

EXHIBIT “8”

2004 WL 898769

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Court of Appeal, Fourth District, Division 1,
California.

ROBERT D., Plaintiff and Appellant,

v.

PARADISE VALLEY HOSPITAL, Defendant and
Respondent.

No. D042180. | (Super.Ct.No. GIS9004). | April 28,
2004.

APPEAL from a judgment of the Superior Court of San
Diego County, Luis R. Vargas, Judge. Affirmed.

Attorneys and Law Firms

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Appellant.

Sheila S. Trexler, Neil, Dymott, Perkins, Brown & Frank,
San Diego, CA, for Defendant-Respondent.

Opinion

HUFFMAN, Acting P.J.

*1 Robert D. (Robert) appeals from that portion of the judgment sustaining defendant's, Paradise Valley Hospital (PVH), demurrer to his first amended complaint without leave to amend. Robert contends PVH can be vicariously liable, as a matter of law, for a **sexual assault** committed by its employee and a jury should decide whether such **assault** is committed within a **nurse's** scope of employment. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On February 8, 2002, Robert filed a complaint against PVH and Noel Viray (Viray). The complaint alleged Viray, acting within the scope of his employment as a nurse and by consent of PVH, assaulted Robert by

fondling him and performing oral copulation on him while Robert was PVH's patient. The court granted PVH's demurrer, with leave to amend, for failure to allege facts sufficient to support a vicarious liability cause of action against PVH.

Robert filed his first amended complaint alleging causes of action against PVH of assault and negligence.¹ In particular, Robert asserted Viray, acting within the scope of his authority and with consent of PVH, assaulted Robert by performing nonconsensual oral copulation on Robert during a sponge bath carried out as part of Viray's responsibility as Robert's nurse. Despite general allegations of consent and authorization, Robert did not allege facts supporting these conclusions. As to the assault cause of action, the court sustained PVH's demurrer without leave to amend, again finding insufficient facts alleged to hold PVH vicariously liable. PVH then filed and was granted a motion for summary judgment on the remaining cause of action, negligence.²

DISCUSSION

I

A demurrer tests the legal sufficiency of the complaint. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) Therefore, we review the complaint "de novo to determine whether it contains sufficient facts to state a cause of action." (*Ibid.*) We treat the demurrer as admitting the properly pleaded material factual allegations of the complaint but do not assume the truth of "contentions, deductions or conclusions of law." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 (*Aubry*)). If any possible legal theory supports a cause of action on the facts alleged, sustaining a demurrer is reversible error. (*Hernandez, supra*, 49 Cal.App.4th at p. 1497.) The trial court exercises its discretion in declining to grant leave to amend. (*Aubry, supra*, 2 Cal.4th at p. 967.) Without a reasonable possibility the pleading can be cured by amendment, the trial court does not abuse its discretion by not granting leave to amend. (*Ibid.*)

II

Under the rule of respondeat superior, "an employer is

vicariously liable for the torts of its employees committed within the scope of the employment." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296 (*Lisa M.*)). Here, the material factual allegations are undisputed. Therefore, the determination of whether the employee acted within the scope of employment is a question of law. (*Lisa M., supra*, 12 Cal.4th at p. 299.)

*2 The scope of employment might include intentional torts even if the employer did not authorize the employee to commit the act and the desire to serve the employer's interest did not motivate the employee, in whole or in part. (*Lisa M., supra*, 12 Cal.4th at pp. 296-297.) For the employer to be liable for an intentional tort, the employee's act must have a "causal nexus to the employee's work." (*Id.* at p. 297.) While an injury arising out of a work-related dispute has a sufficient causal nexus, an injury inflicted out of the employee's personal malice, not engendered by the employment, does not. (*Id.* at pp. 297-298.)

The nexus must be more than "but for" causation for an act to be engendered by the employment. (*Lisa M., supra*, 12 Cal.4th at p. 298.) The incident must involve an act which is " 'an outgrowth' of the employment," a risk which is " 'inherent in the working environment' " "or a risk " 'typical of or broadly incidental to the enterprise the employer has undertaken.' " (*Ibid.*) For a sexual tort, the employee's act is not "engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions." (*Id.* at p. 301.) Physical contact as a part of the employment, without more, is insufficient. (*Id.* at p. 302.) In cases of hospital employees with duties involving "examining or touching patients' otherwise private areas," a sexual assault is attributable to "propinquity and lust" rather than "any peculiar aspect of the health care enterprise." (*Ibid.*)

Further, the act giving rise to the injury must be generally foreseeable in the sense that the "employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 619.) "The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought." (*Lisa M., supra*, 12 Cal.4th at p. 302.)

III

Here, we analyze whether a hospital can, as a matter of law, be vicariously liable for a **sexual assault** committed

by a **nurse** on a patient during the course of a sponge bath, without facts supporting conclusions of consent, authorization, or a desire to serve the employer's interest. The facts in this case do not differ, in any material way, from the facts in *Lisa M., supra*, 12 Cal.4th at pages 294 to 296. In *Lisa M.*, the court held a hospital could *not* be vicariously liable, as a matter of law, when a technician **sexually** assaulted his patient during an ultrasound examination. The court found the technician's act not engendered by the employment or a foreseeable consequence of his contact with the patient. (*Id.* at p. 300.)

Under *Lisa M.*, Robert must allege facts showing Viray's act was "motivated by emotions fairly attributable to work-related events or conditions." (*Lisa M., supra*, 12 Cal.4th at p. 301.) Although the circumstances of the sponge bath made it possible for Viray to commit the assault, Viray's decision to exploit Robert's trust and solitude did not arise out of the performance of the sponge bath. Like the technician in *Lisa M.*, Viray simply took advantage of solitude with Robert "to commit an assault for reasons unrelated to his work." (*Ibid.*) In providing care for Robert which required access to and touching of Robert's "otherwise private areas," Viray committed a sexual assault attributable to "propinquity and lust" rather than "any peculiar aspect of the health care enterprise." (*Id.* at p. 302.) Nothing occurred during the sponge bath "to provoke or encourage" Viray's improper conduct. (*Id.* at p. 303.)

*3 A sponge bath, like an ultrasound, is not the type of procedure expected to give rise to "intense emotions on either side." (*Lisa M., supra*, 12 Cal.4th at pp. 302-303.) In this respect, this case differs from a physician or therapist becoming "sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship." (*Id.* at p. 303.) The contact of a nurse with a patient during a sponge bath lacks a foreseeable risk of a sexual tort in the same way as does the contact of an ultrasound technician with a patient during an ultrasound examination. (*Id.* at p. 303.) Consequently, Viray's conduct, in this context, is so unusual or startling that it is unfair for the costs of it to be passed on to PVH as a business expense. (*Id.* at p. 304.)

We distinguish this case from *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, in which the court held the city could be vicariously liable for a sexual assault committed by an on duty police officer. (*Id.* at pp. 221-222.) In *Mary M.*, the court expressly limited its holding based on the "unique authority vested in police officers." (*Id.* at p. 218, fn. 11.) Police authority includes the "awesome and dangerous" power to detain, arrest, and

when necessary, use deadly force. (*Id.* at pp. 206, 216.) Because danger for abuse is inherent in this power, the resulting costs are fairly allocated to the community who benefits from its lawful use. (*Id.* at p. 216.) A hospital employee, such as Viray, does not have power over a patient rising to this unique authority or "general control" with its inherent danger of abuse. (*Lisa M.*, *supra*, 12 Cal.4th at p. 304.)

For these reasons, PVH cannot, as a matter of law, be vicariously liable for Viray's act of sexual assault under the facts alleged in Robert's first amended complaint. Further, the court did not abuse its discretion by not granting leave to amend as no reasonable possibility of curing the pleading existed in light of the holding in *Lisa*

M., *supra*, 12 Cal.4th 291. (*Aubry*, *supra*, 2 Cal.4th at p. 967.)

DISPOSITION

The judgment is affirmed.

WE CONCUR: McDONALD and AARON, JJ.

Footnotes

- 1 The first amended complaint also alleged assault directly against Viray.
- 2 Robert has not challenged the trial court's decision to grant summary judgment on the remaining cause of action. Accordingly, we limit our discussion to those issues related to the demurrer.

EXHIBIT “9”

Condensed Transcript

200-3967

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In the Matter Of:
DOE VS. VALLEY HEALTH

09-A-595780

MARY JO SOLON

September 20, 2012



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MARY JO SOLON
DOE VS. VALLEY HEALTH

September 20, 2012
1-4

<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 JANE DOE, 4 Plaintiff, 5 vs. 6 VALLEY HEALTH SYSTEM LLC, 7 a Nevada limited 8 liability company, d/b/a 9 CENTENNIAL HILLS HOSPITAL 10 MEDICAL CENTER, UNIVERSAL 11 HEALTH SERVICES, INC., a 12 Delaware corporation, 13 AMERICAN NURSING 14 SERVICES, INC., a 15 Louisiana corporation, 16 STEVEN DALE FARMER, an 17 individual; DOES I 18 through X, inclusive; and 19 ROE CORPORATIONS I 20 through X, inclusive, 21 Defendants 22 23 DEPOSITION OF 24 MARY JO SOLON 25 26 Thursday, September 20, 2012 27 9:00 a.m. 28 29 520 South Fourth Street 30 Las Vegas, Nevada 31 32 Carol O'Malley, CCR 178, RMR</p>	<p>Page 1 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>INDEX OF EXAMINATION Page 3 1 2 3 WITNESS: Mary Jo Solon 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <table border="1"> <thead> <tr> <th>EXAMINATION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>By Mr. Murdock</td> <td>5, 78, 87, 88</td> </tr> <tr> <td>By Mr. McBride</td> <td>59, 83, 90</td> </tr> <tr> <td>By Mr. Bemis</td> <td>72, 87</td> </tr> <tr> <td>By Ms. Brookhyser</td> <td>92</td> </tr> </tbody> </table> <p>EXHIBITS MARKED 1 Appropriate Boundaries Competency Examination 12 2 Memorandum to File 17 3 Letter to whom it may concern signed by L. Elirington, LPN 19 4 Letter dated 1/28/08 to Mary Jo from Ronfrance Theard 20</p>	EXAMINATION	PAGE	By Mr. Murdock	5, 78, 87, 88	By Mr. McBride	59, 83, 90	By Mr. Bemis	72, 87	By Ms. Brookhyser	92
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1 Deposition of Mary Jo Solon
2 September 20, 2012
3 (Prior to the commencement of the deposition,
4 all of the parties present agreed to waive
5 statements by the court reporter, pursuant to
6 Rule 30(b)(4) of NRC.P.)
7

8 MARY JO SOLON,
9 having been first duly sworn, testified as follows:
10

11 EXAMINATION

12 BY MR. MURDOCK:

13 Q. Would you please state your name for the
14 record?

15 A. Mary Jo Solon. S-o-l-o-n.

16 Q. Ms. Solon, have you ever had your
17 deposition taken before?

18 A. Yes, I've been deposed before.

19 Q. How many times?

20 A. Several times. I'm sorry, I don't know the
21 exact number.

22 Q. How many times in the last let's say five
23 years?

24 A. None in the last five years.

25 Q. Okay. Why did you have your deposition

1 taken before? Just generally. Not specifically.
2 A. Generally, I have been in healthcare since
3 1974, in administrative positions, so they were
4 healthcare-related cases.

5 Q. I'm sure the rules haven't changed at all
6 dramatically. You know you have a duty to tell the
7 truth?

8 A. Uh-huh.

9 Q. You have to answer "yes" or "no," or
10 something verbally to my questions. You can't say
11 "uh-huh" or "un-uh," like you just did.

12 A. Okay.

13 Q. So let me ask the question again.

14 You're aware that the law of
15 perjury applies here as it does in a court of law?

16 A. Yes, I am.

17 Q. You have a duty to tell the truth?

18 A. Yes, I do.

19 Q. If you don't understand a question of mine
20 today, please let me know. If you go ahead and
21 answer a question I'm going to assume that you
22 understood it. Is that fair?

23 A. That's fair.

24 Q. I don't know that this will take that long.

25 On the other hand, if you want to take a break at any

1 time, please let me know. However, the only thing I
2 would ask is that you answer the question first, if
3 there's a question pending, before we take a break.
4 Okay?

5 A. Certainly.

6 Q. You are not represented here by counsel, is
7 that correct?

8 A. That's correct.

9 Q. Now, you were served with a subpoena in
10 this matter, and you know what the matter is about;
11 is that correct?

12 A. I have read the subpoena and I realize it's
13 involving Jane Doe vs. -- it looks like Steven
14 Farmer.

15 Q. And do you know who Steven Farmer was, or
16 is?

17 A. Yes, I do.

18 Q. And can you identify him for me?

19 A. Steven Farmer was a certified nursing
20 assistant and worked in the State of Nevada. He
21 worked for an agency, which is a business that
22 supplies personnel to various healthcare facilities,
23 and I know he worked in many facilities in Las Vegas
24 in the past.

25 Q. And he worked for an agency called American

1 Nursing, is that correct?

2 A. I could not tell you if that was correct or
3 not. I know that he did work for an agency.

4 Q. And you know this because of why?

5 A. I was the chief nursing officer at
6 Rawson-Neal State Hospital Psychiatric Facility, and
7 Mr. Farmer had worked for us on some occasions.

