do you have some other entries?

5 A That's all I did.

6 Q You work on shifts at Heritage Hall?

7 A It depends.

8 Q Do you always work the same time period,
9 or does that vary?

10 A It varies.

11 Q What is your normal working hours?

12 THE COURT: I hate to interrupt you, but I
13 don't think that that has a thing to do with
14 this and we need to move on.

15 BY MR. STEPHENSON:

16 Q Ms. Parrish, did you have anything to do
17 with implementing the care plan related to
18 Mrs. Overton while you were attending to her?

19 A We have care plans.

20 THE COURT: The question was did you have
21 anything to do with making a care plan?

22 THE WITNESS: No.

23 BY MR. STEPHENSON:

24 Q Or following one. Did you have a care
25 plan that you followed for Mrs. Overton in relation

1 to your duties at Heritage Hall?

2 A Yes.

3 Q Can you tell me what that was?

4 A I have to know the ADL, that's their way
5 of what they can do and can't do. So I deal with
6 the bathing, the dressing, medication management.

7 Q What about any special steps to deal with
8 her risk of falling?

9 MS. DULEY: Your Honor, she has testified
10 that she does not recall this patient
11 specifically. I think he needs to show her
12 some sort of documentation to help refresh her
13 recollection. This was six years ago.

14 THE COURT: I think the Court previously
15 ruled that the only way that she could testify
16 was by refreshing her memory from the notes
17 because she says she doesn't recall the
18 patient.

19 BY MR. STEPHENSON:

20 Q Do you recall whether or not there was any
21 special care plan that you followed with respect to
22 trying to prevent Mrs. Overton from falling?

23 A I don't know.

24 MS. DULEY: Again, in the interest of time
25 we'll reserve until our case in chief.

1 MS. PHARR: We'll do the same thing, Your
2 Honor.

3 THE COURT: You may go back. Is it safe
4 to excuse her for today?

5 MS. DULEY: I believe so.

6 THE COURT: You're excused for today and
7 unless somebody notifies you otherwise, be
8 here at nine o'clock. Thank you. Your next
9 witness?

10 MR. STEPHENSON: Doris Coleman.

11

12 DORIS COLEMAN

13 was duly sworn and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. STEPHENSON:

17 Q Ms. Coleman, would you state your name and
18 address?

19 A Doris Coleman, P.O. Box 4347, Crewe,
20 Virginia.

21 Q Are you employed by Heritage Hall Nursing
22 Home?

23 A Yes, I am.

24 Q How long have you been so employed?

25 A Twenty-one years.

1 Q And what do you do there?

2 A I'm an LPN.

3 Q And that just performs care for the
4 residents?

5 A And I pass medication, also.

6 Q Did there come a time when in January of
7 1995 you cared for Mrs. Lucille Overton?

8 A I can't recall Mrs. Overton.

9 Q Let me direct your attention to an entry
10 that appears to be made under your name on January
11 20th of 1995 and ask you if you tell me if in fact
12 you made that entry?

13 A This is my writing. This is my
14 handwriting, yes, it is.

15 Q And can you tell me what that note says?

16 A "Found lying on left side on floor in the
17 room. Assist off floor. Range of motion within
18 normal limit. Blood pressure 120 over 70, pulse
19 rate 78, respiration 18," and I signed my name.

20 Q Were you the one that found Mrs. Overton
21 that caused you to make that note, or did somebody
22 else tell you about her being found lying on the
23 floor?

24 A I think somebody else told me, I think.

25 Q And you made that note?

1 A Yes, I did.

2 Q Do you have any recollection about
3 Mrs. Overton's care and her falling and what you
4 did to attend to her?

5 A Well, I did range of motion.

6 Q Do you remember your caring for her?

7 A I just can't recall who --

8 THE COURT: You're saying you don't
9 remember it?

10 THE WITNESS: No, I can't recall her name,
11 but I know this is my writing right here.

12 BY MR. STEPHENSON:

13 Q So you know that you made those entries?

14 A Yes.

15 Q And these are official records of the
16 resident at Heritage Hall?

17 A It's supposed to be.

18 Q And you keep those records as official
19 records for everybody's use?

20 A Yes.

21 Q Do you recall anything else that related
22 to Mrs. Overton?

23 A No, sir.

24 Q Were you involved in implementing any plan
25 of care in relation to her being prevented from

1 falling?

2 A What you mean about that?

3 MS. DULEY: Your Honor, I'm going to
4 object again. She's already testified that
5 she does not recall this patient specifically.

6 THE COURT: I agree. Unless it's in the
7 notes, I don't think Ms. Coleman can testify.

8 MR. STEPHENSON: I don't have any further
9 questions.

10 MS. DULEY: We will reserve until Monday,
11 Your Honor.

12 MS. PHARR: We also reserve, Your Honor.

13 THE COURT: Ms. Coleman, I'm going to let
14 you go home or work or wherever you need to go
15 now, but you need to be back Monday morning at
16 nine o'clock. And if the sheriff comes and
17 tells you you don't have to come, that's
18 official. Otherwise be here, please. Thank
19 you. Your next witness?

20 MR. STEPHENSON: I'm wondering if this
21 might be a time I could plug in and do the
22 video deposition of Dr. Burkhart.

23 THE COURT: It's your case. The sheriff
24 will help you. I told you-all earlier this
25 morning that you were going to get to see a

1 movie. It will be set up here.

2

3 (Discussion held outside hearing of jury.)

4

5 MR. NEWSOME: Any objections you've
6 already passed on them I believe, but they're
7 going to hear objections and I don't think
8 he's going to be able to fast forward that.

9 THE COURT: I've got notes.

10 MS. DULEY: My biggest concern is the
11 causation testimony because he was not
12 designated as a causation expert.

13 MR. STEPHENSON: I didn't think that Your
14 Honor did any ruling that was adverse to
15 anything I told you. I have no objection to
16 the Court's advising the jury they may hear
17 the word objection used at the time and that
18 the Court has otherwise dealt with that.

19 MR. NEWSOME: That was my understanding
20 that you had. The only thing I was saying is
21 you're going to hear objections still. I
22 didn't know if you wanted to talk to the jury.
23 I wasn't saying you needed to rule, I just
24 wanted to note that they will hear objections.

25 MR. STEPHENSON: I have no problem with

1 the Court advising them.

2 THE COURT: I'll tell them. That's fine.
3 I told you-all that this testimony was
4 probably in a lawyer's office. It's under
5 oath. It's as if it were done right here, the
6 difference is there was no judge there. And
7 you're going to hear one lawyer or another
8 saying I object to something, but there's no
9 one to rule on it. So you fast forward
10 through that yourself. Just ignore it. Some
11 of them I have ruled on, you don't need to
12 know it, just listen to it and absorb it if
13 you can.

14
15 (Video tape was played.)
16

17 THE COURT: I suggest that we take a 10
18 minute recess before we call the next witness.

19 MR. STEPHENSON: I just wanted to make
20 sure that I offered the exhibits marked in the
21 deposition of Dr. Burkhart.

22 THE COURT: I don't think you did.

23 MR. STEPHENSON: I would so proffer them.

24 THE COURT: You had proffered the exhibits
25 that you used in that deposition?

1 MR. STEPHENSON: Yes, sir.

2 THE COURT: Your next witness, sir.

3 MR. STEPHENSON: I call Dr. Martin.

4

5 JOHN MARTIN, M.D.

6 was duly sworn and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. STEPHENSON:

10 Q I think we all are reminded of the
11 acoustics here and we all attempt to speak up a
12 little bit so the jury can hear us. Would you
13 state your full name and address?

14 A John Martin, 3706 Halison Avenue, Fairfax,
15 Virginia.

16 Q Would you state your educational
17 background?

18 A I graduated from Washington and Lee
19 University with a AB in chemistry and graduated
20 from George Washington Medical School with an M.D.

21 Q And when did you get your M.D. degree?

22 A 1955.

23 Q Tell me what your work history has been
24 since that time.

25 A Well, after I got out of school I interned

1 for a year and then I went to work in a clinic at
2 Fort Meyer in Arlington, Virginia for a couple of
3 years. And then I established my own practice in
4 Falls Church and had that general practice for 14
5 years. And then I closed that on account of my
6 partner left and had too much work to do, so I went
7 back to work at Fort Meyer for a year and then I
8 went in with a group in Fairfax County for 10 or 11
9 years, and then I went to another group in
10 Manassas.

11 Q Does that mean other physicians?

12 A Yes.

13 Q What kind of other physicians?

14 A These were all general practice, family
15 practice, same thing.

16 Q And you did that with the first group and
17 then you go on to another group of physicians?

18 A Well, I went back to work at Fort Meyer
19 for a year between that. That was sort of a rest
20 area.

21 Q And then you formed a relationship with
22 the second group?

23 A Yes.

24 Q And that went through what period of time?

25 A From '82 to '87.

1 Q And what kind of practice were you engaged
2 in?

3 A That was family practice.

4 Q You're licensed as a physician in
5 Virginia?

6 A I was, yeah.

7 Q And have been so licensed from?

8 A From 1956 until last June I gave up my
9 license.

10 Q And June of 2000?

11 A Yes.

12 Q Was there any reason other than your
13 deciding not to renew it?

14 A Yes. Well, mainly, I mean, I wasn't using
15 the license to amount to anything, wasn't making
16 any money. I wasn't treating patients for money
17 and I didn't really need the license.

18 Q Tell me what you have done since the
19 practice, what would you say was the time, in '87?

20 A Yes.

21 Q What have you done in the medical field
22 since that time?

23 A Well, I play in a softball league with
24 several hundred members mostly over 60 years old
25 and I'm the medical officer for that group. I do

1 make up the first aid kits and supervise first aid
2 and I give a lot of advice and treatment for people
3 who get injured during the games, which is quite a
4 few get a lot of injuries. And I've treated
5 friends and family free over all that time even
6 though I gave up my license.

7 Q And you have continued to do that up
8 through, as a licensed physician up to the year
9 2000?

10 A Yes, writing prescriptions and treating
11 people, not getting any money for it.

12 Q But as a volunteer effort?

13 A Yes.

14 Q And still is it a clinical effort?

15 A Yes.

16 Q Whether or not you get paid?

17 A Yes.

18 Q And you do that for the softball league?

19 A Yes.

20 Q And that is more than one team I take it?

21 MR. NEWSOME: I just object to leading.

22 BY MR. STEPHENSON:

23 Q You are the physician that's the physician
24 in relation to the league?

25 A Yes, and I've been teaching first aid

1 classes as it pertains to the softball players.

2 Q And you conduct those with some
3 regularity?

4 A Well, I've done three of them recently,
5 yeah, four.

6 Q And that's related to the league?

7 A Yes, they're trying to get one person on
8 each team to be instructed in first aid.

9 Q And so you take members then from a
10 representative from each team and conduct the
11 class?

12 A Yes.

13 Q And what is the nature of the class?

14 A Well, any and all types of first aid,
15 recognizing serious illnesses and injuries and what
16 to do with various illnesses and injuries. The
17 serious ones what to do until the ambulance
18 arrives, knowing what to do.

19 Q And do you examine persons who have a need
20 to be examined?

21 A Well, if it happens on the field where I
22 am, yes.

23 Q And have you been called from your field
24 to some other field from time to time?

25 A Yes, we play on a place where there's five

1 fields and I did give cardiac resuscitation to one
2 player and the other injuries.

3 Q So those teams are playing in the same
4 time?

5 MR. NEWSOME: I just object to the
6 leading, Your Honor.

7 A Yes.

8 THE COURT: Rephrase your question.

9 BY MR. STEPHENSON:

10 Q Do the teams that play in the same time
11 frame when you have the five fields?

12 A Yes, all at the same time.

13 Q Are you known to the team members as the
14 team physician?

15 A Yes.

16 Q Have you authored any publications related
17 to any of this --

18 A Well, in our newsletter I write medical
19 articles. I don't know, eight or ten, I guess. I
20 made up my own first aid manual so it would be
21 pertinent to softball players, elderly softball
22 players.

23 Q And again, the age of the players is in
24 what range?

25 A Women from 40 on up and men from 50 on up

1 and our oldest would be 85 in July, but we have
2 several over 80.

3 Q During your time of practice, can you
4 describe yourself in general practice involving
5 treating various kinds of medical conditions?

6 A Yes, anything anybody called me for.

7 Q And would that include, from time to time,
8 fractures?

9 A Yes, I treated quite a few fractures. The
10 serious ones I referred, but I diagnosed a lot of
11 them.

12 Q Is that the process of the general
13 practitioner?

14 A Yes, usually you treat minor ones,
15 fractured fingers, but the more serious ones are
16 referred to an orthopedic specialist.

17 Q And is that the story of the general
18 practice of medicine?

19 A Yes, ordinarily. Some doctors do
20 develop -- general practitioners do develop more
21 expertise in one particular line or so, but most of
22 them don't treat any serious fractures.

23 Q And during your career have you treated
24 patients in nursing homes?

25 A Yes, quite a bit. I was the on-call

1 doctor for one nursing home when I first started
2 practice and I went there quite frequently. They
3 used to call me for anybody that didn't have a
4 regular doctor and otherwise I treated my own
5 patients when they were in nursing homes.

6 Q And have you been involved with the
7 practice of nursing homes in terms of the care?

8 A Yes, I admitted patients there and
9 followed them up and was in charge of their medical
10 care.

11 Q And did that include calculation of their
12 medical records?

13 A Yes, it did.

14
15 CROSS-EXAMINATION

16 BY MR. NEWSOME:

17 Q Good afternoon, Dr. Martin. Dr. Martin,
18 isn't it true that you didn't complete a residency
19 in family practice?

20 A No, I didn't. They didn't have residency
21 when I got out of school.

22 Q So you completed a residency in no
23 specialty; is that correct?

24 A No, that's right.

25 Q And in fact you have no board

1 certification of any kind; is that correct?

2 A That's correct.

3 Q And you've never been on faculty at a
4 medical school, correct?

5 A No.

6 Q And you've never had any academic
7 appointment, correct?

8 A Say that again.

9 Q Have you ever had any academic
10 appointments?

11 A No.

12 Q And you've never been a medical director
13 of a nursing home, correct?

14 A Correct.

15 Q Isn't it true that you retired from the
16 practice of medicine in 1987?

17 A Well, I retired from having an office and
18 going in and treating patients on a regular, full
19 time basis, yeah.

20 Q Isn't it true --

21 THE COURT: I think he answered the
22 question.

23 BY MR. NEWSOME:

24 Q Isn't it true that the last time you had
25 privileges at a hospital was 1987?

1 A That's right.

2 Q And isn't it true that your definition of
3 the standard of care is to do the best care that's
4 available to give that patient?

5 A Yes.

6 MR. NEWSOME: I have no more questions.

7 THE COURT: Ms. Duley, do you have some
8 questions?

9 MS. DULEY: Yes, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MS. DULEY:

13 Q Good afternoon, Dr. Martin. My name is
14 Lisa Duley and I'm representing Heritage Hall.
15 Isn't it true that you have not worked in a nursing
16 home since 1965? You have not been an on-call
17 doctor at a nursing home since 1965?

18 A That's true, yeah.

19 Q And you have no specialty in geriatrics?

20 A No.

21 Q You've never drafted a care plan for a
22 nursing home, correct?

23 A Not for a whole nursing home, no.

24 Q I mean for a patient in a nursing home
25 you've never drafted a care plan?

1 A I mean I've written the orders.

2 Q But you've never drafted a care plan,
3 correct?

4 A I guess you could say that, yeah. I'm not
5 sure what you mean by what kind of a care plan.

6 Q Do you remember having your deposition
7 taken on September 3rd, 1998?

8 A Yes.

9 Q And do you remember being put under oath
10 at that time?

11 A Yes.

12 Q And do you remember being asked the
13 following question and giving the following answer:
14 "Have you ever drafted a care plan?"

15 "Not for a nursing home, no."

16 A I was speaking of the whole nursing home,
17 I wasn't speaking of my own patients. When I admit
18 a patient, I tell them what to do.

19 Q But you don't draft the care plan,
20 correct?

21 THE COURT: I don't think he understands
22 because I don't.

23 BY MR. STEPHENSON:

24 Q You write orders for the patient, correct?

25 A Yes.

1 Q But you don't write the life care plan
2 that the nursing home nurses implement, that's done
3 by the nursing home, correct?

4 A Not at any nursing home that I went to,
5 that I can think of. I mean they have standing
6 orders.

7 Q The only thing you've drafted for the
8 nursing home are your orders, correct?

9 A That's right.

10 Q And you are not familiar with the standard
11 of care in a nursing home, correct?

12 A That's not correct, no.

13 Q Do you remember having your deposition
14 taken on September 3rd, 1998?

15 A Yes.

16 Q And you were put under oath at that time?

17 A Yes.

18 Q And do you remember being asked this
19 question and giving the following answer: "Are
20 there any standards for what must be included in
21 the care plan?"

22 Answer: "I don't know about nursing home
23 standards, no."

24 Do you remember giving that answer?

25 A I don't remember it specifically, but read

1 that again.

2 Q The question was, "Are there any standards
3 for what must be included in a care plan?"

4 Answer: "I don't know about nursing home
5 standards."

6 A I'm not sure what I meant by that. I
7 think I was thinking about the state requirements
8 for various general items in a nursing home is the
9 only thing I can think of what I meant.

10 Q And you've never been on a quality
11 assurance committee of a nursing home, correct?

12 A No.

13 MS. DULEY: I don't have any further
14 questions, Your Honor.

15 THE COURT: Thank you. Show the jury into
16 the jury room, please, sheriff. I didn't wait
17 until you moved his qualification as an
18 expert, but I thought we'd remove the jury
19 before we do that.

20 MR. STEPHENSON: I so move.

21 THE COURT: Yes, sir. Any objections to
22 Dr. Martin being qualified as an expert?

23 MR. NEWSOME: Yes, Your Honor.

24 MS. DULEY: Yes, Your Honor.

25 MR. NEWSOME: Your Honor, the motion that

1 we had was similar to the motion that we had
2 yesterday. As the Court's aware that under
3 8.01-581.20 in order to testify as an expert
4 witness, the expert must of had -- he'll be
5 qualified as to an expert on the standard of
6 care if he demonstrates expert knowledge of
7 the standards of the defendant's speciality
8 and what conforms or fails to conform to those
9 standards and if he's had active clinical
10 practice in the defendant's specialty or
11 related field of medicine within one year of
12 the alleged act or omission that form the
13 basis of the action.

14 I think it's fairly clear from
15 Dr. Martin's testimony that he has been
16 retired from the practice of medicine since
17 1987. He has not seen any patients for pay
18 and the only medically related work that he's
19 done has been with seeing family members,
20 friends and also 'working, being the softball
21 doctor. And Your Honor, clearly that's not a
22 clinical practice. Period. It's clearly not
23 a clinical practice in family practice or any
24 related field of medicine.

25 Clearly he's not doing anything

1 approaching what a family practice physician
2 is doing right now or was doing at the
3 relevant time. The witness testified two
4 things, that he's been retired and he said he
5 didn't have an active clinical practice and I
6 think given the dictates of 8.01-581.20, his
7 own testimony made it clear that he does not
8 qualify as an expert in this case, Your Honor.

9 THE COURT: Ms. Duley.

10 MS. DULEY: Your Honor, of course I would
11 join in everything that Mr. Newsome has said
12 in addition to the fact he's had to have an
13 active clinical practice in the defendant's
14 specialty or related field. Certainly taking
15 care of softball members, softball team
16 members is not a related field to a nursing
17 home. He's testified that the last time he
18 was an on-call doctor at a nursing home was
19 1965 and certainly the standard of care has
20 changed since 1965. On those bases we would
21 ask that he be excluded.

22 MR. NEWSOME: I really neglected because I
23 thought it was so clear from my standpoint
24 regarding active clinical practice. I believe
25 an additional basis for disqualifying this

1 witness, he does not have a knowledge of the
2 standard of care. I believe I asked him what
3 his definition of the standard of care was and
4 he said it's to provide the best care that's
5 available to give that patient. That's not
6 what the standard of care requires. As the
7 Court's well aware it's what a reasonably
8 prudent family physician would do under the
9 circumstances. So to the extent he's given a
10 presumption of knowing what the standard of
11 care is, he's rebutted that presumption by his
12 own testimony here at trial. So any opinions
13 that he would give would be based upon
14 erroneous understanding of the standard of
15 care and on that additional basis Dr. Martin
16 does not qualify.

17 MR. STEPHENSON: I thought when
18 Mr. Newsome made all those representations to
19 the jury that he had qualified him as a
20 physician that didn't have the renown that's
21 planning to introduce, he's certainly
22 presented him to the jury as an expert. I
23 don't know anything in that statute that reads
24 that you have to conduct your clinical
25 practice for great pay and I think it's

1 commendable that we have a physician that is
2 willing to devote himself, after satisfying
3 his financial requirements through a
4 successful career, to providing medical
5 service to a particular group of people in
6 society that I'm sure are very grateful and
7 look up to him for that.

8 He has testified that in the league of
9 some several hundred ballplayers that are
10 elderly ballplayers and they're certainly the
11 same kind of aged person that we're talking
12 about dealing with and having to deal with the
13 various things that happen to people on the
14 ball field, not just getting injured by
15 sliding into someone and getting hit by a
16 ball, but also other things that occur to
17 people when they reach that age, and that he's
18 there and he's given instruction on first aid
19 and how to manage that. And they have
20 representatives from the various teams in the
21 league that attend his lectures on that and
22 that he's formulated and written a first aid
23 manual to deal with the care. That certainly
24 is a practice of medicine that I hope we have
25 some people engaged in and we don't have to

1 worry about our going in and continuing to pay
2 exceptional price for service.

3 I don't think there's any requirement that
4 says the clinical practice can only be done
5 when you're receiving pay. So I think the
6 witness has demonstrated his long-standing
7 qualifications in the general practice of
8 medicine and has enhanced those in his later
9 years that he's able to devote attention to
10 when he is involved in being a physician in a
11 multi-hundred person ball league.

12 THE COURT: Thank you, sir. The question
13 here is whether Dr. Martin can be qualified as
14 an expert in the defendant's specialty.

15 Dr. Martin testifies to having been a GP and
16 still is without an active clinical practice
17 and what we're talking about here is whether
18 he can be qualified to offer an opinion as to
19 the standard of care involved in this case.

20 It's interesting to listen to him, I
21 admire what Dr. Martin does. I think it would
22 be fun, practice medicine without having to
23 make a big salary and pay a big staff. He's
24 dealing with seniors and hundreds of them he
25 testifies to. He's dealing with healthy

1 seniors, healthy enough that they want to play
2 softball, go out and romp and play and have a
3 good time and that's not the same thing. The
4 Court cannot qualify Dr. Martin, as much as it
5 admires him and admires what he does, can't
6 qualify him to offer an opinion as to the
7 standard of care involved in this case, the
8 standard of care for treatment of geriatric
9 patients in a nursing home for he's never done
10 it except perhaps a year back in the '60s and
11 that won't do in this case. I cannot let him
12 testify, Mr. Stephenson.

13 MR. STEPHENSON: Respectfully note my
14 exception.

15 THE COURT: Your exception is noted.
16 Thank you, Dr. Martin. Bring the jury back
17 in. Your next witness, Mr. Stephenson.

18 MR. STEPHENSON: I call Mr. Perdieu.

19
20 HORACE PERDIEU
21 was duly sworn and testified as follows:

22
23 DIRECT EXAMINATION

24 BY MR. STEPHENSON:

25 Q Mr. Perdieu, would you state your name and

1 address, please?

2 A My name is Horace Perdieu, I live at 9111
3 Old Lafayette Drive in Mechanicsville, Virginia.

4 Q What was your relationship to Lucille
5 Overton?

6 A Ms. Overton was my mother.

7 Q And your mother's now deceased?

8 A My mother is deceased.

9 Q When did she die?

10 A October 16th, 1999.

11 Q You are the personal representative of her
12 estate?

13 A I am.

14 Q And you're here in that capacity?

15 A I'm here in that capacity.

16 Q Directing your attention to 1994 and 1995
17 time frame, tell me about your mother's general
18 condition at that time.

19 A When she was released from Johnston-Willis
20 for an operation of a bowel obstruction, the social
21 worker at Johnston-Willis had assisted me in
22 finding a Medicare/Medicaid bed in a nursing home.
23 This nursing home that I selected was Heritage Hall
24 since it was in Blackstone, Virginia and that's
25 where she was from.

1 Q And did she have some condition for which
2 she had first been hospitalized at Johnston-Willis
3 Hospital?

4 A Her condition was bowel obstruction and
5 she had been treated by the Blackstone Family
6 Practice and they had given her a prescription for
7 castor oil for which when she went in to
8 Johnston-Willis. They had to pump her stomach and
9 everything in order to --

10 MS. PHARR: Objection, Your Honor.

11 THE COURT: Sustained. What does this
12 have to do --

13 BY MR. STEPHENSON:

14 Q I just want you to generally say where she
15 was before you then proceeded to have her moved to
16 Heritage Hall.

17 A She was at Johnston-Willis and when she
18 was released on the 4th she was, which I took her
19 to Heritage Hall on the 4th of January with the
20 assistance of my cousin from Blackstone and she
21 walked into Heritage Hall. I had the papers that
22 Johnston-Willis gave me for her release and for her
23 care that was required. I met with I believe a
24 Ms. Chris Orange who was the admissions director at
25 which time we went over the interest agreements or

1 mission agreements which included medical
2 assistance, care of a physician, resident rights
3 and freedom from abuse. At that time we were given
4 somewhat of a tour of Heritage Hall as far as the
5 dining room, different rooms that she could go in
6 to meditate and of course the room that she was
7 eventually assigned to.

8 Q You took transfer records from
9 Johnston-Willis Hospital with you when you took
10 your mother to Heritage Hall?

11 A That's correct.

12 MR. STEPHENSON: I'd like to mark this
13 exhibit.

14 BY MR. STEPHENSON:

15 Q Is this a package of documents that you
16 took to Heritage Hall from Johnston-Willis?

17 A This appears to be the package that I
18 took. I did not really review the package that
19 Johnston-Willis gave me that closely.

20 MR. STEPHENSON: I did want to proffer the
21 transfer records as an exhibit.

22 THE COURT: This is transfer records from
23 Johnston-Willis to Heritage Hall.

24 MS. DULEY: We would object on a number of
25 bases. First of all, they're not the transfer

1 records and a number of people have testified
2 to that in deposition in addition to the fact
3 they are hearsay. Mr. Perdieu did not write
4 them and to my knowledge the person who did is
5 not going to be here.

6 MR. STEPHENSON: Your Honor, that's
7 certainly a mystery to me that people have
8 testified that these are not the transfer
9 records in a deposition. This is the first
10 I've heard of that and these are records that
11 were delivered to me by Heritage Hall, again,
12 in the production of the documents that
13 constituted part of their records. That's
14 where I got them from.

15 MS. DULEY: Your Honor, they were
16 generated by Johnston-Willis, they were not
17 generated by Heritage Hall. They are not
18 business records of Heritage Hall. The fact
19 that we produced them in evidence certainly
20 does not make them admissible. Produced them
21 in discovery, I'm sorry.

22 THE COURT: Mr. Stephenson, this document
23 appears to me to have been generated for the
24 purpose of showing Mrs. Overton to be
25 qualified Medicare or Medicaid-wise for

1 nursing home care. I don't see where it even
2 mentions Heritage Hall. It just mentions her
3 condition at Johnston-Willis and the care that
4 they needed for her which makes them say she
5 needs to be in a nursing home, which qualifies
6 her for Medicare.

7 MR. STEPHENSON: I agree that's part of
8 the process, but they are documents that are
9 the customary transfer documents that are
10 delivered to the institution to which she's
11 transferred.

12 THE COURT: But they're not Heritage
13 Hall's documents. They happen to be in their
14 files because they came with her.

15 MR. STEPHENSON: And I submit they're part
16 of the medical records that pertain to
17 Mrs. Overton that is admitted for the care and
18 admitted at the time that she is to start
19 receiving that Medicare based on those
20 conditions and the conditions for which she is
21 being treated, and her care is totally
22 connected to the factors that were involved in
23 her being so eligible and seeking that care.

24 THE COURT: My problem with it is it
25 doesn't purport to tell Heritage Hall what

1 they need to do.

2 MR. STEPHENSON: It certainly advises them
3 of conditions that are very relevant to what
4 her needs are for care, and if they're taking
5 her in to receive Medicare payments, they have
6 a duty under the statutes to give her that
7 care responding to what the care needs are.

8 THE COURT: This doesn't say what care she
9 needs, it says what her problems are. I don't
10 think it can be admitted as a Heritage Hall
11 document.

12 MR. STEPHENSON: I didn't offer it to be a
13 Heritage Hall document, I proffered the
14 exhibit to show that Heritage Hall was on
15 notice of these conditions of Mrs. Overton at
16 the time she was admitted there for care and
17 her care plan certainly should have included
18 this history of her assessment of her needs.

19 THE COURT: Do we know that it did not?

20 MR. STEPHENSON: I certainly have every
21 evidence that's flowing in showing that they
22 didn't provide care corresponding to the needs
23 for care that were indicated in her needing
24 the assistance in the six areas of the seven.

25 MS. DULEY: Your Honor, I'm going to

1 object, he's making an argument. It sounds to
2 me like he's making a closing argument.

3 MR. NEWSOME: The jury is hearing all
4 this.

5 THE COURT: Unless they understood it
6 better than I do, it doesn't matter. I still
7 view it as a transfer document that I don't
8 see how it has any relevance to her care. It
9 has relevance to the transfer and the
10 requirements for transfer Medicare-wise.
11 Period.