8 And he was arrested, which was
9 very public and common knowledge in our healthcare
10 community. It was on TV. It was in the newspaper.

11 We looked at our files for the
12 fact that he had worked there, and many state
13 agencies then went to organizations where he had
14 worked and asked questions about his work history
15 there.

16 Q. You said many state agencies?

17 A. My memory of it is it was the Bureau of
18 License and Certification, who changed their name to
19 the Bureau of Healthcare Quality and Compliance, and
20 the State Board of Nursing.

21 Q. And they asked questions?

22 A. They asked about his work history.

23 Now, that's my memory of it. I
24 have not gone back and looked. I don't have access
25 to those records, because I don't work at the state

<p>1 hospital any longer. 2 Q. I was just about to ask you that. You do 3 not work at Rawson-Neal anymore? 4 A. No, I do not. 5 Q. Where do you work now? 6 A. I work for Southwest Medical Associates, 7 which is a subsidiary of United Health Group and is a 8 local multi specialty physician office practice. 9 Q. What do you do there? 10 A. I am the chief nursing officer, as well as 11 the director of the professional administration 12 department. 13 Q. In between Rawson-Neal and Southwest 14 Medical, did you work anywhere else? 15 A. No, I did not. It was only a weekend, 16 Friday to Monday. 17 Q. How long did you work at Rawson-Neal? 18 A. I worked there just around two years. 19 Q. And you said you were the chief nursing 20 officer? 21 A. Uh-huh. 22 Q. Is that a yes? 23 A. Yes. 24 Q. And what was your job? What were your job 25 duties as chief nursing officer?</p>	<p>Page 9</p> <p>1 Q. Okay. 2 A. But I was responsible for reviewing files, 3 for instance, for people who came to us from 4 agencies. We didn't hire them, but they did work for 5 us. 6 Q. When you say "reviewing files from 7 agencies," what do you mean by that? 8 A. If we were going to look at someone from an 9 agency, there were requirements that we had from the 10 agency they had to send us. 11 They had to verify background 12 information. They had to verify any licensure, if 13 there were licensure involved, or certifications. 14 For instance, CPR certification. 15 That the individual that was 16 coming from the agency had reviewed any policies or 17 procedures that we had sent to them, that they needed 18 to know about. 19 That's kind of a general view of 20 the kind of documentation that went back and forth. 21 Q. Okay. Now, did you know a Michele Simmons? 22 A. I don't believe so. 23 MR. MURDOCK: I'm sorry, I thought I 24 had more copies of this one document. I apologize. 25 MR. McBRIDE: I think I have a copy of</p>
<p>1 A. Rawson-Neal is an inpatient psychiatric 2 hospital. I was the chief nursing officer for the 3 inpatient side. 4 The state system does have some 5 outpatient facilities, too, but I just worked on the 6 inpatient side. 7 And the chief nursing officer is 8 responsible for the practice of nursing. In a 9 facility it's required by law that someone is, and so 10 I had day-to-day operational responsibilities. 11 Q. Did you do hiring, firing, things like 12 that? 13 A. I hired for some positions, but we had 14 managers in positions that would hire people that 15 would work in their particular departments. 16 Q. What about in terms of CNAs? Did you have 17 hiring/firing responsibilities? 18 A. In terms of CNAs, Rawson-Neal as a 19 psychiatric hospital really works with what are 20 called mental health techs, and they are not 21 necessarily CNAs. Some of them have that background, 22 many of them do not. 23 And the majority of the unlicensed 24 staff, which would be the non-nursing staff at 25 Rawson-Neal, are mental health techs.</p>	<p>Page 10</p> <p>1 that. 2 MS. BROOKHYSER: I have a copy. 3 MR. MURDOCK: I apologize. Let's mark 4 this as Exhibit 1. 5 (Plaintiff's Exhibit 1 marked.) 6 BY MR. MURDOCK: 7 Q. Ma'am, I'm showing you what's been marked 8 as Plaintiff's Exhibit 1. Have you ever seen a 9 document like that before? 10 A. I've seen documents like this, yes. 11 Q. Have you seen that exact document before? 12 A. I don't believe that I have. 13 Q. Is that a document from Rawson-Neal? 14 MR. McBRIDE: I object to form. 15 MR. MURDOCK: If you know. 16 THE WITNESS: I can't really answer 17 that, because I don't know the answer. 18 BY MR. MURDOCK: 19 Q. Okay. Is this the type of document that 20 you would look at prior to allowing an agency worker 21 to work at Rawson-Neal? 22 A. It would be very similar to, yes, that type 23 of a document. 24 Q. And this is called "Appropriate Boundaries 25 Competency Examination," is that correct?</p>
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<p>1 A. Yes, it is.</p> <p>2 Q. Do you know whether or not this was an</p> <p>3 examination that was drafted by Rawson-Neal for</p> <p>4 American Nursing?</p> <p>5 A. I worked at Rawson-Neal for two years. I</p> <p>6 would have been the person involved in those two</p> <p>7 years in that, and I did not do that.</p> <p>8 Now, prior to that I couldn't</p> <p>9 answer that question, because I wouldn't know.</p> <p>10 Q. Did Rawson-Neal provide American Nursing a</p> <p>11 competency examination with regard to appropriate</p> <p>12 boundaries for staff at the agency?</p> <p>13 A. No.</p> <p>14 Q. So when you said before, in terms of</p> <p>15 reviewed policies and procedures -- how would</p> <p>16 American Nursing know about policies and procedures</p> <p>17 that their employees should review?</p> <p>18 A. We developed a binder and we gave it to the</p> <p>19 agency, that included policies and procedures that we</p> <p>20 wanted them to review prior to sending staff to us.</p> <p>21 Q. Okay.</p> <p>22 A. And the agency's obligation was to review</p> <p>23 it with their staff before they sent staff to us, and</p> <p>24 we asked for them to document that in writing.</p> <p>25 Q. And that policies and procedures -- do you</p>	<p>Page 13</p>	<p>1 Q. So is it your belief that if there was no</p> <p>2 didactic component to this competency examination,</p> <p>3 that somehow this was faulty?</p> <p>4 MR. McBRIDE: I object to form.</p> <p>5 MS. BROOKHYSER: Join.</p> <p>6 THE WITNESS: I don't know what that</p> <p>7 means. Can I answer the question?</p> <p>8 MR. McBRIDE: Yes. It's just an</p> <p>9 objection for the record.</p> <p>10 THE WITNESS: From my perspective, the</p> <p>11 only piece of paper you've provided is this one piece</p> <p>12 of paper, so I can't answer if there's anything else</p> <p>13 associated with it.</p> <p>14 BY MR. MURDOCK:</p> <p>15 Q. Okay. How was Rawson-Neal set up in terms</p> <p>16 of the division of areas, in other words, G3A versus</p> <p>17 G3B?</p> <p>18 A. Rawson-Neal is relatively new construction</p> <p>19 and the building itself surrounds a central</p> <p>20 courtyard, and there are pods or buildings --</p> <p>21 although the buildings are attached, so you don't</p> <p>22 have to walk outside. You can go around the entire</p> <p>23 circle. And there's A through H.</p> <p>24 And in the clinical ones -- for</p> <p>25 instance, one of those was the cafeteria, so it</p>	<p>Page 15</p>
<p>1 know if that included with it the Appropriate</p> <p>2 Boundaries Competency Examination?</p> <p>3 A. I don't think that -- well, we would not</p> <p>4 have sent an Appropriate Boundaries Competency</p> <p>5 Examination during the two years that I was there.</p> <p>6 That was not developed by us during that time. And</p> <p>7 we did not send tests. We sent policies and</p> <p>8 procedures.</p> <p>9 Q. Okay.</p> <p>10 A. And validation of competency in healthcare</p> <p>11 is typically done three ways.</p> <p>12 One of them is a didactic</p> <p>13 component with a written examination. So were we to</p> <p>14 send anything like that, we would look for the</p> <p>15 didactic component, as well as the written</p> <p>16 examination.</p> <p>17 Q. When you say "a didactic component," what</p> <p>18 do you mean by that?</p> <p>19 A. It's the educational piece that's either by</p> <p>20 classroom -- it's some sort of learning environment,</p> <p>21 self-paced learning; but you offer the education, and</p> <p>22 then give a test on it.</p> <p>23 Q. Okay.</p> <p>24 A. And that's one of three ways that you</p> <p>25 validate competency in healthcare, for the most part.</p>	<p>Page 14</p>	<p>1 wouldn't have been a nursing unit.</p> <p>2 In the clinical ones there were</p> <p>3 two sides, and one side was A and -- let's see. We</p> <p>4 called it -- anyway, there are two sides in each</p> <p>5 building that house patients.</p> <p>6 Q. Were they divided by a wall or anything</p> <p>7 like that?</p> <p>8 A. When you walk into the area -- all patients</p> <p>9 there initially come into Rawson-Neal on a Legal</p> <p>10 2000, so they're all on a hold, an involuntary hold.</p> <p>11 When you walk into the front desk</p> <p>12 there are doors to each side that are locked doors,</p> <p>13 and you would go into the one side of the unit or the</p> <p>14 other side of the unit. So they were separate.</p> <p>15 Q. Okay.</p> <p>16 A. On the nursing desk side you could walk</p> <p>17 between the two units.</p> <p>18 Q. Would there be a reason for someone -- a</p> <p>19 CNA, for instance, or a mental health tech, whatever</p> <p>20 you want to call it -- would there be a reason for a</p> <p>21 person who had patients on G3A to be visiting</p> <p>22 patients on G3B?</p> <p>23 MR. BEMIS: Calls for speculation.</p> <p>24 BY MR. MURDOCK:</p> <p>25 Q. In general.</p>	<p>Page 16</p>

Page 17

1 A. Generally speaking, the staff would cover
2 for each other and assist each other.
3 And I do want to tell you the
4 reason that they're numbered like that -- it just
5 came back to me.
6 G and 3 -- some people called the
7 buildings by numbers and some people called them by
8 letters. So in the end what they evolved to was
9 saying G and 3, but it meant the same thing. And
10 then there was the A and B side.
11 Q. Okay. Now, there was an issue with
12 Mr. Farmer in January of 2008. Do you remember that?
13 A. January of?
14 Q. 2008?
15 A. No, I don't.
16 Q. You don't remember that?
17 A. No.
18 MR. MURDOCK: Let's mark this as
19 Exhibit 2.
20 (Plaintiff's Exhibit 2 marked.)
21 BY MR. MURDOCK:
22 Q. Ma'am, I'm showing you what's been marked
23 as Plaintiff's Exhibit 2. Why don't you take a
24 second and read through that.
25 A. I wrote that.

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1 Q. I didn't ask the question yet. Did you
2 write this?
3 A. Yes, I did.
4 Q. Okay. In fact, down below it says /s/s,
5 and next to that it says "Mary Jo Solon?"
6 A. Yes.
7 Q. And you did write this?
8 A. Yes, I did.
9 Q. Now, this memo is not dated. Do you recall
10 when you actually wrote it?
11 A. No, I don't.
12 Q. Does this refresh your recollection of an
13 incident that occurred with Mr. Farmer in January of
14 2008?
15 A. Obviously when I read it, the document
16 itself refreshes my recollection; but I actually
17 don't have a separate memory of this, separate from
18 this piece of paper.
19 Q. Okay. When Mr. Farmer was arrested, did
20 you go back and look at any of these documents?
21 A. I went back in and we had a file for every
22 agency person, and I looked at the file that existed
23 for Mr. Farmer.
24 Q. Okay.
25 A. We had documentation from the agency, we

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1 had some orientation information, and we had
2 evaluations for him.
3 And so I'm assuming -- that's a
4 bad thing to do -- that this document was in that
5 file, because that's where I typically would have put
6 it was in that file.
7 Q. Do you recall providing this document to
8 the District Attorney's office or Metro?
9 A. No, I don't.
10 MR. MURDOCK: Let's mark this next.
11 (Plaintiff's Exhibit 3 marked.)
12 BY MR. MURDOCK:
13 Q. I'm showing you what's been marked as
14 Plaintiff's Exhibit 3. Would you take a second and
15 read through that?
16 A. Okay.
17 Q. Do you recall reviewing that document ever
18 before?
19 A. I don't recall reviewing it before, but I
20 would assume that it came as part of the other
21 information.
22 Q. What do you mean, "as part of the other
23 information?"
24 A. If I look back on this, Matt Ross came to
25 me on the 23rd and he reported the situation with the

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1 CNA.
2 A typical process would be to ask
3 people that were involved to write a statement about
4 what happened, and that is what this looks like.
5 MR. MURDOCK: Let's mark this 4.
6 (Plaintiff's Exhibit 4 marked.)
7 BY MR. MURDOCK:
8 Q. Showing you what's been marked as
9 Plaintiff's Exhibit 4, have you ever seen this
10 document before?
11 A. The document is addressed to me, so I
12 assume it came to me. And again, I don't really have
13 a memory of this situation in January of 2008.
14 Q. Okay.
15 A. I will say that it looks like Neicey sent
16 this in response to a request for information
17 which --
18 Q. Who?
19 A. I'm sorry, Rontraneice. People called her
20 Neicey.
21 Q. Okay. And you believe it was sent in as a
22 request for information?
23 A. Yes.
24 Q. Now, at some point in time do you recall
25 contacting American Nursing and advising them that