12 MR. STEPHENSON: I submit for the record
13 that when these transfer documents accompany
14 the person that becomes a resident, that
15 that's part of the medical history that guides
16 them in determining her immediate needs for
17 care and when she's admitted as a person
18 suffering from dementia, confused and needs
19 assistance in ambulating and in all of the
20 daily life activities, that they're on notice
21 that she needs that kind of care coming in and
22 when they don't provide it --

23 THE COURT: The reason for the objection
24 is it's not a Heritage Hall document which is
25 a roundabout way of saying it's hearsay. It

1 can't come in through Heritage Hall as
2 business records. I ask the jury to disregard
3 all this discussion if you listened to it.

4 BY MR. STEPHENSON:

5 Q Mr. Perdieu, I'm going to mark another
6 document.

7 THE CLERK: Do you want to say 7?

8 THE COURT: Make this one 7 and show that
9 that 6 was not allowed.

10 MR. STEPHENSON: I'll deal with the other
11 six numbers later.

12 (Exhibit 7: Admission sheet)

13 BY MR. STEPHENSON:

14 Q Mr. Perdieu, I show you what has been
15 marked as Plaintiff's Exhibit No. 7, and it's
16 identified as the admission sheet, and ask you if
17 you can identify that document?

18 A Yes, this is the document that the
19 administrator and I went over during her admission
20 to Heritage Hall.

21 Q And this was the admission agreement?

22 A It was. I might add that the reason that
23 I had to have the other responsible people because
24 I was living in Fairfax at that time and so my
25 cousin was placed on as a responsible person to be

1 contacted as well as my uncle who is in Crewe,
2 Virginia.

3 Q And so they appear on the document?

4 A Yes, they appear on the document.

5 Q Who executed the document?

6 A Chris Orange executed the document for me.

7 Q On behalf of Heritage Hall?

8 A That's correct.

9 Q And then you also executed it on behalf of
10 your mother?

11 A That's correct.

12 MR. STEPHENSON: I offer that as
13 plaintiff's next exhibit.

14 THE COURT: Have you seen this? Do you
15 know what it is.

16 MS. DULEY: Yes, we have, Your Honor, and
17 we would object on the basis on who Chris
18 Orange is, whether she had the ability to bind
19 Heritage Hall. I believe in order for a
20 contract to come in we have to have testimony
21 from both parties of the contract and at this
22 point we have had no testimony from Heritage
23 Hall to qualify this document.

24 MR. STEPHENSON: I'm really surprised that
25 now Heritage Hall takes the position that they

1 not have admitted Mrs. Overton there.

2 THE COURT: That's what it sounds like.

3 Overrule the objection. You may proceed.

4 BY MR. STEPHENSON:

5 Q Mr. Perdieu, the admission agreement
6 contained attachments to it that are shown in the
7 pages that go through the page with the signatures?

8 A Yes, sir.

9 Q And did you expect that you had the
10 advantage of what the recitals were within the
11 agreement regarding the obligations of Heritage
12 Hall?

13 A Yes, I expected for them to treat my
14 mother for whatever she needed to be treated and
15 when I read about the medical assistance that they
16 provide, civil rights provisions for the patient's
17 rights, I felt therefore she was leaving one
18 facility going to another facility for treatment
19 and I expected the next facility to treat her as if
20 she just had been in the first facility.

21 Q Can you describe the condition of your
22 mother, Mrs. Overton, at the time she came to
23 Heritage Hall on the 4th of January, 1995?

24 A My mother walked into Heritage Hall, she
25 walked around, reviewed the dining room, the room

1 that she was going to be assigned to. She was not
2 released from Johnston-Willis for almost a month
3 after she'd had the operation for them to make sure
4 that her bowel movement was okay and that she was
5 feeding and that she was generally in pretty good
6 health.

7 Q How was she mentally?

8 A Mentally I think that she was somewhat
9 confused, which I understand happens to a lot of
10 older people when they're put under for an
11 operation, but eventually they supposedly will come
12 out of it. And I did not feel that her length of
13 stay at Heritage Hall would be very long because we
14 were hoping to put her back into her home and have
15 some home care.

16 Q Did you stay around anytime after you
17 brought your mother to Heritage Hall?

18 A Yes, I was around in that period for
19 approximately a week and a half. I would come down
20 from Fairfax, Virginia to my hunting club in
21 Dinwiddie and I would hunt during the deer season
22 or rabbit season.

23 Q During that time period did you visit with
24 your mother?

25 A I visited my mother several days, at least

1 every other day to make sure that she was okay and
2 make sure she was getting acclimated to her new
3 surroundings. And we discussed her having a TV in
4 her room and the comforts that I set up for her, a
5 chair if that's what she wanted, one of the chairs
6 from her home. She was in good condition. She was
7 eating well. She had her strength back somewhat
8 and she was getting around well. My mother always
9 did shuffle. She doesn't walk like a lot of us do,
10 but she shuffles.

11 Q Did there come a time that you left this
12 area and went back to your home?

13 A On the 20th of January of '95 my wife
14 received a call from Heritage Hall that my mother
15 had fallen, she had been checked by a doctor and
16 she was okay. My wife contacted me, I had planned
17 to go home that day anyhow, she contacted me and I
18 went by Heritage Hall to check on her. When I
19 stopped at Heritage Hall I found mom to be
20 sleeping, resting, so I talked to the nurse at
21 Heritage Hall and again was assured that she was
22 okay.

23 Q And what did you do?

24 A Then I went home. The following day on
25 the 21st I received a call from Heritage Hall that

1 my mother had fallen again, this time in the dining
2 room. She'd been checked by a doctor, but she was
3 okay.

4 Q And you accepted that report?

5 A I accepted that and I continued to call
6 Heritage Hall, I wouldn't say every other day, but
7 about three or four different times between the
8 21st and the 30th just to find out how she was
9 doing. I would talk to the nurse and I hadn't
10 heard the term yet nurse's aide or whatever they
11 are when they're not a full-fledged nurse, but I
12 would try always to talk to the nurse in charge of
13 her at that time. They assured me that she was
14 doing okay, that they were dressing her and taking
15 her to the dining room for her meals, for breakfast
16 and lunch, but she was having her dinner meal in
17 her room. I had received a call from my cousin who
18 had visited my mother during that time frame and
19 she was a little concerned --

20 MS. DULEY: Objection, Your Honor, it's
21 hearsay. He can't testify as to the thoughts
22 and comments of his cousin.

23 MR. STEPHENSON: Let me say that the
24 witness is not testifying to show the truth of
25 the utterance that he got from his cousin, but

1 only how he came to have some information that
2 prompted him to do something.

3 THE COURT: How about you try to rephrase
4 it so it's because of what she said I did so
5 and so instead of giving us what the lady
6 said.

7 BY MR. STEPHENSON:

8 Q Aside from what was said to you, did you
9 have some information that caused you to do
10 something else?

11 A Well, whenever I called Heritage Hall I
12 would be assured that my mother was doing all
13 right. I talked to my cousin who informed me --

14 MS. DULEY: Objection.

15 THE COURT: What your cousin said is
16 hearsay. Tell us what you did in response to
17 what she told you.

18 A In response to what my cousin told me, I
19 began to be concerned that my mother was having a
20 problem at Heritage Hall. So on the 30th of
21 January around 2:30 p.m. I arrived at Heritage Hall
22 and took in a television for my mother. She was on
23 the bed asleep on top of her bed with a sheet
24 pulled up with nothing on from her waist below. I
25 talked to the maintenance man at Heritage Hall

1 about hooking up the TV and I didn't want to wake
2 my mother so I left. I returned again around four
3 o'clock p.m. at which time my mother was still
4 asleep. I went to the nurse's station and I asked
5 them about her eating and about her medicine. I
6 was concerned to make sure that they were giving
7 her thyroid medicine and I wanted to find out if
8 they were giving her any other medicine that may
9 make her sleepy, drowsy or not very active. I was
10 told that they were giving her Benadryl, that she
11 was taking her thyroid medicine. Again, I was told
12 that she was having her meals in the dining hall,
13 however she was being fed. She wasn't feeding
14 herself. This again was an alert that concerned me
15 because when I left her she was feeding herself.

16 Q And then what else occurred, if anything?

17 A I again met at Heritage Hall after talking
18 to the nurse and I returned around 6 p.m. that
19 afternoon as I wanted to talk to my mother as well
20 as see how she was being fed. As I proceeded to
21 her room there was, and I don't think it was a
22 nurse, I think it was a nurse's aide, trying to
23 feed her. My mother was laying on her side without
24 her eyes open and they were trying to coax her to
25 eat. She was not talking, she would mumble a

1 little bit, but that was about it. I observed the
2 food on her tray to be whole vegetables, mashed
3 potatoes and some meat that was cut up into some
4 big chunks, some small bites.

5 I observed my mother eating one-half of a
6 spoon of mashed potatoes and she choked on that.
7 They then tried to give her some milk which she
8 wouldn't drink because she didn't like milk, so I
9 suggested that she have iced tea. She did take
10 three or four sips of the iced tea and at that time
11 another assistant came into the room and the first
12 lady that was there trying to feed her told her
13 that she wasn't eating very well and I think she
14 indicated it was about time for her to have dinner?
15 And so the second person said well, you go and I'll
16 finish up feeding your mother.

17 My mother did not take any food from the
18 second person that came in and she was pretty quick
19 to wrap up the food tray, and at that time I asked
20 the second person that had just left came back in
21 for a few minutes, I asked them both why my
22 mother's false teeth had not been put in if they
23 expected for her to eat the meal. They looked at
24 each other and one of them answered either it was
25 their first time with her or second time with her

1 as evidently they rotate the people at Heritage
2 Hall from one end of the hall to the other end of
3 the hall and they said they were not familiar with
4 my mother. I could see the little round cup which
5 held her false teeth sitting by the tray of food
6 and I pointed that out to them at which time they
7 looked at each other and rolled their eyes.

8 By this time I was beginning to be and
9 become more upset than I already was. I asked to
10 see the head nurse, so one of the ladies went to
11 find the head nurse to bring back to talk to me.
12 During that period of time my mother had not said a
13 word to me or hardly opened her eyes, but she heard
14 my voice talking and she did open her eyes and she
15 made a statement like --

16 MS. DULEY: Objection, Your Honor.

17 MR. STEPHENSON: I would take the position
18 that this is a res geste statement and this is
19 a lady that is now expired and she made a
20 comment to him that it is admissible. We had
21 some discussion about this.

22 THE COURT: I'll allow him to say what she
23 said.

24 A The statement which she said to me is "No
25 one should have to go through this," which I took

1 to mean --

2 THE COURT: No, I don't think I should
3 allow it to go any farther.

4 MR. STEPHENSON: I don't think he's
5 planning to, Your Honor.

6 THE COURT: Well, he was.

7 BY MR. STEPHENSON:

8 Q Just tell me what that prompted you to do.

9 A That statement, I was still waiting for
10 the nurse to come back to see me. The person who
11 went to get the head nurse returned and asked me if
12 I was going to be there for another 30 or 40
13 minutes as I believe she said that the nurse was
14 eating. I said I probably will be here for the
15 next 30 or 40 minutes, but the longer I stayed
16 there and look at my mother and felt in my mind
17 that she was suffering, I left before I would say
18 something that I didn't want to say. And I didn't
19 want to make a scene at the nursing home.

20 That night I didn't sleep at all, so the
21 next morning on the 31st of January I returned to
22 Heritage Hall about 7:30 or 7:45. The doors were
23 still locked and I had a janitor let me in. I went
24 to my mother's room, she was still in bed sleeping,
25 I then went to the nurse's station and told them

1 that I wanted my mother seen by a doctor that day,
2 that morning and that I would be back that morning
3 to find out what the outcome was. I told the nurse
4 that I was concerned because the coloring of my
5 mother was not what I felt to be right and I felt
6 that she was in pain. The nurse told me,
7 recommended to me to come back between 9:00 and
8 12:00, that was the normal time that the doctors
9 made the rounds at the Heritage Hall.

10 I left and I returned at 10:30 a.m. As I
11 entered my mother's room one of the aides there
12 said that the nurse and doctor would like to see me
13 at the nurse's station. As I proceeded down the
14 hallway I met Dr. Stuart White who I knew and he
15 knew me. We had a brief discussion on the fact
16 that he and Dr. Damewood.

17 MS. DULEY: Objection, Your Honor, this is
18 hearsay. The doctors are not employees of
19 Heritage Hall.

20 THE COURT: Unless he starts to quote
21 them, I don't have anything to rule on.

22 MS. DULEY: I thought he was about to.

23 MR. STEPHENSON: I believe the doctors
24 were employees of defendant Blackstone Family
25 Practice.

1 THE COURT: So.

2 MR. STEPHENSON: So the witness is also
3 addressing all of the issues that involve the
4 respective defendants. He's saying that he
5 met doctors there who were --

6 THE COURT: The objection was to what he
7 was going to say the doctors said. It's a
8 hearsay objection.

9 MR. STEPHENSON: But the objection, Your
10 Honor, was based on there being some
11 independent parties and I'm saying if they're
12 doctors with Blackstone Family Practice,
13 they're also employees of the entity that's a
14 defendant. I think he can talk about what
15 employees of the entity says.

16 THE COURT: Still an out-of-court
17 statement, isn't it?

18 MR. STEPHENSON: I'm thinking discussions
19 that he had with employees of a defendant
20 attributable to the defendant. Same as an
21 individual defendant, a corporate defendant
22 employees can speak for the entity. Just as
23 any nurse could make the statement on behalf
24 of Heritage Hall. He was in Heritage Hall,
25 but we have the interrelationship between

1 Heritage Hall and Blackstone Family Practice.

2 THE COURT: Objection is to hearsay.

3 MR. STEPHENSON: I understand, and I think
4 that's an exception to the hearsay rule that
5 employees of an entity that is a defendant,
6 what they say is not subject to the hearsay
7 objection.

8 THE COURT: Do you have anything to say to
9 that?

10 MS. PHARR: Your Honor, as far as there is
11 no employee comment hearsay exception. If
12 he's going to proffer testimony about what the
13 doctor said, it's irrelevant who employed
14 them. It's an out-of-court statement made to
15 show the truth of the matter asserted
16 therefore it's hearsay and he hasn't presented
17 an exception to the court that's recognized
18 under Virginia law.

19 THE COURT: Do you have any authority for
20 it, Mr. Stephenson?

21 MR. STEPHENSON: I thought that was a
22 basic rule of evidence.

23 THE COURT: I don't know of an exception
24 that would allow it.

25 MR. STEPHENSON: I don't need to have him

1 do that because we can take him on in steps,
2 so I would not press that issue.

3 BY MR. STEPHENSON:

4 Q Tell me then what occurred next in terms
5 of anything that involved your mother's health.

6 A I went to the nurse's station and I met
7 with Dr. Damewood in a private room there at
8 Heritage Hall. Am I permitted to say what I said
9 to him?

10 Q Did you know who Dr. Damewood was?

11 A No.

12 Q It was not a doctor that you had engaged
13 at any time to serve your mother?

14 A No, sir.

15 Q Then tell me what occurred, and if you
16 tell me that without saying what Dr. Damewood said
17 at that moment, try to do that.

18 A Dr. Damewood told me that --

19 MS. PHARR: Objection, Your Honor,
20 hearsay.

21 THE COURT: Now I have a question as to
22 whether it's offered for the truth of it. If
23 it gets us moving along, I don't see where
24 it's harmful.

25 MR. STEPHENSON: Moreover I think we have

1 a medical record involving Dr. Damewood.

2 MS. PHARR: And that medical record is
3 also hearsay. If Mr. Stephenson wants to make
4 a proffer as to what this witness is going to
5 say.

6 THE COURT: Let's do that. Take the jury
7 out, please. Do you want to proffer what he
8 would say?

9 MR. STEPHENSON: Yes, what was the
10 conversation that you had with Dr. Damewood?

11 THE WITNESS: Dr. Damewood informed me
12 that he and Dr. White had given my mother an
13 enema because she was still having problems
14 with her bowels. He said that she had some
15 soreness based on his examination of her and
16 he thought that we should have an x-ray made.
17 And I told Dr. Damewood that I certainly
18 agreed that an x-ray be made, and at that same
19 time I told him I had some concerns about what
20 type of medicine was being given to my mother
21 as well as if she was being fed properly. And
22 I mentioned the Benadryl to him and I said I
23 don't know if that may have had an effect or
24 not on her falling. He said, "Well, she's now
25 off of Benadryl, but it would be hard to prove

1 that that had anything to do with her
2 falling."

3 Once we agreed on the x-ray, he couldn't
4 tell me exactly what time that this would be
5 performed and the x-rays read, so I gave him a
6 telephone number that I could be reached after
7 the x-rays were completed. He said, "Well, I
8 should be around because I may have to make
9 some decision based on the x-rays."

10 At that time he also proceeded to tell me
11 a story about his mother or mother-in-law who
12 I think had fallen and it was about three days
13 or something like that later before they found
14 out that she had a broken hip. Well, we
15 didn't have much to say anymore on that, but I
16 left there with the impression he already
17 pretty well figured that my mother had a
18 broken hip.

19 I left Heritage Hall and around 2:45 p.m.
20 Dr. Rosenbaum's office called and I believe it
21 was Dr. Rosenbaum that talked to me on the
22 phone and indicated that he had read my
23 mother's x-ray and that she indeed did have a
24 fracture. The recommendation was that she be
25 put in the ambulance and sent to

1 Johnston-Willis for treatment, and I certainly
2 agreed with that, also. I then left where I
3 was at, came to Heritage Hall and the
4 ambulance was already there getting ready to
5 load her into the ambulance.

6 MR. STEPHENSON: I think he's gone beyond
7 what's being proffered in terms of the
8 conversation.

9 THE COURT: And you object to everything
10 with Dr. Damewood?

11 MS. PHARR: Based on the testimony we
12 object to the conversation Mr. Perdieu had
13 with Dr. Damewood about the story he tells
14 about his mother.

15 THE COURT: How about the fact that he
16 told him that she needed an x-ray?

17 MS. PHARR: Have no objection to that.

18 THE COURT: I thought that's what was
19 going to be said and I couldn't see why you
20 objected to it when everybody knows that that
21 was done.

22 MS. PHARR: We objected because we knew in
23 his deposition that he had that conversation
24 with Dr. Damewood.

25 THE COURT: I think the limited part of it

1 that deals with the fact that he informed
2 Mr. Perdieu that he thought his mother ought
3 to be x-rayed and that was done and it was
4 positive is fine, but the rest of it should
5 not be given to the jury.

6 MR. STEPHENSON: You understand the limit,
7 not testifying or give your testimony to the
8 jury about his comment about something that
9 happened to his mother?

10 THE WITNESS: Certainly.

11 THE COURT: Just that you met with him and
12 that he informed you that he thought your
13 mother should be x-rayed, you agreed, it was
14 done and she had a broken hip.

15 THE WITNESS: I certainly will try.

16 THE COURT: Bring the jury back in.

17 BY MR. STEPHENSON:

18 Q Mr. Perdieu, we were in the process of
19 talking about the conversations that ensued with
20 Dr. Damewood. Can you tell the jury, please, what
21 occurred in that discussion time on January 31st of
22 1995?

23 A I started back with the fact that I went
24 to the nurse's station and Dr. Damewood was there
25 and we went into a room where we would not be

1 disturbed. And at that time he informed me that
2 they had given my mother an enema because she was
3 still having bowel problems and that she had some
4 soreness. After he examined her he determined that
5 and that he recommended that an x-ray be performed.
6 I certainly agreed with the x-ray and I also stated
7 some other concerns to him that I thought that my
8 mother's color wasn't good. I didn't think that
9 she was maybe eating properly because she seemed to
10 be malnourished to me.

11 With that agreement that the x-rays be
12 taken, I provided Dr. Damewood with a telephone
13 number that I could be reached since they did not
14 have a time, did not know how long it would take to
15 do the x-ray and read the x-ray and I left Heritage
16 Hall. About 2:45 that same afternoon I was
17 contacted by Dr. Rosenbaum's office and I think it
18 was Dr. Rosenbaum that talked to me and said that
19 he had read her x-ray and indeed she did have a
20 broken hip. His recommendation was that she go to
21 the hospital in an ambulance and I agreed with
22 that, too.

23 By the time I arrived at Heritage Hall,
24 the ambulance had been summoned, she was on the
25 stretcher and they were getting ready to load her

1 into the ambulance to take her to Johnston-Willis
2 Hospital. I followed the ambulance to
3 Johnston-Willis. I was able to get into the
4 emergency room about 30 minutes after my mother had
5 been admitted and she was examined by a doctor at
6 the emergency room who indicated to me that she
7 appeared to be very weak and that --

8 Q What was your observation of your mother
9 in terms of her weakness, if you had such an
10 observation?

11 A I had observed my mother as being what I
12 felt to be very weak to the point that she wasn't
13 even talking anymore much less trying to lift her
14 head or to eat or whatever. The doctor at the
15 emergency room informed me that he had checked her
16 over.

17 Q Was she admitted into Johnston-Willis
18 Hospital?

19 A Yes, and that he had called Dr. Burkhart
20 who would be the doctor who performed the surgery.
21 Dr. Burkhart did arrive and he examined my mother
22 and at that time he informed me that before that
23 they could do an operation, because she was weak
24 and dehydrated, that they would have to build her
25 system up. He also told me at that time --

1 MS. DULEY: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. STEPHENSON:

4 Q Let's stop at what he told you at that
5 time and just tell me what you observed and what
6 happened and the aftermath of that including your
7 mother's receiving surgery and then what occurred
8 after she was recovering from the surgery at
9 Johnston-Willis Hospital and what happened to her
10 next.

11 A On 1 February Dr. Burkhardt performed the
12 surgery in the afternoon. My mother had a cardiac
13 arrest for which they used lifesaving support to
14 bring her back. They then completed the operation
15 on her hip as she was placed in intensive care for
16 two and a half days before she was sent to the
17 fourth floor to recuperate from the operation.

18 Q And she stayed in Johnston-Willis for a
19 while after that?

20 A She stayed in Johnston-Willis until
21 February 8th of '95 at which time the social worker
22 during the period she was in the hospital had
23 assisted me again in finding another nursing home
24 that she could go to and at this particular time I
25 wanted her closer to me and I definitely didn't

1 want to go back to Heritage Hall.

2 Q So where did she go?

3 A We were able to get her into the Woodbine
4 Rehabilitation and Health Care Center in
5 Alexandria, Virginia.

6 Q Was there some rehabilitation that went on
7 after that?

8 A They had facilities there, yes. She
9 stayed on this -- Woodbine has several things
10 going, they don't just take care of elderly people,
11 people who have operations and stuff that need to
12 be rehabed like in walking, arms or whatever, they
13 have a facility there that does that. Everybody
14 who receives rehab is placed on the second floor
15 until the rehab time is up.

16 Q And was your mother placed in a special
17 rehab center?

18 A Yes.

19 Q How long did she stay there?

20 A I would have to estimate that. I think
21 she was there a good couple of months that they
22 were trying to get her up to walk and walk on her
23 own. She eventually got to where she could make
24 some steps with a walker, but she never really
25 walked again by herself. Most of the time after

1 that she spent in a wheelchair at Woodbine.

2 Q Was that up to the time of her death?

3 A That was up to the time of her death.

4 Q In relation to the cost of her care, do
5 you have some amount that was expended to care for
6 her as a result of her having the fractured hip and
7 the repair to that and whatever her health problems
8 were that were related to that after her surgery?

9 A Based on the papers that we had requested
10 from the hospitals and from the nursing home, what
11 I'd give you would have to be estimates, but
12 approximately. The Johnston-Willis Hospital bill
13 was somewhere around \$28,000. Dr. Burkhart was
14 \$2,300. Blackstone Family Practice I think that
15 was probably for the x-rays, \$123. Alexandria
16 hospital another \$300 because my mother had to be
17 taken to Alexandria to be checked for the incision.
18 I think that we saw that Dr. Burkhart indicated in
19 his testimony that she would have to be looked at
20 again. There's another doctor that treated my
21 mother while she was at the nursing home, he was
22 identified as a Dr. Maloney. I think his bill was
23 somewhere around \$525. I don't believe that that
24 covered everything because I saw a bill from
25 Woodbine from \$9,939. I had to assume that that

1 had something to do with the rehab.

2 MS. DULEY: Objection, Your Honor.

3 THE COURT: Sustained. We're into
4 speculation at that point.

5 BY MR. STEPHENSON:

6 Q But she did have rehab treatment that had
7 special billing for that?

8 A That's correct, of the equipment that she
9 had to have and the treatment.

10 MR. STEPHENSON: I think I had a exhibit
11 marked. I'm not sure that we introduced that.
12 I wanted to offer that. I'd like to have that
13 offered into evidence.

14 MR. NEWSOME: No objection.

15 MR. STEPHENSON: For the record, that's
16 the bill for \$28,017.23.

17 THE COURT: That will be admitted without
18 objection.

19 (Exhibit 8: Medical bills)

20 BY MR. STEPHENSON:

21 Q Mr. Perdieu, did you ever authorize
22 treatment by Dr. Fowler to be rendered to your
23 mother?

24 MS. PHARR: Objection, Your Honor.

25 A No.

1 MR. STEPHENSON: I don't understand the
2 grounds.

3 MS. PHARR: There have been no allegations
4 that Dr. Fowler provided unauthorized
5 treatment in the motion for judgment. It's
6 not an issue. It's irrelevant.

7 MR. STEPHENSON: Your Honor, that's a new
8 objection that I've just heard. If I need to
9 respond to it, I'm prepared to do so.

10 MS. PHARR: It's irrelevant. There
11 haven't been any allegations that Dr. Fowler
12 provided any unauthorized treatment.

13 THE COURT: You changed the meaning of the
14 word. I don't think there's any inference of
15 unauthorized, rather did you specifically
16 authorize.

17 MS. PHARR: Yes, sir.

18 THE COURT: Overrule your objection.

19 BY MR. STEPHENSON:

20 Q Mr. Perdieu, did you ever grant authority
21 for treatment by Dr. Fowler, the resident, to be
22 rendered to your mother at any time?

23 A No, I did not know her.

24 Q Did you know that she was the physician
25 that had come in and had seen her on the 20th and

1 the 21st in relation to her fall?

2 A I did not know who the physician was.
3 What they told me was that a doctor had examined my
4 mother and that she was okay. I assumed her to be
5 a full-fledged doctor.

6 THE COURT: I overrule that statement and
7 ask you-all to disregard it, please, without
8 it even being objected to.

9 MR. STEPHENSON: I have no further
10 questions of Mr. Perdieu.

11 THE COURT: Do you-all have very long
12 examination of Mr. Perdieu?

13 MS. PHARR: We have no cross-examination.

14 MS. DULEY: Very brief, Your Honor.

15 THE COURT: If it's brief, I'll go ahead
16 and do it.

17

18 CROSS-EXAMINATION

19 BY MS. DULEY:

20 Q Good evening, Mr. Perdieu. I'm just going
21 to go through a couple of brief questions with you.
22 Prior to her admission at Heritage Hall, your
23 mother underwent bowel surgery at Johnston-Willis;
24 is that correct?

25 A That's correct.

1 Q And at the time she was at
2 Johnston-Willis, the doctors had had or the nurses
3 had had trouble with her trying to pull her IV out,
4 correct?

5 A That's correct.

6 Q And as a result of that they restrained
7 her wrists, correct?

8 A That's correct.

9 Q And you were upset that they had
10 restrained your mother at Johnston-Willis, correct?

11 A Can I add to that? I mean that's not a
12 yes or no.

13 Q Isn't it true that you were upset that
14 they had restrained your mother at Johnston-Willis?

15 A I was upset that they had restrained my
16 mother at Johnston-Willis and that she had choked
17 on her vomit and they sent her to the emergency
18 room as cardiac arrest again, yes.

19 Q And at one time you considered filing suit
20 against Johnston-Willis, correct?

21 A I'll say correct, yeah.

22 Q From Johnston-Willis you took your mother
23 directly to Heritage Hall, correct?

24 A That's correct.

25 Q And prior to her admission at

1 Johnston-Willis she had had some assistance at home
2 with washing and cleaning and other household
3 activities, correct?

4 A That's correct.

5 Q And you were told by personnel at
6 Johnston-Willis that your mother suffered from
7 dementia, correct, or altered mental state?

8 A When they released her, yes.

9 Q Now, you admitted your mother on January
10 4th, 1995, correct?

11 A Correct.

12 Q And at that time you say she walked in,
13 but she was shuffling, correct? She was not
14 walking like you and I walk, correct?

15 A No, she shuffled. She has shuffled for
16 five or six years.

17 Q You visited your mother on January 20th,
18 correct?

19 A That's correct.

20 Q And I assume that was after 5 a.m. in the
21 morning, correct?

22 A That's correct.

23 Q So it was after the fall on January 20th,
24 correct?

25 A I'm sorry.

1 Q It was after the fall that occurred on
2 January 20th?

3 A Yes.

4 Q And at that time she did not seem to be in
5 any pain, correct?

6 A I can't say that's correct. I didn't know
7 because she was asleep.

8 Q And you did not see her again until
9 January 30th, correct?

10 A That's correct.

11 Q So in fact --

12 MR. STEPHENSON: Objection. I'm sorry.

13 BY MS. DULEY:

14 Q So in fact you didn't talk -- if your
15 mother was asleep on January 20th, you did not talk
16 to your mother between January 4th and January
17 30th; is that correct?

18 A That's correct.

19 MR. STEPHENSON: January what date?

20 MS. DULEY: January 4th.

21 MR. STEPHENSON: I don't think that's his
22 testimony.

23 THE WITNESS: No, I didn't talk to her on
24 the 20th, but in between the time that she had
25 been in the hospital, I mean in Heritage Hall

1 on the 4th, yes, I visited her several times
2 and talked to her.

3 BY MS. DULEY:

4 Q You visited her other than the 20th? Is
5 it my understanding that you took her on the 4th,
6 you visited her on the 20th and then you came back
7 on the 30th?

8 THE COURT: I think the reporter could go
9 back and pull it for you, but my notes show
10 that he visited her several times the first
11 ten days.

12 MS. DULEY: I apologize.

13 THE COURT: And then did not see her again
14 until the 20th.

15 MS. DULEY: I apologize. I misunderstood.

16 BY MS. DULEY:

17 Q But you didn't talk to her between the
18 20th and the 30th; is that correct?

19 A Not to her directly.

20 Q You were also told when you came on the
21 30th that she had an upper respiratory infection,
22 correct?

23 A I think somewhere around there I was told
24 something, that's why they was giving her Benadryl,
25 I believe.

1 Q On January 30th you were told that the
2 charge nurse was at lunch, would be back in 20 or
3 30 minutes, correct?

4 A 30 to 40 minutes.

5 Q And you left the facility without talking
6 to a doctor or nurse, correct, on that day?

7 A There was no doctor available that I know
8 of at the nurse's center and I did not talk to a
9 nurse.

10 Q And you left without waiting, correct?

11 A I did.

12 Q And then you did not return until the next
13 day, correct?

14 A That's correct.

15 Q After her hip surgery you moved her to
16 Woodbine, correct?

17 A That's correct.

18 Q And Woodbine's in Alexandria, correct?

19 A Yes.

20 Q And she fell more than 22 times at
21 Woodbine, correct?

22 A She fell quite a few times. I do not
23 know.

24 Q Your mother smoked a pack of cigarettes a
25 day for over 50 years, correct?

1 MR. STEPHENSON: Objection.

2 THE COURT: Sustained.

3 MS. DULEY: My experts are going to tie
4 all that together.

5 THE COURT: Somebody's got to do some tall
6 tying to get smoking to tie into this.

7 BY MS. DULEY:

8 Q She'd had respiratory problems in the
9 past, correct?

10 A I don't really know.

11 Q She had respiratory problems at
12 Johnston-Willis in December, correct? She had them
13 there?

14 A Yes, because she was dehydrated and was
15 weak as far as I know.

16 MS. DULEY: I don't have any further
17 questions, Your Honor.

18 THE COURT: Okay. Any redirect,
19 Mr. Stephenson?

20 MR. STEPHENSON: Just one question.

21 BY MR. STEPHENSON:

22 Q Did you ever pursue Johnston-Willis
23 Hospital?

24 A No, I did not pursue that at all.

25 THE COURT: Do you have anymore witnesses?

1 MR. STEPHENSON: Yes, I do.

2 THE COURT: How many more?

3 MR. STEPHENSON: I have to do

4 Dr. Rosenbaum, I had designated deposition
5 testimony, but I would plan to do it live
6 instead of reading it in, and then I have
7 Dr. Fowler's fairly extensive deposition
8 testimony.

9 THE COURT: So you have two more?

10 MR. STEPHENSON: Two more.

11 THE COURT: We'll adjourn now and come
12 back Monday morning at 9:00, but be here on
13 time so we can hit it first thing, and we're
14 going to stay here Monday until we finish.

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REPORTER'S CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in the above-referenced matter.



Keith Williamson, RPR
Commonwealth of Virginia at Large

HERITAGE HALL

Facility

TV

Plaintiff #1
W

DATE	TIME	ALL NOTES MUST BE SIGNED WITH TITLE AND DATED
1-4-95	1030	77 y.o. old white female admitted to NW 8A from JWH Tru private vehicle. 166. HTN. Hypertension (disorder) (disorder) mental status. NKA Resident is alert and oriented x 1 to person & place. She understands assistance. She is incontinent of bowel and bladder (at times). Hearing & vision are adequate for age and condition. She wears eye glasses. Wears "P + L" dentures - Has upper dentures but lower dentures were left @ hospital. She requires assistance w/ all ADL's - vs- 98-73-20- 11/60 Ht. - 5'4". Wt. - 88 lbs. - A. Hancock R.N.
1-4-95	1215	Was fed lunch - Accepted 100% - A. Hancock R.N.
1-4-95	1400	Emp & P - Fleet enema given - Nausea - large firm stool. A. Hancock R.N.
1-4-95	1430	Wound pack bath given - Has .5 x .5 discolored area on O. elbow - Laboratory surgical site is 6" in length - clean & dry - healed - in no st of infection. A. Hancock.
1-4-95	2100	Q (1/2) UO blood tincture, alert & pleasant BP 170/100 to 8-20 T-99 - ate 75% of supper UOided x 2 - A. Hancock
1/5/95	0600	V/S Temp 97.4 P. 68 R. 18 B/P 118/60. Alert + cooperative to a.m. care. Vd x 2 this shift. Awake @ 12 ⁰⁰ but slept the majority of the shift. - J.K. Hawthorn

NAME: Lucille Overton PHYSICIAN: Dr. Rosenbaum ROOM NUMBER NW 8A

HERITAGE HALL

Facility III

DATE	TIME	ALL NOTES MUST BE SIGNED WITH TITLE AND DATED
1-5-95	1300	Brother Edward Pennington Knight resident bottom dentures. L. Parrish, MD
1-5-95	1400	T. 98.4 P. 72 R. 16 BP 120/60. Noted trying to ambulate & assist. X2. #7P done by M.D. ————— L. Parrish, MD
1-5-95	1800	BP 120/60 - M. - 20 - 98.4 ————— Don Fuller
1-6-95	1100	Keep getting out of wheelchair. T. 98 P. 60 R. 20 BP 150/80. ————— L. Parrish, MD
1-7-95	0900	No problems or complaints noted. T. 97 P. 80 R. 20 BP 130/60 ————— L. Parrish, MD
1/10/95	1000	Seen by psychiatrist; see progress notes ————— D. Coleman
1-10-95	1000	Fecal Inoc. @ 7th avenue given to LFS see lab! —————
1-11-95	0001	Upo 400 Zalt. ————— D. Coleman MD
1/11/95	0000	Blood drawn for adm lab & TBN level drawn & sent to NHL! Clean catch urine specimen obtained for adm U/A & sent to NHL ————— D. Coleman
1/13/95	0545	Rested well. ————— D. Coleman MD
1/13/95	1130	Lab orders seen by M.D. New orders written; see physician order sheet and see lab sheet and physician progress note. ————— L. Parrish, MD
		X
		X
		X
		X

NAME: Lurille Newton PHYSICIAN: DR. Rosenbaum ROOM NUMBER NU 8X

10 9

DATE	TIME	ALL NOTES MUST BE SIGNED WITH NAME AND DATED
1/20/95	1510	Found lying on left side on floor in room. Assisted off floor. Room → well. T/P 130/70 P. 78 R. 18. ——— A. Calman, MD
1-20-95	1030	Seen by M.D. regarding fall. No apparent injury. See physician's progress sheet. AP 130/70 P. 72 R. 18 T. 99° S. Parrish, MD
1-20-95	1035	(0905) LATE ENTRY - Resident wandered out of facility, found on 6th street ambulating. ——— S. Parrish, MD
1-20-95	1330	Responsible person notified of resident fall and wandering outside S. Parrish, MD
1-20-95	2200	A 08:20 OR 12 R. 12/12/95 ——— S. Parrish, MD
1-21-95	0545	Uncomplaining from previous fall. T. 98° P. 76 R. 18 B/P 126/74 ——— A. Calman, MD
1-21-95	0905	Brought back to Nurse's station, reported by S. Hodge LPN - resident fell in large D/R - and was found lying on (L) side. Brought back and placed on bed in room 90 (L) side pain. BP 150/70 P. 78 R. 22 T. 98° (R) ——— S. Parrish, MD
1-21-95	1000	Seen by M.D. regarding fall. No apparent injury. See incident report. ——— S. Parrish, MD
1-21-95	1330	Boy Perdoni (son) notified of resident fall. ——— S. Parrish, MD
1-21-95	1450	O/C/O (L) side pain. Telephone order written for Tylenol. ——— S. Parrish, MD

HERITAGE HALL

Facility 10

DATE	TIME	ALL NOTES MUST BE SIGNED WITH TITLE AND DATED
1-21-95	2100	V5-BP-130/8, TPR-99, 80, 18. No further C/o discomfort from previous fall. Will monitor. — Schlichte, M.D.
1/22/95	1500	(BP) 150/70 (P) 88 (R) 20 80% from previous fall. (T) 95.6 Will monitor. — Schlichte, M.D.
1/22/95	1900	Internal 650mg p.i.d. C/o (L) 1.1 pain. T. 99 P. 76 R. 20 BP 140/70 L. Padrick, C.
1-22-95	2100	V5-BP-128/70, T-98.4, P-82, R-20. Res'd voices & C/o discomfort @ this time. — Schlichte, M.D.
1-23-95	07:00	Met nurse. Discomfort with voice. No complaint from previous fall. Confused. Also took a breakfast. — Schlichte, M.D.
	0500	BP 140/70 T 99 P 74 R 20 And still a slight change. — Schlichte, M.D.
	1100	MD in 2: 7.00 - injury, So. Port. in room, So. Port. in room. — Schlichte, M.D.
	1100	Resident very slow & speech is slurred. Unable to understand what she says. — Schlichte, M.D.
	1200	At 5070 lunch & 1.000 p.m. still Confused. — Schlichte, M.D.
	1315	Food & 7.00 - 7.00 given to Resident. — Schlichte, M.D.
	1400	Met. And still a little slow. — Schlichte, M.D.
		Resident continues to complain of pain in left knee. — Schlichte, M.D.
1-23-95	2230	Resting quietly at this time. Remains slow this shift. Accepted 75% of supper. Has not had results from enema as of this time. — Schlichte, M.D.

NAME: Lucille Overton PHYSICIAN: Prof. Rosenbaum ROOM NUMBER: 110-8A

DATE	TIME	ALL NOTES MUST BE SIGNED WITH TITLE AND DATED
1-24-95	1800	Max alert, Squash cells today. At 1000. Bunked St. 000, 9.4 hrs. pain: don't know what it is
1000	RT 130	low T 98° P 82 R 18 Cnd Stable ↑ W 10
1100		MD in P: 10-0000 9.4 hrs. No discomforts. See Doctor program: none ————— (Benson 10)
1245/900		Pas has voiced no complaints this shift. Pleasant - cooperative — (Benson 10)
1-25-95	0700	Alert, ↑ W 10. Noted to have a congested cough a decreased appetite expected. Accepted from Refused to eat Breakfast & Drink. See Signile
0900	RT 120	92 T 98° P 72 R 22 MD to read (Benson 10)
1030		MD in P: Congested Cough, See Doctor order, See Doctor program: none ————— (Benson 10)
1-25-95	1405	Message let me know concerning machine re congestion & starting amoxicillin (antibiotic) ————— (Benson 10)
1-25-95	2200	Pas remains slow. On bed rest throughout shift. Started amoxicillin as ordered. Refused supper. No C/O discomfort; no distress noted. (Benson 10)
1-26-95	0800	Time 99 Alert, ↑ W 10. No distress noted. No coughing noted this am. Voiced no complaints.
0930		Accepted 5070 Breakfast & drink 240 in Signile. (Benson 10)
1100		Remains alert, ↑ W 10. Squash alone, just has a poor appetite and is fluid encouraged but she refused to drink ————— (Benson 10)
1300		At 5070 Lunch & drink 100 & Signile — (Benson 10)
1400		Alert, 1000 9.4 hrs ————— (Benson 10)

NAME: J. M. O'neal PHYSICIAN: Dr. L. R. O'neal ROOM NUMBER: W 8A

Facility

Facility

DATE	TIME	ALL NOTES MUST BE SIGNED WITH TITLE AND DATED
1-26-95	2200	Res'd has remained slow and in bed throughout shift. Ate 40% of supper; fed by staff. I-2000 N-V x III. Accepted morphine @ 4 pm. 1-2000
1/27/95	0300	Res. has rested well. s.c.p., s.p.d. noted. Med given as ordered. 120/70-72-16 T48 BBB
1-28-95	0530	Out 7:10. At 5:00 Breakfast + drink 240. Obs: No distress. s.t. No coughing noted. Remains alert. Vital no complaints. Remains slow — BBB
	1300	At 25% lunch + l.p. staff. Appetite remains poor.
	1400	Intake 540 Vx 2 — BBB
1-28-95	0600	Intake 2200. Vx 1 — D. Calmes, 4N —
1-29-95	0800	Out 7:10. s.c.p. all around No distress. s.t. I
	0900	At 10:00 Breakfast + drink, all has liquid. BBB
	1300	At 10:00 Lunch + drink has liquid. noted to have a cough continued this shift. No distress. s.t. I BBB
	1400	Intake 720. Vx 2 — BBB
1-30-95	0600	Intake 2800. Vx 2 — D. Calmes, 4N —
1-31-95	0100	In bed resting quietly — BBB
	0330	Vs: 110/70-68-24 - No distress, noted — BBB
1/31/95	0830	Accepted 25% breakfast - fed by staff - s.c.p. in this AM + upset over road's condition — BBB
1/31/95	0940	TPR 99° @ 76.2 BP 118/70 - MD in to evaluate — BBB
		See MD progress notes + new orders — BBB

NAME: W. W. Dwyer PHYSICIAN: 788 R. Rosenbaum ROOM NUMBER W 8A

DATE	TIME	NOTES MUST BE SIGNED WITH TI. AND DATED
1/31/95	1000	S. S. enema given per order c SFS expelled. Manually removed LFS - flat enema given c no results — R. Dobson LP
1/31/95	1030	Catheterized urine specimen obtained for U/A and sent to NTH c difficulty — R. Dobson LP
1/31/95	1100	Resting quietly c NOBT at this time & No complaints offered — R. Dobson LP
1/31/95	1230	Refused lunch - Resting quietly — R. Dobson LP
1/31/95	1400	I "900" - left c Ida Robertson, CNA for appt for x-rays @ BFPC — R. Dobson LP
1-31-95	1430	Rescd returned to bed via stretcher accompanied by M. Robertson LPK & A. Lane LPK. Placed in bed. No distress noted — R. Dobson LPK
1-31-95	1530	Received Call from Dr. Rosenbaum at BFPC. N.D. spoke c son Roy Perdue & made aware of resident's x-ray results. Rescd to be transferred to Johnston Willard Hosp, ER. R. Dobson LPK
1-31-95	1535	Nottingham Rescue Squad aware — R. Dobson LPK
1-31-95	1610	Nottingham Rescue Squad here — Bp 126/82 P-84 R-24 & R. Dobson LPK
1-31-95	1630	Rescd in Transport to JWH. Son in Willard Follow to Hosp.
1-31-95		Not holding bed at this time — R. Dobson LPK

NAME: Jim M. Overton PHYSICIAN: Dr. Rosenbaum ROOM NUMBER: NL 5F
-789-

Facility

Facility 1 ✓

NAME:

Guillermo O. Cortez

PHYSICIAN:

Dr. R. S. Nibbelin

ROOM NUMBER

11/1/80

WEEKLY RESIDENT CARE RE

NIGHTS

Plaintiff: 42

Name		Room No.		Physician					
Lucille Swinton		NW8A		C. Resnick					
Date		1-4		1-5		1-6		1-7	
		7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11
Mobility	Ambulation ad lib	✓			✓	✓	✓	✓	✓
	With Assistance	✓			✓	✓	✓	✓	✓
	Up in Chair	UC			✓	✓	✓	✓	✓
	Up in Bathroom	BC			✓	✓	✓	✓	✓
	Walk to D.R.				✓	✓	✓	✓	✓
Emotional	Alert				✓	✓	✓	✓	✓
	Confused	✓			✓	✓	✓	✓	✓
	Irritable/Noisy								
	Uncooperative/Depressed								
Safety	Siderails Ck q 2 hr								
	W-Rest. Ck 1/2 hr Rel q 2 hr								
	V-Rest. Ck 1/2 hr Rel q 2 hr								
	G-Ch Ck 1/2 hr Rel q 2 hr								
Sleep	Good				✓	✓	✓	✓	✓
	Restless								
Diet	Diet	Soft			✓	✓	✓	✓	✓
	Feed Self	✓			✓	✓	✓	✓	✓
	Needs to be Fed	WA			✓	✓	✓	✓	✓
	To Dining Room	✓			✓	✓	✓	✓	✓
Appetite	Tray in Room								
	Good 75 - 100%	✓			✓	✓	✓	✓	✓
	Fair 50 - 75%	✓			✓	✓	✓	✓	✓
	Poor 25 - 50%	✓			✓	✓	✓	✓	✓
Personal Hygiene	Refused Food 0%	✓			✓	✓	✓	✓	✓
	Whirlpool	UP							
	Tub Bath								
	Shampoo								
	Bed Bath	✓			✓	✓	✓	✓	✓
	Oral Hygiene	✓			✓	✓	✓	✓	✓
	Skin Care/Nail Care	✓			✓	✓	✓	✓	✓
	Patient Turned q 2 hr								
Elimination	Shave								
	B.M.								
	Voided	X2			X2	X2	X1	X3	X2
	Catheter								
	Catheter Care								
	Urine Sugars								
	Enema Given	X1							
Other	Incont./Urine				X2				
	Incont./Feces								
	Egg Crate Mattress								
	Sheep Skin								
	T.E.D. Hose								
	Intake								
	Output								
	Supplemental Feedings								
	Range of Motion								
	A & O Ointment								
Keri Lotion									
H. S. Snack									
INITIALS	<div style="display: flex; justify-content: space-between;"> Swinton -791- Plaintiff: 42 </div>								

WEEKLY RESIDENT CARE REL .D

Name <u>Dwight Lucille</u>		Room No. <u>08A</u>		Physician			
Date	<u>11/07/95</u>	<u>11/09/95</u>	<u>11/10/95</u>	<u>11/11/95</u>	<u>11/12/95</u>	<u>11/13/95</u>	<u>11/14/95</u>
	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7
Mobility	Ambulation ad lib	✓	✓	✓	✓	✓	✓
	With Assistance	✓	✓	✓	✓	✓	✓
	Up to Chair/WC/BSC	✓	✓	✓	✓	✓	✓
	Up to Bathroom/BSC	✓	✓	✓	✓	✓	✓
	Resident Turned q2hr	✓	✓	✓	✓	✓	✓
ROM	✓	✓	✓	✓	✓	✓	✓
Emotional	Confused	✓	✓	✓	✓	✓	✓
	Combative						
	Irritable/Noisy						
	Uncooperative/Depressed						
Safety	Siderails Ck q2 hr						
	W-Rest. Ck q 1/2 hr Rel q2 hr						
	V-Rest. Ck q 1/2 hr Rel q2 hr						
Sleep	G-Ch Ck q 1/2 hr Rel q2 hr						
	Good	✓	✓	✓	✓	✓	✓
	Restless						
Diet	Na						
	Diet M.F.C.H. Smt	✓	✓	✓	✓	✓	✓
	Feed Self/With Assist	✓	✓	✓	✓	✓	✓
	Needs to be Fed/Son/Svr						
	To Dining Room	✓	✓	✓	✓	✓	✓
Appetite	Trav in Room	✓	✓	✓	✓	✓	✓
	100%	✓	✓	✓	✓	✓	✓
	75%	✓	✓	✓	✓	✓	✓
	50%	✓	✓	✓	✓	✓	✓
	25%	✓	✓	✓	✓	✓	✓
	Refused Food 0%						
Personal Hygiene	Supplemental Feeding						
	HS Snack						
	Whirlpool 2x wk						
	Tubbatv/Shower						
	Bedbath Coma/Part	✓	✓	✓	✓	✓	✓
	Shampoo/Beauty Shop/Barber						
	Foot Care/Podiatry Care PRN	✓	✓	✓	✓	✓	✓
	Oral Hygiene	✓	✓	✓	✓	✓	✓
Dressing	Nail Care						
	Shave						
	Self/With Assist	✓	✓	✓	✓	✓	✓
Elimination	Street/Gown	✓	✓	✓	✓	✓	✓
	Flat/Underwear PRN						
	BM Continent/Ostomy						
Other	Voided Continent/Ostomy	X3 X3 X3	X2 X3 X3 X2 X2	X3 X3 X3 X2 X2	X3 X3 X3 X2 X2	X2 X2 X3 X3	
	Catheter						
	Catheter Care						
	Incont. Urine						
Other	Incont. Feces						
	Intake						
	Output						
	Eggcrate Mattress						
Other	Sheep Skin						
	TED Hose						
	Two CK PRN						
INITIALS	NA	ACNSIDU	INT	CH	2000	CG	2000
LN							

WEEKLY RESIDENT CARE REL

ADULTAGE Hall

Name		Room No.		Physician				
DYERSON, LUCILLE		184		J. Rose				
Date		11/15/95	11/16/95	11/17/95	11/18/95	11/19/95	11/20/95	11/21/95
		7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7	7-3 3-11 11-7
Mobility	Amputation ad lib	✓	✓	✓	✓	✓	✓	✓
	With Assistance	✓	✓	✓	✓	✓	✓	✓
	Up to Chair/WC/GC	✓	✓	✓	✓	✓	✓	✓
	Up to Bathroom/BSC	✓	✓	✓	✓	✓	✓	✓
Emotional	Resident Turned q2hr	✓	✓	✓	✓	✓	✓	✓
	ROM	✓	✓	✓	✓	✓	✓	✓
	Confused	✓	✓	✓	✓	✓	✓	✓
	Combative	✓	✓	✓	✓	✓	✓	✓
Safety	Irritable/Noisy	✓	✓	✓	✓	✓	✓	✓
	Uncooperative/Depressed	✓	✓	✓	✓	✓	✓	✓
	Siderails Ck q2 hr	✓	✓	✓	✓	✓	✓	✓
	W-Rest. Ck q 1/2 hr Rel q2 hr	✓	✓	✓	✓	✓	✓	✓
Sleep	V-Rest. Ck q 1/2 hr Rel q2 hr	✓	✓	✓	✓	✓	✓	✓
	G-Ch Ck q 1/2 hr Rel q2 hr	✓	✓	✓	✓	✓	✓	✓
	Good	✓	✓	✓	✓	✓	✓	✓
	Restless	✓	✓	✓	✓	✓	✓	✓
Diet	Nap	✓	✓	✓	✓	✓	✓	✓
	Diet Med. Soft	✓	✓	✓	✓	✓	✓	✓
	Feed Self/With Assist	✓	✓	✓	✓	✓	✓	✓
	Needs to be Fed/Spr/Svr	✓	✓	✓	✓	✓	✓	✓
Appetite	To Dining Room	✓	✓	✓	✓	✓	✓	✓
	Tray in Room	✓	✓	✓	✓	✓	✓	✓
	100%	✓	✓	✓	✓	✓	✓	✓
	75%	✓	✓	✓	✓	✓	✓	✓
Personal Hygiene	50%	✓	✓	✓	✓	✓	✓	✓
	25%	✓	✓	✓	✓	✓	✓	✓
	Refused Food 0%	✓	✓	✓	✓	✓	✓	✓
	Supplemental Feeding	✓	✓	✓	✓	✓	✓	✓
Dressing	HS Snack	✓	✓	✓	✓	✓	✓	✓
	Whirlpool 2x wk	✓	✓	✓	✓	✓	✓	✓
	Tub Bath/Shower	✓	✓	✓	✓	✓	✓	✓
	Bed Bath Comb/Part	✓	✓	✓	✓	✓	✓	✓
Elimination	Shampoo/Beauty Show/Barber	✓	✓	✓	✓	✓	✓	✓
	Foot Care/Podiatry Care P/N	✓	✓	✓	✓	✓	✓	✓
	Oral Hygiene	✓	✓	✓	✓	✓	✓	✓
	Nail Care	✓	✓	✓	✓	✓	✓	✓
Other	Shave	✓	✓	✓	✓	✓	✓	✓
	Self/With Assist	✓	✓	✓	✓	✓	✓	✓
	Sleeve/Gown	✓	✓	✓	✓	✓	✓	✓
	Feet Care 2x wk P/N	✓	✓	✓	✓	✓	✓	✓
Other	BM Continent/Ostomy	✓	✓	✓	✓	✓	✓	✓
	Voided Continent/Ostomy	✓	✓	✓	✓	✓	✓	✓
	Catheter	✓	✓	✓	✓	✓	✓	✓
	Catheter Care	✓	✓	✓	✓	✓	✓	✓
Other	Incont. Urine	✓	✓	✓	✓	✓	✓	✓
	Incont. Feces	✓	✓	✓	✓	✓	✓	✓
	Intake	✓	✓	✓	✓	✓	✓	✓
	Output	✓	✓	✓	✓	✓	✓	✓
Other	Eggcrate Mattress	✓	✓	✓	✓	✓	✓	✓
	Sheep Skin	✓	✓	✓	✓	✓	✓	✓
	TED Hose	✓	✓	✓	✓	✓	✓	✓
	Imock P/N	✓	✓	✓	✓	✓	✓	✓
INITIALS		<p>NA: [Signature] LN: [Signature]</p>						

WEEKLY RESIDENT CARE REC.

Nursing Home

Name		OVERTON LUCILLE									Room No. NW08									Physician DR. ROSENE								
Date		1/22/95			1/23/95			1/24/95			1/25/95			1/26/95			1/27/95			1/28/95								
		7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7						
Mobility	Ambulation ad lib																											
	With Assistance																											
	Up to Chair/WC/GC																											
	Up to Bathroom/BSC																											
	Resident Turned q2hr																											
Emotional	ROM																											
	Confused																											
	Combative																											
	Irritable/Noisy																											
	Uncoop/Depressed																											
Safety	Siderails Ck q2 hr																											
	W-Rest. Ck q 1/2 hr Rel q2 hr																											
	V-Rest. Ck q 1/2 hr Rel q2 hr																											
	G-Ch Ck q 1/2 hr Rel q2 hr																											
Sleep	Good																											
	Restless																											
	Nap																											
	Diet																											
	Feeding Self/With Assist																											
Diet	Needs to be Fed/Son/Syr																											
	To Dining Room																											
	Tray in Room																											
	100%																											
	75%																											
Appetite	50%																											
	25%																											
	Refused Food 0%																											
	Supplemental Feeding																											
	HS Snack																											
Personal Hygiene	Whirlpool, Zzzz																											
	Tubbat/Shower																											
	Bedbath Comb/Part																											
	Shampoo/Beauty Shop/Barber																											
	Foot Care/Podiatry Care																											
Dressing	Oral Hygiene																											
	Nail Care																											
	Shave																											
	Self/With Assist																											
	Street/Gown																											
Elimination	BM Continent/Ostomy																											
	Voided Continent/Ostomy																											
	Catheter																											
	Catheter Care																											
	Incont. Urine																											
Other	Incont. Feces																											
	Intake																											
	Output																											
	Eggcrate Mattress																											
	Sheep Skin																											
INITIALS		NA LN																										

Name		LUCILLE		Room No.		NW08		Physician		DR. ROSEN												
Date		1/29/95			1/30/95			1/31/95			2/01/95			2/02/95			2/03/95			2/04		
		7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	11-7	7-3	3-11	
Mobility	Ambulation ad lib																					
	With Assistance																					
	Up to Chair/WC																					
	Up to Bathroom/WC																					
	Resident Turned q2hr																					
Emotional	ROM																					
	Confused																					
	Combative																					
	Irritable/Noisy																					
	Uncoop/Depressed																					
Safety	Siderails Ck q2 hr																					
	W-Rest. Ck q1/2 hr Rel q2 hr																					
	V-Rest. Ck q1/2 hr Rel q2 hr																					
	G-Ch Ck q1/2 hr Rel q2 hr																					
Sleep	Good																					
	Restless																					
	Nap																					
	Diet - Reg SJR																					
	Feed Self/With Assist																					
Diet	Needs to be Fed/Son/Svr																					
	To Dining Room																					
	Tray in Room																					
	100%																					
	75%																					
Appetite	50%																					
	25%																					
	Refused Food 0%																					
	Supplemental Feeding																					
	HS Snack																					
Personal Hygiene	Whirlpool																					
	Tubbatv/Shower																					
	Bedbath Comb/Part																					
	Shampoo/Beauty Shop/Barber																					
	Foot Care/Podiatry Care																					
Dressing	Oral Hygiene																					
	Nail Care																					

Plaintiff's Ex 3

6

HERITAGE HALL

Facility 11

	Review Date 1/11/95 1st Week	Review Date 1/18/95 2nd Week	Review Date 1/25/95 3rd Week	Review Date 2/1/95 4th Week
Fall History (including prior to admission):				
2 or more in past month (2 pts.)			2	
1 to 2 in past month (1 pt.)				
Mental Status: (2 pts. ea.)				
Confusion/Dementia	2	2	(1 confusion)	
Agitation/Increased Anxiety				
Noncompliant Resident				
Neurological Disease: (1 pt. ea.)				
CVA	1	1	1	
Parkinsons				
Alzheimers				
Seizure disorder				
Orthopedic Disease/Problems: (1 pt. ea.)				
Recent Fracture (location _____ Date _____)				
Cast/splints/slings				
Amputations/Prosthesis				
Severe Arthritis				
Other Disease/Problems: (1 pt. ea.)				
Diabetes				
Osteoporosis				
Postural Hypotension				
Syncopal/Dizziness				
Sensory Deficits:				
Decreased vision (2 pts.)				
Decreased hearing (1 pt.)				
Aphasia (1 pt.)				
Incontinence:				
Bowel (2 pts.)	2	2	2	
Bladder (2 pts.)	2	2	2	
Uses Assistive Devices: (1 pt. ea.)				
Wheelchair	1	1	1	
Walker				
Cane				
Transfer Difficulties (1 pt.)				
Unsteady gait (2 pts.)	2	2	2	
Protective Device release (2 pts.)	2	2	2	
Protective Device ordered (1 pt.)				
(Type: _____)				
Medications: (1 pt. ea.)				
Cardiac				
Diuretics				
Antipsychotics				
Hypnotics	1	1		
Anti-anxiety				
Laxatives				
Total Score:	13	9	14	

Scoring Evaluation:

0 - 2 = Minimal Risk
 3 - 8 = Moderate Risk
 9 + Up = High Risk

Resident Name:	Last	First	Middle	Birth Date	Room Number
	Owerton	Lucille	-796-	12/28/17	NWRT

2001

HERITAGE HALL

Plaintiff's 244
Jr

Facility IV

Date of this Report 1-20-95 Person reporting David Coleman Jr

Resident Name Lucille M. Carter Age 82 Sex Female

Date of injury 1-20-95 Time 1510 ^{a.m.} p.m. Place occurred NW 8A

1. Description of incident/accident Found lying on left side on floor in Room. Moved off floor, Room → wall.

2. What other person was involved? N/A What did that person do which contributed to the incident?

3. Did defective equipment, furnishings or other unsafe conditions contribute to the incident?

What was wrong? N/A

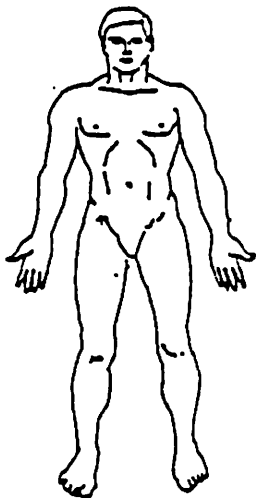
4. What persons other than the injured saw the incident? Identify fully N/A

5. Condition of resident before the incident: Disoriented ☒ Senile ☒ Sedated ☐ Normal ☐ Alert ☐

Condition of resident after incident:

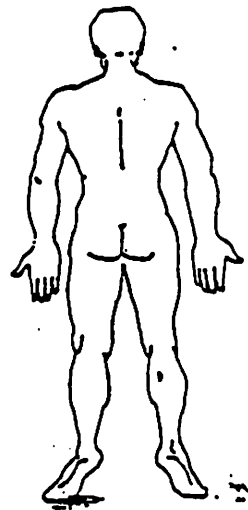
6. Were bed rails present? Were bed rails up? Down?