<p>Page 21</p> <p>1 Mr. Farmer was not to be scheduled at Rawson-Neal 2 until there was an investigation? 3 A. From the documents you gave me that I 4 wrote, I contacted Michele Simmons at American 5 Nursing Services on January 24th of 2008, and I also 6 told the staffing office not to book any further 7 shifts for him. Our staffing office people would 8 call the agency and schedule people to work. 9 Q. And it was your expectation at the time you 10 did that that American Nursing would perform an 11 investigation, is that correct? 12 MS. BROOKHYSER: Objection to form. 13 BY MR. MURDOCK: 14 Q. Go ahead. You can answer the question. 15 A. I would expect that any agency would, 16 including American Nursing. 17 From our perspective on the 18 provider side, one of the things that happens when 19 you work with agency staff is we don't -- it's 20 different than working with your own employees. 21 So if patients, colleagues, 22 co-workers have an issue with an agency person, you 23 tell the agency not to send them back; where you 24 might take a different tact with your own employee, 25 in terms of investigating that employee. If that</p>	<p>Page 23</p> <p>1 (Plaintiff's Exhibit 5 marked.) 2 BY MR. MURDOCK: 3 Q. Showing you what's been marked as Exhibit 4 5, have you ever seen this document before? 5 A. I don't remember reading this document, but 6 since it's dated January 29th I would assume that it 7 came in with the rest of these packets -- with the 8 rest of the documents that you have. 9 Q. Can you identify Cynthia Holman for us? 10 A. Sure. Cindy Holman was one of our two 11 staffing office people. So she worked to make sure 12 that we had appropriate staffing on duty, and would 13 call various agencies and book staff when we needed 14 them, if we were not able to cover open positions by 15 overtime or other types of mechanisms. 16 Q. Okay. 17 (Plaintiff's Exhibit 6 marked.) 18 BY MR. MURDOCK: 19 Q. Have you ever seen these documents before? 20 A. These documents were sent to me 21 electronically, so I know I've read them before. And 22 actually this one seems more familiar to me than the 23 others do. 24 Q. Let's talk about these a little bit. 25 First of all, I guess it looks</p>
<p>Page 22</p> <p>1 makes sense. 2 Q. But who performs the investigation? In 3 other words, was it Rawson-Neal performing the 4 investigation, or was it your expectation that 5 American Nursing would perform the investigation? 6 A. What it appeared that we knew at this point 7 was that an agency person that was working for us as 8 a mental health tech, but had background as a CNA -- 9 a patient said that this individual had contacted 10 her, which would have been inappropriate. So we 11 acted just on what the patient said. 12 Q. Right. 13 A. I acted just on what the patient said. 14 Q. But did you expect American Nursing to 15 perform an investigation? 16 A. I would have expected that they would have. 17 That's just a personal expectation. 18 MS. BROOKHYSER: Late objection to 19 form. 20 BY MR. MURDOCK: 21 Q. Was it your personal expectation, acting as 22 chief nurse at Rawson-Neal? 23 A. Yes. 24 Q. Thank you. 25 MR. MURDOCK: Let's mark this next.</p>	<p>Page 24</p> <p>1 like an email chain started as an email from Matthew 2 Ross to Mary Jo Solon. That's you, correct? 3 A. Yes. 4 Q. And it was cc'd to Tina Hovenkamp, is that 5 correct? 6 A. Yes. 7 Q. Who is Tina Hovenkamp? 8 A. Tina Hovenkamp is an administrative 9 assistant that works at Rawson-Neal and supported the 10 nursing administration office. 11 Q. Now, if you look at the bottom email from 12 Mr. Ross, it was dated January 8, 2008 at 12:45 p.m.; 13 is that correct? 14 A. Yes. 15 Q. Do you know why this email was drafted in 16 the first place? 17 A. Well, there must have been some verbal 18 conversation of some sort before this, that said, 19 "Please give more information." It looks like this 20 is a response to getting more information. 21 So Matt Ross as a PN3, which is a 22 charge nurse level person on that particular unit, 23 would have discussed this with some other folks. 24 Q. Now, he states in here, "Hello Mary Jo. 25 Further investigation helped to clarify the situation</p>

<p>Page 25</p> <p>1 somewhat.* Did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. Do you believe there were any other emails</p> <p>4 besides these two?</p> <p>5 A. I don't remember any other emails in</p> <p>6 addition to this.</p> <p>7 Q. Okay. Now, under number 1 he discusses</p> <p>8 Lorraine Elrington's statement.</p> <p>9 Did you ever speak with</p> <p>10 Ms. Elrington about that statement?</p> <p>11 A. No, I don't believe I did.</p> <p>12 Q. Number 2, he discusses Ms. Theard's</p> <p>13 statement, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ever speak with Ms. Theard?</p> <p>16 A. No, I don't believe I did.</p> <p>17 Q. Cynthia Holman, on number 3, talks about a</p> <p>18 Nurse Catalina; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Who is Catalina?</p> <p>21 A. It appears from this email that Catalina is</p> <p>22 the nurse that Lorraine, the LPN, refers to in number</p> <p>23 1. The patient told her that Steve Farmer rented a</p> <p>24 room from Nurse Catalina.</p> <p>25 Cynthia Holman is the</p>	<p>Page 27</p> <p>1 A. The dailies are daily assignment sheets</p> <p>2 that are a permanent record so you can see what</p> <p>3 nursing personnel worked in what unit. And this</p> <p>4 means to me that Matthew and Cindy, Cynthia Holman,</p> <p>5 looked through our daily records back through --</p> <p>6 actually 2007, and were not able to verify that</p> <p>7 Steven had ever been assigned to work on G3B. He did</p> <p>8 work on G3A on this day of January 3rd.</p> <p>9 Q. Okay. We'll get back to that in a second.</p> <p>10 MR. MURDOCK: Let me just mark this</p> <p>11 next exhibit.</p> <p>12 (Plaintiff's Exhibit 7 marked.)</p> <p>13 BY MR. MURDOCK:</p> <p>14 Q. Now, have you ever seen Plaintiff's Exhibit</p> <p>15 7 before?</p> <p>16 A. Yes, I have.</p> <p>17 Q. And that appears to be a Nurse Performance</p> <p>18 Evaluation, is that correct?</p> <p>19 A. It's an Agency Staffing Evaluation.</p> <p>20 Q. Okay. And that's something that the people</p> <p>21 at Rawson-Neal fill out and then give to American</p> <p>22 Nursing?</p> <p>23 A. We implemented a process when I was there</p> <p>24 that we did very regular evaluations on any agency</p> <p>25 people that came in to work in our facility, much</p>
<p>Page 26</p> <p>1 administrative assistant staffing person who it would</p> <p>2 appear from this email Matt talked to, and Matt told</p> <p>3 him that this nurse is an agency nurse and was</p> <p>4 currently DNR'd, which means "Do Not Return." Which</p> <p>5 means we called the agency and said, "Don't sent her</p> <p>6 back."</p> <p>7 Q. Why was she DNR'd?</p> <p>8 A. I don't know that, but it should be in the</p> <p>9 files at Rawson-Neal.</p> <p>10 Q. Now, then number 4 says, "Patient Ethel</p> <p>11 reported these phone calls to Lorraine and</p> <p>12 Rontraneice January 2, 2008," is that right?</p> <p>13 A. That's what it says here, yes.</p> <p>14 Q. Now, if you go up to the second email, it's</p> <p>15 dated January 9, 2008 at 9:31 a.m. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Now, it's an email to you from Mr. Ross,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And he states, "After searching through the</p> <p>21 dailies as far back as 12/25/07 with Cynthia Holman,</p> <p>22 we were unable to verify that Steve had actually been</p> <p>23 assigned to work this unit G3B," is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Now, what does that mean to you?</p>	<p>Page 28</p> <p>1 more often than we would evaluate our own staff,</p> <p>2 because typically you evaluate them formally once a</p> <p>3 year.</p> <p>4 And we would collect this</p> <p>5 information. We filed it, as well as sent a copy to</p> <p>6 the agency, whichever agency it was. And I know that</p> <p>7 I reviewed this, because my initials are on the top.</p> <p>8 Q. Okay. Now, apparently the patient -- if</p> <p>9 you can look through everything and kind of get a</p> <p>10 large view of the situation -- the patient they were</p> <p>11 talking about here was on unit G3B, is that correct?</p> <p>12 A. (No response.)</p> <p>13 Q. Let me try and help you out here.</p> <p>14 A. Yes, she was on G3B.</p> <p>15 Q. She was on G3B?</p> <p>16 A. The patient.</p> <p>17 Q. The patient. Mr. Farmer, CNA mental health</p> <p>18 tech, whatever you want to call him, was not assigned</p> <p>19 to work on G3B; is that correct?</p> <p>20 A. This other document says that they were not</p> <p>21 able to find any documentation that he was assigned</p> <p>22 to work on G3B.</p> <p>23 Q. And you're referring to what document,</p> <p>24 ma'am?</p> <p>25 A. The email that is dated Wednesday, January</p>

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1 9th at 9:31 a.m.
2 Q. And what exhibit is that, ma'am?
3 A. That's Exhibit 6.
4 Q. So the email that you're referring to is
5 the email from Matt Ross to you dated January 9, 2008
6 where he talks about where he went back in the
7 dailies back through Christmas of 2007, and they
8 could not verify that Mr. Farmer worked unit G3B,
9 correct?
10 A. That's correct.
11 Q. Now, he does say though on January 3, 2008
12 Mr. Farmer worked on G3A, correct?
13 A. This email does say that, yes, Exhibit 6.
14 Q. Okay. But the incident apparently occurred
15 on January 2, 2008, correct?
16 A. That is what this email says, Exhibit 6,
17 yes.
18 Q. Now, would there be a reason why Mr. Farmer
19 would be in G3B?
20 MR. McBRIDE: I object to form.
21 MR. MURDOCK: I'm going to strike the
22 question before I even ask it.
23 BY MR. MURDOCK:
24 Q. Now, of course you would agree with me that
25 CNAs, nurses, whatnot, should not be speaking with

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1 patients about their living situations; is that
2 correct?
3 A. Actually I don't agree with that.
4 Particularly in a psychiatric unit, it's part of the
5 therapeutic care plan to have appropriate
6 conversation. Often in the group therapy team
7 meetings we develop plans for post discharge, and
8 that is a huge issue for this patient population.
9 Q. So in other words, there was no problem
10 with Mr. Farmer, is that correct?
11 A. Excuse me, I think I misspoke. I was
12 talking about the patient's living situation.
13 Q. Oh, okay.
14 A. Not Mr. Farmer's living situation. I
15 apologize.
16 Q. No, no. Let's go back.
17 A. I think I answered the wrong question.
18 Q. You did.
19 A. I apologize for that. I surprised
20 everybody, including myself.
21 MR. McBRIDE: That surprised him more.
22 BY MR. MURDOCK:
23 Q. Let's go back and talk about that for a
24 second.
25 If Mr. Farmer had done this, in

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1 terms of where he discussed his living situation with
2 the patient, was that a proper thing to do?
3 MR. McBRIDE: I object to form.
4 Incomplete hypothetical.
5 MS. BROOKHYSER: I join.
6 BY MR. MURDOCK:
7 Q. You can answer the question.
8 A. I'm thinking about my answer.
9 Q. Okay.
10 A. In context, no, I think that this is
11 inappropriate.
12 Again, in group therapy sessions,
13 when you develop a treatment plan and the social
14 worker is there, the doctor is there -- people may
15 talk about renting rooms, as opposed to going to the
16 Salvation Army or being discharged to another
17 shelter. But it still would be an improper
18 disclosure on the part of the staff person to say
19 what they were doing personally.
20 Q. Sure. If Mr. Farmer had called the client
21 or the patient on the patient's phone on two
22 occasions, would that be inappropriate?
23 A. Yes.
24 MR. McBRIDE: Object to form.
25 Incomplete hypothetical. Lacks foundation.