7. What is resident's statement as to causes of incident? Didn't get up.



TYPE OF INJURY

1. Laceration
2. Hematoma
3. Abrasion
4. Burn
5. None Apparent
6. Other

☐
☐
☐
☐
☒
☐Specify
_____

VITAL SIGNS:

Blood Pressure

120/72

Pulse

78

Respirations

18

EMERGENCY MEASURES: _____

Explain apparent injury:

no apparent injury. Ambulating
5 problems.

Physician notified

Fowler MD
Physician's Name11/20/95
Date9:10
Timea.m.
p.m.

Responsible Party Notified:

Ray Perkins Son/POA

Treatment

no tx req.

CORRECTIVE ACTION TAKEN

What steps have been taken to prevent similar occurrences and what further recommendations are made?
(Replace or repair equipment, instruct employee, control resident, or other action?)

Explain to resident to use for assistance and
frequently checks per

Follow-up dates (for Admin. or Safety Comm.) 1. _____

2. _____

3. _____

Joan [Signature]
(ADMINISTRATOR SIG.)DATE 1
COUNSELED
-798-D. Colver [Signature]
(EMPLOYEE SIGNATURE)

1-22-95

HERITAGE HALL

Plaintiff: 4.5

Facility III

Date of this Report 1-21-95 Person reporting A. Panich, Jr

Resident Name Lucille Overton Age Sex F

Date of injury 1-21-95 Time 0905 ^{a.m.} _{p.m.} Place occurred Large D/R.

1. Description of incident/accident fell in large dining room.
noted lying on (L) side.

2. What other person was involved? N/A What did that person do which contributed to the incident? N/A

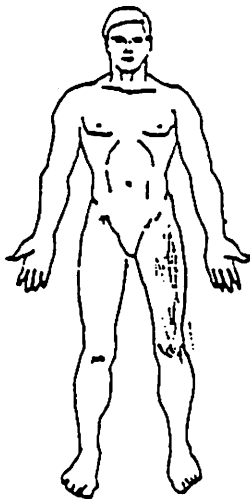
3. Did defective equipment, furnishings or other unsafe conditions contribute to the incident? N/A
What was wrong? N/A

4. What persons other than the injured saw the incident? Identify fully Reported by Debbie
Hodge - resident found lying on floor on (L) side
Ch (L) leg pain

5. Condition of resident before the incident: Disoriented ☒ Senile ☐ Sedated ☐ Normal ☐ Alert ☐
Condition of resident after incident: Disoriented

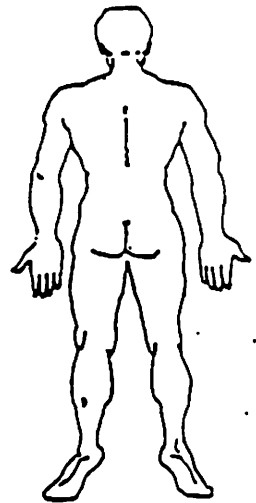
6. Were bed rails present? N/A Were bed rails up? N/A Down? N/A

7. What is resident's statement as to causes of incident? Confused - disoriented



TYPE OF INJURY

1. Laceration
 2. Hematoma
 3. Abrasion
 4. Burn
 5. None Apparent
 6. Other
- Specify _____

☐
☐
☐
☐
☐
☐

VITAL SIGNS:

Blood Pressure 150/70
Pulse 78
Respirations 22
T. 98.2

EMERGENCY MEASURES: Brought back to room
on bed. Supervisor notified
Resident checked, 15 taken

Explain apparent injury: Pt is apparent injury

Physician notified

Hawley MD
Physician's Name

1/18/95
Date

1139
Time

Responsible Party Notified: _____

Treatment

No tx required

CORRECTIVE ACTION TAKEN

What steps have been taken to prevent similar occurrences and what further recommendations are made?
(Replace or repair equipment, instruct employee, control resident, or other action?)

CNA's instructed to continue to repair
falls immediately.

Follow-up dates (for Admin. or Safety Comm.) 1. _____ 2. _____ 3. _____

[Signature]
(ADMINISTRATOR SIG.)

DATE 1/18/95
COUNSELED

[Signature]
(EMPLOYEE SIGNATURE)

Facility

10

Plaintiffs ¶ 6
Refused
2

Refused

Resident Name: Last

LAST

First

Middle

Room Number:

Attending Physician

HERITAGE HALL

Facility TV

DATE	TIME	
1/5/95		(1) Admission H & P Doc. & Chart reviewed
		(2) Resident is <u>ONR</u> living will in Chart
1/13/95		Lab Back : TSH = <u>68.9</u>
		AI : Hypothyroidism : will start IT : Synthroid 0.75 up to 1
1/20/95		S/P Fall. Ambulating 3 prob. <u>no</u> no tx required Gander MD
1/21/95		Pt again S/P Fall, no apparent injury. no tx required Gander MD
1/23/95		Pt noted to be very sluggish, confused. With D/c Benedrine. Reeval in am Gander MD

Resident Name: Last Owston First Lucille Middle 802- Room Number 1108A
 Attending Physician Gander MD

HERITAGE HALL

Facility 10

DATE	TIME	
1/5/95		<u>Hx P</u>
		<u>Hx P</u> : Lucille Overton is a 76 y.o. w. a transfer from T.H.H. S/p Intest Obstruction & Adhesions began on 12/4/94. Complicated with Wound dehiscence & Post-Op Pnp trial requiring intubation & assisted ventilation.
		<u>P. Med. Hx</u> : (1) Hypertension (2) ILL (3) Mini Strokes (4) Intest Adhesions & SBO
		<u>P. S. Hx</u> : (1) Appendectomy (2) BTL 10/1/72 (3) Salivary
		<u>F. Hx</u> : None Contributing
		<u>S. Hx</u> : Used to Smoke 1/2 pack/day x 55 yrs. Denied GTOR use
		<u>All</u> : NKDA
		<u>Pres. Meds</u> : (1) ASA 100 mg (2) Cardizem CD 120 mg q.d. (3) Lasix 20 mg q.d. (4) Synthroid 0.25 mg q.d. (5) Timolol 25 mg q.d.
		<u>PE</u> : Pleasant Old lady in NAD, lying comfortably in bed in NAD VS: B.P. = 120/70, T = 98.3, H.R. = 90, R.R. = 20 HCCNT: PERRL, O.P. clear, Adentulous
		<u>Neck</u> : Supple MNTUN
		<u>Chest</u> : CTA Bilat. No audible crackles
		<u>CVS</u> : NO S. & P. $\frac{98}{55}$ Pnppt. M. radiating to Axilla
		<u>Abd</u> : Midline Scar. Dealed with 2x4 Intention Suture Strips in place Soft, NT, ND, (+) RS.
		<u>PR</u> : Home Neg NT. NOT impacted
		<u>LL Ext</u> : DPO Bilat. No Pedal Edema
		Over →

Resident Name: Last	Overton	First	Lucille	Middle		Room Number	NW 8 A
Attending Physician	C. G. Rasmussen MD -803-						

HERITAGE HALL

Facility 1/1

DATE 1/1 TIME 1/1

400	C. 101	Breast. No Masses or Avascular palpable. Nipples Mo. firmness & erect nipples. Mammary Glands grossly intact. No Masses or Sensory Defects reported. Prompt for Hearing. Wall Reflexes DTR weak. P. in good condition. Wall. Alert, oriented x 3. Grossly intact.
		<u>Labs.</u> Admit Lab. 1-12
		A/P: 36 yo w/f transferred from T-W Hospital to 4. 11. to receive 3/4 Cat Chest & Adhesions from complicated with Post op resp failure. Tuberculosis. Stable & Clear to receive IVH.
		① Litter: Pt. been Normotensive during Hosp stay. Will start Diuretic & Cardiac use for now. Pt's B.P. is stable.
		② Hypothyroidism: Pt. off Synthroid during Hosp stay. been euthyroid in the Hosp. Will repeat TSH level on Adm.
		③ Hx/o CVA & AMS: Will continue CCASA 100 mg.
		④ Post operative Abdominal Surgical Case. Wound well healed. Incision Care will continue.
		⑤ F/A Adm. Labs.
		⑥ Will place pt. on Benadryl 25 mg qhs for Itching & Hx/o Agitation & Melanil Pre Hosp. use. Relaxation. P.N. Contin.

Resident Name:

Last

First

Middle

Room Number

Attending Physician

-804-

Overton Lucille

NW 8A

C. J. Rosenbaum

HERITAGE HALL

Facility

IV

DATE TIME

1/24/95

Asked to see pt - 90 pain to (2) knee.
Pt denies pain this am. ↑ alertness
since D/cing Benedryl.

PE:

(1) knee - (2) swelling, (2) effusion, (2) tenderness
Good flexion, extension to 140°

A/P: Knee pain - Denies at present.
Reval if complaint recurs.

Amuletino

1/25/95

PT 2 ↑ cough this am - (2) dk yellowish
sputum. AVSS

PE:

Lungs: (2) basilar rales, fair AE, poor effort.
COR: RRR 3 (10)

A/P: productive cough - Encourage ↑ PO fluids.
Amoxicillin 250mg PO TID x 10 D
Robitussin 10ml PO q6h PRN cough

Resident Name:

Last

First

Middle

Room Number

Attending Physician

Resident Name: Last First Middle

Attending Physician

-805-

Room Number

HERITAGE HALL

Facility 111

DATE TIME

1-31-95

11am

Spoke to D.S. son of P. Rosen

He Volunteered Concern about mother

not being able to leave food

Rescues towards P. Rosen son w/o

and speech evaluation

will be sent to P. Rosen

[Signature]

1/31/95

1pm

X ray: (C) Transverse femoral neck fracture.

Toradol 30 mg IM @ BFPC; son is to be calling me for instructions; meanwhile sending back to Heritage Hall

[Signature]

Resident Name: Last

First

Middle

Room Number

Christina Lucile

258A

Attending Physician

Dr. P. Rosenblum

PROBLEM SHEET

Family # _____

BLACKSTONE FAMILY PRACTICE CENTER, INC.

Phone

Sex: Male

820 South Main Street

Blackstone, Va. 23824

Drugstore

M S W D Sun

Employer

Birth Date 12/28/17

Address _____

Name Lucille M. Stone

[illegible]

CARE JOURNAL

[illegible]

JOHNSTON-WILLIS HOSPITAL

1401 Johnston-Willis Drive
Richmond, Virginia 23235-4759
Telephone (804) 330-2000
Virginia Toll Free 1-800-468-6620

*Plaintiffs: GPE
refused*

January 4, 1995

Mrs. Lucille Overton
4 Lyle Gate Trailer Park
Blackstone, Va. 23824

Dear Mrs. Overton:

The Virginia Department of Medical Assistance Services (Medicaid) requires that any individual seeking admission to a nursing facility be screened if the individual is Medicaid eligible at the time of application to a nursing home or expects to become Medicaid eligible within 180 days after entering a nursing facility. DMAS has contracted with Johnston Willis Hospital to perform pre-admission screening using level-of-care criteria, assessment tool, and procedures established by DMAS.

Once the screening team determines an individual meets the criteria for nursing facility admission, the screening team considers the appropriate setting for the delivery of care.

The Nursing Home Pre-Admission Screening team, in accordance with policy and procedures of DMAS, has determined that Lucille Overton meet/meets the level-of-care criteria necessary for Medicaid-funded long-term care. It was determined that nursing facility care would best meet Mrs. Overton's needs at the present time. The nursing facility is responsible for assessing your needs upon admission and periodically thereafter in order to demonstrate that you continue to meet the nursing facility criteria.

You may appeal this decision by writing to the Recipient Appeals Unit, Department of Medical Assistance Services, Suite 1300, 600 East Broad Street, Richmond, VA 23219, of your desire to appeal within thirty days of receipt of this decision letter.

Sincerely,

Calvin P. Moore, MSW
Department of Social Work

/cdh

HERITAGE HALL
ADMISSION AGREEMENT

Plaintiffs 4p. 1
[Signature]

This Agreement is made as of 4 day of January, 1995 between HCMF Corp., a Virginia Corporation, d/b/a Heritage Hall (the "Home"), and Lucille Overton, ("the Resident"), and Roy Percich, May Lynn, (the "Responsible Party").

Krotzer, Edward C. Pennington
PREMISES

The Resident is in need of extended nursing care, and has applied, voluntarily, for admission to the Home to receive such care.

The Home is a licensed provider of nursing care services, and has accepted the Resident for admission to the Home.

The Responsible Party has access to the Resident's income and resources for the purpose of making payment to the Home for services provided to the Resident.

The term Resident, as used throughout the remainder of this agreement, is understood to refer collectively to the Resident and the Responsible Party.

WE AGREE AS FOLLOWS:

I. PROTECTION OF RESIDENT RIGHTS:

The Home shall observe a policy and procedure to protect the rights of the Resident. A copy of resident rights as required under current law is attached to this agreement as Attachment A. The Resident, by his or her signature on this Agreement, acknowledges receipt and understanding of this document.

II. CHARGES AND FEES:

a. The Resident is obligated to pay for care and services as indicated by checkmark below:

☐ The Resident appoints the Responsible Party, pursuant to the Special Power of Attorney (Attachment B), to protect and preserve the Resident's income and resources and to make prompt payment for the fees and charges imposed by the Home out of such income and resources.

☒ The Responsible Party has legal access and control of the Resident's income and resources, pursuant to General P.O.A. dated Nov. 3, 1993, (Attachment B), to protect and preserve the Resident's income and resources and to make prompt payment for the fees and charges imposed by the Home out of such income and resources.

☐ Other: _____

- b. The Resident shall pay one (1) month in advance, the published rate per day, for nursing care, room, and board, plus any applicable ancillary charges pursuant to a current Itemized List of Charges (Attachment C). The Home reserves the right to increase any rates upon thirty days written notice given to the Resident.
- c. The Resident shall pay promptly, when billed, all charges of the Home as itemized on a statement provided to the Resident. The payment due date is upon receipt of the statement of charges due.
- d. The Resident shall pay a late payment charge of one and one half percent (1 1/2%) per month (18% annually) on all past due balances and accounts not paid by the last day of the month after the billing date. Payments shall be credited to oldest amounts owing before current amounts due.
- e. In the event the bill becomes past due the Home may turn the unpaid bill over to an attorney or a collection agency and the Resident shall be liable to the full extent allowable by law for all costs, expenses, and attorney's fees incurred in the collection of such unpaid bills.
- f. Refunds due, from payments previously made by the Resident, if transferred or discharged, will be made within sixty (60) days following the month of transfer or discharge.

III. MEDICAL ASSISTANCE:

- a. In the event the Resident's funds are inadequate to meet the cost of care for 30 days, the Resident shall take all necessary steps to secure and maintain eligibility for Virginia Department of Medical Assistance Services (Medicaid), Medicare, or such other similar program for which the resident may be eligible.
- b. The Resident agrees to pay all fees and charges due promptly upon presentation of a statement of charges due. These charges include any amounts not covered by Medicaid, Medicare, or other private insurance programs; co-payments, deductibles, resident pay amounts, or periods of ineligibility. During periods of ineligibility, the Resident will be billed according to the facility's private pay rate schedules. Insurance deductibles and co-payments will be established by the applicable program guidelines.
- c. The Resident authorizes the Home to apply for payment on behalf of the Resident under Medicare, Medicaid, private insurance programs or similar programs to Medicare and Medicaid, and the Resident requests that payment of authorized benefits be made to the Home on his or her behalf. The Resident certifies that all information provided by him in applying for payment under Medicaid or Medicare is correct. The Resident agrees to sign necessary forms to accomplish assignment of benefits from third party payors.

IV. PHYSICIAN

- a. The Resident must remain under the care of a physician for the duration of nursing home placement. In the event the services of the attending physician terminate, or if the attending physician fails to fulfill his obligations in accordance with federal and state law, the Home shall assist the Resident in obtaining a new physician. If the Resident fails to secure such physician, the Resident agrees to selection of a physician by the Home.

- b. The Home will notify the Resident's attending physician when the condition of the Resident so requires. If the Resident's physician is unavailable, the Home may contact another physician.

V. MEDICAL RECORDS:

The Resident authorizes the facility or agent of the facility to release to Medicare, Medicaid, or such other similar program and to their respective agents any information needed for any Medicare, Medicaid, or such other similar program claim.

VI. TERMINATION OF CONTRACT:

- a. The Resident shall give the Home a minimum of one (1) week written notice prior to withdrawing from the Home. This notice would not be due when the stay is covered under the Medicare or Medicaid program.
- b. Except as otherwise provided by law or in this Agreement, and considering the safety of all residents in the Home, the Home will give the Resident thirty (30) days written notice prior to removing the Resident from the Home. The Home may transfer or discharge the resident for medical reasons or to assure his welfare or that of other residents, or for nonpayment of any amount owing by the Resident to the Home or for any reason allowed by law, including the cessation of operations of the Home. In the event of discharge for whatever reason, the Responsible Party agrees to accept the resident at the location indicated below:
-
-

- c. In the event of termination of this "Admission Agreement" by either party, the accrued charges must be paid to the Home on the day that the Resident leaves the premises of the Home.

VII. EQUIPMENT AND FURNISHINGS:

Any special equipment brought into the Home must be ordered by the physician and permission obtained from the Administrator; however, the Home accepts no liability for equipment or furnishings brought into the Home by the Resident.

VIII. LIABILITY:

- a. In the event the Resident withdraws from the Home without a written order from the Resident's attending physician, the Resident releases the Home, its employees, the Board of Directors and the attending physician from any liability for any complication or injury which may occur as a result of such withdrawal. The Resident or the Resident's legal representative must also sign a "Release of Liability" form before discharge from the Home.
- b. The Home shall exercise due caution and care toward the Resident; however, the Home does not assume liability for harm or injuries suffered by the Resident except where caused by the negligence of the Home, its employees or agents.
- c. The Resident shall hold the Home, its employees or agents, without responsibility or liability for personal injury, death or property damage caused by the Resident except in the case of negligence of the Home, its employees or agents.

IX. ESTATES:

In the event the Resident should expire, unpaid obligations shall be paid within sixty (60) days by the Responsible Party, out of the funds described in Paragraph II.a. of this Agreement or by the Resident's Estate. The cost and arrangement of burial and services shall be paid by the Resident's estate, the Resident's relatives, the Responsible Party, or the agency of government which may be responsible.

X. CIVIL RIGHTS:

The Home is in compliance with the provisions of the Civil Rights Act 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, and all requirements imposed pursuant thereto, to the end that no person (physician, resident, or employee) shall, on the grounds of race, color, national origin, handicap or age be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the provision of any care or service. Under no circumstances will the application of this policy result in the segregation of building, wings, floors, or rooms for reasons of race, color, national origin, handicap or age.

XI. WAIVER OF PROVISIONS:

The parties retain all of their rights under this agreement unless they give up those rights by signing a written waiver. A party does not give up any rights merely by failing to exercise them.

XII. MODIFICATION OF AGREEMENT/BINDING EFFECT:

This Agreement is intended to benefit the parties and shall be binding upon the parties and their respective representatives, successors and permitted assigns unless all of the parties agree in writing to a change in a term or terms.

XIII. SEPARABILITY OF PROVISIONS:

If an appropriate court finds any term of this agreement to be unenforceable, the parties agree to replacement of the term with one that is enforceable and which serves the same purpose as nearly as possible. All of the other terms of the agreement will continue to have their same effect.

XIV. NOTICE:

Any required notice shall be given in writing to the other party by personal delivery or certified mail, return receipt requested. Every such notice shall be addressed:

Home: Heritage Hall
P.O. Box 549 Blackstone, VA 23824

Responsible Party: ① Ron Perdue ② Marlyn Krotzer ③ Edward Pennington
5305 Orchardsm Ct. 47 Ridge Rd. 1313 W. Tennessee Ave.
Fairfax, VA 22032 Blackstone, VA 23824 Crewe, VA 23930

Resident: Lucille Overton 96 Heritage Hall
P.O. Box 549 Blackstone, VA 23824

A party may change its address or addressee set forth above by giving the other written notice of such change. A notice shall be deemed given, if by personal delivery, on the date of such delivery or, if by certified mail, on the date shown on the applicable return receipt.

XV. ENTIRE AGREEMENT:

This document represents the entire agreement between and among the parties and takes the place of any prior agreement of any type having to do with extended nursing care services provided by the home to the resident.

XVI. COUNTERPARTS:

The parties may enter into this agreement by signing the same document or separate documents. If more than one document is used each will be an original and together they will make one agreement.

Admit Date: 1/4/95

Resident: mentally unable to sign dementia (160)
Signature

Lucille Overton
(Type or print name)

Responsible Party: X Edward Pennington
Signature

X Edward Pennington
(Type or print name)

HCMF Corp. By:

Joseph H. Newcomb
Signature

JOSEPH H. NEWCOMB
Administrator

Responsible Party:

Signature

(Type or print name)

Admitted By: Kris Orange

Comments: _____

RESPONSIBLE PARTY'S INFORMATION

Responsible Party: Edward Pennington

Telephone Nos:
Home 645-9300
Office NA

Address: 1313 W. Tennessee Ave.
Crescent, VA 22930

X Social Security Number: 224-18-1517
X Employment Information: Retired

Responsible Party: _____

Telephone Nos:
Home _____
Office _____

Address: _____

Social Security Number: _____
Employment Information: _____

ATTACHMENT A RESIDENT RIGHTS

The federal Nursing Home Reform Act ("OBRA '87") went into effect on October 1, 1990. An important part of the reform law is the increased emphasis on the rights of nursing facility residents, including their right to dignity, choice and self-determination. Residents must receive care in a manner and an environment which maintains or enhances their quality of life. Nursing facilities must "promote and protect" the rights of each resident, and provide care and services necessary for each resident to attain or maintain the "highest practicable physical, mental and psychosocial well-being."

As a nursing facility resident, you have the following rights under federal and state law:

1. FREEDOM OF CHOICE

- A. To choose a personal attending physician.
- B. To be fully informed, in advance, about your care and treatment, and to be fully informed, in advance of changes in your care and treatment that may affect your well being.
- C. To participate in the planning of your care and treatment or changes in care and treatment.
- D. To not be required to perform services for the facility.
- E. To choose activities, schedules, and health care in which you are interested.
- F. To make choices about your life in the facility that are important to you.
- G. To self administer your medications unless the physician, nurse, and other professionals responsible for your care have determined that it is unsafe for you to do so.
- H. To keep and use your personal property including furniture and clothing, as space allows.
- I. To manage your financial affairs and to not be required to deposit your funds with the nursing facility.

2. FREEDOM FROM RESTRAINTS

- A. To be free from chemical and physical restraints used for punishment, involuntary seclusion, discipline or staff convenience.
- B. To have a restraint imposed only to treat your medical symptoms or to ensure your physical safety or the safety of other residents, and only when ordered in writing by a physician. The physician's written order must specify the time the restraints may be used and the reason for imposing the restraint.
- C. To be given drugs which control your behavior or emotions (psychopharmacologic drugs) only on the orders of your physician and only as part of the physician's written plan of care designed to eliminate or modify the symptoms for which the drugs are prescribed, and only if an independent consultant from outside the facility reviews your continued need for this type of medication at least annually.

3. FREEDOM FROM ABUSE

To be free from mental, verbal, sexual, or physical abuse, and physical punishment.

4. PRIVACY

- A. To be treated with recognition of your dignity, individuality and privacy.
- B. To have privacy in your room.
- C. To have privacy when care or medical treatment is being provided.
- D. To receive mail that has not been opened.
- E. To have access to stationary, postage, and writing implements at your expense.
- F. To have privacy when using the telephone.
- G. To have privacy when receiving visitors.
- H. To have privacy when family or groups of nursing facility residents meet.

5. CONFIDENTIALITY

To have your personal and medical records treated confidentially.

6. ACCOMMODATION OF NEEDS

- A. To have your individual needs and preferences reasonably accommodated.
- B. To receive notice before you are moved to another room and before your roommate is changed.
- C. To share a room with your spouse if both of you live in the same facility and both you and your spouse consent to the arrangement.

7. GRIEVANCES

- A. To voice complaints regarding your care or treatment, without discrimination or retaliation.
- B. To receive prompt action by the facility to resolve your complaints.

8. PARTICIPATION IN RESIDENT AND FAMILY GROUPS

- A. To organize and take part in resident groups in the facility.
- B. To have your family meet with the families of other residents in the facility.
- C. To meet and talk with persons from the community either inside or outside the facility.

9. PARTICIPATION IN ACTIVITIES

To participate in social, religious, and community activities.

10. EXAMINATION OF YOUR RECORDS AND SURVEY RESULTS

- A. To review and purchase photocopies of all your nursing facility records within 24 hours of your request.
- B. To review the report of the most recent federal or state survey of the nursing facility.
- C. To review the facility's plan of correction if one is required as a result of a survey.

11. NOTICE OF RIGHTS

- A. To be informed, both orally and in writing, in a language that you understand, prior to or at the time you are admitted to the nursing facility, of your legal rights during your stay at the facility.
- B. To receive a written statement of your rights.
- C. To exercise your rights as a citizen of the facility and as a citizen of the United States.
- D. To be informed, both orally and in writing, of your right to apply for Medicaid and how to apply for benefits.
- E. To be informed, in writing, before or at the time you are admitted and periodically during your stay, of services available in the facility and of charges for those services.
 - 1. If you are Medicaid eligible when you are admitted or at the time you become Medicaid eligible, to be informed of the items and services that are included in the nursing facility rate paid by Medicaid and for which you may not be charged. This does not affect your obligation to contribute your patient pay amount determined by the local department of social services;
 - 2. If you are Medicaid eligible, to be informed of those items and services that the facility offers which are not covered by Medicaid and the amount of the charges for those items and services;
 - 3. If you are Medicaid eligible, to be informed of changes in items, services, and charges described in section (1) and (2) above.
- F. To be informed in writing by the facility regarding how to file a complaint with the facility.
- G. To be informed in writing by the facility that you may file a complaint with the State Department of Health regarding resident abuse or neglect, or the mishandling, abuse or theft of your property.
- H. To be informed in writing regarding how to contact the Ombudsman Program.

- I. To be informed in writing of your right to refuse treatment, and to refuse to participate in experimental research.
- J. To be informed of your right to formulate advance directives.
- K. To be fully informed in language that you understand of your total status, including your medical condition.
- L. To receive a written description of how the facility will protect your personal funds.

12. TRANSFER AND DISCHARGE RIGHTS

- A. To remain in the facility and not be transferred or discharged unless:
 - 1. The transfer or discharge is necessary for your welfare and your needs cannot be met in the facility.
 - 2. Your health has improved so that you no longer need the services provided by the facility.
 - 3. The safety of other residents in the facility is in danger.
 - 4. The health of other residents in the facility is in danger.
 - 5. After a reasonable time, and after an appropriate notice, you have failed to pay, or Medicaid or Medicare has failed to pay for your stay in the facility.
 - 6. The facility ceases to operate.

(In all cases, the reason(s) for your transfer or discharge must be documented in your medical record.)

- B. To receive a written notice from the facility at least 30 days in advance of your transfer or discharge telling you and a family member or your legal representative of the transfer or discharge and the reasons for it unless:
 - 1. The health or safety of other residents in the facility is in danger, or
 - 2. Your health improves enough to allow an earlier transfer or discharge, or
 - 3. Your medical needs require a more urgent transfer or discharge, or
 - 4. You have not lived at the facility for 30 days.
- C. When transferred or discharged for the reasons listed in B above, you have the right:
 - 1. To have the facility record the reasons for the transfer or discharge in your medical record.
 - 2. To receive a written notice as many days in advance of your transfer or discharge as possible.

- D. If transferred or discharged for any reason, to receive a written notice which includes:
1. the reason for your transfer or discharge;
 2. the effective date of your transfer or discharge;
 3. the location to which you are transferred or discharged;
 4. your right to appeal the transfer or discharge;
 5. the name, mailing address, and telephone number of the State Long-Term Care Ombudsman;
 6. if appropriate, the name, mailing address, and telephone number of the Protection and Advocacy Program for Developmentally Disabled or Mentally Ill individuals.
- E. In the case of voluntary transfers or discharges, notice shall be reasonable under the circumstances.
- F. To have the facility provide you with sufficient preparation and orientation to make sure you have a safe and orderly transfer or discharge from the facility.