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1 MS. BROOKHYSER: Join.
2 BY MR. MURDOCK:
3 Q. Let's go to the Nurse Performance
4 Evaluation for a second. That was number 7.
5 Could you read what Mr. Ross wrote
6 on here?
7 A. "Staff informed me that Mr. Farmer called a
8 female client" -- the symbol for female is not the
9 word "female" -- "on the client's phone on two
10 occasions."
11 Q. Thank you. That's all I need.
12 Now, based on just that one
13 sentence, would that be inappropriate?
14 A. Yes.
15 Q. Is this something that you would
16 investigate, as to whether or not the staff actually
17 did this or not?
18 MR. McBRIDE: I object to form. The
19 staff did what?
20 MR. MURDOCK: Called the female client
21 on the client's phone on two occasions.
22 THE WITNESS: Well, the patient has
23 reported that this is what occurred -- reported it to
24 two Rawson-Neal employees. It's documented by
25 registered nurse, who is a team leader, and we just

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1 took action as a result of that and said he can't
2 come back.
3 Now, that was not me saying that
4 he did call her or did not call her. It's saying a
5 patient alleged or made the statement that he called.
6 BY MR. MURDOCK:
7 Q. Okay.
8 A. And we acted in response to the patient's
9 statement, which we could do with agency people.
10 It would have been a different
11 follow-up if the patient had alleged that an employee
12 of Rawson-Neal -- a state employee had done this.
13 Q. What would the follow-up have been?
14 A. We would have done more investigation to
15 see if it actually happened or not.
16 Q. Okay.
17 A. We did not investigate to see if this
18 actually happened or not. It was enough that the
19 patient said it did. This person was an agency
20 person, we told the agency we didn't want him to come
21 back.
22 Q. Did you ever speak personally with
23 Mr. Farmer?
24 A. I don't think I ever have.
25 Q. Did anybody at Rawson-Neal ever ask him for

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1 his side of the story?
2 A. In the relationship with an agency, we deal
3 with the agency, not the individual. So we take our
4 concerns back to the agency. And in fact we
5 developed these forms during the two years I was
6 there so that we always gave the agency something in
7 writing about why we told them we DNR'd or "Do Not
8 Return" an agency staff person.
9 Prior to that it had just been
10 verbal, or not some sort of formalized process.
11 Q. Okay.
12 MR. MURDOCK: We'll mark this as the
13 next exhibit.
14 (Plaintiff's Exhibit 8 marked.)
15 BY MR. MURDOCK:
16 Q. Why don't you take a look at that.
17 A. Okay.
18 Q. Showing you what's been marked as
19 Plaintiff's Exhibit 8, have you ever seen this
20 document before?
21 A. Yes.
22 Q. And this appears to be a document from
23 Michele Simmons over at American Nursing, is that
24 correct?
25 A. Yes.

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1 Q. And this is something that you would have
2 reviewed, is that correct?
3 A. Yes.
4 Q. Do you recall when you reviewed it?
5 A. It would have been around the time that
6 this incident occurred, but no, I could not recall
7 exactly when I reviewed it.
8 Q. Now, the date of the memorandum is
9 January 25, 2008. Do you see that?
10 A. Yes.
11 Q. And it talks about, "Steven Farmer Incident
12 GPOD 3B, 1/7/08," correct?
13 A. Yes.
14 Q. But the actual incident didn't occur on
15 1/7/08, correct?
16 A. The written documentation in the other
17 exhibits say that the conversation happened on
18 January 2nd.
19 Q. Now, the first paragraph of this document,
20 Plaintiff's Number 8 states, "In response to the call
21 received from Mary Jo Solon." Do you see that?
22 A. Yes.
23 Q. Do you recall making a phone call to
24 Michele Simmons or American Nursing about Steven
25 Farmer?

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1 A. I don't recall the phone call as a separate
2 incident, but I believe the other documents support
3 that I contacted American Nursing Services and told
4 them we had a concern.
5 Q. I don't understand your answer. I'm just
6 trying to --
7 A. I don't have an independent memory of the
8 phone call and my conversation with Michele Simmons,
9 but it's certainly supported that the conversation
10 happened. If that makes any sense.
11 Q. Okay. And why would you have made a phone
12 call, since Mr. Farmer was already DNR'd and you had
13 already filled out the information sheet -- or not
14 you, but Rawson-Neal had already filled out the
15 American Nursing Services Nurse Performance
16 Evaluation with regard to Mr. Farmer?
17 A. Well, we were notifying her at the agency
18 what the issues were, that he was not going to come
19 back to us and work.
20 Q. Yeah, but you already did that, so why
21 would you have made a phone call?
22 A. Just additional follow-up.
23 Q. Okay.
24 A. Again, the timelines for how everything
25 happened, it appeared that there was a lot of things

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1 that occurred early in January, and I would have
2 called her, according to Michele's documentation, on
3 January 24th. I have no reason to suspect that
4 didn't actually occur.
5 Q. Would it suffice to say that you were
6 concerned about Mr. Farmer's conduct?
7 A. In the context of the time, remembering
8 that this was before anything else came out about
9 Mr. Farmer.
10 So in the context of a patient
11 telling us that she knew where he lived, and that he
12 had called her twice on the telephone, my level of
13 concern would have been, "Well, this is
14 inappropriate, it crosses boundaries, and he can't
15 come back here and work with our patient population
16 any longer."
17 Q. Right.
18 A. And I would have told her that, because I
19 had conversation with anybody at any agencies, or let
20 them know when we were DNRing someone, so that they
21 would know why.
22 Q. And did you expect at that time that
23 American Nursing would perform an investigation of
24 the incident?
25 MR. MURDOCK: I object to form.

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1 MS. BROOKHYSER: Join.
2 THE WITNESS: I would suspect that
3 certainly they would have.
4 BY MR. MURDOCK:
5 Q. So according to this document, Ms. Simmons
6 states that she spoke with Mr. Farmer on January 25,
7 2007, is that correct?
8 A. Yes.
9 Q. And she goes on to talk about what
10 Mr. Farmer told her, correct?
11 A. That's correct.
12 Q. Now, apparently Mr. Farmer told Ms. Simmons
13 that he was having a problem with the patient, and in
14 fact told Cindy in staffing about the incident,
15 correct?
16 A. That's what this documentation says,
17 Exhibit 8.
18 Q. Okay.
19 (Plaintiff's Exhibit 9 marked.)
20 THE WITNESS: Just as a point of
21 information, in the particular clinical environment
22 that we're talking about, it is not an uncommon
23 process for a patient to become fixated on a staff
24 member or a social worker, psychologist,
25 psychiatrist, for any particular reason.

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1 When that would happen, we did
2 make every effort to ensure that they were not in
3 contact with each other.
4 Oftentimes this kind of fixation
5 of a more involved relationship -- it oftentimes also
6 is a violent fixation, so people physically attack
7 staff.
8 So being "fixated" is a common
9 term that we use in that clinical environment to
10 describe a patient's inappropriate interest in
11 another staff member. And in the context of the
12 time, that would have been what this appeared to be,
13 I believe.
14 BY MR. MURDOCK:
15 Q. Well, what about a staff member who is
16 fixated on a patient?
17 A. That's really inappropriate.
18 Q. In other words, a staff member calling on a
19 patient's phone twice?
20 MR. MURDOCK: I object to form.
21 THE WITNESS: Absolutely if a staff
22 member called a patient on their personal phone or
23 contacted them, it's inappropriate.
24 BY MR. MURDOCK:
25 Q. And who is it up to to determine as to

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1 whether or not the staff member is fixated on a
2 patient or the patient is fixated on the staff
3 member?
4 A. Patient fixations are usually very well
5 established. They happen more publicly. It's part
6 of conversation. It can be part of the treatment
7 plan and the treatment plan development that occurs.
8 I'm not saying it was in this
9 case, but it's part of a clinical assessment, and
10 usually we are pretty focused on our patients and
11 where they're coming from.
12 Q. Right. But of course the first thing you
13 might want to do is ask the staff member, correct?
14 A. That could be one thing that you might do,
15 yes.
16 Q. But in this instance, because it was an
17 agency worker, you left it up to the agency, correct?
18 A. Yes.
19 Q. Okay. Now, showing you what's been marked
20 as Plaintiff's Exhibit 9, this is a memorandum from
21 you dated March 2, 2008. Do you see that?
22 A. Yes.
23 Q. And that's your electronic signature, is
24 that correct?
25 A. That's correct.

<p style="text-align: right;">Page 41</p> <p>1 Q. Do you remember writing this document?</p> <p>2 A. I don't remember writing it, but I</p> <p>3 obviously did.</p> <p>4 Q. Now, you state in the first sentence,</p> <p>5 "After reviewing the documentation from all parties</p> <p>6 involved, it appears that a patient fixated on</p> <p>7 Mr. Farmer." Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. What parties involved were you looking at,</p> <p>10 what documents?</p> <p>11 A. I could not tell you, because I don't have</p> <p>12 access to those records.</p> <p>13 Q. Do you remember any other documents than</p> <p>14 the ones I've shown you here today?</p> <p>15 A. I don't remember any other documentation.</p> <p>16 Q. Based upon the documents I've shown you</p> <p>17 here today, does it appear as though the patient</p> <p>18 fixated on Mr. Farmer, or Mr. Farmer fixated on the</p> <p>19 patient?</p> <p>20 A. Based on this document, I believe at the</p> <p>21 time in March of 2008 that the patient was fixated on</p> <p>22 Mr. Farmer.</p> <p>23 Q. What do you base that on?</p> <p>24 A. The documentation that I reviewed.</p> <p>25 Q. Show me.</p>	<p style="text-align: right;">Page 43</p> <p>1 Services.</p> <p>2 She talks about conversations with</p> <p>3 Miriam, who is a PN3 on that unit, and while I have</p> <p>4 no independent memory of this at all, that might have</p> <p>5 been a person that would have supported this fixation</p> <p>6 by the patient, since she was the clinical person</p> <p>7 onsite on that unit at the time, observing the</p> <p>8 behaviors of both.</p> <p>9 I know that I did review</p> <p>10 performance evaluations in his file subsequently, and</p> <p>11 there are many others in addition to this one, and</p> <p>12 none of the other ones suggest in any way that we had</p> <p>13 any difficulties when he was there working.</p> <p>14 Again, this is all in the context</p> <p>15 at the time, and I'm very clear and recognize that</p> <p>16 there are many issues with relation to him since</p> <p>17 then, but I did not know that at the time.</p> <p>18 Q. Sure. And apparently you state in your</p> <p>19 second sentence, "Mr. Farmer stated he communicated</p> <p>20 his concerns regarding this patient's fixation,"</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. That's referring to Michele Simmons --</p> <p>24 A. Exhibit 8?</p> <p>25 Q. Exhibit 8, Michele Simmons' statement of</p>
<p style="text-align: right;">Page 42</p> <p>1 A. As I'm said before, I'm not sure this</p> <p>2 includes all the documentation.</p> <p>3 Q. Let me represent to you that these are the</p> <p>4 documents that I've received, and I haven't received</p> <p>5 any others. So if you could show me what documents</p> <p>6 in there you base this opinion on.</p> <p>7 MR. McBRIDE: I object to form.</p> <p>8 THE WITNESS: I have no documents in my</p> <p>9 possession.</p> <p>10 MS. BROOKHYSER: I'm going to join that</p> <p>11 objection.</p> <p>12 MR. McBRIDE: It's argumentative.</p> <p>13 BY MR. MURDOCK:</p> <p>14 Q. Based on all the documents in front of you,</p> <p>15 the plaintiff's exhibits, please tell me what</p> <p>16 documents you're using to make this proclamation that</p> <p>17 the patient fixated on Mr. Farmer.</p> <p>18 MR. McBRIDE: I object to form. It's</p> <p>19 been asked and answered. It's argumentative.</p> <p>20 THE WITNESS: I'm not sure it's a</p> <p>21 proclamation, sir.</p> <p>22 BY MR. MURDOCK:</p> <p>23 Q. Statement.</p> <p>24 A. I see some supporting statements from</p> <p>25 Michele, who I realize now works at American Nursing</p>	<p style="text-align: right;">Page 44</p> <p>1 what Mr. Farmer told her, correct?</p> <p>2 A. Yes.</p> <p>3 Q. But of course you state in your third</p> <p>4 sentence, "However, the staffing coordinator does not</p> <p>5 recall any conversation with Mr. Farmer about this</p> <p>6 topic," correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Did that raise a flag?</p> <p>9 MR. McBRIDE: I object to form.</p> <p>10 THE WITNESS: Based on this document,</p> <p>11 Exhibit 9, I believe that I spoke with Cindy Holman,</p> <p>12 who is the staffing coordinator, and it did not raise</p> <p>13 any flags that she didn't recall a conversation with</p> <p>14 Mr. Farmer, no.</p> <p>15 BY MR. MURDOCK:</p> <p>16 Q. If a patient is fixated on a staff member,</p> <p>17 what is the staff member supposed to do?</p> <p>18 A. The staff member is supposed to enforce</p> <p>19 appropriate boundaries, certainly is supposed to</p> <p>20 communicate that fixation to the treatment team, and</p> <p>21 the treatment team should use that information as</p> <p>22 part of developing the plan of care for the patient.</p> <p>23 Q. Did you ever investigate as to whether or</p> <p>24 not Mr. Farmer actually made the phone calls to the</p> <p>25 patient?</p>

<p style="text-align: right;">Page 45</p> <p>1 A. I have no memory of investigating that, no.</p> <p>2 Q. In other words, did you ever --</p> <p>3 A. If I can finish?</p> <p>4 Q. Sure. Go ahead.</p> <p>5 A. The PM3, that would be Marion, "Believes</p> <p>6 the patient was fixated on Mr. Farmer and also</p> <p>7 observed Mr. Farmer's work on numerous occasions."</p> <p>8 And that is in Exhibit 9. Which</p> <p>9 tells me that I had conversation with Marion, who was</p> <p>10 the PN3 that we're talking about, and she believed</p> <p>11 that the patient was fixated on Mr. Farmer.</p> <p>12 Q. Did you make any notes of your conversation</p> <p>13 with Marion?</p> <p>14 A. I have no notes in my possession, and if</p> <p>15 they're not in the file at Rawson-Neal then --</p> <p>16 Q. Then you didn't?</p> <p>17 A. Then I don't know that I did.</p> <p>18 Q. What is Marion's last name?</p> <p>19 A. I'll find out. I don't know what we would</p> <p>20 do without our iPhones, but I know that I still have</p> <p>21 her in here.</p> <p>22 Marion Booth-May. It's B-o-o-t-h</p> <p>23 M-a-y.</p> <p>24 Q. Do you happen to have her phone number,</p> <p>25 while I've got you there?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. No, I don't know.</p> <p>2 Q. Of course you had a written request to</p> <p>3 American Nursing, "To reinforce appropriate</p> <p>4 boundaries with Mr. Farmer, as well as the absolute</p> <p>5 need to report (verbally and in writing) any</p> <p>6 inappropriate patient fixation or concerns about</p> <p>7 patient behavior to both the supervising nurse at the</p> <p>8 hospital and to his agency." Is that correct?</p> <p>9 A. That's correct. That is what Exhibit 9</p> <p>10 says.</p> <p>11 Q. Now, why did you do that?</p> <p>12 A. Because in the first paragraph I stated my</p> <p>13 belief at the time that the patient was fixated on</p> <p>14 Mr. Farmer, and this was a reminder to the agency</p> <p>15 that they needed to work with their employee --</p> <p>16 excuse me, he's not actually an employee -- with the</p> <p>17 person that they contract with to send to us, to</p> <p>18 reinforce appropriate boundaries and the need to</p> <p>19 report verbally and in writing if he felt that any</p> <p>20 patient was inappropriately fixated on him.</p> <p>21 Q. Did you believe when you wrote this that</p> <p>22 Mr. Farmer had an issue with inappropriate</p> <p>23 boundaries?</p> <p>24 A. I believe when I wrote this that the</p> <p>25 patient was fixated on Mr. Farmer, and I wanted to</p>
<p style="text-align: right;">Page 46</p> <p>1 A. I happen to have it. It's a mobile number.</p> <p>2 243-6130.</p> <p>3 Q. Do you know if she still works at</p> <p>4 Rawson-Neal?</p> <p>5 A. I'm not sure if she does or not.</p> <p>6 Q. Okay. Now, again, back to my question.</p> <p>7 A. She is, I will say, one of the most expert</p> <p>8 psychiatric nurses I've ever worked with.</p> <p>9 Q. I'm sure she is.</p> <p>10 Did she go back and look at the</p> <p>11 phone calls to see whether or not the phone calls</p> <p>12 were actually made?</p> <p>13 A. I don't know that.</p> <p>14 Q. Did you?</p> <p>15 A. I did not. She --</p> <p>16 Q. Okay.</p> <p>17 MR. McBRIDE: I don't think she was</p> <p>18 finished.</p> <p>19 MR. MURDOCK: Well, it was a "yes" or</p> <p>20 "no" question. All I said was, "Did you?"</p> <p>21 BY MR. MURDOCK:</p> <p>22 Q. Now, you then apparently told American</p> <p>23 Nursing that he could come back?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Do you know if he ever came back?</p>	<p style="text-align: right;">Page 48</p> <p>1 ensure that Mr. Farmer would report any of those</p> <p>2 kinds of situations to appropriate people.</p> <p>3 Q. Right, but there's two parts to this</p> <p>4 request.</p> <p>5 One was what you just said, "The</p> <p>6 absolute need to report verbally and in writing any</p> <p>7 inappropriate patient fixation."</p> <p>8 But then there's the first part in</p> <p>9 the sentence which talks about, "To reinforce</p> <p>10 appropriate boundaries with Mr. Farmer."</p> <p>11 So again my question was, did you</p> <p>12 believe at the time you wrote this that there may</p> <p>13 have been issues with regard to inappropriate</p> <p>14 boundaries with Mr. Farmer and the patients?</p> <p>15 A. I did not believe at the time.</p> <p>16 Q. Then why did you write that?</p> <p>17 A. Reinforcing appropriate boundaries is</p> <p>18 something that we do constantly. It's always an</p> <p>19 issue in psychiatric care, because it's a different</p> <p>20 type of clinical environment. And I would have</p> <p>21 thought that appropriate boundaries include when a</p> <p>22 patient is fixated on you, what you do in response to</p> <p>23 a patient fixation. So it's a very broad term.</p> <p>24 Q. And you believed by putting American</p> <p>25 Nursing Services on notice that they would reinforce</p>

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1 these appropriate boundaries, right?
2 A. Yes, I did.
3 Q. And you believed that American Nursing
4 would also instruct Mr. Farmer about the absolute
5 need to report, verbally and in writing, any
6 inappropriate patient fixation, correct?
7 A. Yes.
8 Q. Okay.
9 MR. MURDOCK: Let's mark this next.
10 (Plaintiff's Exhibit 10 marked.)
11 BY MR. MURDOCK:
12 Q. Showing you Plaintiff's Exhibit 10, do you
13 know what this is?
14 A. It's a memorandum that I wrote and sent to
15 American Nursing Services that said that we
16 considered Steve Farmer DNR, "Do Not Return," and
17 it's dated May 19th.
18 Q. Now, you signed this, is that correct,
19 electronically?
20 A. I signed this electronically, yes.
21 Q. And you sent that to American Nursing
22 Services, correct?
23 A. I believe that I did. This is just a copy
24 of it, but I believe I would have sent it to American
25 Nursing Services.

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1 Q. Now, you wrote that on May 19th why? What
2 happened on May 19th that caused to you write this?
3 A. I believe that this was the timeframe that
4 something occurred that was public knowledge, that
5 there were issues with Steve Farmer and his
6 performance, and we didn't want him back.
7 Q. What was that?
8 A. There was media stories, and I believe -- I
9 can't tell you the date that they happened, but I
10 believe that this was that timeframe. And people
11 became aware of the fact that there were allegations
12 of inappropriate sexual contact by patients at
13 MountainView Hospital, and I believe that he was
14 arrested right around this time.
15 Q. Okay.
16 A. I believe that.
17 Q. So in other words, there were apparently
18 some allegations at a hospital regarding some alleged
19 sexual assaults, or something like that?
20 A. Yes.
21 Q. Now, of course these were just allegations,
22 correct?
23 A. Yes.
24 Q. Despite the fact that they were just
25 allegations, you DNR'd him immediately, correct?

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1 A. Absolutely.
2 Q. You didn't investigate, correct?
3 A. No.
4 Q. You didn't call Michele Simmons to have her
5 investigate, correct?
6 A. No.
7 Q. Because these allegations were so serious
8 you said, "No, no, no," and you DNR'd him?
9 A. Yes.
10 Q. Now, of course two months earlier there was
11 an allegation about alleged patient fixation, and you
12 allowed him to return, correct?
13 A. That's correct.
14 Q. Of course these were just allegations?
15 A. Well, no, I believe patient fixation
16 occurred. I did not believe it was an allegation two
17 months earlier.
18 Q. Did you speak with the patient?
19 A. No, I did not.
20 Q. So you didn't speak with the patient, you
21 didn't check for phone records, correct?
22 A. That's correct.
23 Q. You didn't talk to Mr. Farmer directly,
24 correct?
25 A. Correct.

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1 Q. You didn't speak with Rontraneice, correct?
2 A. I don't know if I spoke with Rontraneice or
3 not. I may have. I know that there's a document
4 here from her addressed to me, Exhibit 4.
5 Q. Do you recall speaking with her?
6 A. I don't have an independent recollection of
7 speaking with her, but I would not, so I don't know
8 if I did or not. But she certainly sent a response
9 to me.
10 Q. Well, was it a response, or was it just
11 a --
12 A. Well, you're correct, I shouldn't have used
13 the word "response." I don't know that it was a
14 response. She sent a document to me.
15 Q. Okay. So we're not sure as to whether or
16 not you spoke to Rontraneice.
17 You did not speak with Lorraine
18 Elrington. I believe you testified to that, correct?
19 A. No, I'm sure I did not.
20 Q. So when you DNR'd Mr. Farmer on May 19,
21 2008, the only evidence before you that he even did
22 anything wrong was through the media, correct?
23 A. Correct.
24 Q. So in other words, if Mr. Farmer's patient
25 fixation issue was through the media, then you might

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1 have DNR'd him at that time; is that correct?
2 MR. McBRIDE: I object to form.
3 Hypothetical.
4 MR. MURDOCK: Strike that.
5 THE WITNESS: I think if he had been
6 arrested for a patient fixation, that would have
7 elevated it to a different level; and I believe that
8 he was arrested, and that was one of the things that
9 drove this action.
10 BY MR. MURDOCK:
11 Q. Sure. You didn't notify Metro, did you?
12 A. Of the patient fixation two months before?
13 Q. Right.
14 A. No, I did not.
15 Q. Because what you did is -- he wasn't your
16 employee, correct?
17 A. That's correct.
18 Q. You notified American Nursing, correct?
19 A. Correct.
20 Q. And you expected American Nursing to do
21 whatever they thought was necessary to deal with
22 Mr. Farmer, correct?
23 MS. BROOKHYSER: I object to form.
24 THE WITNESS: I expected that American
25 Nursing would investigate and provide follow-up,

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1 which I believe they did.
2 BY MR. MURDOCK:
3 Q. Well, of course they couldn't do an
4 investigation in terms of checking for phone calls,
5 correct?
6 MS. BROOKHYSER: Objection to form.
7 Calls for speculation.
8 BY MR. MURDOCK:
9 Q. Could they?
10 A. I don't know how to answer that question.
11 If you're asking me could they have -- could you
12 clarify what you're asking?
13 Q. Yeah. Could American Nursing have called
14 you and said, "We'd like a list of all the phone
15 calls had by this patient?"
16 MR. McBRIDE: I object to form.
17 MS. BROOKHYSER: Join.
18 THE WITNESS: If I could answer that, I
19 don't know the process that they would have been able
20 to use to get a list of phone calls that were made to
21 a cellphone.
22 BY MR. MURDOCK:
23 Q. Did you expect them to do an investigation?
24 A. I expected them to investigate, yes.
25 MS. BROOKHYSER: Same objection.

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1 BY MR. MURDOCK:
2 Q. Looking back on this now, in the context of
3 his being arrested, do you feel you did anything
4 wrong in this case?
5 A. Actually I think I handled it just
6 appropriately, in the context of what was going on at
7 the time. Certainly looking back with additional
8 information, there are concerns. I'm concerned.
9 Q. What's the additional information?
10 A. The additional information that he was
11 arrested a couple of months later for a variety of
12 behaviors that are inappropriate and illegal.
13 Q. And in the end, when you contacted American
14 Nursing, it was American Nursing that you relied on
15 to allow him back into the facility?
16 MS. BROOKHYSER: Objection to form.
17 BY MR. MURDOCK:
18 Q. Correct?
19 A. I don't think that's actually entirely
20 correct.
21 Q. Tell me.
22 A. I sent information to American Nursing,
23 they sent information back. We collected information
24 from other people, including probably information
25 that I would have relied on quite heavily, which was

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1 the information from the PN3.
2 Q. Which there's no memorandum about, correct?
3 A. Exhibit 9 says that she believes this
4 patient was fixated on Mr. Farmer, and also observed
5 his work on many occasions.
6 Q. Right. But of course when you drafted
7 that, as we discussed before, there's no notes about
8 that conversation with the PN3, correct?
9 A. I said I didn't have any notes in my
10 possession. I don't know if there are any notes or
11 not. There are no notes presented here.
12 Q. Do you believe there are somewhere?
13 A. I have no idea.
14 Q. So she said it was patient fixation. Do
15 you know what she based her opinion on, by the way?
16 MR. BEMIS: Calls for speculation.
17 BY MR. MURDOCK:
18 Q. If you know. If you don't know, say you
19 don't know.
20 A. She's making a clinical assessment of a
21 patient.
22 Q. I'm not talking about a clinical assessment
23 of a patient.
24 What I'm asking for is the actual
25 activities involved between the patient and the staff

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1 member, what she based her opinion on, if you know?
2 MR. McBRIDE: Let me object. That can
3 be the same thing. I object to form.
4 MR. MURDOCK: And maybe it is. It
5 could be. I don't know.
6 THE WITNESS: I believe it is a
7 clinical assessment.
8 BY MR. MURDOCK:
9 Q. Okay. So of course the patient's chart
10 would reflect this, is that correct?
11 A. I don't know what the patient chart
12 reflects. I have not read that.
13 Q. And again, you never even talked to the
14 patient, did you?
15 A. No, I did not.
16 Q. And you are currently -- again, what is
17 your job at Southwest Medical?
18 A. I'm the chief nursing officer for Southwest
19 Medical Associates and the director of the
20 professional administration and development
21 department.
22 Q. Do you do hiring and firing there?
23 A. I hire in my department, but managers hire
24 in their own departments. And so I would do hiring
25 and firing in my department, yes.

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1 And I sit on many panel
2 interviews. We do panel interviews for new staff,
3 new physicians.
4 Q. On May 19, 2008, outside of sending the
5 memorandum to American Nursing about Mr. Farmer, did
6 you call American Nursing?
7 A. I don't believe I did.
8 Q. Have you ever had a conversation with
9 Michele Simmons or anybody at American Nursing
10 discussing Mr. Farmer, after May 19, 2008?
11 A. No.
12 Q. Did anybody ever call you from American
13 Nursing?
14 A. I don't believe so, no.
15 Q. Did any lawyers ever call you from American
16 Nursing?
17 A. No. That I would remember.
18 Q. Did Metro ever call you?
19 A. No.
20 Q. Did the Attorney General's office ever call
21 you?
22 A. No. I actually left employment I think
23 shortly thereafter. I left the state. No, I was
24 still there for awhile. Never mind.
25 Q. When did you leave?