NOTE: Medicaid pays the nursing facility to hold your bed up to 18 overnights a year for therapeutic leave including visits with the family or friends or admission to a rehabilitation facility for an evaluation. If you are hospitalized, Medicaid will not pay to hold your bed. You may pay the private pay rate to hold the bed if you wish. The nursing facility must readmit you to the first available bed in a semi-private room even if you do not pay to hold your bed.

13. ACCESS AND VISITATION RIGHTS

- A. To receive visits from your immediate family or other relatives that you have consented to see.
- B. To receive visits, with your consent, from your personal physician, representatives of the state and federal agencies, and the Ombudsman Program.
- C. To receive visits, with your consent, from organizations and individuals who provide health, social, legal or other services.
- D. To receive any other visitors that you consent to see.
- E. To receive a copy of your medical record in response to your request.
- F. To allow the Ombudsman to review your medical record, with your consent.

14. ADMISSIONS RIGHTS

- A. To have equal access to quality care, regardless of your source of payment.
- B. To not be required to have a responsible party (third party guarantee of payment) as a condition of admission (or expedited admission), or continued stay in the facility.

- C. If you are eligible for Medicaid, to not be charged, or asked to give any gift, money, donation, or other consideration in addition to Medicaid as a precondition of being admitted (or being admitted more quickly) to the facility, or as a requirement for your continued stay in the facility.
- D. To apply for and, if eligible, to receive Medicaid without restriction. This includes not being required to fulfill a specified period of residency in the facility before applying for Medicaid. No contract or agreement may require a deposit or other prepayment from Medicaid benefits, nor may the contract or agreement authorize the facility to refuse to accept retroactive Medicaid recipients, nor may the contract or agreement authorize the facility to refuse to accept retroactive Medicaid benefits.
- E. To receive information about the facility's admissions policies, including any preference given. Nursing facilities must disclose to applicants information on their waiting list, including but not limited to:
 - 1. the number of persons on the waiting list;
 - 2. the applicant's status in relation to the admission preferences of the facility; and
 - 3. the dates when persons were placed on the waiting list.

15. PROTECTION OF RESIDENT'S FUNDS

If you choose to have the nursing facility manage your personal funds, the facility must:

- A. Keep funds over \$50 in an interest bearing account, separate from the facility's account.
- B. Keep funds under \$50 in a separate account or petty cash fund. The nursing facility must purchase a surety bond to secure the resident funds in its keeping.
- C. Establish and maintain a full, complete, and separate accounting of your funds.
- D. Not combine your funds with another resident's or with facility funds.
- E. Make your financial records available to you or to your legal representative when you ask to see them.
- F. If you are a Medicaid resident, the nursing facility must notify you when your balance comes within \$200 of the Medicaid eligibility resource limit and the effect this will have on your continued eligibility for Medicaid.
- G. If you die, the nursing facility must turn over your funds to your trustee.

16. RIGHTS OF INCOMPETENT RESIDENTS

To have your right exercised by the person appointed under state law to act on your behalf, if you have been determined to be legally incompetent. If you have not been adjudged incompetent under state laws by a court of competent jurisdiction, any legal surrogate designated in accordance with state law may exercise your rights to the extent provided by the state law.

State Long-Term Care Ombudsman

Department for the Aging
Long-Term Care Ombudsman
700 E. Franklin Street, 10th Floor
Richmond, VA 23219
Telephone Toll Free:
1-800-552-3402

State Agency for Developmentally Disabled or Mentally Ill

Department for the Rights of the Disabled
101 North 14th Street, 17th Floor
Richmond, VA 23219
Telephone Toll Free:
1-800-552-3962
Voice or TDD (Telecommunication Devices for the Deaf)

HCMF Corporation

Resident Helpline:
2965 Colonnade Drive, Suite 200
Roanoke, VA 24018
Telephone Toll Free:
1-800-768-4263

State Survey Agency

Office of Health Facilities Regulations
3600 Centre Bldg., Suite 216
3600 W. Broad Street
Richmond, VA 23230
Telephone 1-804-367-2100
Complaint Line 1-800-955-1819

State Medicaid Agency

Department of Medical Assistance Services
Division of Medical Services
600 East Broad Street, Suite 1300
Richmond, VA 23219
Telephone 1-804-225-4220

State Mental Health/Mental Retardation Agency

Department of Mental Health, Mental Retardation and Substance Abuse Services
P.O. Box 1797
Richmond, VA 23214
Telephone 1-804-786-3921

I acknowledge that I received a copy of these Resident Rights and had them explained to me to my satisfaction:

Date: 1/4/95 (on admittance to Home)

Resident: mentally unable to sign dementia (KO)

Responsible Party: [Signature]

Responsible Party: May P. Kates

x Edward Pennington 1-820-12

RESIDENT NAME: Lucille Overton

NOTICE OF DEEMED CONSENT TO HIV BLOOD TESTING

Section 32.1 - 45.1 of the Code of Virginia authorizes health care providers to test their patients for HIV antibodies when the health care provider is directly exposed to the body fluids of a patient in a manner which may transmit Human Immune Deficiency Virus (HIV). Center for Disease Control Guidelines indicate your care in the nursing home creates the risk of such exposure for the nursing home staff. Because of this risk, the nursing home is required to inform you that, in the event of such an exposure, you will be deemed to have consented to such testing, and to have consented to the release of the test results to the health care provider who was exposed. However, you would be informed before any of your blood would be tested, pursuant to this provision, for HIV antibodies, and the testing would be explained and you would be given the opportunity to ask any questions you might have.

YOU SHOULD NOT SIGN THE ACKNOWLEDGEMENT UNTIL YOU HAVE READ THIS NOTICE AND HAVE HAD IT EXPLAINED TO YOUR SATISFACTION.

I hereby acknowledge that I have read the above notice of deemed consent, and the provision of Section 32.1-45.1 have been fully explained to my satisfaction.

Yes ☒ No ☐

PHOTOGRAPHIC RELEASE

I hereby authorize the taking of photographs of the resident and the reproduction and use of such photographs with (or without) identification without reservation by:

- | | |
|-------------------------------------|---|
| A) Heritage Hall for publicity use. | C) Heritage Hall for production of a scrapbook of activities. |
| B) The press or other news media. | D) Medical Records. |

Yes ☒ No ☐

CONSENT FOR FLU VACCINE

I understand the risks and benefits of the flu vaccine. I request that the vaccine be administered to the above named resident if ordered by the attending physician.

Yes ☒ No ☐

mentally unable to sign: dementia (KW)
Resident

1/4/95
Date

Harold E. Cardia
Responsible Party

1-4-95
Date

May B. Kratz
~~Witness Facility Representative~~

1-4-95
Date

X Edward Pennington

X 1-5-95

Karla L. Overton

HERITAGE HALL

NOTICE OF THERAPEUTIC LEAVE POLICY

If you are a Medicaid eligible resident, Medicaid will pay for your bed for a maximum of eighteen (18) days within a twelve (12) month period for "therapeutic leave."

Therapeutic leave is defined as going home for an overnight visit or to visit relatives and friends or for admission to a rehabilitation facility up to seven (7) days for an evaluation. You can go for visits for any amount of time not to exceed the eighteen (18) days.

* As of 1/4/95 you have 18 days remaining.

Please note that you will continue to be responsible for your entire co-pay during the therapeutic leave days.

NOTICE OF BED HOLD POLICY

If you are hospitalized, Medicaid and Medicare currently do not pay to hold your bed.

You will be responsible for charges to "hold" your bed in the facility at the published rate per day if you choose to hold your bed.

If you choose not to hold your bed, the facility is required to re-admit you upon the first available bed in a semi-private room if you:

- (1) Require the services provided by Heritage Hall.
- (2) Are eligible for Medicaid nursing facility services.
- (3) Have paid all charges due to Heritage Hall for your previous nursing home stays.

I certify that I have received this form, and understand the contents of this form.

Resident: mentally unable to sign: dementia (KW) Date: 1/4/95

Responsible Party: Thomas E. Gordon Date: 01/04/95

Responsible Party: May P. Korte Date: 01/04/95

X Edward Pennington X 01/05/95

Plaintiff's ex 8

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P.O. BOX 35003
RICHMOND, VA 23235-0003

PAGE 1 OF 1

MAIL PAYMENT TO

OVERTON LUCILLE PENNINGT
4 LONE STAR TRLR PARK
BLACKSTONE VA 23824

P.O. BOX 35003
RICHMOND, VA 23235-0003

**TO RECEIVE PROPER CREDIT, PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.
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TRANSACTIONS MADE AFTER THE STATEMENT DATE WILL APPEAR ON THE NEXT STATEMENT

STATEMENT DATE	STATEMENT PERIOD	
02/12/95	01/31/95 TO 02/08/95	
ACCOUNT NUMBER	PATIENT NAME	
510012305	OVERTON LUCILLE PENNINGT	

ESTIMATED INSURANCE AMOUNT IS BASED ON OUR BEST INFORMATION.

ACCOUNT BALANCE LAST STATEMENT	NEW CHARGES/ CREDITS	NEW PAYMENTS/ ADJUSTMENTS	ACCOUNT ADJUSTMENTS	CURRENT ACCOUNT BALANCE	ESTIMATED INSURANCE AMOUNT	AMOUNT NOW DUE
0.00	28017.32	0.00	0.00	28,017.32	28,017.32	\$0.00

DATE	DESCRIPTION	QTY	AMOUNT
02/08/95	INPATIENT SERVICES		28,017.32
02/12/95	MEDICARE1 BILLED		
02/12/95	MEDICAID3 BILLED		

DATE	DESCRIPTION	QTY	AMOUNT
	ACCOUNT BALANCE		28,017.32
	ESTIMATED INSURANCE		28,017.32

-823-

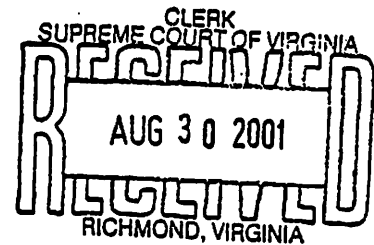
1 MTRGTNTA TOI I FREE 1-800-468-6620

COMMONWEALTH OF VIRGINIA
IN THE CIRCUIT COURT OF THE COUNTY OF NOTTOWAY
Case No. CL-031

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

vs.

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



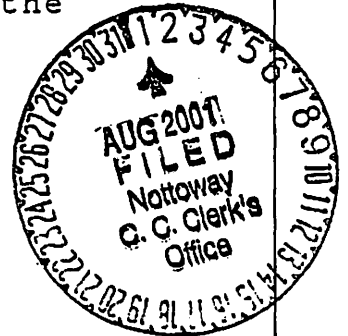
VOLUME II

ORIGINAL

May 21st, 2001

Nottoway, Virginia

Complete transcript of testimony and other
incidents in the above, when heard before the
Honorable James Luke, Judge, and a jury.



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1 THE COURT: Good morning. I trust
2 everyone had a nice weekend. Ready to go to
3 work?

4 MR. STEPHENSON: I seem to have had a
5 respiratory disorder and I'm not going to be
6 in good voice this morning.

7 THE COURT: Well, I'm sorry, I know it
8 makes you uncomfortable, but I think we can
9 put up with it. Are we ready to bring the
10 jury?

11 MR. STEPHENSON: I do have a preliminary
12 matter, if I may. I wanted to note an
13 objection to part of the counterdesignation of
14 the deposition of Josephine Fowler and I would
15 respectfully submit that Dr. Fowler testified
16 that she didn't remember, beyond the notice,
17 of any examination done to the patient,
18 Lucille Overton and then she goes on and talks
19 about some things that she generally does.
20 And I would object to reading that in the
21 designations.

22 MR. NEWSOME: I believe it's fairly clear
23 that the General Assembly has ruled, that
24 there's a law that says you can testify
25 regarding habit and routine, and she testifies

1 at length that here's a routine that I follow
2 for every patient in this situation, and she's
3 clearly entitled to do that.

4 There's a case that came out in '99 and
5 the General Assembly took care of it in the
6 year 2000 that now I actually have a copy,
7 it's 8.01-397.1. It's pretty clear that a
8 witness can testify as to his habit or routine
9 and that's just what the law is in Virginia.
10 To say that you have to remember something
11 that occurred six years ago, which is what had
12 happened, doesn't make any sense and that's
13 why the General Assembly enacted the law that
14 it did because folks do things, habit, routine
15 and it doesn't have to be corroborated or
16 anything. Is this your habit or routine and
17 there it is. It's that simple. That's what
18 the law provides now. So to say that
19 Dr. Fowler cannot testify as to her general
20 habit or routine under certain circumstances
21 is just incorrect. It's contrary to the law.

22 THE COURT: Is this in a deposition that
23 she did this?

24 MR. STEPHENSON: In a deposition questions
25 that were asked and in response, of course she

1 was prepared for her deposition that way and
2 in all instances she said she didn't know
3 anything beyond her notes, she didn't have any
4 other notes and so what's in the medical
5 record to say that's all that she could vouch
6 for. And her deposition was taken in 1998 and
7 so it wasn't six years.

8 THE COURT: Let me see that. Are you
9 familiar with the statute, Mr. Stephenson?

10 MR. STEPHENSON: I didn't know that that
11 precluded the general comments. As I read the
12 statute it says that the routine can be used
13 to corroborate that they were, on a particular
14 occasion, was in conformity with the habit or
15 routine. She testifies that on occasion she
16 didn't have any knowledge of what she did at
17 all and then it goes on to say that well, I
18 don't know the specific patient. I don't
19 remember if I talked to this patient, but I'm
20 sure with all patients I say what's bothering
21 you. If they don't answer me, I talk to them.
22 I try to gather how they feel by the way that
23 I'm examining them.

24 And then the other part, did you inquire
25 as to whether or not there were any symptoms

1 that would cause you to look at some area of
2 the body for injury. I do a cursory exam and
3 look at the whole body, and then she goes on
4 to say how she does that.

5 MR. NEWSOME: And testifies to what her
6 routine is.

7 THE COURT: That's what I understand this
8 to be saying. 8.01-397.1, and it starts out
9 with capital A, it says admissibility.

10 "Evidence of the habit of a person or the
11 routine practice of an organization whether
12 corroborated or not and regardless of the
13 presence of eyewitnesses is relevant to prove
14 that the conduct of the person or organization
15 on a particular occasion was in conformity
16 with the habit or routine practice."

17 I understand that she says she doesn't
18 recall this specific patient nor does she
19 recall what she did, but her routine is and I
20 think it's admissible. What the jury thinks
21 about it is another question.

22 MR. STEPHENSON: She had made some note in
23 the report and then doesn't remember having
24 done it, I think it might be appropriate to
25 read in the routine. When she has no

1 recollection or no note in the record of
2 having done something, I don't know that her
3 routine can proffer up.

4 THE COURT: I overrule your objection and
5 we'll allow it to come in.

6 MR. STEPHENSON: I wanted to also proffer
7 the letter of counsel that stated that all
8 counsel stipulate to the authenticity of all
9 medical records that obviate the need to bring
10 in the custodian of records to trial. There
11 have been a lot of objections to medical
12 records and that --

13 MR. NEWSOME: We weren't arguing for Your
14 Honor, we said no one's saying they aren't
15 what they are, it's an issue of admissibility.
16 I don't think a letter between counsel
17 comes -- are you trying to make it an exhibit?

18 MR. STEPHENSON: I wanted to proffer this
19 as part of the record.

20 MR. NEWSOME: This document does not
21 become part of the record. It's no different
22 than what's already been said time and time
23 again.

24 THE COURT: There have been no objections
25 to the records as to the authenticity, but

1 only as to whether they were probative in this
2 case; is that correct?

3 MR. STEPHENSON: Well, I thought sometimes
4 it went beyond that and I just wanted to make
5 sure the record is clear on that.

6 THE COURT: You can state for the record
7 that there was an agreement between counsel
8 that there would not be any quibbling over
9 authenticity of these records.

10 MR. NEWSOME: Mr. Stephenson, I actually
11 have, I don't know if you have, I've got
12 everything in mine if you want to read from
13 these. They're both marked the same way if
14 you want to read from one of them.

15 MR. STEPHENSON: I think I have mine
16 marked, also.

17 THE COURT: You-all are going to read
18 Dr. Fowler's.

19 MR. NEWSOME: I'm not going to read, Your
20 Honor.

21 THE COURT: I thought somebody was going
22 to help him.

23 MR. NEWSOME: I'll read if you want me to.
24 Your Honor, I will read if you want me to. We
25 don't need to go through bringing --

1 THE COURT: There are two people here,
2 Mr. Stephenson is asking questions and
3 Dr. Fowler is answering them and somehow I
4 think it's clearer to a jury if they realize
5 who is doing what.

6 MR. STEPHENSON: I'll accept
7 Mr. Newsome's, he has a marked one.

8 THE COURT: Can we bring the jury?

9 MR. STEPHENSON: Yes, sir.

10 THE COURT: Bring the jury in. Good
11 morning, jurors. I appreciate you being here
12 and ready to go to work on time. We hope we
13 can get right along with this this morning.
14 Mr. Stephenson, you're at bat, sir.

15 MR. STEPHENSON: If the Court, please, I
16 now propose to read in excerpts from the
17 deposition testimony of Dr. Josephine Fowler
18 that was taken on January 19th, 1998, and as I
19 apologized earlier to the Court for my
20 respiratory disorder, I ask the jury to
21 indulge me with something that's affected me
22 over the weekend and my voice is not normal
23 today. So I appreciate your indulgence.

24 THE COURT: Dr. Fowler is not present in
25 the courtroom, as Mr. Stephenson told you he

1 took her deposition, he took her answers to
2 his questions in 1998. They were recorded and
3 what he proposes to do and is going to do is
4 to read that deposition. He's going to read
5 his questions, Mr. Newsome has agreed to play
6 the part of Dr. Fowler. So what you're going
7 to here is Mr. Stephenson's questions of
8 Dr. Fowler and Mr. Newsome reading her
9 answers. You can sit right there if you want.

10
11 (Deposition read into evidence)

12
13 MR. STEPHENSON: The doctor's progress
14 notes I wanted to re-proffer the exhibit that
15 was identified by Fowler.

16 MR. NEWSOME: There's no mention of any.

17 THE COURT: I'm not sure that I'm with
18 you.

19 MR. STEPHENSON: I'll just withhold that
20 then.

21 THE COURT: All right. That's all of her
22 deposition?

23 MR. STEPHENSON: Yes.

24 THE COURT: Who is your next witness?

25 MR. STEPHENSON: I did want to read in

1 some admissions of Heritage Hall, Your Honor,
2 but I can take the next witness and then do
3 that.

4 THE COURT: However you wish to proceed,
5 sir.

6 MR. STEPHENSON: If the Court, please, I
7 would propose to read into the record
8 admissions responded to by Heritage Hall.

9 MS. DULEY: Can I see that, please?

10 MR. NEWSOME: Those aren't admissible, you
11 can't use admissions from cases pending.

12 MS. DULEY: May we approach, Your Honor?

13 THE COURT: Yes, you may. Do we need to
14 ask the jury to go out?

15 MS. DULEY: These are requests for
16 admissions that were responded to in the
17 previous lawsuit and there has been no order
18 entered in this case that that incorporates
19 the discovery from the last case.

20 MR. STEPHENSON: Counsel, again,
21 stipulated to the discovery in the prior case.

22 MR. NEWSOME: I certainly don't recall.
23 This is not my fight.

24 MS. DULEY: I have never stipulated that
25 this discovery from the last case was

1 incorporated into this case.

2 MR. STEPHENSON: That's what we've been
3 using.

4 THE COURT: How do you think that
5 stipulation was made, Mr. Stephenson?

6 MR. STEPHENSON: By an agreement between
7 counsel.

8 THE COURT: May I?

9 MS. DULEY: Sure. Quite frankly, I've
10 never seen this because this was before I was
11 involved in the case.

12 MR. STEPHENSON: It has the check marks
13 besides the ones that I'm going to proffer.
14 If I may add, counsel have regularly been
15 using all the discovery that was had on other
16 occasions including bringing forth before the
17 Court in motions excerpts from depositions of
18 expert witnesses from that period.

19 MS. DULEY: That's different.

20 MR. STEPHENSON: It's discovery.

21 THE COURT: This is the subject for a
22 motion for summary judgment before the Court,
23 I suppose, the business about the --

24 MR. STEPHENSON: Yes. These things are in
25 evidence about the falls and the treatment.

1 Certainly dealing with all these subject
2 matters.

3 MS. DULEY: Your Honor, I've never seen it
4 so I haven't even read them. I don't know
5 what they say. Of course if they say things
6 that are already in evidence, I would object
7 on the basis that it's cumulative.

8 MR. NEWSOME: I definitely haven't seen
9 them this time around and I would hope none of
10 them in any way relate to my clients.

11 MR. STEPHENSON: We also have some
12 admissions from your firm as well.

13 MR. NEWSOME: You have no admissions from
14 us. I'm fairly confident I've never told you
15 that we would use discovery because I have
16 submitted -- I've propounded new discovery,
17 depositions, sworn testimony, I don't care if
18 it's from 30 years ago, that's a different
19 ball game.

20 Certainly by the rules admissions in a
21 previous case you can't use them in a pending
22 case. When Dr. Martin, I sent you a letter
23 saying is he going to say anything other than
24 what's in his deposition and if he was, I was
25 going to take his deposition. I generally do

1 not and I don't think I've ever done it,
2 stipulate to bringing things forth because I
3 always send out new discovery. If I did in
4 this case, please show me.

5 MR. STEPHENSON: It's just been
6 continually done and we discussed not having
7 to re-propound discovery.

8 MR. NEWSOME: But I did that. We sent out
9 all new discovery in this case, so did
10 Heritage Hall.

11 MR. STEPHENSON: We've been utilizing
12 discovery that was in the prior case.

13 MR. NEWSOME: I have utilized nothing
14 other than discovery depositions which is what
15 you do.

16 MS. DULEY: Because it's sworn testimony.
17 That's very different from the pleading.

18 MR. NEWSOME: And Rule 4:8 speaks to using
19 a pending case and it does not go forward
20 because interrogatories are sworn testimony as
21 well. You can always use those against folks,
22 but actually admissions are a little different
23 animal. Again, maybe he's saying he's going
24 to try to read something against my client. I
25 tend to doubt if we permitted anything that

1 would help his case.

2 MR. STEPHENSON: Generally you didn't
3 admit too much.

4 THE COURT: On a cursory examination of
5 this there are things that I think are not in
6 evidence at this point have to do with 42 USC
7 and this motion for summary judgment with
8 regard to that.

9 MR. NEWSOME: Pending. And I don't think
10 you recall seeing this appended to his motion
11 in opposition. Do you have an agreement
12 somewhere?

13 MR. STEPHENSON: No, not in writing,
14 just --

15 MR. NEWSOME: Then I certainly won't agree
16 to that.

17 MS. DULEY: I haven't ordered that either.

18 MR. NEWSOME: Certainly not consistent
19 with the way that we proceeded in propounding
20 additional discovery.

21 MR. STEPHENSON: Now we back away from
22 the --

23 MR. NEWSOME: I don't think we need to get
24 into character assassinations here.

25 MR. STEPHENSON: To the extent they are

1 against interests, I would submit that they
2 are admissions against party's interests. I
3 think there are just two copies.

4 THE COURT: Do you have another witness?

5 MR. STEPHENSON: Yes, Dr. Rosenbaum.

6 THE COURT: Do you agree or not that the
7 rule would preclude these unless you have an
8 agreement with counsel?

9 MR. STEPHENSON: I'm really not sure of
10 that answer, Your Honor, in all candor.

11 THE COURT: Do you have the rules?

12 MR. NEWSOME: Yes, sir.

13 MR. STEPHENSON: I don't want to contend
14 that way or not.

15 MR. NEWSOME: It's 4:11 and not 8. It's
16 right in the first part.

17 THE COURT: What I would like to do in the
18 interest of time is to ask you to proceed to
19 Dr. Rosenbaum and let me take a look at this,
20 okay?

21 MS. DULEY: May I look at a copy of those
22 in the meantime, please?

23 MR. STEPHENSON: Sure.

24 THE COURT: You wish to call
25 Dr. Rosenbaum?

1 MR. STEPHENSON: Yes, I do, if I may, Your
2 Honor.

3
4 CHARLES ROSENBAUM, M.D.
5 was duly sworn and testified as follows:
6

7 DIRECT EXAMINATION

8 BY MR. STEPHENSON:

9 Q Dr. Rosenbaum, would you state your full
10 name and address, please?

11 A Charles Rosenbaum, 1413 Rockyville Road,
12 Blackstone.

13 Q Dr. Rosenbaum, where are you employed?

14 A Blackstone Family Practice Center.

15 Q And what is Blackstone Family Practice
16 Center?

17 A We are a medical practice in Blackstone
18 that serves as a teaching program for residents
19 that are physicians training in family practice.
20 We take medical doctors like Dr. Fowler who had
21 graduated from medical school and given three years
22 of education.

23 Q And you're involved with training of
24 interns and residents who have temporary licenses?

25 A Yes, sir.

1 Q How long have you done that?

2 A Since 1990.

3 Q Has there been a different status from
4 1990 up to the present date of Blackstone Family
5 Practice?

6 MS. PHARR: Objection, what's the
7 relevance of that question? And we're not
8 sure what it means, Your Honor, what is the
9 status of Blackstone Family Practice.

10 THE COURT: I'll ask Mr. Stephenson to see
11 if he can phrase it a little more clearly.

12 BY MR. STEPHENSON:

13 Q In 1995 what was your affiliation with the
14 Medical College of Virginia?

15 A In 1995 when Mrs. Overton was in Heritage
16 Hall, we were a residency program that was
17 affiliated with the medical college.

18 Q Did the affiliation change in any way from
19 January of '95 forward?

20 MS. PHARR: Objection, Your Honor. I
21 don't see what the relevance is as to what the
22 status was after Mrs. Overton was no longer at
23 Heritage Hall.

24 THE COURT: I would agree.

25 MR. STEPHENSON: I'll withdraw that

1 question.

2 BY MR. STEPHENSON:

3 Q In 1995 at the time that Mrs. Overton was
4 a resident of Heritage Hall, would you describe the
5 relationship with the Medical College of Virginia
6 and Blackstone Family Practice?

7 A I think what you have to say is that the
8 medical college has a department of family practice
9 that provides us with the authority under which we
10 run our residency. A residency program like ours
11 generally has an affiliation with a medical college
12 or some sort of educational body through which we
13 receive our, wouldn't say we receive our
14 accreditation, but under which we have the
15 authority to run the residency program.

16 Q In that connection did you hire the
17 residents directly?

18 A Me?

19 Q At Blackstone Family Practice?

20 A What we did is we paid the residents that
21 were like Dr. Fowler, working with us, with money
22 that's appropriated by the General Assembly every
23 year in Virginia and sent out to the three medical
24 schools at Norfolk and Richmond and
25 Charlottesville, and they in turn send the money

1 through to the residencies and then we pay the
2 residents with those monies.

3 Q And they're not monies that come out of
4 the treasury of Blackstone Family Practice Center,
5 they're monies that you receive as appropriated
6 funds to pay them?

7 A The money would go through the department
8 of family practice and go to Blackstone and that's
9 the one that we would use.

10 Q In relation to your utilizing the
11 residents, did you receive any fees for medical
12 services that were based on their treating
13 patients?

14 A Do you mean did I receive fees?

15 Q Did Blackstone Family Practice receive
16 fees from the services of the residents in treating
17 patients?

18 MS. PHARR: I'm going to object. What is
19 the relevance of all this? We're here to
20 determine whether the care that was given to
21 Mrs. Overton is reasonable. I don't see how
22 questions of fees goes to the relevance of
23 that issue.

24 MR. STEPHENSON: If the Court, please,
25 it's relevant to the issues in this case as to

1 whether or not these residents were out there
2 treating patients independently and were not
3 receiving any funds for those, but funds were
4 being received by Blackstone Family Practice
5 from utilizing the services of the residents
6 that they farmed out to treat patients without
7 any supervision from time to time.

8 MS. PHARR: If he wants to ask
9 Dr. Rosenbaum about the supervision, we
10 wouldn't have any objection to that, but the
11 question as to how many the residents were
12 paid doesn't go to the relevant issue.

13 MR. STEPHENSON: I submit that it involves
14 not only the issues of the care and the
15 supervision.

16 THE COURT: I don't think that we need to
17 go any farther with that. You've established
18 how Dr. Fowler was compensated for this and I
19 don't think anyone would ever approach
20 thinking that Blackstone Family Practice
21 operates without charging fees. I'll ask you
22 not to go into that. Please go on.

23 BY MR. STEPHENSON:

24 Q In relation to the operation of Blackstone
25 Family Practice as it was operated in 1995 at the

1 time that Mrs. Overton was a resident of Heritage
2 Hall, did Blackstone Family Practice also serve
3 patients in addition to the relationship with the
4 Medical College of Virginia?

5 A I don't understand.

6 Q Did you carry on a practice of medicine?

7 A In 1995 we were practicing medicine in
8 Blackstone, yes, sir.

9 Q And you saw patients from whatever source,
10 patients came in to see you?

11 THE COURT: You had patients other than
12 those that came through this residency
13 program.

14 A Sir, I'm not sure you can make a real
15 distinction. Any patient that would have come to
16 our office would have been a patient of our
17 practice no matter which physician saw them.

18 BY MR. STEPHENSON:

19 Q And they came from all manner of the
20 community?

21 A Yes, sir.

22 Q What did you treat patients for?

23 A Family practice is the treatment of
24 patients for undifferentiated problems, that is
25 complaints that the patient might bring in could be

1 any variety in the field of medicine.