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1 A. I've worked in my current position for
2 three years in the summer, so 2009.
3 Q. So you were there about a year after this?
4 A. Yes.
5 MR. MURDOCK: I have nothing further at
6 this time.
7
8 EXAMINATION
9 BY MR. McBRIDE:
10 Q. Ms. Solon, my name is Robert McBride. I
11 represent Mr. Farmer in this case.
12 You stated that this memorandum
13 that you wrote, where you provided notice to American
14 Nursing Services that Steven Farmer was considered
15 DNR -- that that occurred as a result of you learning
16 of allegations in the media about some alleged sexual
17 assaults by Mr. Farmer, is that right?
18 A. That's correct. The information was in the
19 media, but it also was in discussion with people that
20 worked at our hospital, at Rawson-Neal.
21 So my initial knowledge about this
22 may have been someone there saying, "Did you see
23 this?" If that makes sense.
24 Q. Okay.
25 A. But then I would have seen it also.

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1 Q. And so at the time you were aware that
2 Mr. Farmer had been arrested, correct?
3 A. Yes.
4 Q. Do you know if since that time the
5 allegations against Mr. Farmer of those various
6 allegations that were made, for which he was
7 arrested, have ever been proven to be true in a court
8 of law?
9 MR. MURDOCK: I'm going to object. The
10 trial hasn't happened yet, so I'm not sure what --
11 MR. McBRIDE: I'm asking her if she
12 knows that they've been proven to be true.
13 MR. MURDOCK: I'm still objecting.
14 It's inappropriate.
15 THE WITNESS: One of the documents that
16 I receive on a regular basis is from the Nevada State
17 Board of Nursing, and they publish a disciplinary
18 action list on a regular basis, and it lists people's
19 names and license and any action that was taken. And
20 I believe that his CNA license was revoked by the
21 Nevada Board of Nursing.
22 BY MR. McBRIDE:
23 Q. But what I'm asking is, do you know if
24 Mr. Farmer has been convicted of any of the
25 allegations made against him?

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1 A. No, I don't know.
2 Q. Okay. And do you believe --
3 A. Actually, let me restate that. The other
4 attorney has just said the trial has not happened, so
5 that makes me think it has not.
6 Q. That's right. So as of today, these
7 allegations have still not been proven to be true
8 against Mr. Farmer, true?
9 A. I believe that's true, in a court of law.
10 Q. And do you believe that Mr. Farmer is
11 innocent until proven guilty?
12 MR. MURDOCK: Objection.
13 BY MR. McBRIDE:
14 Q. You've heard that phrase before, haven't
15 you?
16 A. I've heard that phrase before, and I
17 support that phrase. However, at the same time the
18 Nevada Board of Nursing revoked his CNA license.
19 Q. I understand that, but that wasn't my
20 question.
21 My question is, do you believe
22 Mr. Farmer would be innocent until proven guilty of
23 these charges that were made against him,
24 notwithstanding the fact that the Board of Nursing
25 revoked his license?

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1 MR. MURDOCK: And I'm sorry, in a
2 criminal court of law? Or are you asking in the
3 media? What are you asking?
4 MR. McBRIDE: I'm asking in a criminal
5 court of law.
6 MR. MURDOCK: Oh. I object to
7 relevance. Who cares?
8 THE WITNESS: I actually believe in
9 innocent until proven guilty. Yes, I do believe in
10 that.
11 BY MR. McBRIDE:
12 Q. Now, you also stated that in your
13 experience working at Rawson-Neal, in a psychiatric
14 hospital, that it's not uncommon for patients to
15 become fixated on other staff members, true?
16 A. It's not uncommon for psychiatric patients
17 to become fixated on others. It can be another
18 patient, but it can also be staff people. It can be
19 a variety of individuals. So it does happen
20 sometimes that they become fixated on employees.
21 Q. And that would include physicians as well,
22 right?
23 A. Yes, it does.
24 Q. And during your time there Steven Farmer
25 wasn't the only individual staff member, based on

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1 your recollection, who a patient had become fixated
2 on; is that right?
3 A. That's correct.
4 Q. Did you report every single one of those
5 other fixations to Metro, of a patient becoming
6 fixated on a staff member?
7 A. No. It's a clinical symptom, and so we
8 would not have reported that. I would not have
9 reported that to Metro.
10 Q. And with regard to your reliance on Marion
11 Booth-May, were you satisfied with her judgment or
12 opinion that in her opinion Mr. Farmer --
13 A. I believe I was satisfied, because that's
14 what I wrote in that exhibit.
15 Q. Were you also satisfied with the
16 information that you obtained in the investigation
17 conducted by Ms. Simmons at American Nursing?
18 A. Can you repeat that question?
19 Q. Sure. Were you also satisfied with the
20 investigation that American Nursing Services had
21 conducted, including the conversations they had with
22 Steve Farmer, in arriving at your determination that
23 Steven could return to Rawson-Neal?
24 A. This would have been part of that decision,
25 and I believe I was satisfied with what she said,

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1 yes.
2 Q. In reviewing any of Mr. Farmer's prior
3 assessments that had been conducted -- and one of
4 them was previously shown to you by counsel -- did
5 you see any instance of Mr. Farmer overreaching or
6 engaging in inappropriate boundaries with a patient?
7 A. No, I don't believe that any of the other
8 evaluations had any negative information on them, and
9 there are many of them.
10 Q. In fact, do you recall any negative
11 comments against Mr. Farmer by any of the staff
12 members, based on his performance as a CNA during the
13 entire time he was there?
14 A. No, actually I don't.
15 Q. Other than the phone calls that were the
16 issue in this case, was there, to your knowledge, any
17 allegations by this patient that Mr. Farmer had
18 engaged in inappropriate sexual contact with her?
19 A. I believe that there's a statement in here
20 that she made that she said he kissed her, but I'd
21 have to look through these exhibits to see if that is
22 there or not.
23 She also though said that she was
24 married to him, and she referred to him as Santa
25 Claus.

<p>Page 65</p> <p>1 Q. Do you know why she referred to him as 2 Santa Claus? 3 A. He had a full beard, and actually other 4 people referred to him that way also, because he had 5 that appearance. 6 Q. And you know that this patient was not 7 married to Mr. Farmer, right? 8 A. She was not married to Mr. Farmer, that's 9 correct. 10 Q. You also note from the email from Matthew 11 Ross that this patient was diagnosed as being 12 bipolar, right? 13 A. That is the diagnosis that Matt Ross did 14 write in that email, yes. 15 Q. And Matt Ross indicated the patient is 16 bipolar and could conceivably strike up a 17 conversation with anyone instantly, right? 18 A. That is what he wrote, yes. 19 Q. What did you understand that comment to 20 mean? 21 A. He was merely making a statement about the 22 clinical situation of the patient. 23 Q. And again, I just want to clarify, you have 24 no recollection of having any conversations with 25 Mr. Farmer at any point in time during his work at</p>	<p>Page 67</p> <p>1 relates he says, and what he is saying would relate 2 to fixation, and something that he would need to be 3 very cautious about, as someone that works in that 4 field. 5 Q. But again, based on Mr. Farmer's statement 6 to Ms. Simmons, as contained in this letter, he did 7 notify the staffing coordinator about this, and told 8 the staffing coordinator that he could not be on the 9 unit; isn't that right? 10 A. That's what he wrote here, yes. Or that's 11 what he wrote that she said. 12 Q. Okay. And even though Cindy has no 13 recollection of that occurring, you have no 14 independent knowledge of whether or not that 15 conversation occurred? 16 A. Well, Cindy reported that she did not 17 remember any conversations with him about that. 18 Q. But that doesn't mean it didn't occur, she 19 just doesn't remember? 20 A. She doesn't remember. 21 Q. And I'm sorry if this was already asked, 22 but after you received this letter from Michele 23 Simmons, do you recall if you had any conversations 24 with her regarding the information contained in it? 25 A. I don't know if I called and spoke to her</p>
<p>Page 66</p> <p>1 Rawson-Neal; is that right? 2 A. That's correct. 3 Q. Do you know what medications this patient 4 may have been on while she was hospitalized at 5 Rawson-Neal? 6 A. No, I don't. 7 Q. In your experience, is it always possible 8 for a staff member to recognize when a patient 9 becomes fixated on them? 10 A. I think when the fixation is overt, when 11 their actions or statements are overt, the staff 12 member would recognize it. That's not always the 13 case. 14 Q. Did you see anything in Mr. Farmer's files 15 about any actions that he may have seen as being 16 overt, with regard to this patient? 17 A. Can you ask that again? 18 Q. Sure. I'm trying to find out if there's 19 anything, based on your review of the documents, that 20 you saw as overt actions by the patient, that would 21 give Mr. Farmer notice that this patient had become 22 fixated on him. 23 A. I think the documentation that would 24 suggest that came from Michele Simmons at American 25 Nursing, from her interview with him. And what she</p>	<p>Page 68</p> <p>1 and had conversation with her after I received this. 2 I don't remember. 3 Q. And from the time of this letter, which was 4 January 25, 2008, up until your memorandum to the 5 file on March 20, 2008 where you advised that 6 Mr. Farmer could return to Rawson-Neal, do you know 7 what if anything may have occurred, as far as any 8 further investigation into these actions or inactions 9 by Mr. Farmer? 10 A. Based on what I wrote on March 20th, I 11 would have had communication with both Cindy Holman, 12 the staffing coordinator, as well as Marion 13 Booth-May, the PN3. 14 Q. In other words, I'm trying to determine, do 15 you know why it would have taken approximately two 16 months between the time you received that letter from 17 Michele Simmons, up until you finally made the 18 decision on Mr. Farmer that he could return on March 19 20th? Did anything happen in the interim that 20 delayed your decision in this respect? 21 A. I would have taken the opportunity to talk 22 to those couple of people. And he was not working 23 for us at the time, so there was no sense of urgency 24 that our patients were at risk. 25 So no, I don't know anything more</p>

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1 about it than that.
2 Q. Did anyone, to your knowledge, specifically
3 request that Steven Farmer be allowed to return to
4 Rawson-Neal to work?
5 A. I don't know the answer to that. I mean I
6 don't remember anybody encouraging me to bring him
7 back, but he had worked there for awhile and had
8 contacts, people that he worked with. So there may
9 have been people that said, "We should get him back
10 here."
11 Q. Other than this incident and the
12 information we've been discussing for the past hour
13 and a half, was there any negative information that
14 you obtained from any other staff members during any
15 conversations you might have had, regarding
16 Mr. Farmer and his work there at Rawson-Neal?
17 A. No, there were no negatives.
18 Q. After you learned about his arrest in the
19 media, did you conduct any additional investigations
20 into Mr. Farmer's conduct, or whether he had any
21 potential issues with any other patients while he
22 worked there?
23 A. No, I didn't.
24 Q. You said you were contacted by the Nevada
25 State Board of Nursing. Do you remember that?

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1 A. Yes.
2 Q. Do you remember when that occurred?
3 A. No, I'm sorry, I don't.
4 Q. Do you know if it was after he was
5 arrested?
6 A. Oh, yes, it would have been after that,
7 yes.
8 Q. And do you know who you spoke with at the
9 Nevada Board of Nursing?
10 A. I'm sorry, I do not.
11 Q. Do you know any information that you may
12 have provided to them?
13 A. I'm sorry, I don't remember.
14 Q. And before today had you ever communicated
15 with anyone at the -- again, I just want to clarify
16 this -- up until today, have you had any
17 communications with anyone at Metro regarding
18 Mr. Farmer?
19 A. No.
20 Q. Up until today have you had any
21 communications with the D.A.'s office regarding the
22 allegations against Mr. Farmer in these other cases?
23 A. No.
24 Q. How about Mr. Farmer's public defender?
25 A. No.

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1 Q. Prior to today have you had any direct
2 communication with Mr. Murdock or anyone in his
3 office?
4 A. I have spoken on the phone to the woman who
5 helped arrange today, and I believe her name is
6 Karen. That's the only person.
7 Q. Were you served with a subpoena to appear
8 here for your deposition?
9 A. Yes, I was.
10 Q. Do you know when you were served with that
11 subpoena?
12 A. I actually was served with two, because the
13 dates changed. The first one was dated June 29th --
14 the letter was; and the second one was July 24th. So
15 I would have received it I'm sure right after the
16 first one, after June 29th.
17 Q. I also meant to ask you, too, with regard
18 to these comments that the patient related that
19 Steven Farmer had kissed her -- do you recall reading
20 that somewhere?
21 A. Yes.
22 Q. Did you or anyone on your staff at
23 Rawson-Neal ever witness Steven Farmer kiss this
24 patient?
25 A. No.

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1 Q. So again, that statement came solely from
2 this bipolar patient?
3 A. From the patient, yes.
4 Q. The same patient who said she was married
5 to Santa Claus?
6 MR. MURDOCK: Objection. Assumes facts
7 not in evidence.
8 BY MR. McBRIDE:
9 Q. Is that correct?
10 A. It's the same patient, yes. And a number
11 of people reported that she said she was married to
12 him.
13 MR. McBRIDE: That's all I have. Thank
14 you.
15 MS. BROOKHYSER: I don't have any
16 questions.
17 MR. BEMIS: Can we take five minutes
18 real quick?
19 (Recess.)
20
21 EXAMINATION
22 BY MR. BEMIS:
23 Q. I just have a few questions. My name is
24 John Bemis. I represent Centennial Hills.
25 With regard to your work at

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1 Rawson-Neal, did you advise anybody at Rawson-Neal
2 today that you were going to be giving a deposition?
3 A. Yes. I told Chelsea Szklany, when I was
4 first served with the subpoena, that I was going to
5 be giving a deposition.
6 Q. And I'm not going to be able to pronounce
7 that last name.
8 A. I'm going to spell it for you.
9 Q. Okay.
10 A. The first name is Chelsea, and the last
11 name is S-z-k-l-a-n-y.
12 Q. What was your conversation with Chelsea?
13 A. I called Chelsea and told her --
14 MR. MURDOCK: You know what? Before
15 you answer that question, is she an attorney?
16 THE WITNESS: No, she is not an
17 attorney.
18 MR. MURDOCK: Okay.
19 THE WITNESS: I called and told her I
20 had received the subpoena, and that it was in
21 relationship to Steve Farmer.
22 BY MR. BEMIS:
23 Q. And what was her response?
24 A. She said to call her after I did this and
25 tell her how it went, which seemed like a good

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1 response.
2 Q. If I'm correct, you testified earlier you
3 were in charge of reviewing the agency hires or the
4 agency employees that came over?
5 A. The agency people that we scheduled, yes.
6 Q. And what would you review when you had an
7 agency scheduled to come over?
8 A. We developed a process that we sent
9 information to the agencies that we wanted them to
10 share with anybody that they were going to send.
11 They sent us documentation back
12 that would have affirmed, if there was a license
13 involved, that the person had a current license; that
14 they had reviewed the information, they understood
15 the privacy issues.
16 There are many issues in that
17 particular clinical environment, with verbal
18 deescalation and physical intervention techniques
19 that they had to be competent in, and a variety of
20 things like that.
21 Q. As it relates to licensure and background
22 checks, that's information that the agency would do;
23 is that correct?
24 A. Yes.
25 Q. And then they would provide you

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1 confirmation?
2 A. They would provide confirmation that that
3 is completed -- the background checks, drug
4 screenings, licensure, verification of TB screening,
5 those kinds of things.
6 Q. And because the agency provided that
7 information to you, there would be no need for
8 Rawson-Neal to recheck that information?
9 A. No, we would not recheck that information.
10 Q. When you request an agency schedule, do you
11 know whether that individual that's coming over has
12 been DNR'd from a different facility?
13 A. No, we would not know that. There is not
14 sharing of that kind of information, that I'm aware
15 of.
16 Q. And when you would DNR an individual it
17 could be for a variety of reasons?
18 A. Yes.
19 Q. Whether it's personal conflict, or an
20 actual thing with their employment or their skills?
21 A. It could be for any number of reasons that
22 we would just call the agency and say, "Don't send
23 this person back."
24 Q. And I understand that especially being at a
25 mental health center, that you would provide the

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1 deescalation information and verbal communication
2 with patients.
3 Did you provide any information to
4 the agencies about appropriate boundaries?
5 A. I'd have to go back and look at that
6 packet. It's a pretty comprehensive packet. I would
7 assume that was specifically included. It's a binder
8 that has lots of information in it.
9 Q. Were you in charge of putting that binder
10 together?
11 A. Yes, I was involved. I was the person that
12 put the binder together.
13 Q. And were you also involved in creating
14 policies and procedures at Rawson-Neal?
15 A. Yes.
16 Q. And did you have a policy and procedure
17 about appropriate boundaries?
18 A. I believe we did.
19 Q. And do you know whether that policy
20 included how to communicate patient fixation to
21 management or to your immediate superiors?
22 A. I don't know that that was addressed in
23 that sort of detail, without reviewing the actual
24 binder of policies.
25 Q. With regard to the documentation that we

<p style="text-align: right;">Page 77</p> <p>1 went over earlier, I want to turn your attention to 2 Plaintiff's Exhibit 8, the letter from Michele 3 Simmons, the second full paragraph. It states that 4 they called Steven Farmer on 1/25/07. 5 Did you believe that to be a typo 6 and to mean 2008? 7 A. I would have, yes. To be honest, I didn't 8 notice it until you pointed it out. 9 Q. And I'm correct -- I don't want to put 10 words in your mouth -- the January incident, did you 11 DNR Mr. Farmer in January, or when you said "no 12 rehire," is that the same? Are we using them 13 synonymously? 14 A. "Do Not Return" and "DNR" is synonymous. 15 Q. No, but in January you indicated that you 16 spoke to Michele Simmons about not to book shifts 17 with Steven Farmer. 18 A. Yes. 19 Q. And does that mean "Do Not Return?" 20 A. Yes, that's what that means. 21 Q. Okay. And in March I'm correct that you 22 then said, "We are now able to rebook shifts with 23 Mr. Farmer?" 24 A. Yes. 25 Q. And am I correct you don't have a</p>	<p style="text-align: right;">Page 79</p> <p>1 another facility; is that correct? 2 A. That's correct. 3 Q. What if they were DNR'd for inappropriate 4 boundaries, or things like that? 5 A. The agency would know that. 6 Q. Right. But they wouldn't tell you? 7 A. They could have told us, but -- 8 Q. Do you think they should have? 9 A. Oh, yeah, I think they should have. But 10 there was no process -- when we DNR'd somebody we 11 notified the agency. We didn't then also notify 12 anybody who might use staff from that agency. 13 Q. Sure, absolutely. But you believe the 14 agency certainly should have told you? 15 MS. BROOKHYSER: Objection to form. 16 Assumes facts not in evidence. 17 THE WITNESS: Yeah. If they thought 18 that was an issue with someone that they were sending 19 out, I think that they should have communicated that, 20 or in my opinion, not sent them out. 21 BY MR. MURDOCK: 22 Q. Now, I don't know about this population, 23 but a patient who is bipolar -- does that equate to 24 that same patient being a liar? 25 A. No, it does not.</p>
<p style="text-align: right;">Page 78</p> <p>1 recollection whether Mr. Farmer again worked at 2 Rawson-Neal after March 20, 2008? 3 A. I don't know whether he worked there 4 between March and May 9th. I don't recollect. 5 Q. And it also states in here on March 20th 6 you spoke to Cindy, or you spoke to the staffing 7 coordinator? 8 A. Cindy is the staffing coordinator. 9 Q. Did you testify earlier that there were two 10 staffing coordinators? 11 A. There were two people, yes, that worked in 12 the staffing office. They worked 12-hour shifts. 13 Q. Who was the other one besides Cindy? 14 A. Joanne Pinkney, P-i-n-k-n-e-y. 15 Q. And do you know if you spoke to Joanne? 16 A. I don't remember if I spoke to her also, or 17 just Cindy. 18 MR. BEMIS: I don't have any further 19 questions. 20 21 FURTHER EXAMINATION 22 BY MR. MURDOCK: 23 Q. When you were reviewing staffing files from 24 these agencies, you testified that you would not know 25 as to whether or not this person was DNR'd from</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. If a patient is bipolar, does that equate 2 to that patient not being a victim? 3 A. No, it absolutely does not. 4 Q. If a person is bipolar, does that mean you 5 just throw away what they said happened? 6 MR. McBRIDE: I object to form. 7 MS. BROOKHYSER: Join. 8 THE WITNESS: No, it doesn't. 9 BY MR. MURDOCK: 10 Q. Are you aware of the circumstances 11 surrounding Mr. Farmer's sexual assaults on these 12 women, in terms of their medical conditions? 13 MR. McBRIDE: I object to form. Lacks 14 foundation. Assumes facts. 15 MR. BEMIS: Join. 16 MS. BROOKHYSER: Join. 17 BY MR. MURDOCK: 18 Q. Are you aware? 19 A. I'm aware that there are allegations of 20 fault for patients who were hospitalized. 21 Q. In other words, what condition they were 22 in -- 23 A. No. 24 Q. -- as to whether or not they could fight 25 back, or anything like that?</p>

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1 MR. McBRIDE: I object to form.
2 THE WITNESS: I'm not aware.
3 BY MR. MURDOCK:
4 Q. Could you do me a favor and just show me in
5 the documents that you've been provided here today,
6 where it says in any of the documents that they were
7 married -- that the patient and Mr. Farmer were
8 married?
9 A. Exhibit 8, he made that statement to --
10 Q. Mr. Farmer did.
11 A. Mr. Farmer made that statement.
12 Q. Outside of Mr. Farmer making the statement,
13 did anybody else make the statement that they were
14 married?
15 A. Let me look here. In Exhibit 4, our
16 employee stated that he was her boyfriend.
17 Q. That doesn't say "married."
18 A. Correct.
19 Q. It says "he was her boyfriend," correct?
20 A. Yes. And in Exhibit 3 it refers to
21 "boyfriend" also.
22 Q. Okay. Now, just because you didn't see --
23 I'm sorry, you can continue looking. I apologize.
24 A. And in Exhibit 2 I state, "This patient
25 told two Rawson-Neal Nursing Services employees (an

Page 82
1 LPN and a mental health tech) that he was her
2 boyfriend."
3 Q. Right. It doesn't say "married?"
4 A. No, it does not say "married."
5 Q. The only one that said "married" was
6 Mr. Farmer, correct?
7 A. Yes, that's correct.
8 Q. Okay. Now, just because you don't witness
9 someone inappropriately touching or kissing another
10 person, that doesn't mean it didn't occur, correct?
11 A. Absolutely, that's correct.
12 Q. And just so I'm crystal clear about this --
13 and I think I've asked you before, but I just want to
14 be crystal clear about this -- you never spoke to the
15 patient, correct?
16 A. No, I did not.
17 Q. Did you ever read the grand jury testimony
18 of the patient?
19 A. No, I didn't.
20 Q. Have you ever seen any documents at all
21 actually written by Mr. Farmer about what occurred at
22 Rawson-Neal?
23 A. No, I have not seen any documents written
24 by Mr. Farmer.
25 Q. So the only document you've seen is

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1 something that Michele Simmons wrote, correct?
2 A. Yes, the document that she sent me.
3 MR. MURDOCK: I have nothing further at
4 this time.
5
6 FURTHER EXAMINATION
7 BY MR. McBRIDE:
8 Q. Ms. Solon, at Rawson-Neal were there video
9 cameras at all in place?
10 A. No, not video cameras. The patients, based
11 on their clinical situation, are assigned a level of
12 surveillance by staff, and the most loose
13 surveillance is every 15 minutes.
14 Q. And do you know what type of surveillance
15 this patient would have been under by any staff
16 member?
17 A. I cannot recollect what surveillance she
18 was on during the course of her hospitalization. It
19 does vary at times, depending on what's going on with
20 the patient.
21 Q. And who would be charged with that
22 surveillance of a particular patient?
23 A. The staff that work on the unit.
24 Q. Would that include a CNA?
25 A. That would include mental health techs,

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1 yes.
2 Q. And would those be employees of Rawson-Neal
3 or of the agency?
4 A. They are both employees of the agency and
5 employees of Rawson-Neal, and they document it on a
6 documentation tool that's not part of the medical
7 record.
8 MR. MURDOCK: I'm sorry, could you say
9 that again?
10 THE WITNESS: They document it on a
11 documentation tool that is not part of the medical
12 record.
13 BY MR. McBRIDE:
14 Q. Where is that documentation tool?
15 A. It's a log and they're permanently stored.
16 They're very retrievable.
17 But it's a log, and if you're
18 assigned to do that surveillance you have the
19 patients' names, and timeframes. And there are
20 codes, and you write on the code what the patient was
21 doing at the time you observed the patient. It could
22 be sleeping. They could be socializing with others.
23 They could be in a therapy session.
24 The order for their level of
25 surveillance, we sometimes also have constant

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1 observation. That would mean that a patient had to
2 be within your eyesight a hundred percent of the
3 time, and if you needed to step away and go to the
4 bathroom or anything like that, you had to be
5 replaced by someone.

6 And there also is one-to-one
7 surveillance, and that is for a patient that needs a
8 staff member assigned to them, and you have to be
9 within arm's length of the patient at all times. So
10 if they're moving around the unit, you do that.

11 And all that is documented by the
12 person who is doing it. But because of the way the
13 documentation tool is built, you have up to 30
14 patient names, and the timeframes across. So that
15 tool is not put into every medical record.

16 Q. But again, you don't know what level of
17 surveillance this patient was under, is that right?

18 A. No. It's very uncommon to be on a
19 one-to-one. That's people that are acting out,
20 attacking others, attacking staff, inappropriate
21 behavior where they need someone very close to them.

22 And the other one-to-one
23 observations often are for folks that have suicidal
24 ideation, so you have to be able to see them at all
25 times, head to toe. You can't sit in the doorway and

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1 see only their legs and feet in a room.

2 Q. And to your knowledge, did anyone at
3 Rawson-Neal ever go back and look at those logs with
4 regard to this patient, to see if there was any
5 observation of any inappropriate contact with Steven
6 Farmer?