2 Q Did you perform surgery?

3 A We do minor surgery in our office, taking
4 skin bumps and things like that off, yes, sir.

5 Q And in relation to an orthopedic type
6 injury, you wouldn't perform that kind of surgery?

7 A Not strictly, no. Not in the sense of
8 operating surgery, no.

9 Q But you would diagnose a fracture if a
10 fracture occurred and then send them on for
11 treatment by a specialist?

12 A If that was required, yes, sir.

13 Q Did you have rotation of residents in
14 relation to the residency program at Blackstone
15 Family Practice?

16 A I think it was pretty much the way that
17 Dr. Fowler described it, the residents in training
18 would come and we would have a schedule where they
19 would sometimes be working in our office and
20 sometimes they would be working in other places as
21 part of their training.

22 Q What was your responsibility in
23 supervising the residents?

24 A In running the residency program what we
25 have to do to be a certified or accredited as a

1 residency program, we have to provide the residents
2 with the -- with what I would call graduated
3 responsibility. This is something that's very
4 important to the training of residents and it's in
5 our requirements that we do that at some levels of
6 training the residents, have direct oversight by an
7 attending physician like myself. And then as they
8 progress through the program what we do is we
9 provide them with opportunities for learning that
10 don't involve that kind of direct oversight.

11 Q How long did you have a resident, in
12 association with Blackstone Family Practice, that
13 you allow them to proceed without any direct
14 supervision?

15 A I think that there's an important point
16 that happens at the first year of residency. In
17 Dr. Fowler's case that would have been the summer
18 of 1994. At that time in order for a resident to
19 be allowed to progress on to be a second year
20 resident like Dr. Fowler was in 1995, the faculty
21 has to look at the evaluations that have come to us
22 from the performance of the first year residency
23 and from our direct observation of that physician
24 during that first year and make a decision about
25 that resident. They can't be a second year

1 resident in the program unless the faculty has
2 determined that that person can see patients
3 without direct oversight by an attending physician.
4 That's one of our requirements.

5 Q Dr. Rosenbaum, let me see if I understand
6 your characterization of the first and second year
7 residency program. When Dr. Fowler was at
8 Blackstone Family Practice Center in January of
9 1995, what was her status in terms of being a first
10 year or second year resident?

11 A She was a second year resident.

12 Q How do you know that?

13 A Beg your pardon?

14 Q How do you know that?

15 A It's a fact, sir.

16 Q I want to ask you do you rule out an
17 internship as you're describing this? Are there
18 three years involved? Is there an internship and
19 then the first year of residency and second year
20 residents?

21 A The word intern has fallen out of favor
22 over the last 15 or 20 years and I didn't mean to
23 confuse you, but generally speaking, now what used
24 to be called an internship pretty much universally
25 I was talking about that before as a first year

1 residency. We really see our program as a three
2 year program in which the residents progress across
3 that graduated responsibility that I was talking
4 about.

5 Q At the time that Dr. Fowler was with you
6 in January of 1995, had she not just become a
7 resident in July of 1994?

8 A She had become a second year resident in
9 July of 1994, yes, sir.

10 Q Was there a third year residency?

11 A Yes, sir.

12 Q And she would have been granted a
13 temporary license in July of 1996?

14 A In July of 1996 that was when Dr. Fowler
15 graduated from our program.

16 Q What does that mean when she graduated
17 from your program?

18 A At that time she would have completed all
19 three years of the residency and in the particular
20 case of Dr. Fowler she was an excellent resident
21 and she had at that point completed all the
22 requirements of the American Board of Family
23 Practice to take the national board certification
24 in family practice, and that's what she
25 subsequently did.

1 Q When did Dr. Fowler come to Blackstone
2 Family Practice?

3 A She began as a first year resident in the
4 summer of 1993.

5 Q In 1993 she came with you there?

6 A She began as a first year resident in July
7 of 1993, yes, sir.

8 Q And what affiliation did she have with
9 Blackstone Family Practice Center at that time?
10 What did she do?

11 A She was one of our residents.

12 Q Was she in-house physically there?

13 A During that first year of residency?

14 Q Yes.

15 A During the first year residency a huge
16 majority of the time the residents are working, at
17 that time were working at the medical college in
18 Richmond taking rotations in different things.
19 They would work in our office in Blackstone once or
20 twice a month and they would have brief rotations
21 where they might come for a couple of weeks, but
22 the huge majority of it would be at the medical
23 college.

24 Q In fact did Dr. Fowler ever come to
25 Blackstone Family Practice Center before January of

1 1995?

2 A Yes, sir.

3 Q Did she come before her first rotations
4 with you in January of 1995?

5 A No, sir, I think I said she had been
6 coming to our office since the summer of 1993.

7 Q How long did she stay there?

8 A Until 1996.

9 Q Continuously?

10 A No, sir, I think as we said that she had
11 different rotations that would bring her to the
12 office or take her out to other places for parts of
13 her training.

14 Q What did she do in terms of her service in
15 January of 1995?

16 A You mean how did she perform?

17 Q No, what was her assignment?

18 A In the first half of January, 1995 she did
19 a two week rotation in orthopedic surgery at South
20 Hill, Virginia with Dr. Van down there, and in the
21 second two weeks of January, 1995 she was primarily
22 assigned to the nursing home.

23 Q And that was Heritage Hall Nursing Home?

24 A Yes, sir.

25 Q Dr. Rosenbaum, did you have some position

1 yourself with the Heritage Hall Nursing Home?

2 A I don't understand.

3 Q Did you have a position with the Heritage
4 Hall Nursing Home individually?

5 A I think you're going to ask me about that
6 contract.

7 Q Well, did you have a contract with the
8 Heritage Hall Nursing Home?

9 A The contract you have there is a contract
10 that existed between Blackstone Family Practice
11 Center and Heritage Hall.

12 MR. STEPHENSON: May I have that marked as
13 an exhibit?

14 THE CLERK: Exhibit 9. .

15 (Exhibit 9: Contract)

16 BY MR. STEPHENSON:

17 Q I show you what has been marked as Exhibit
18 No. 9 and ask you to identify that for me.

19 A Yes, sir. To my understanding all nursing
20 homes have to have someone --

21 Q There's no other question pending.

22 MS. PHARR: Your Honor, he's just
23 explaining what the question was. The
24 question was what is it and he was explaining
25 what it is. He was asked if he could identify

1 it.

2 THE COURT: Identify it as the contract.

3 What's the next question?

4 BY MR. STEPHENSON:

5 Q And that's the contract between Blackstone
6 Family Practice and Heritage Hall Nursing Home?

7 A It is.

8 Q What is involved in that contractual
9 relationship?

10 A What's involved is that the nursing home
11 needs to have an entity or a person that is called
12 the medical director, I think that's a requirement
13 of their operation, and this is an agreement
14 between Blackstone Family Practice and the nursing
15 home for that. Now that's not something that
16 involves the medical care of patients and certainly
17 doesn't involve the medical care of Mrs. Overton,
18 but is an administrative thing with the nursing
19 home.

20 Q Who was the medical director of Heritage
21 Hall at the time in question in 1995?

22 A I represent Blackstone Family Practice
23 Center in that administrative capacity.

24 Q Are you the medical director of Heritage
25 Hall Nursing Home?

1 A I represent my practice which is
2 contracted to the nursing home in that capacity.

3 Q And for that you're paid a stipend?

4 A Personally?

5 Q Well, is Blackstone Family Practice paid a
6 stipend?

7 MS. PHARR: Objection, Your Honor, what is
8 the relevance to whether or not Mrs. Overton's
9 care was reasonable as to --

10 THE COURT: Just like the earlier
11 question, everybody knows the answer. Please
12 move along.

13 BY MR. STEPHENSON:

14 Q Under this agreement with Heritage Hall
15 and Blackstone Family Practice, are you the
16 designated medical director?

17 MS. PHARR: Your Honor, I believe that the
18 agreement speaks for itself and it is signed
19 by Dr. Rosenbaum for Blackstone Family
20 Practice and it is a contract between
21 Blackstone Family Practice and the nursing
22 home.

23 THE COURT: I think what Dr. Rosenbaum is
24 trying to say is that individually he's not,
25 that Blackstone Family Practice is the

1 designated medical director and in their
2 behalf he signed that contract.

3 MR. STEPHENSON: Counsel has said that the
4 agreement speaks for itself and I will accept
5 inasmuch as the agreement says that the
6 medical director.

7 MS. PHARR: Objection, Your Honor, this
8 has not been moved into evidence.

9 THE COURT: It hasn't been accepted. I
10 don't know if there's an objection, you just
11 asked that it be marked.

12 MR. STEPHENSON: I proffer it into
13 evidence.

14 THE COURT: Is there an objection to it?

15 MS. PHARR: Yes, Your Honor, and we'd like
16 to approach. You can take a look at this, it
17 has absolutely nothing to do with the medical
18 care that was rendered to Mrs. Overton. It
19 has nothing to do with any patient care and
20 Dr. Rosenbaum's already testified that it
21 doesn't have anything to do with the treatment
22 rendered to Mrs. Overton and does not apply to
23 any particular patient care.

24 As you know, the issue in this case is
25 whether or not medical treatment provided to

1 Mrs. Overton was reasonable. This contract
2 does not speak to any of those issues.

3 MR. STEPHENSON: Dr. Rosenbaum hasn't
4 testified yet, but he has in deposition that
5 he has, as a result of being medical director,
6 listed as the primary attending physician on
7 numerous residents of Heritage Hall including
8 specifically these listed on the records as
9 the attending physician, first attending
10 physician of Ms. Overton.

11 MS. PHARR: And if asked those questions
12 he will testify that he was the attending
13 physician, but that contract does not pertain
14 to the attending physicians, this is a
15 contract between Blackstone Family Practice
16 and Heritage Hall. It has nothing to do with
17 the duties and responsibilities of the patient
18 care to Mrs. Overton.

19 MR. STEPHENSON: He's placed in the
20 position of medical director there certainly
21 is an affiliation, comes right on down to
22 what --

23 THE COURT: The question before the Court
24 and before the jury is whether the standard of
25 care was met. This doesn't deal with the

1 standard of care.

2 MR. STEPHENSON: Your Honor, there are
3 various issues in the pleading before this
4 court including a count involving the contract
5 for services and involving the overall
6 relationships and their commitment to
7 providing her the care that is contemplated.

8 MS. PHARR: There is no breach of contract
9 claim against Dr. Rosenbaum or the Blackstone
10 Family Practice and this is an agreement by
11 Blackstone Family Practice and Heritage Hall.
12 There is no breach of contract claim against
13 Dr. Rosenbaum. So even if this is a contract
14 entered into by Blackstone Family Practice,
15 there haven't been any allegations that there
16 was any breach of the contract between
17 Blackstone Family Practice and Heritage Hall.
18 One more reason why this is irrelevant to the
19 issue.

20 MR. STEPHENSON: It also has a provision
21 in here that says they are to provide the
22 temporary physician services in cases where
23 the admitting physician is not the attending
24 physician and shows that the patient has --

25 THE COURT: They're doing that.

1 MR. STEPHENSON: And to provide physician
2 services in cases of emergency in the event
3 the patient's attending physician can't be
4 reached.

5 THE COURT: What's that got to do with
6 this case?

7 MR. STEPHENSON: It just ties in that his
8 position of medical director has ordered
9 himself to present himself not only as an
10 attending physician to Mrs. Overton, but to
11 all the residents at Heritage Hall.

12 THE COURT: I don't think it comes in.
13 Not for this purpose. Sustain the objection.

14 MR. STEPHENSON: Note my exception.

15 THE COURT: Your exception is noted.

16 BY MR. STEPHENSON:

17 Q Dr. Rosenbaum, did you have a
18 patient/doctor relationship with Lucille Overton?

19 A No, sir.

20 Q Were you familiar with her admission to
21 Heritage Hall on or about January 4th, 1995?

22 A No, sir.

23 Q You never had any doctor/patient
24 relationship with Lucille Overton?

25 A The only time I ever saw Mrs. Overton was

1 after her x-ray at Blackstone Family Practice that
2 showed the broken hip.

3 (Exhibit 10: Progress notes)

4 BY MR. STEPHENSON:

5 Q Dr. Rosenbaum, I want to show you what has
6 been marked as Plaintiff's Exhibit No. 10.

7 MS. PHARR: Can I see that?

8 BY MR. STEPHENSON:

9 Q And ask if you can identify the exhibit
10 for me.

11 A Yes, sir, these are copies of the doctor's
12 progress notes from Lucille Overton from the
13 nursing home.

14 Q And they are nursing home chart records?

15 A They're doctor's progress notes, yes, sir.

16 Q And they're contained in the Heritage Hall
17 chart records of Lucille Overton?

18 A Yes, sir.

19 Q Do you maintain any such records at
20 Blackstone Family Practice Center?

21 A I think anybody who takes care of patients
22 maintains records, yes, sir.

23 Q Do you maintain these records also at your
24 office at Blackstone Family Practice?

25 A Those records are written in the nursing

1 home.

2 Q I note that on the --

3 MR. STEPHENSON: May I proffer this as an
4 exhibit, Your Honor?

5 MS. PHARR: Your Honor, again, we would
6 object to the extent that those records are
7 not Dr. Rosenbaum's except for the 1/31
8 notation. Those are doctor's progress notes
9 authored by a variety of other physicians and
10 they are inadmissible as hearsay.

11 MR. STEPHENSON: I may wish to ask a few
12 more foundation questions.

13 THE COURT: I understand you're saying
14 that the last entry is the only one by
15 Dr. Rosenbaum?

16 MS. PHARR: Yes, sir.

17 THE COURT: Well, I think the evidence to
18 this shows that Dr. Rosenbaum said he did not
19 see her except after the x-ray was made and he
20 made a notation in this record at that time.
21 That notation I think would be admissible,
22 otherwise it's not because it is hearsay as to
23 him. You may continue to question him on
24 that. If you wish to have that last page, the
25 part of it that's signed off on by

1 Dr. Rosenbaum admitted, it will be done.

2 MR. STEPHENSON: I'd like to ask a few
3 more questions.

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1 BY MR. STEPHENSON:

2 Q Dr. Rosenbaum, I note that on the exhibit
3 with respect to each page your name is apparently
4 on each page?

5 A Yes, sir.

6 Q And how did your name come to be on each
7 page of this document?

8 A I didn't write it there if that's what
9 you're asking. I'm listed on a lot of the pages of
10 the documents in the nursing home.

11 Q And why are you so listed?

12 A I think it's a matter of consistency.
13 What you have there is a place on the medical
14 records where in the nursing home they'll write the
15 physician's name and I think that helps in most
16 nursing homes to remember which doctor is seeing
17 which patient, but at Heritage Hall the patients
18 there, Mrs. Overton is the example, is cared for by
19 all of the physicians in our office. And we all
20 would care for the patient, the residents or the
21 attending physicians or all of us.

22 And so the particular doctor who first saw
23 the patient when they came into the nursing home
24 wouldn't be the one that you would list on there
25 because that physician may leave, not be there

1 any more after that point. So I think for
2 consistency sake my name representing Blackstone
3 Family Practice as the medical directorship of the
4 nursing home is listed on those documents. That
5 doesn't necessarily mean that I would be taking
6 care of Mrs. Overton or any other patient.

7 Q In fact aren't you listed on the records
8 of all of the residents at Heritage Hall Nursing
9 Home as an attending physician because you are the
10 medical director there?

11 A I think that the patient's rights allow a
12 patient to choose another physician, but in the
13 case of Mrs. Overton that's true.

14 Q And you were listed as her number one
15 attending physician?

16 A My name is listed there for the reasons of
17 consistency. If you had used the name of the
18 physician that first saw her in the nursing home,
19 that doctor would have graduated and left the
20 program at some point and would have been
21 meaningless to have his name on there. So you
22 would have my name on there even though I hadn't
23 seen the patient.

24 Q Doesn't the records also say that
25 Blackstone Family Practice is the second attending

1 physician?

2 A Yes, sir.

3 Q And does that include, then, all of your
4 doctors associated with Blackstone Family Practice?

5 A Yes, sir, I think we're all included.

6 Q Do you disclaim that anyone had the
7 authority to enter your name on the record?

8 A No, sir. I don't think it troubles me to
9 have my name listed that way.

10 Q In fact you confirmed --

11 A I don't recall telling someone to put my
12 name there.

13 Q But you certainly don't disavow that they
14 did so without authority?

15 A It doesn't bother me that my name is
16 listed like that, no, sir.

17 MR. STEPHENSON: Your Honor, how far do we
18 have to go to have the records --

19 THE COURT: You can't go far enough, I
20 don't think. I've already denied it except
21 for the last page.

22 MR. STEPHENSON: Note my exception.

23 THE COURT: Yes, sir.

24 MS. PHARR: Can we assume that that page
25 will be redacted?

1 THE COURT: We can do that.

2 BY MR. STEPHENSON:

3 Q Dr. Rosenbaum, are you today saying that
4 you were not Lucille Overton's attending physician?

5 MS. PHARR: Your Honor, I'm going to
6 object. We have gone over and over and over
7 the status of Dr. Rosenbaum and the attending
8 physician. I think he's asked and answered
9 this question.

10 THE COURT: The Court agrees.

11 BY MR. STEPHENSON:

12 Q Dr. Rosenbaum, do you know who was listed
13 as the attending physician of Mrs. Overton?

14 MS. PHARR: Your Honor, same objection.

15 THE COURT: I think it's clear,
16 Mr. Stephenson, that Dr. Rosenbaum has said a
17 couple of times that every physician connected
18 with Blackstone Family Practice worked in the
19 nursing home and attending these people, that
20 unless they had chosen a physician for
21 themselves.

22 BY MR. STEPHENSON:

23 Q Dr. Rosenbaum, when the services were
24 required by a physician treating any resident of
25 Heritage Hall, what was the practice in terms of

1 sending someone over to Blackstone Family Practice
2 to treat them?

3 A Well, I think it was pretty much the way
4 that Dr. Fowler described it. For most of the care
5 of the patients there they were cared for during
6 the weekday morning rounds. We would have
7 physician or physicians in the nursing home between
8 9:00 and 12:00 on Monday through Friday and
9 whatever patients the nurses would request they
10 examine they would do so.

11 Q And Dr. Fowler was one of the residents
12 that would have been sent over to see patients?

13 A Yes, sir.

14 Q And did she do that on -- be dispatched to
15 do so by Blackstone Family Practice that was called
16 to provide care?

17 A Yes, sir. Are you talking about as part
18 of her rotation there?

19 Q As part of what was provided by the
20 medical services of Blackstone Family Practice.

21 A If the patient needed to be seen, any one
22 of us could have gone there.

23 Q And when Dr. Fowler went over, she went
24 under the auspices of Blackstone Family Practice?

25 A We considered the residents in training to

1 be junior partners in our practice. They're
2 medical doctors and they can do anything that any
3 licensed medical doctor in that practice can do, so
4 all of us would be considered to be part of
5 Blackstone Family Practice Center in taking care of
6 those patients.

7 Q And so when she went over, she went over
8 as an agent of Blackstone Family Practice Center?

9 MS. PHARR: Objection, Your Honor, again,
10 we're going on the same road. We've gone over
11 these questions. He's asked and answered them
12 a number of times. Further, Your Honor, I
13 believe that the question of the agency
14 relationship is a question of law and not a
15 question that this witness can properly
16 answer.

17 THE COURT: I think it's perfectly clear
18 that she was assigned there by MCV, she was
19 authorized to go in the nursing home and see
20 patients as Dr. Rosenbaum has said that the
21 nurses indicated needed to be seen, and I'll
22 ask you to move on.

23 BY MR. STEPHENSON:

24 Q Dr. Rosenbaum, in relation to any
25 treatment rendered to Lucille Overton by

1 Dr. Fowler, did you ever review any treatment that
2 she rendered?

3 A Not to my recollection.

4 Q Do you know of any other doctor at
5 Blackstone Family Practice that did?

6 A Not to my knowledge.

7 Q Have you reviewed the doctor's progress
8 notes that were made by Dr. Fowler?

9 A Yes, sir.

10 Q Can I direct your attention then to the
11 items in the doctor's progress notes that are dated
12 January 20th and January 21st of 1995 and ask you
13 if you recognize that as items that were entered in
14 by Dr. Fowler?

15 A Yes, sir.

16 Q And what notes were entered by Dr. Fowler?

17 MS. PHARR: Objection, Your Honor, may we
18 approach?

19 THE COURT: Yes.

20 MS. PHARR: You've already ruled that the
21 notes made by Dr. Fowler are inadmissible
22 because they're hearsay. You've heard
23 testimony from Dr. Rosenbaum that he never
24 treated Lucille Overton. Mr. Stephenson is
25 asking him to comment on notes written by

1 another doctor for a patient he never saw and
2 notes he did not review at the time she was
3 treated. That's improper. He's trying to get
4 this testimony, hearsay testimony that you've
5 already ruled into evidence by having
6 Dr. Rosenbaum read it.

7 MR. STEPHENSON: Not only was this made by
8 the employee of Blackstone Family Practice in
9 her position as resident, we also just had
10 testimony from Dr. Fowler describing to these
11 notes that she made. We had testimony from
12 Dr. Fowler that the entries that she made on
13 the 20th and 21st, so I mean she's already
14 identified these same notes.

15 MS. PHARR: But they weren't admitted into
16 evidence.

17 MR. STEPHENSON: I put them in evidence
18 under her testimony.

19 MS. PHARR: He went to offer them and he
20 withdrew that.

21 MR. NEWSOME: Your Honor, may I just say
22 one thing? The records will be clear that he
23 never reviewed these notes.

24 THE COURT: He just said that.

25 MR. NEWSOME: Why is he asking this

1 witness questions about those notes?

2 THE COURT: What are you trying to do?

3 MR. STEPHENSON: Trying to show that they
4 did nothing for her in terms of the service.

5 THE COURT: He said that he never reviewed
6 those notes.

7 MR. STEPHENSON: My position is that he
8 should have.

9 THE COURT: Well, that's argument for
10 later on, but I don't think you can get this
11 in.

12 BY MR. STEPHENSON:

13 Q Did you ever consult with Dr. Fowler in
14 relation to her treatment with Mrs. Overton?

15 A Not to my knowledge, no, sir.

16 Q And I believe you testified you know of no
17 other doctor who consulted with her about treating
18 Lucille Overton?

19 A Correct.

20 Q So she treated Lucille Overton without any
21 supervision, then, on the part of you or any other
22 doctor at Blackstone Family Practice Center?

23 A I don't think that that's a fair thing to
24 say. She was treating with that doctor and had she
25 needed consultation from one of us she was always

1 able to get that 24 hours, 7 days a week.

2 Q But it was up to her to request that?

3 A Yes, sir, that's one of the requirements
4 of being able to be a second year resident was that
5 we as a faculty had met and felt that she was able
6 to do that.

7 MR. STEPHENSON: We had talked about
8 redacting something from Exhibit 10, but I --

9 THE COURT: Yes, sir, I think what was
10 agreed that you could get into evidence is
11 this part, and I'll ask that the clerk to put
12 a copy machine on it.

13 MR. STEPHENSON: I was going to ask him
14 something about the --

15 THE COURT: You can ask him something
16 about it, but before we let the jury see it.

17 BY MR. STEPHENSON:

18 Q Dr. Rosenbaum, would you tell the Court
19 and the jury, please, what entry is made on this
20 Exhibit No. 10 that's attributable to you?

21 A Yes, sir, this is a note here that I wrote
22 in our office, after I saw the x-ray, that showed
23 that Mrs. Overton had a broken hip.

24 Q And how did you come to make that entry?

25 A I saw the x-ray that showed she had a

1 broken hip and I wrote about it in the chart.

2 Q And did you examine her before the x-ray
3 was made?

4 A Not to my recollection, no, sir.

5 Q And somebody else ordered the x-rays?

6 A Yes.

7 Q Who ordered the x-rays?

8 A Dr. Damewood.

9 Q And did you have any communication with
10 Dr. Damewood as to why the x-ray was ordered?

11 A I don't recall specifically.

12 Q Then how did you come to read the x-ray?

13 A I think that there are probably a couple
14 of ways that that could have happened. If I was
15 the what we've called the consultant doctor, that
16 is the faculty physician that was available for
17 consultation by the residents on that day, I might
18 have been available. Like I said those doctors
19 have no other responsibilities other than no
20 schedule of patients other than being available for
21 consultations need. I might have been that person,
22 or they might have just come and found me between
23 patients or between other duties and asked me to
24 look at the x-ray. I really don't know.

25 Q And you read the x-ray and you found it

1 showing a fracture?

2 A Yes, sir.

3 Q And what did you do after that?

4 A I gave her some pain medicine and sent her
5 back to the nursing home.

6 Q Is that it, that's what you do?

7 A Well, there were arrangements being made
8 to send her on to the hospital at Johnston-Willis,
9 yes, sir.

10 Q And did you order her to be sent on to
11 Johnston-Willis Hospital?

12 A I don't really know how that happened,
13 whether Dr. Damewood made those arrangements or how
14 that happened.

15 Q If you were the consultation doctor on
16 duty that day, what did you do, or what would you
17 have done in relation to following up on what had
18 been involved in nursing that fracture?

19 MS. PHARR: Objection, calls for
20 speculation on what he would have done if
21 anything were different.

22 THE COURT: If you did anything, if you
23 recall.

24 A I don't recall anything about that day in
25 relation to Mrs. Overton.

1 Q Do you recall doing anything else in
2 reviewing Mrs. Overton's history upon your reading
3 an x-ray that showed she had a fractured hip?

4 A I don't recall anything regarding the care
5 given to Mrs. Overton.

6 Q Did you make any investigation as to
7 whether or not something had occurred and she had
8 been treated in some way by one of your residents?

9 A Not to my recollection.

10 Q Why would you not?

11 A I don't know that I understand the
12 question.

13 Q In relation to your residency program,
14 isn't part of your responsibility to train the
15 residents in treating patients?

16 A Yes, sir.

17 Q And I take it Dr. Damewood was also a
18 resident at the time?

19 A Yes, sir.

20 Q Would you not have had an interest in
21 following through with Dr. Damewood as part of the
22 residency program to determine how this occurred,
23 what he did and how he came to order an x-ray?

24 MS. PHARR: Objection, Your Honor. What
25 is the relevance of what Dr. Damewood did?

1 That has nothing to do with the issue in this
2 case which is whether Dr. Fowler rendered
3 appropriate medical care to Mrs. Overton.

4 MR. STEPHENSON: I submit determining what
5 he did in the overall investigation.

6 THE COURT: I think if you're asking
7 Dr. Rosenbaum what he did, that's okay, but if
8 you're asking him what or why Dr. Damewood did
9 something, then I sustain the objection.

10 MR. STEPHENSON: I'm trying to learn what
11 he did as a mentor of the residents.

12 MS. PHARR: Of Dr. Damewood, which is not
13 an issue in this case.

14 THE COURT: Be specific, sir.

15 BY MR. STEPHENSON:

16 Q With regard to the x-ray, this had been an
17 x-ray ordered by Dr. Damewood also a resident that
18 day?

19 A Yes, sir.

20 Q In the process of following up in your
21 residency training program, did you have some
22 practice that you followed in dealing with the
23 residents in terms of their training in addressing
24 what they did in their examination and following a
25 patient in finding a fracture?

1 A There's not direct oversight of every
2 patient that's seen by every resident.

3 Q And you didn't review any records and
4 didn't feel called upon to do so of Mrs. Overton in
5 relation to any other preliminary examination had
6 been done by any other resident?

7 A Not to my recollection, no.

8 Q Why would you not do that?

9 A I wasn't asked to by anyone at the nursing
10 home or by the director of the residency.

11 Q Well, in your training of residents do you
12 need to be asked to involve yourself in the process
13 of the training?

14 MS. PHARR: This is all argumentative, I'm
15 going to object. If he wants to ask
16 Dr. Rosenbaum about the evaluation process, I
17 think Dr. Rosenbaum can speak to that, but I
18 think the question is argumentative as it's
19 phrased.

20 THE COURT: Sustained.

21 BY MR. STEPHENSON:

22 Q Do you have any evaluation process
23 involving your residents?

24 A Yes, sir, we evaluate them all the time.
25 They're evaluated on all of the things that they do

1 in the practice of medicine both in our office and
2 also in the rotations that they take outside of our
3 office in the various medical specialities.

4 Q And one of the rotations out of your
5 office was done by Dr. Fowler in January of 1995?

6 A When she was in orthopedic surgery at
7 South Hill, yes, sir.

8 Q No, in January of 1995 when she was there
9 attending patients at Heritage Hall.

10 A Yes, sir, that's part of an office
11 rotation because they spend the mornings in the
12 nursing home, the afternoons in the office.

13 Q So with relation to her services to
14 residents at Heritage Hall, did you do anything
15 that involved the evaluation of how she was
16 treating patients?

17 A Yes, sir, what we've done is we had weekly
18 meetings with all the faculty and we would sit at
19 the table and talk about everything in the program
20 and all the residents there. In addition, of
21 course, I went to the nursing home, as Dr. Fowler
22 testified, once a week and directly observed her in
23 patient care there so I could see what kind of a
24 job she did.

25 Q Tell me what you did in January of 1995

1 when you went over once a week and observed her.

2 A I can't specifically recall that
3 particular time. You have to understand that
4 during the course of the residency she spent 10 to
5 12 weeks at the nursing home so I would have gone
6 there with her many, many times, but I wouldn't
7 have gone there with her during that rotation in
8 January.

9 Q Did you yourself examine any patient that
10 she had treated, examined at Heritage Hall?

11 A I'm sure that I did.

12 Q Did you ever do anything in relation to
13 treatment of Mrs. Overton?

14 A No.

15 Q But yet you did diagnose a fracture that
16 occurred to Mrs. Overton when she was a resident at
17 Heritage Hall?

18 MS. PHARR: Your Honor, we have gone over
19 and over this. He's already said he diagnosed
20 the fracture on the 31st after reviewing the
21 x-rays.

22 THE COURT: The Court agrees. How much
23 longer are you going to be with this witness,
24 sir?

25 MR. STEPHENSON: A little bit longer, Your

1 Honor.

2 BY MR. STEPHENSON:

3 Q Dr. Rosenbaum, were you the primary
4 attending physician for Blackstone Family Practice
5 at the Heritage Hall?

6 MS. PHARR: Your Honor, I apologize. We
7 have gone over and over and over this. I
8 believe you've already sustained one objection
9 to this line of questioning.

10 THE COURT: I think that Dr. Rosenbaum has
11 sufficiently answered that question
12 previously.

13 BY MR. STEPHENSON:

14 Q Did you provide any care plan for any of
15 the residents at Heritage Hall Nursing Home?

16 MS. PHARR: I'm going to have to object
17 again. What is the relevance as to whether he
18 provided a care plan for the residents at
19 Heritage Hall? The issue here is was the
20 treatment rendered to Mrs. Overton by
21 Dr. Fowler reasonable. That's the issue.

22 THE COURT: He's not the director of
23 Heritage Hall, therefore I sustain the
24 objection.

25 MR. STEPHENSON: I'm trying to ask him in

1 his role as medical director for Heritage Hall
2 which I believe --

3 MS. PHARR: What does that have to do with
4 her care? He's already testified that as
5 medical director he wasn't involved in any
6 patient care and didn't require him to be
7 involved in any direct patient care.

8 THE COURT: I think that's correct,
9 Mr. Stephenson.

10 BY MR. STEPHENSON:

11 Q Did you provide any care plan or supervise
12 or review any care plan related to Lucille Overton?

13 A Not to my knowledge, no, sir.

14 Q Did you provide any orders in relation to
15 Mrs. Overton when she was admitted to Heritage
16 Hall?

17 A No, sir.

18 Q Do you know if anyone did from Blackstone
19 Family Practice?

20 A Yes, sir, I'm sure she had orders.

21 Q And they would have been done by somebody
22 at Blackstone Family Practice Center?

23 A One of our physicians would have provided
24 her with orders.

25 Q And how did you determine who would do

1 that?

2 A That would be determined by whichever
3 physician examined her when she was first admitted
4 to the nursing home would have been writing her
5 admission orders.

6 Q Did you review Dr. Damewood's entries on
7 the medical records, Dr. Rosenbaum?

8 A Yes, sir, I have.

9 Q Are you in a position to decipher those
10 for us?

11 MS. PHARR: Objection, Your Honor. You've
12 already ruled those records are hearsay. He
13 did not write them.

14 THE COURT: I haven't heard Dr. Damewood
15 did anything except x-ray and read an x-ray
16 and report a broken hip.

17 MS. PHARR: May we approach?

18 THE COURT: Where are you headed?

19 MR. STEPHENSON: I had subpoenaed
20 Dr. Damewood to testify here and the Court
21 excused him on a motion to quash. It was with
22 some understanding that we would be allowed
23 some latitude in dealing with what
24 Dr. Damewood did in relation to his
25 examination of Mrs. Overton, and what I wanted

1 was for him to decipher his own records. And
2 the only representation I had we would need
3 him for that purpose and he was excused and I
4 handled this again in the deposition
5 Dr. Rosenbaum's reading of Dr. Damewood's
6 notes under the auspices of Blackstone Family
7 Practice Center and their formal records that
8 are official medical records. I'm trying to
9 proffer all the medical records.

10 THE COURT: I guess he performed an x-ray,
11 but he read the x-ray and then he reported.

12 MR. STEPHENSON: He didn't just do that
13 from the x-ray, he reported the x-ray to
14 Mrs. Overton and Dr. Rosenbaum confirmed his
15 diagnosis on January 31st.

16 THE COURT: What is this witness going to
17 be able to tell you?

18 MR. STEPHENSON: What the records say.

19 THE COURT: No, I don't know of any
20 understanding, the motion to quash was
21 granted, at least on my conversations that
22 Dr. Damewood's attorney and you, defense was
23 not involved in that and the Court concluded
24 that the x-rays and its results were already
25 in and was agreed that that could come in.

1 There's no objection to that.

2 MR. NEWSOME: The jury's already heard it.

3 THE COURT: You may not ask Dr. Rosenbaum
4 about what Dr. Damewood did.

5 BY MR. STEPHENSON:

6 Q Dr. Rosenbaum, are the residents required,
7 as part of your procedure with them, to maintain
8 medical records?

9 A Yes, sir, all doctors write medical
10 records, notes.

11 Q And do those records have some integrity?

12 MS. PHARR: Objection, Your Honor.

13 BY MR. STEPHENSON:

14 Q And legitimacy of records?

15 A I don't understand.

16 Q Do they become official records then of a
17 patient?

18 A They are what they are, yes, sir.

19 Q And are they officially chart records?

20 A Yes, sir.

21 Q Dr. Rosenbaum, what do you consider your
22 role to be as the number one attending physician if
23 you're so listed?

24 MS. PHARR: I'm going to have to object.

25 We've gone down this road at least three or

1 four times now. He's already testified about
2 his role as attending physician and what that
3 meant.

4 THE COURT: Sustain the objection.

5 MR. STEPHENSON: Your Honor, note my
6 exception.

7 THE COURT: Yes, sir, it's noted.

8 BY MR. STEPHENSON:

9 Q You never visited Lucille Overton at any
10 time as an attending physician other than reading
11 the x-ray on January 20th?

12 A Not to my knowledge.

13 Q And January 31st?

14 A Not to my knowledge.

15 Q When your name was on all the records of
16 Mrs. Overton as the listed attending physician, was
17 that so entered with your authority or without your
18 authority?

19 MS. PHARR: Objection, Your Honor, this
20 has been asked and answered at least three
21 times now.

22 THE COURT: Dr. Rosenbaum has explained
23 this previously. Sustain the objection.

24 BY MR. STEPHENSON:

25 Q To your knowledge, was there any

1 misrepresentation made in showing your name on any
2 place?

3 MS. PHARR: Objection, Your Honor, this is
4 the same question but a different way. He's
5 already asked about this attending physician.

6 THE COURT: Sustain the objection.

7 MR. STEPHENSON: Note my exception.

8 THE COURT: Exception is noted.

9 BY MR. STEPHENSON:

10 Q Did you ever examine Mrs. Overton's chart
11 while she was a patient at Heritage Hall?

12 A Not to my knowledge.

13 Q Do you know of anyone at Blackstone Family
14 Practice Center who was in a position of a
15 supervisor of the residents that examined her
16 chart?

17 A Not to my knowledge.

18 MR. STEPHENSON: We have attached an
19 exhibit and a page from that and I would like
20 this marked as a complete set of the doctor's
21 progress notes, or to offer the rest of the
22 exhibit and maybe reattach that page. And I
23 had proffered this as part of the medical
24 records of Heritage Hall and that was objected
25 to, but I think Dr. Rosenbaum at least

1 identified these as doctor's progress notes
2 that are maintained as part of the file
3 records of Heritage Hall.

4 So I would like to resubmit the exhibit as
5 part of the medical records of Heritage Hall
6 on that identification. I'm trying to get
7 that in. When I was, earlier on, presenting
8 that, it was objected to by Heritage Hall on
9 the basis of these being doctor's progress
10 notes, so I'm going to get through an
11 identification by Dr. Rosenbaum these are
12 medical records that constitute part of the
13 Heritage Hall files meaning that I would like
14 to resubmit it that those are part of the
15 medical records.

16 MS. DULEY: I think we have gone over this
17 on Friday that it was determined that they
18 were not business records of Heritage Hall.

19 MR. STEPHENSON: Dr. Rosenbaum has a
20 position at Heritage Hall under Blackstone
21 Family Practice and he says --

22 THE COURT: Wait a minute, it is not your
23 determination that controls. I don't have a
24 perfect recollection by any means, but I think
25 Friday as this was up here, the doctors did it

1 and they made our copies of it in their files,
2 but I don't see how you can classify this as a
3 record for Heritage Hall, that every one of
4 these is made by a different physician. He's
5 not an employee of Heritage Hall.

6 MR. STEPHENSON: They come in vicariously
7 with their being part of the business records.

8 THE COURT: I ruled that they did not and
9 I ruled on it Friday.

10 MR. STEPHENSON: That was prior to my
11 having further identification through
12 Dr. Rosenbaum who was in a dual position, as
13 he has described, in his position at Heritage
14 Hall as a medical director and knowing that
15 these are medical records that are kept of the
16 residents at Heritage Hall. So I have further
17 authentication plus we do have a stipulation
18 as to the authenticity.

19 THE COURT: You can only authenticate that
20 piece that I said can come in. That's the
21 only piece that he has anything to do with.

22 MR. STEPHENSON: I had also identified
23 through Dr. Fowler the records as well that
24 were attributed to her.

25 MS. DULEY: I didn't hear that in

1 Dr. Fowler's deposition.

2 THE COURT: I can't allow it.

3 MR. STEPHENSON: May I keep that as an
4 intact exhibit and then proffer it as a
5 refused one?

6 THE COURT: Yes, we've taken a page off.

7 MR. STEPHENSON: And I'd like to mark that
8 as Exhibit 11.

9 (Exhibit 11: Copy of license)

10 THE COURT: You have that page. The clerk
11 says you have it on your desk.

12 Mr. Stephenson, I'm going to give this jury a
13 break in five minutes. Can you finish in five
14 minutes?

15 MR. STEPHENSON: I'll try.

16 BY MR. STEPHENSON:

17 Q Dr. Rosenbaum, in relation to treatment
18 for a patient by a resident that's associated with
19 your resident training program, do you have any
20 policy regarding the permission by the patient to
21 be so treated by one of your residents?

22 MS. PHARR: Objection, Your Honor,
23 relevance.

24 THE COURT: Answer the question.

25 A I think that when you are a patient and

1 you present yourself for treatment that you are,
2 I'm not a lawyer, but I think you deem to give
3 consent to be treated by the person that's seeing
4 you.

5 Q Let me take that a step further. Suppose
6 you had a patient that does not have the capacity,
7 because of a dementia condition, and someone else
8 is acting for that patient, does that change your
9 answer in terms of an implied consent?

10 MS. PHARR: Objection, Your Honor.

11 THE COURT: I think I need to change my
12 other ruling. If you're going to go down that
13 line, I don't think that that's the proper
14 place to go. I reverse myself on the earlier
15 one and ask the jury to disregard the answer
16 Dr. Rosenbaum started to answer.

17 MR. STEPHENSON: Note my exception.

18 THE COURT: Yes, sir.

19 BY MR. STEPHENSON:

20 Q Did you serve on the quality assurance
21 committee at Heritage Hall?

22 MS. PHARR: Objection, Your Honor. Again,
23 relevance.

24 MR. STEPHENSON: Part of my position is
25 they violated the contract, Your Honor, with

1 Lucille Overton and did not have the quality
2 of care provide in the agreement between the
3 parties, and so I'm asking him about his role.

4 MS. PHARR: May we approach briefly?

5 THE COURT: No, we'll recess for 10
6 minutes.

7
8 (A recess was taken at 11:34 a.m.)

9
10 THE COURT: Bring the jury back in. All
11 right, Mr. Stephenson.

12 MR. STEPHENSON: I think we may have one
13 coming in without objection.

14 MS. PHARR: We have an objection to that.
15 We will object to it if it's asked to be
16 admitted into evidence.

17 MR. NEWSOME: He already testified.

18 MS. PHARR: He already testified that she
19 had a temporary license.

20 MR. NEWSOME: That's fine.

21 THE COURT: They don't object to it.

22 BY MR. STEPHENSON:

23 Q I'm showing you what's been marked as
24 Plaintiff's Exhibit 11 and ask you if you would
25 tell me whether or not these are copies of the

1 licenses that Josephine Fowler had when she was a
2 resident at Blackstone Family Practice?

3 A Yes, sir, that's what they are.

4 Q And that relate to the period of expiring
5 on 6/30/95 and also expiring on 6/30/96?

6 A That's what they say, yes, sir.

7 THE COURT: Admitted without objection.

8 BY MR. STEPHENSON:

9 Q Dr. Rosenbaum, did you have some
10 obligation to review incident reports at Heritage
11 Hall?

12 A I don't understand.

13 Q Did you have any obligation to review
14 incident reports at Heritage Hall in your
15 relationship to the medical directorship of
16 Blackstone Family Practice?

17 A If they were given to me, yes, sir, I'd be
18 happy to review them.

19 Q You didn't have some obligation to review
20 those on a monthly basis?

21 A Not to review all of them, no, sir.

22 Q Who would give them to you for review?

23 A I think that's just like any of the
24 patients that you would see in the nursing home, if
25 the nurses would say if I was there and a patient

1 had fallen and there was an incident report, then
2 the nurse might ask me to see the patient and that
3 sort of thing.

4 Q But you only did so if some nurse asked
5 you to do that?

6 A Yes, sir.

7 Q Did you ever review the incident reports
8 related to Lucille Overton?

9 A Not before the proceedings of being sued,
10 no, sir, not to my knowledge.

11 MR. STEPHENSON: I wanted to mark and
12 admit as exhibits some Virginia code sections
13 and also the U.S. code section, which we've
14 identified as exhibits.

15 MR. NEWSOME: What is he going to get from
16 the witness?

17 THE COURT: He didn't say anything from
18 the witness, he said he wanted them marked as
19 exhibits.

20 MR. NEWSOME: I don't think it's proper to
21 enter the statute.

22 MR. STEPHENSON: They're just statutes and
23 I wanted to proffer those and publish those to
24 the jury.

25 MS. PHARR: Your Honor, if he wants to

1 have them marked, but this witness isn't going
2 to testify.

3 THE COURT: He's not asking that the
4 witness say anything, forget the witness, he
5 just wants them as exhibits.

6 MS. PHARR: I think that's improper for
7 him to do it that way, in addition to the fact
8 that these exhibits are irrelevant to the
9 issues that are at hand in this case which
10 is --

11 THE COURT: I'll ask you to hold that and
12 there will be an opportunity when the jury is
13 not in the room and you can put it on the
14 record.

15 MR. STEPHENSON: I'll do that. You may
16 examine the witness.

17 MS. PHARR: We'll reserve questions for
18 our own case in chief.

19 THE COURT: You may return to your seat.

20 MR. STEPHENSON: I understand the license
21 is in so I don't need to --

22 THE COURT: The license is.

23 MR. STEPHENSON: So I will rest with my
24 evidence.

25 THE COURT: All right, sir. Plaintiff

1 rests.

2 MR. NEWSOME: We have a motion, Your
3 Honor.

4 THE COURT: Show the jury out, please.
5 Mr. Newsome.

6 MR. NEWSOME: Yes, Your Honor. The
7 plaintiff's obviously rested now. Your Honor,
8 in a medical malpractice case such as this in
9 order to establish the standard of care, a
10 breach of that standard of care and causation,
11 a plaintiff has to present expert testimony on
12 those issues. And Mr. Stephenson and
13 plaintiff, excuse me, has presented no expert
14 testimony whatsoever in this case and it is
15 impossible to establish standard of care,
16 breach and causation. In fact there's no
17 evidence of any criticism on the record in the
18 absence of that expert testimony and on the
19 basis of plaintiff's complete failure to issue
20 a breach of the standard of care and
21 causation, we move that their case be stricken
22 at this point.

23 THE COURT: As to Dr. Rosenbaum?

24 MR. NEWSOME: As to Dr. Rosenbaum and to
25 Blackstone Family Practice. I'm sorry, Your

1 Honor, Dr. Rosenbaum and Blackstone Family
2 Practice.

3 THE COURT: Mr. Stephenson.

4 MR. STEPHENSON: If the Court, please, and
5 I did -- I didn't proffer for the record, I
6 wanted to have the expert depositions in that
7 the Court refused to allow of Drs. Liedelmyer
8 and also Dr -- of Phyllis Corrigan. And so I
9 just wanted those in for the record and the
10 Court had rejected those.

11 On the ground of expert testimony, again,
12 I would renew my presentation of those
13 witnesses on the basis that I reread the
14 statute. There is a positive reference in the
15 statute that says an expert will be qualified
16 if he has practiced in the specialty or
17 related field within the past year. As I read
18 that, I don't see that it rules out experts in
19 the cases under that have talked about others
20 that would qualify coming in out of the
21 jurisdiction, and I submit that the witnesses
22 should have been qualified on the basis of
23 their credentials and that that was not a rule
24 out by the statute, but there are other cases
25 under the statute.

1 I want to pull those out of my paper here
2 that said the jury can consider evidence
3 itself and that they can be the judge of what
4 was a miss in the practice that's common
5 knowledge. And I submit that the record
6 shows -- and this is just addressing the
7 malpractice count in the motion for judgment.
8 The motion for judgment goes on with several
9 counts including a breach of contract and the
10 regular negligence and also statutory
11 violations.

12 I submit to the Court that under the case
13 authority, if I may have an opportunity to
14 pull that out, the case name extends for the
15 proposition that the jury can be the judge of
16 something that is within the common knowledge,
17 and I'll find the authority for that for the
18 Court, that without expert testimony they can
19 make that judgment. And within a matter of
20 common knowledge we have ample record here
21 that there was falls and a failure of
22 diagnosis and then we have an expert witness
23 that did testify and the expert testimony came
24 in regarding the time that the break occurred,
25 that it was an old break in relation to

1 identifying the age of the fracture. And I
2 submit that going through and showing in the
3 records the terse examination and no finding,
4 and then when Mr. Perdieu had to come in and
5 recognize the deterioration in Mrs. Overton
6 and then he had to demand that she get medical
7 attention, then immediately the x-ray and
8 examination disclosed the fractured hip which
9 was aged. And that was testified to amply by
10 the surgeon who performed the surgery at the
11 time that he did it, he saw that the fracture
12 had aged.

13 Other than in the malpractice thing throws
14 the burden on the defense to come forward and
15 show that it did not occur with their
16 negligence, their neglect, their breach of
17 contract and I think we have at least a
18 doctrine of res ipsa loquitur under those
19 conditions because it's clearly shown prima
20 facie that she sustained the fracture while
21 she was in the care of both the nursing home
22 and the doctors who sent the resident over,
23 the obligation to supervise and be a mentor.

24 And when Mr. Perdieu came in and demanded
25 that she have medical attention, it was easily

1 discovered, x-ray confirmed what should have
2 been done all the while. So what kind of
3 additional testimony do you have to confirm
4 that they just missed it, and it's up to the
5 jury to determine whether or not they should
6 have exercised the standard of care necessary
7 to detect that.

8 Beyond that we have the contract and the
9 agreement that was entered into. Of course
10 this is vicariously in terms of Mr. Newsome's
11 motion, the medical services, but we have no
12 record anywhere of any testimony of any
13 consent to be served by the resident. So when
14 they are allowed the resident to go over and
15 attend to Mrs. Overton, it was done so without
16 any agreement for her to be treated by
17 Dr. Fowler, and Mr. Perdieu testified that he
18 had never consented to her being treated by a
19 resident.

20 THE COURT: Let me ask you, who would
21 treat her if she had no physician?

22 MR. STEPHENSON: Her attending physician.

23 THE COURT: Who was that?

24 MR. STEPHENSON: Dr. Rosenbaum is listed
25 as her first attending physician and

1 Blackstone Family Practice is listed as the
2 second attending physician, and Blackstone
3 Family Practice sent up a resident. And the
4 resident on the authority that I was
5 presenting to the Court is required under
6 section 54.1-2961 of the Virginia code. "The
7 employment, the intern or resident shall be
8 responsible and accountable at all times to a
9 licensed member of the staff. With interns
10 and residents holding temporary license may be
11 employed in a legally established and licensed
12 hospital or other organization operated in an
13 approved graduate medical education program
14 when their practice is confined to persons who
15 are bona-fide patients within a hospital or
16 other organization receiving treatment, advice
17 in an outpatient department of the hospital."

18 I submit when they sent the resident over
19 to treat the patients at Heritage Hall, they
20 say they did so under a misrepresentation that
21 they were in compliance with that and that's
22 not part of the establishment. Mr. Perdieu
23 came in and saw that the health of his mother
24 had deteriorated under the contract that he
25 had entered into with Heritage Hall, he gave

1 no permission for her to be so treated and
2 when he insisted she have medical treatment,
3 she was found to have had the fractured hip,
4 which all the evidence shows that it occurred
5 sometime earlier.

6 So on that basis I think we have an issue
7 to present to the jury on the various counts
8 that I have including the contract, the
9 statutory violation and the negligence and we
10 have the malpractice one as the other count.
11 Anyone should have been able to be able to
12 detect and the nurse's records show that we
13 have in evidence that her health continued to
14 deteriorate. The weekly resident reports show
15 that in that period of time after the fall she
16 was not ambulating with assistance at all, so
17 we have evidence in the exhibits that were
18 identified that showed that she just lay there
19 and I think the evidence supports that she was
20 just allowed to deteriorate without the proper
21 attention to detect what should have been an
22 obvious fracture and was discovered when
23 Mr. Perdieu came in and found her in that
24 state.

25 You rely on the medical services that the

1 statute provides should be furnished the
2 residents in the nursing home and what is
3 contemplated that would be done and
4 supervision of residents that are training,
5 find that they get training, but do you take
6 the residents of the nursing home who are the
7 elderly and just make them experiment
8 subjects? Do you give them proper
9 supervision?

10 I'm appalled that Dr. Rosenbaum testifies
11 that he was never prompted to look at this
12 patient at all even after he read an x-ray on
13 January 31st that showed that she had a
14 fracture. Did he go back as part of his
15 responsibility of mentoring and supervised the
16 residents to determine what the history was of
17 the patient. He testifies right here today
18 that he did nothing. Although he permitted
19 his name to be used as medical director, as
20 the attending physician and the number one
21 attending physician, and yet he thought that
22 that presented no responsibility.

23 I submit that what he did is have a mill
24 there that permitted residents to be run
25 through and paid a stipend that he says is

1 even provided by the state legislature that
2 they don't even have to pay and receive
3 remuneration from the services of their
4 nursing hall. If they can do that, that's a
5 fine business operation.

6 I think that we have counts in the motion
7 for judgment that are extensive and permits us
8 to have a jury issue that involves the
9 Defendants Rosenbaum and Blackstone Family
10 Practice Center.

11 THE COURT: That's in response to
12 Mr. Newsome. I'm going to turn to Ms. Duley.

13 MS. DULEY: We have a motion as well, Your
14 Honor. Your Honor, I would join in
15 Mr. Newsome's argument regarding the fact that
16 there's been no expert regarding the deviation
17 from the standard of care. Raines versus
18 Lutz, 231 Virginia 110 says that expert
19 testimony is necessary to establish those
20 three elements; standard of care, deviation
21 from the standard of care and that that
22 deviation was the cause of the damages. Bryan
23 versus Burt, 254 Virginia 228 also says that
24 the plaintiff, in order to establish proximate
25 cause, must state what should have been done.

1 I have not heard anybody say what the nurses
2 at Heritage Hall should have done or what
3 would have prevented her fall.

4 In addition, there's been no causation
5 events. Even if we assume for the purposes of
6 argument that there is evidence of standard of
7 care and deviation, there is no evidence that
8 the deviation caused her fall. In addition,
9 there is no evidence that the fall caused the
10 break. Spruill versus Commonwealth, 221
11 Virginia 475 says that a medical opinion based
12 on a possibility is irrelevant, speculative
13 and therefore inadmissible. And I would
14 submit to the Court that Dr. Burkhart who is
15 the only person who came close to saying she
16 may have broken it when she fell says, page 8
17 of his deposition, line 16, "Did you form an
18 opinion as to how she sustained the fractured
19 left hip?"

20 Answer: "No. I mean I have no idea."

21 Then he goes on to say it is in the realm
22 of medical possibility that if she fell on the
23 20th or the 21st that she sustained a fracture
24 and that I saw her for 10 days later, that I
25 said it was about 10 to 14 days old. Could it

1 have been sustained at that fall? Answer is
2 yes, it could have. He says medical
3 possibility. Under Spruill versus
4 Commonwealth that testimony is inadmissible.

5 As to the contract, Your Honor, very
6 interestingly page 3 of the contract, section
7 8 number B says, "The home shall exercise due
8 caution and care toward the resident, however
9 the home does not assume liability for harm or
10 injuries suffered by the resident except where
11 caused by the negligence of the home, its
12 employees or agents." Once again, we're back
13 to the negligence theory. He has not proven
14 any negligence on behalf of Heritage Hall.
15 The fact that she fell is not proof of
16 negligence.

17 Your Honor, to hold the fact that she fell
18 is proof of negligence would be holding
19 Heritage Hall to a strict liability standard
20 and certainly there is no -- they have not
21 contracted for strict liability and there is
22 no allegation that they were responsible to --
23 held to a strict liability standard.

24 In addition, as with the negligence
25 theory, with the contract theory they still

1 have to show what we failed to do that caused
2 the fall or what we affirmatively did that
3 caused the fall and that requires an expert.
4 As to the statutory duty, Your Honor, I'm
5 not -- I will not take the Court's time and go
6 through every single one of them, but suffice
7 it to say that there is no evidence that we
8 breached any of these duties, or even if we
9 did breach any of these duties, that those
10 breaches caused the damages.

11 Your Honor, in order to be held liable in
12 this case, the plaintiff must show that either
13 the standard of care, the contract or the
14 statutes that he cites require that Heritage
15 Hall insure the resident's stability 24 hours
16 a day. The fact that she fell, which is the
17 only thing that is in evidence, has no bearing
18 on whether they breached the standard of care,
19 breached the contract or violated a statute.
20 Again, to hold them to that standard would be
21 a strict liability standard and on those
22 grounds I would move that the Court strike the
23 case against Heritage Hall.

24 THE COURT: Did you wish to respond to
25 Ms. Duley as to Heritage Hall?

1 MR. STEPHENSON: Yes. If the Court,
2 please, directing your attention to the
3 admission agreement and the attempted escape
4 clause, the agreement, among other things,
5 states that the hall shall -- the home shall
6 exercise due caution and care towards the
7 resident as well as have the other obligations
8 to furnish an environment, and attached to it
9 with the rights that are part of the contract
10 gives her the right to choose a personal
11 attending physician, to be fully informed in
12 advance about the care and treatment, to
13 participate in the planning and care of the
14 treatment or changes in the care and treatment
15 and to, among other things, to make choices
16 about your life in the facility that are
17 important. To be free from mental, verbal,
18 physical abuse. To be treated with
19 recognition of your dignity, individuality and
20 privacy, and also provides that the person in
21 the care as Mrs. Overton's representative
22 would be fully informed about incidents that
23 happened. He was informed and misinformed
24 because he was told that his mother had had a
25 fall twice on the 20th and then on the 21st

1 gave assurance that she was all right.

2 He had his own suspicion when he came in
3 later after it seemed to him that things were
4 not right and he traveled from Fairfax and
5 sees her on the 30th and found that her state
6 of health was in total deterioration and
7 contrary to the representation that was made,
8 she was all right. She did not receive the
9 care, and they also had an obligation to
10 comply under the code of Virginia and comply
11 with the U.S. code in relation to how they
12 cared for their patients, and we can refer to
13 all those provisions.

14 We also have her being treated without
15 Mr. Perdieu's knowledge by a resident that was
16 not a fully licensed person in terms of under
17 the auspices of Blackstone Family Practice as
18 part of the graduate medical program, and I
19 submit that the treatment was going on outside
20 their facility and with no indication of any
21 supervision. Dr. Fowler testified that she
22 didn't report to anyone, that no one
23 supervised her in relation to the treatment of
24 Mrs. Overton and she doesn't even remember the
25 patient. After the disclosure of the fracture

1 that occurred back apparently on the watch of
2 Dr. Fowler, there was never any follow up or
3 treatment or training and any attempt to even
4 review the records to determine what had
5 happened to Mrs. Overton. She was just left
6 in a state of so be it. If you fall, that's
7 what happens and maybe if her injury is severe
8 enough they don't have any problem because she
9 can't get out of bed.

10 So I think all of that is well in evidence
11 and creates an issue for the jury to review.
12 I think all the statutory requirements hold
13 them to a standard they have to show that they
14 followed in terms of the statutory part. We
15 have the U.S. statute that goes into
16 substantial depth into what requirements are
17 to qualify and continue to qualify for the
18 Medicare payments of the residents. And the
19 nursing home is a skilled nursing facility and
20 holds itself out as such.

21 Mr. Perdieu entered into an agreement that
22 he expected to have the due care provided as
23 was needed at the time that she came into the
24 nursing facility. He testified that she
25 walked in, although she had impairments that

1 were obvious for the needs for the care, there
2 was no suitable care plan ever improvised to
3 deal with her assessment as a high risk for
4 falls.

5 She proved that that was correct and
6 accurate by sustaining a fall on the 20th of
7 January and then there was nothing done to
8 deal with her observation and oversight. At
9 that time she also sustained a fall in the
10 dining room. There apparently was no
11 supervision which is part of the requirement
12 of the nursing home to supervise their dining
13 room residents and because, again, she was
14 found on the floor having fallen in the dining
15 room, there's no showing of any removal from
16 her bed following that incident on the 21st.

17 In terms of Dr. Burkhart's testimony,
18 you've got to take that in context when he
19 used the term possibility. You know that
20 taking it in the whole context he was talking
21 about probability because he had given ample
22 opinion from the -- there was medical evidence
23 that there was no red blood, that there was
24 old blood that he showed dated somewhere
25 between 10 and 14 days. He also showed that

1 there was issue around the bone that caused
2 him to form that opinion at the time he
3 performed the surgery, and then when he was
4 shown the records of her falls, of course that
5 is a competent producing cause of the
6 fracture.

7 He also testified in closing, yes, you
8 could do it another way. You could sit her
9 and cause a break. Someone could have just
10 slugged her and it could break that way. He
11 had before him the evidence that was provided
12 and the nurse's notes that labeled the falls
13 in their records, and so they dealt with them
14 as reported incidents and they prepared
15 incident reports related to the events. And
16 so that obviously falls right into the time
17 frame that he had identified from the physical
18 evidence that he viewed in the surgical
19 process. He didn't have access to those
20 records at the time he formed that opinion,
21 the Johnston-Willis surgical records in which
22 he performed the surgery on. That certainly
23 is confirmed by the time period in which the
24 falls occurred as to when the break occurred.

25 After that happens, and the contention is

1 we couldn't prevent her from falling, maybe
2 they identified that she had a high risk for
3 falls, they took no steps to put in place any
4 kind of plan that dealt with that
5 characteristic of her and then she falls and
6 then she lies there in a bed with no attention
7 after that.

8 I don't think they meet the contractual
9 agreement to provide her reasonable care under
10 the contract that they undertook to perform
11 when they admitted her as a patient and agreed
12 to accept compensation for the services to
13 her. So to say that they have no
14 responsibility, unless you can come in with
15 some witness to show that they didn't do some
16 care, takes it out of the realm of anybody's
17 common knowledge. This jury is well equipped,
18 based on the evidence before it of what
19 happened, so I think what more evidence do you
20 need than what occurred in this case. Our
21 position is very clear.

22 THE COURT: Thank you, sir.

23 MR. NEWSOME: Your Honor, I just want to
24 clear up a couple of quick things.
25 Mr. Stephenson keeps referring to a breach of

1 contract. There is no breach of contract
2 claim against Dr. Rosenbaum, Blackstone Family
3 Practice. Not an issue. The issue of the
4 statute, we've argued a motion for summary
5 judgment. I know the Court had that under
6 advisement. Let me just remind the Court with
7 respect to the issue of Dr. Rosenbaum and
8 Blackstone Family Practice. I'll just read
9 you 42 USC 1395i-3, requirements for ensuring
10 quality of care in skilled nursing facilities.

11 Your Honor, as I took you through, at the
12 hearing, every provision in this act in this
13 section of the act deals with what a skilled
14 nursing care facility must do. Blackstone
15 Family Practice, Dr. Rosenbaum, clearly are
16 not a skilled nursing facility and to the
17 extent that this statute applies to anyone and
18 provides a duty of care, it clearly doesn't do
19 that with respect to my client, Dr. Rosenbaum
20 and Blackstone Family Practice. There is no
21 provision that says a physician must do
22 whatever, and even if it were, Your Honor, it
23 would still come out to the issue which is
24 whether or not the care was reasonable.

25 While Mr. Stephenson cannot cite you to a

1 case situation when expert testimony is
2 required is actually the same for everything.
3 If it cannot assist the jury, or if the jury
4 doesn't need it, you don't need it. The cases
5 say you don't need expert testimony in a
6 medical case. First of all, they refer to it
7 as in the rare case and there are two cases
8 reported in Virginia Supreme Court. They say
9 if it's within the range of the jury's common
10 knowledge and experience.

11 The issues with respect to Dr. Rosenbaum
12 and Blackstone Family Practice and really
13 Dr. Fowler is two; one is a failure to
14 diagnose. Failure to diagnose isn't that she
15 had a fractured hip, the issue is -- first of
16 all, Dr. Burkhardt, who is an orthopedic
17 surgeon, can't tell you when it happened. He
18 wasn't purporting to say when it happened. To
19 believe that a jury knows when a fracture
20 occurred or more importantly, when it should
21 have been diagnosed, to say that's in their
22 common knowledge and experience is just flat
23 out falls. The jury doesn't know. You need
24 expert testimony.

25 The other issue of negligent supervision

1 of Dr. Fowler, Your Honor, how many of these
2 jurors know what a residency program and then
3 what type of supervision is required. And to
4 be quite frank, Your Honor, the only evidence
5 before this jury right now is that the
6 supervision was appropriate and that came from
7 Dr. Rosenbaum when he talked about the
8 supervision, graduated responsibility and
9 clearly Dr. Fowler should have been over
10 there.

11 That is a complex medical issue just like
12 a failure to diagnose and that's why you need
13 expert testimony. You can't have a jury to
14 just speculate, well, maybe they should have
15 diagnosed it this day, this day when on record
16 we have an orthopedic surgeon for 20 years who
17 can't pinpoint exactly when it occurred. Not
18 within the common knowledge and experience of
19 most physicians which is why you have to bring
20 on experts.

21 Residency program; clearly not within the
22 common knowledge and experience. The only
23 evidence they have is the evidence that the
24 supervision was appropriate and that came from
25 Dr. Rosenbaum who was called as an adverse

1 witness. So the plaintiff is stuck with any
2 uncontradicted evidence and there's no
3 testimony to the contrary.

4 The only evidence in this case at this
5 point is that with respect to graduated
6 responsibility, Dr. Fowler was appropriately
7 treating Ms. Overton. That's the only
8 evidence that you have. So even on that basis
9 there's no breach here. So again, no contract
10 claim with respect to Dr. Rosenbaum and
11 Blackstone Family Practice, the statute
12 clearly doesn't apply to Dr. Rosenbaum and
13 Blackstone Family Practice and this is not one
14 of those rare cases like Beverly Enterprises
15 where you do not need expert testimony because
16 the issue of negligence is within the common
17 knowledge and experience of the jurors. On
18 that basis we move that the plaintiff's
19 evidence be stricken.

20 THE COURT: Thank you, sir.

21 MS. DULEY: Would you like to hear from me
22 again or not?

23 THE COURT: Well, you have an opportunity.
24 I'm not going to stop you.

25 MS. DULEY: Just briefly, Your Honor.

1 Again, I would like to reiterate that in Bryan
2 versus Burt, 254 Virginia 28, the supreme
3 court held in that case that proximate cause
4 was not proven because the plaintiff failed to
5 present evidence of what should have been
6 done. I have yet to hear what Heritage Hall
7 could have or should have done in order to
8 prevent Mrs. Overton from falling. The mere
9 fact that she fell is not evidence of a breach
10 of any sort.

11 In Beverly Enterprises is the case in
12 which the supreme court held that in rare
13 instances expert testimony is not needed in
14 these types of cases. They had an employee
15 from the nursing home who testified -- let me
16 back up just a little bit. A woman went into
17 the nursing home with a history of choking and
18 was told that she needed assistance eating.
19 She was in the nursing home for a period of
20 time and they left a plate of food in front of
21 her and left her unattended. Well, it is
22 obvious in that case to the jury and to
23 everybody else that they shouldn't have left
24 the food in front of her. In addition to the
25 fact that a nurse from that nursing home said

1 we shouldn't have left the food in front of
2 her.

3 So they had an admission from an employee
4 that they had breached the standard of care.
5 In addition, Your Honor, it was obvious that
6 this food should not have been left. In this
7 case I certainly don't know what we could have
8 done to prevent the fall and I think it is
9 certainly outside the common experience of the
10 jury to speculate as to what we could have
11 possibly done to have prevented the fall.

12 Your Honor, I think I'll leave it at that.
13 On those bases we would ask that the
14 plaintiff's case be stricken against Heritage
15 Hall.

16 THE COURT: Thank you.

17 MR. STEPHENSON: Your Honor, please,
18 another case that I wanted to cite for the
19 court is Dickinson and Fatahey, a '97 case
20 that said the section didn't require plaintiff
21 to present expert testimony in all medical
22 malpractice actions. And in the Beverly
23 Enterprises case, that was one that I was
24 looking for the cite on also and it does hold
25 in that case the impression that whether a

1 reasonably prudent nursing home would permit
2 its employees to leave a tray of food
3 unattended.

4 When we have a duty and it involved more
5 than just the plaintiff falling, we have the
6 negligence exhibited and their improper
7 attention. Another way is Mr. Perdieu came in
8 and said that he found them feeding her with
9 false teeth out and hard food and trying to
10 press that in her. That was another violation
11 of her contractual duty that they were just
12 not giving her attention.

13 I think that we have multiple pieces of
14 evidence that the jury can determine whether
15 or not the nursing home failed in their
16 contractual undertaking. They haven't shown
17 that they could not have prevented, they could
18 have her attended. I think the jury could
19 certainly determine, along with our
20 suggestions of other things, they are equipped
21 to do in having her surveilled, having her out
22 in the open, having her watched and attended
23 to in any number of ways, and other things
24 they could have done to prevent her from being
25 injured with falling. And so I think that is

1 something they just neglected. Your Honor, I
2 want to make sure that my statutory sections
3 are in as part of the record.

4 THE COURT: They were objected to.

5 MR. STEPHENSON: If they're not part of
6 the record, I just wanted to again recite from
7 the requirements of the United States Code
8 Service under Public Health and Welfare Social
9 Security Act that the requirements relating to
10 the provision of services on the quality of
11 life, that a skilled nursing facility must
12 care for its residents in such a manner as
13 will promote maintenance of quality of life of
14 each resident and a skilled nursing facility
15 must --

16 THE COURT: Let me ask you this: Rather
17 than reading all of that in, you wanted
18 reference to the fact that you were relying on
19 the 42 USC and a couple of Virginia statutes,
20 and I would encourage you just to refer to
21 them by number and not read the whole thing in
22 the record.

23 MR. STEPHENSON: The reference, and this
24 is a 27 page section of 42 USCS section
25 1395i-3. Virginia Code section 32.1-138.

1 Virginia Code section 54.1-2961 regarding
2 interns and residents in hospitals and their
3 requirements. Virginia Code section
4 54.1-2961.

5 THE COURT: I don't think there is any
6 question in this case but that Mrs. Overton's
7 hip was broken while she was a patient at
8 Heritage Hall. I don't think there's any
9 question as to the results of that her
10 condition deteriorated some and I quite
11 understand the upset to anyone closely
12 associated with her. I also don't think there
13 is any question but what it is necessary in
14 this case for the plaintiff to be able to show
15 a breach of the standard of care and I think
16 that can only be done through expert
17 testimony, which as I've said, was not able to
18 be produced.

19 I further think that if the burden to show
20 a breach of the standard of care cannot be
21 shown, that we do not reach any contractual
22 issues. For instance, Mr. Stephenson talks
23 about Mrs. Overton or her family not having
24 requested that a resident attend her, and not
25 by inference, nor did he request that

1 Blackstone Family Practice attend to her. And
2 the reference is made to the fact that she
3 legally has a right to choose her own
4 physician. The right is not denied, but it
5 was not exercised. She goes in the nursing
6 home and the nursing home has a contract with
7 Blackstone Family Practice and they treat her.
8 The Court has no choice in this matter but to
9 grant both motions to strike. So ordered.

10 MR. STEPHENSON: Note my exception, and
11 may I have made part of the record the
12 rejected depositions of Dr. Liedelmyer and
13 Phyllis Corrigan?

14 THE COURT: I think they would be part of
15 the record in the matter. They've been
16 discussed, shown, read.

17 MR. STEPHENSON: I have the original
18 deposition transcripts.

19 THE COURT: You can make them part of the
20 record.

21 MR. STEPHENSON: Also the exhibits that
22 were proffered and refused, I want to make
23 sure that they're all --

24 THE COURT: I think the clerk has -- I'm
25 not sure that he has all of them, but you can

1 check. I have a list of them. I'll be glad
2 to go over them with you. Nothing further?

3 MR. NEWSOME: No, Your Honor, nothing at
4 all.

5 MS. DULEY: Your Honor, would you like for
6 one of the defendants to prepare the order?

7 THE COURT: Yes, I certainly would. Bring
8 the jury in. Virginia law requires that the
9 plaintiff in a case like this be able to prove
10 that there's been a breach of the standard of
11 care for a physician, or in this case also a
12 nursing home, and that has to be done in
13 virtually every case by expert testimony,
14 expert medical testimony which Mr. Stephenson
15 was not able to produce in this case.

16 The motion to strike the plaintiff's
17 evidence was made by the defense, the Court
18 has granted that motion. You-all are excused.
19 I thank you very much for your presence.
20 Court is adjourned.

21
22
23
24
25

REPORTER'S CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in the above-referenced matter.



Keith Williamson, RPR
Commonwealth of Virginia at Large

AGREEMENT

Plaintiff ex I

MEDICAL DIRECTOR

HCMF CORP. d/b/a

HERITAGE HALL -

BN
This agreement is made and entered into on the 1ST day of APRIL, 1994, by and between HCMF Corp., d/b/a Heritage Hall ~~Academy~~, 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 year.

CM
BN

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.

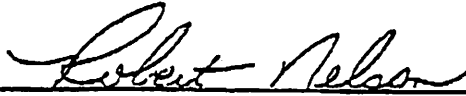
Each party shall establish and maintain confidentiality as to client information and records that are of a personal nature, as required by federal or state laws.

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  DATE 4/1/94
(Signature)
CHARLES I. ROSENBAUM, MD
FOR BLACKSTONE FAMILY PRACTICE CENTER

HCMF CORP. d/b/a HERITAGE HALL - Blackstone

By  Date 4/6/94
Robert E. Nelson
Director of Administrative Services

HERITAGE HALL

Facility 111Plaintiff/sep. 10
OK

DATE TIME

1/31/95

3PM

X ray: (C) transverse femoral neck fracture.
Toradol 30 mg IM @ BFPC; son is to be
calling us c. instructions; meanwhile sending
back to Heritage Hall

C. Rosen/

Resident Name: Last	First	Middle	Room Number
Creston	Lucille		NW 8A
Attending Physician			
Dr. C. Rosenbaum			

HERITAGE HALL

Facility 10

Platiff 40 10

Refused

DATE	TIME	
1/5/95		HxP
		HxPT: Lucille Overton is a 76 yo w f a transfer from J.W.H. S/p Intest. Obstruction & Adhesion lysis on 12/9/94. Complicated with Wound dehiscence & Post. Op. Resp. failure requiring intubation & Assisted Ventilation.
		P. Med. Hx: ① Hypothyroidism ② Htn ③ Mini Strokes x4. ④ Intest Adhesions & SBO
		P. S. Hx: ① Appendectomy ② BTL 1947 ③ Cataracts
		F. Hx: Man Contributing.
		Soc. Hx: Used to Smoke 1/2 pack / day x 55 yrs. Denied ETOH use.
		All: NKDA
		Post Meds: ① ECASA 1 po qd ② Cardizem CD 120 mg qd ③ Lasix 20 po qd. ④ Synthroid 0.75 mg qd ⑤ Thioridazine 25 mg po qd.
		PC: Pleasant Old lady in NAD, lying comfortably in bed in NAD. VS: B.P. = 120/70, T = 98.2, H.R. = 80 R.R. = 20 HGEENT: PERRLA, OPCLear, Adentulous.
		Neck: Supple, No JVD
		Lungs: CTA Bilat, No Audible ads Snds
		Cvs: (NL) S1 & S2 g++/VI P-sept. M radiating to Axilla
		Abd: Midline Scar healed with 2ry Intention. Steri Strips in place. Soft, NT, ND, (+) BS.
		PR: Hene Neg. NT, NOT impacted.
		LLPEXT: DPp2 Bilat. Mo Pedal Edema
		Over

Resident Name: Last	Overton	First	Lucille	Middle		Room Number	NW 8A
Attending Physician	C. J. Rosenbaum						

HERITAGE HALL

Facility 1/1

DATE	TIME	
Her	Contd.	<p>Breast: No Masses or Axillary LN palpable, Nipples No fissures or inverted nipples.</p> <p>Mens: Cn $\pi \rightarrow \pi$ grossly intact, No Hom or Sensory Defects apparent except for Haring.</p> <p>WNI Reflexes DTR WNI & Proprioception WNI Alert, Oriented x3 Grossly Non focal</p> <p>Labs: Admit lab & TSH</p> <p>A/P: 76 yo w & transferred from J-W Hospital to H. H. to reside Sp Int. Obst & Adhesion Lysis Complicated with Post Op resp failure, Intubation Ventilatory Support Stable & Clear to reside in WH</p> <p>① Htn: Pt. been Normotensive during Hosp stay Will hold Diuretic & Cardizem use for Now Pt's B.P. is Stable</p> <p>② Hypothyroidism: Pt. off Synthroid During Hosp. Stay been euthyroid in the Hosp. Will repeat TSH level on Adm.</p> <p>③ Hx/o CVA & AMS: Will continue ECASA 1 po qd.</p> <p>④ Post Operative Abd Surgical Care: Wound well healed incision Care will continue.</p> <p>⑤ F/u Adm. Labs.</p> <p>⑥ Will Place pt. on Benadryl 25mg qhs for Itching & Hx/o Agitation & Melalil Pre Hosp. use & laxation PRN Constipation</p>

Resident Name: Last Overton First Lucille Middle Room Number NW8A

Attending Physician C J Rosenbaum

HERITAGE HALL

Facility TV

DATE	TIME	
1/5/95		(1) Admission Hx P. Doc. & Chart reviewed
		(2) Resident is <u>ONR</u> living will in Chart
1/13/95		Lab Back : TSH = <u>(68.9)</u>
		A/p : Hypothyroidism : Will start Synthroid 0.75 q.d.
1/20/95		S/P Fall. Ambulating 3 prob. No tx required
		Gowler MD
1/21/95		Pt again S/P Fall, no apparent injury. No tx required
		Gowler MD
1/23/95		Pt noted to be very sluggish, confused.
		With D/c Benedryl. Reeval in am
		Gowler MD

Resident Name: Last	Overton	First	Lucille	Middle		Room Number	1108A
Attending Physician	C Rosenbaum						

HERITAGE HALL

Facility IV

DATE	TIME	
1/24/95		<p>Asked to see pt & go pain to (L) knee. Pt denies pain this am. ↑ Alertness since D/c'ing Benedryl.</p> <p>PE:</p> <p>(L) knee - (+) swelling, (+) effusion (+) tenderness Good flexion, extension to 140°</p> <p>A/P: Knee pain - Denies at present. Reeval if Complaint recurs. <i>Amber, MD</i></p>
1/25/95		<p>Pt & ↑ cough this am - (+) dk yellowish sputum. AVSS</p> <p>PE:</p> <p>Lungs: (+) basilar rales, fair AE, poor effort. COR: RRR 3 (M)</p> <p>A/P: productive cough - Encourage ↑ PO fluids. Amoxicillin 250mg PO TID x 10 D Robatussin 10ml PO q6h PRN cough <i>Amber, MD</i></p>

Resident Name: Last	First	Middle	Room Number
<i>Amber</i>	<i>Lucille</i>		<i>1108A</i>
Attending Physician <i>C. Rosenbaum</i>			

HERITAGE HALL

Facility 10

DATE	TIME	
1-31-95	10 AM	ATSD 20 to Laboratory and 20 Foods
		per report of NCO, Pts saw Rot Present
		visited last pm and is concerned about
		poor nutrition ? last pm laboratory plans
		pt 40 Pts (others too) part of LQ and and/or
		pellets / (C) HEP area. report of Vomiting
		chart showing no change from 5/15 to now
		observation, TSH (now on Synthroid 2 1/2 tabs)
		EUA and As H. Also report for
		(D) EFFUSION
		PE pt report and laboratory progress to management
		of (C) HEP then and currently
		T 99 ² normal 110/70 76 20
		heart continuous to upper extremities in place
		the lower extremities
		lung - bases clear with 25 percent throughout
		APR to anterior superior
		can - abd. & 25%
		abd - mass, soft & clear - enlargement on loc Tru
		to abd.
		rectal -> <u>large</u> amt. of soft stool in vault
		↑ PATN to EXT. notation (C) HEP > (R)
		① No observation - Feet feet / SSE new
		to 1/2 lower observation from 3000 to 00
		② No (C) HEP fx (to normal L and. Since also present
		③ Laboratory related to above. Hypothyroid
		will also 1/2, follow wts ✓
		- well on Pts son
		- ✓

Resident Name: Last	First	Middle	Room Number
Overton	Lucille		New 8A
Attending Physician			
Dr. C. L. Rosenbaum			

Plaintiff's Ex. 11

JOHN W. HASTY
DIRECTOR

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS

6608 WEST BROAD STREET
4th FLOOR
RICHMOND, VA 23230-1717

BOARD OF MEDICINE
THOMAS A. WASH, M.D., PRESIDENT

EXPIRES

06-30-96

TEMPORARY LICENSE

FOR

INTERN-RESIDENT

LICENSE NUMBER

0116

006024

JOSEPHINE R. FOWLER, MD
J.W. HARBISON, MD/GRAD MED EDU
BOX 257, MCV STATION
RICHMOND, VA 232980257

TO PROVIDE INFORMATION OR FILE A
COMPLAINT ABOUT A LICENSEE, CALL: 1-800-533-1560

(SEE REVERSE SIDE FOR NAME AND ADDRESS CHANGE)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH PROFESSIONS

6608 WEST BROAD STREET
4th FLOOR
RICHMOND, VA 23230-1717

BOARD OF MEDICINE
CATHERINE S. CASEY, M.D., PRESIDENT

EXPIRES

06-30-95

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(SEE REVERSE SIDE FOR NAME AND ADDRESS CHANGE)

0118008024

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
CONSENT FOR RELEASE OF INFORMATION

Refused
or

I hereby give the Virginia Department of Medical Assistance Services (DMAS), Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Community Services Boards (CSB) permission to obtain medical and personal information to assess MS. Lucille Overton need for long-term care services.

I understand that these entities will keep this information and take reasonable steps in accordance with law to safeguard the confidentiality of medical and personal records.

I understand that under the Virginia Privacy Protection Act of 1976 I have the right to inspect, correct, or complete this information.

I understand that if I do not provide the information requested, the option of receiving nursing home care in a Medicaid-certified facility or Home and Community-Based Waiver services as a Medicaid recipient may not be given.

I understand that the information requested is necessary to complete an assessment of needs and develop an appropriate plan of long-term care services and, pursuant to a determination of Medicaid eligibility, to authorize Medicaid payment.

These rights and responsibilities have been read by or explained to me and I understand them.

X HORACE F. PERDUE
Print name of applicant or applicant's authorized representative

X HORACE F. PERDUE 12-10-94
Signature of applicant or applicant's representative Date

X SON W. POWER OF ATTORNEY HORACE F. PERDUE
Representative's relationship to applicant (parent, guardian, power of attorney)

Witness, if signed by mark Date

CHERRYLL P. YOUNG 12/16/94
Signature of screening authority (registered nurse, social worker, or physician) Date

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF NOTTOWAY

HORACE E. PERDIEU, as Administrator of
THE ESTATE OF LUCILLE P. OVERTON,
Deceased,

Plaintiff,

v.

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

Defendants.

LAW NO.: CL-031

FINAL ORDER

THE PARTIES came by and through counsel, on the 18th and 21st days of May, 2001 for the trial of this matter. A jury was impanelled.

Plaintiff went forward with his case calling Betty Pomphrey, Loretta Parrish, Doris Coleman, Barry Burkhardt, M.D., Horace Perdieu and C. I. Rosenbaum, M.D. to testify on his behalf during his case in chief. The Plaintiff proffered Reinald Leidelmeyer, M.D. and Phyllis Corrigan, R. N. as medical experts, and the Court ruled that their testimony would not be admitted because they did not qualify as experts. The Court quashed the subpoena served on Dr. George P. Damewood who was subpoenaed by Plaintiff to testify with respect to his examination of Lucille Overton at the time her fractured hip was diagnosed. Portions of the deposition of Josephine Fowler, M.D. were read into evidence. In addition, the plaintiff called John Martin, M.D. to testify as an expert in this matter, however, the Court found that Dr. Martin was not qualified to testify as an expert. The plaintiff rested.

Defendants, Blackstone Family Practice Center, Inc., C. I. Rosenbaum, M.D. and HCMF Corporation t/a Heritage Hall Health Care made motions to strike the plaintiff's evidence. The defendants argued that the plaintiff's case must be struck because the plaintiff had failed to establish the standard of care by expert testimony. The plaintiff had further failed to prove that the standard of care had been breached and that such breach was a proximate cause of the plaintiff's damages. In addition, the defendants argued that the plaintiff failed to establish a breach of the contract or a breach of the statutory duty.

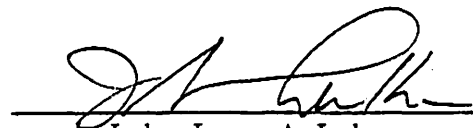
The plaintiff argued that the experts which had been previously excluded, including Phyllis Corrigan, R.N., Reinald Leidelmeyer, M.D. and John Martin, M.D., were qualified to testify as experts. The plaintiff further argued that he had established a breach of statutory duty as well as a breach of the contract. Plaintiff also argued that the facts of this case were within the common knowledge of the jury and therefore, experts were not necessary.

UPON CONSIDERATION of the trial testimony and arguments of counsel, it appears to the Court that the Motions to Strike are proper; and it is therefore

ORDERED that the Motions to Strike are GRANTED and judgment is entered in favor of the defendants, Blackstone Family Practice Center, Inc., Charles I. Rosenbaum, M.D., a/k/a C. I. Rosenbaum, M.D. and HCMF Corporation t/a Heritage Hall Health Care.

AND THIS ORDER IS FINAL

ENTER 6 / 8 / 01



Judge James A. Luke
Circuit Court Judge for
County of Nottoway

WE ASK FOR THIS:

Lisa Kent Duley
Lisa Kent Duley, Esquire
DENTON & FISCELLA
6630 West Broad Street, Suite 290
Richmond, Virginia 23230
(804) 673-4004
Fax (804) 673-6555
Counsel for HCMF Corp. t/a
Heritage Hall Health Care

S. Elizabeth Pharr
Kelvin L. Newsome, Esquire
S. Elizabeth Pharr, Esquire
LECLAIR RYAN, P.C.
707 E. Main Street, 11th Floor
Richmond, VA 23219
Counsel for Blackstone Family Practice Center, Inc.
and Charles I. Rosenbaum, M.D.

SEEN AND

Objected to: (See Attachment stating
Grounds for Objection)

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

ch:97-007/final-order

GROUND FOR OBJECTION

Plaintiff objects to the rulings of the Court that excluded testimony of Plaintiff's experts, Phyllis Corrigan, R.N., Reinald Leidelmeyer, M.D., and John Martin, M.D.; and objects to the Court's ruling quashing the subpoena serve on Dr. George P. Damewood; and objects to the several rulings by the Court that rejected exhibits offered by Plaintiff, including Policies and Procedures of HCMF Corporation, t/a Heritage Hall Health Care, Doctor's Notes that were part of Lucille Overton's chart records, and Transfer Records that described the medical condition of Lucille Overton when she was admitted to the Heritage Hall facility; and objects to the refusal of evidence offered by Plaintiff; and other rulings of the Court to which Plaintiff noted exceptions; and on the grounds stated in Plaintiff's memoranda filed in opposition to Defendants' motions.

Furthermore, Plaintiff objects to the dismissal by the Court of Plaintiff's contract claim. It is submitted that Plaintiff presented a *prima facie* case regarding the breach of the agreement between Heritage Hall and Lucille Overton, and objects to the Court's ruling that prevented the submission of this issue to the jury despite its being within the realm of the jury's common knowledge. Plaintiff also objects to the dismissal of the Count related to failure to comply with statutory requirements.

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St. Paul Staff Attorneys

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JONATHAN P. JESTER*
LISA KENT DULEY*

*VA, MD & DC BARS
*VA & DC BARS
† VA & WV BARS
*VA BARS

June 18, 2001

VIA EXPRESS MAIL

The Honorable James A. Luke
Prince George County Circuit Court
6601 Courts Drive
Prince George, VA 23875-0280

Re: Estate of Lucille P. Overton v. HCMF Corporation t/a Heritage Hall Health Care
Law No.: CL-031
Our File No. 97-007

Dear Judge Luke:

Enclosed please find the Final Order endorsed by counsel in the above-referenced case. Thank you for your time and attention to this matter. Should you have any questions, please feel free to contact me.

Sincerely,

Lisa Kent Duley
Lisa Kent Duley

Enclosure

cc: B. G. Stephenson, Esquire
Kelvin L. Newsome, Esquire
S. Elizabeth Pharr, Esquire
W. Barry Harmon, Sr. Claim Representative
Claim No.: NK06600169-45A011
ch:97-007/judgethukeltr

DENTON & FISCELLA IS AN UNINCORPORATED ASSOCIATION, NOT A PARTNERSHIP OF TRIAL ATTORNEYS EMPLOYED FOR THE EXCLUSIVE PURPOSE OF REPRESENTING THE ST. PAUL AND

ASSIGNMENTS OF ERROR

1. The Trial Court erred when it excluded the expert testimony of three witnesses proffered by Petitioner, on the basis of a misinterpretation of the applicable expert witness statute, Va. Code Ann. § 8.01-581.20.
2. The Trial Court erred when it struck Petitioner's case for lack of expert testimony, when the negligence that was the subject of this litigation was so blatant as to render the determination of a violation of the standard of care within the common knowledge of the jury.

GROUNDS FOR OBJECTION

Plaintiff objects to the rulings of the Court that excluded testimony of Plaintiff's experts, Phyllis Corrigan, R.N., Reinald Leidelmeyer, M.D., and John Martin, M.D.; and objects to the Court's ruling quashing the subpoena serve on Dr. George P. Damewood; and objects to the several rulings by the Court that rejected exhibits offered by Plaintiff, including Policies and Procedures of HCMF Corporation, t/a Heritage Hall Health Care, Doctor's Notes that were part of Lucille Overton's chart records, and Transfer Records that described the medical condition of Lucille Overton when she was admitted to the Heritage Hall facility; and objects to the refusal of evidence offered by Plaintiff; and other rulings of the Court to which Plaintiff noted exceptions; and on the grounds stated in Plaintiff's memoranda filed in opposition to Defendants' motions.

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*VA, MD & DC BARS
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*VA & WV BARS
*VA BARS

June 18, 2001

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Prince George County Circuit Court
6601 Courts Drive
Prince George, VA 23875-0280

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Law No.: CL-031
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Lisa Kent Duley
Lisa Kent Duley

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Kelvin L. Newsome, Esquire
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Claim No.: NK06600169-45A011

ch:97-007/judgeluke-ltr

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