7 A. I don't know that anyone went back and
8 looked at those actual logs. The log is completed by
9 the staff member, and they would code, you know,
10 "socializing with others," "in the cafeteria," "in
11 the gym" -- those kinds of things.

12 If one of our staff people saw
13 another agency or employee in inappropriate contact
14 with a patient, they would report that. There's no
15 code for that.

16 Q. Okay. And it's your testimony that if any
17 staff member had observed Mr. Farmer kissing this
18 patient, or any inappropriate contact, that would
19 have been reported to someone at Rawson-Neal?

20 A. The expectation for all employees, if
21 there's any physical contact, is that it is reported,
22 whether that was kissing or any other type of
23 contact.

24 Q. And who would that have been reported to?

25 A. Typically people would report it to the

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1 supervising nurse on the unit, who then would report
2 it forward.

3 MR. McBRIDE: That's all the questions
4 I have.

5

6 FURTHER EXAMINATION

7 BY MR. MURDOCK:

8 Q. Which is what Lorraine and Rontraneice did,
9 correct? They followed what they should have done?

10 A. I believe that they reported it to Matt
11 Ross, yes, absolutely. I think they did exactly what
12 they were supposed to do.

13 MR. MURDOCK: I'm sorry, I don't know
14 if you had anything.

15 MS. BROOKHYSER: I have no questions.

16 MR. BEMIS: I had one follow-up.

17 MR. MURDOCK: Go ahead. I'm sorry.

18

19 FURTHER EXAMINATION

20 BY MR. BEMIS:

21 Q. With respect to if the allegations of
22 kissing a patient had been substantiated, would you
23 have to report that to the Board of Nursing?

24 A. Yes.

25 Q. And you didn't report anything to the Board

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1 of Nursing?

2 A. I did not report it to the Board of
3 Nursing. But because he's a CNA, that would be
4 reportable to the Board of Nursing. They cover CNAs.

5 In this particular client
6 environment, we did a lot of training on physical
7 contact and things like that.

8 So when a patient who is being
9 discharged comes to you and wants to hug you as
10 they're being discharged, we really don't do that.

11 Any sort of physical contact is
12 very much discouraged, partly because you can have
13 situations also when it's not really a hug, it turns
14 into an assault. Staff there get assaulted a lot.

15

16 FURTHER EXAMINATION

17 BY MR. MURDOCK:

18 Q. Did you ever find out what happened to the
19 patient, if anything, after she was discharged?

20 A. No, I did not.

21 Q. I guess most important, did American
22 Nursing ever come in and ask for these logs, these
23 surveillance of patient logs, to make a determination
24 as to whether or not anything occurred between Steven
25 Farmer and the patient?

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1 MS. BROOKHYSER: Objection. Form.
2 BY MR. MURDOCK:
3 Q. If you know.
4 A. I don't know that they did.
5 Q. Did American Nursing ever come in and ask
6 you for any of the documents at all, with regard to
7 Mr. Farmer and these allegations?
8 A. No. The only thing that I would have
9 provided to American Nursing --
10 Q. Hold on. I'm just asking what they asked
11 for. Not what you provided -- what they asked for.
12 Did American Nursing ever come in
13 and interview Rontraneice?
14 A. No.
15 Q. Did American Nursing ever come in and ask
16 you to interview Lorraine Elrington?
17 A. No.
18 Q. Did American Nursing ever come in and ask
19 you to interview Matt Ross?
20 A. No.
21 MR. MURDOCK: I have nothing further at
22 this time.
23 MS. BROOKHYSER: I have some follow-up.
24 MR. McBRIDE: I have just a couple,
25 too.

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1 MS. BROOKHYSER: Go ahead.
2
3 FURTHER EXAMINATION
4 BY MR. McBRIDE:
5 Q. Did you ever tell anyone at American
6 Nursing that there were these surveillance logs kept?
7 A. It's part of the charting and
8 documentation, so I don't know that I ever had
9 specific conversation with American Nursing about
10 documentation logs. American Nursing would know that
11 we observe and document what the patient is doing on
12 a very regulated basis in any psychiatric facility.
13 Q. Even though American Nursing didn't come in
14 and interview these individuals that made those
15 reports about Steven Farmer, you did provide their
16 statements to American Nursing, correct?
17 A. I'm sorry, the only thing I provided to
18 American Nursing was the evaluations.
19 The other documents say that I
20 sent to Michele Simmons, I would not have sent them
21 more information than, "Our employees said that this
22 happened." I would not have sent the names of those
23 employees to Michele.
24 Q. So you did not provide them with the
25 written statements that they prepared?

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1 A. No, I did not.
2 Q. Why not?
3 A. I wrote a memorandum to file and sent it to
4 Michele saying, "This is what has been reported to
5 us, and based on this, these are the actions we're
6 going to take." It's just not appropriate to send
7 the rest of it.
8 Q. Did you feel that you provided adequate
9 information to ANS to have them investigate?
10 A. Yes, I certainly thought I did.
11 Q. Did anyone to your knowledge ever have any
12 discussions with this patient's treating psychiatrist
13 at Rawson-Neal, regarding these events or her
14 recollection of events involving Steven Farmer?
15 A. I don't know. A patient's fixation on a
16 staff member or anyone else could certainly be a
17 topic of treatment team, and there are notes for
18 treatment team in the medical record. So if that
19 discussion occurred it would be documented there, but
20 I don't know that it did in this case.
21 Q. So you personally didn't instruct anyone to
22 look at those records?
23 A. No.
24 Q. And you personally did not look at those
25 records?

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1 A. I did not look at the records, no.
2 MR. McBRIDE: That's all I have.
3
4 EXAMINATION
5 BY MS. BROOKHYSER:
6 Q. I don't think I've introduced myself to you
7 yet. I'm Amanda Brookhyser. I represent ANS.
8 I think you testified earlier,
9 particularly talking about Exhibit 8, which is the
10 letter from Ms. Simmons, that this was something that
11 you would have reviewed when making your decision to
12 allow Mr. Farmer to again start working at
13 Rawson-Neal; is that correct?
14 A. That would have been one of the documents,
15 yes.
16 Q. And I believe you also testified that after
17 reading this correspondence from Ms. Simmons you were
18 satisfied with the investigation that ANS had
19 conducted?
20 A. I was satisfied with what she sent back,
21 and then I interviewed folks at our agency also.
22 Q. If you had not been satisfied with the
23 information she provided you, would you have
24 requested more information from ANS?
25 A. It's possible. It's also possible that we

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1 just would have stood by the DNR, "Do Not Return."
2 Q. And of course in this instance you didn't
3 stand by it, you eventually removed the DNR and
4 allowed Mr. Farmer to come back, right?
5 A. Yes.
6 Q. And after reading this January 25th
7 correspondence from Ms. Simmons, if you felt that at
8 that point she did need additional information, would
9 you have provided it to her?
10 A. It would depend on what she asked for. A
11 lot of information I would not have provided to her,
12 including, for instance, the patient's name. Any of
13 that kind of information.
14 MS. BROOKHYSER: No more questions.
15 MR. McBRIDE: That's all the questions
16 I have.
17 MR. MURDOCK: I don't have anything.
18
19 (The deposition concluded at 11:00 a.m.)
20
21
22
23
24
25

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1 DEPOSITION ERRATA SHEET
2
3 File No. 42138
4 Case Caption: Jane Doe vs. Valley Health System
5
6
7
8 DECLARATION UNDER PENALTY OF PERJURY
9
10 I declare under penalty of perjury that I have
11 read the entire transcript of my deposition taken in
12 the captioned matter or the same has been read to me,
13 and the same is true and accurate, save and except
14 for changes and/or corrections, if any, as indicated
15 by me on the DEPOSITION ERRATA SHEET hereof, with the
16 understanding that I offer these changes as if still
17 under oath.
18
19 Signed this day of , 20
20
21
22 MARY JO SOLON
23
24
25

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1 REPORTER'S CERTIFICATE
2 STATE OF NEVADA)
3 ss.)
4 COUNTY OF CLARK)
5 I, Carol O'Malley, Nevada Certified Court
6 Reporter 178, do hereby certify:
7 That I reported the taking of the deposition
8 of MARY JO SOLON on September 20, 2012 commencing at
9 the hour of 9:00 a.m.;
10 That prior to being examined, the witness was by
11 me duly sworn to testify to the truth, the whole
12 truth, and nothing but the truth;
13 That I thereafter transcribed my said
14 shorthand notes into typewriting and that the
15 typewritten transcription of said deposition is a
16 complete, true, and accurate transcription of my said
17 shorthand notes taken down at said time. Review of
18 the transcript was requested.
19 I further certify that I am not a relative or
20 employee of an attorney or counsel involved in said
21 action, nor financially interested in said action.
22 IN WITNESS WHEREOF, I have hereunto set my hand
23 in my office in the County of Clark, State of Nevada,
24 this 3rd day of October, 2012.
25 Carol O'Malley, CCR No. 178

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25 MARY JO SOLON

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25		

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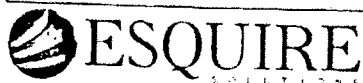


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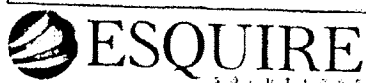


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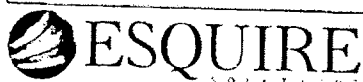


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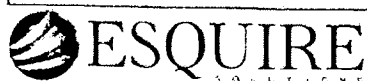


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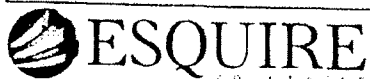


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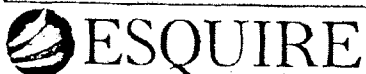


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EXHIBIT “10”

MEMORANDUM to FILE

Matthew Ross, PN3 approached me on Wednesday, January 23, 2008 regarding a situation with an agency C.N.A. (Steven Farmer from *American Nursing Services*)

On January 7, 2008, Matthew Ross completed and then forwarded an evaluation for Mr. Farmer. In the comments section, Mr. Ross wrote "staff informed me that Mr. Farmer called a female client on the client's phone-on two occasions".

Also, on January 2, 2008, this patient told two Rawson Neal Nursing Services employees (an LPN and a MHT) that Steve was her boy friend and relayed information about his living situation to these two employees.

The patient was discharged from Rawson Neal on January 23, 2008. Prior to discharge, Matthew Ross interviewed the patient and solicited information regarding the telephone calls. Per Matthew Ross, the patient again affirmed that Steve Farmer called her twice on the patient's telephone in the day room.

Mr. Farmer was scheduled to work on 3-11 on January 23, 2008. I sent him home/canceled the remainder of his shift and instructed the Staffing Office not to book shifts for Steven Farmer until further notice.

On January 24, 2008, I contact Michelle Simmons at American Nursing Services and informed her of the concerns regarding Steven Farmer. Ms. Simmons planned to contact Steven Farmer and elicit information from him about this situation.

On January 25, 2008, Ms. Simmons left a telephone message fro me indicating she obtained some information from Steven Farmer.

I called Ms. Simmons on Monday, January 28, 2008.

/s/s Mary Jo Solon
Director of Nursing





American Nursing Services^{INC.}

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

mjs

NAME: Steve Farmer

TITLE: CNA

DATE OF HIRE: 1/1

SHIFT DATE: 1/12/08

FACILITY: SNAMHS Unit G3B

UNIT: G3B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
1. Return the completed form to fax number ()

PERSONAL ATTRIBUTES	Above Average	Average	Below Average
• Arrives Promptly for work and returns from breaks on time			
• Demonstrates a Positive Attitude			
NURSING PROCESS			
• Follows Universal Precautions Guidelines			
• Demonstrates comprehensive patient assessment skills			
• Establishes priorities for patient care activities based on acuity			
• Maintains a safe and therapeutic patient environment			
• Performs procedures and administers medications according to Facility Standards			
• Provides patient/family teaching			
• Responds to patient requests with promptness, empathy, and genuine interest			
• Recognizes deviations from patient norms and takes appropriate action			
• Seeks out Charge Nurse for clarification of assignment			
• Maintains confidentiality and patient rights			
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner			
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor			

Evaluator Comments:

Staff informed me that Mr. Farmer called
a client on the client's phone - on two occasions
The Pt, EM, was familiar with Mr. Farmer's
living situation (renting a room in a house).
This agency does not support fraternizing with clients.

Evaluator Signature & Title: M. 7085 RN III

Date: 1-7-08

Employee Signature: _____

Date: _____

TOTAL P.01

Tina Hovenkamp

From: Matthew Ross
Sent: Wednesday, January 09, 2008 9:31 AM
To: Mary Jo Solon
Cc: Tina Hovenkamp
Subject: FW: Steve Farmer

Hello Mary Jo,

After searching through the dailies as far back as 12-25-07 with Cynthia Holman, we were unable to verify that Steve had actually been assigned to work this unit (G3B).

He did work G3A on 1-3-08, however. Patient [REDACTED] is bipolar and could conceivably strike up a conversation with anyone instantly.

Matthew Ross RN III

Matthew Ross RN III
Unit G 3B
(702) 486-4447
Cell (702) 250-1600
MattRoss@SNAMHS.nv.gov
6150 Community College Dr.
Rawson-Neal Psychiatric Facility

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From: Matthew Ross
Sent: Tue 1/8/2008 12:45 PM
To: Mary Jo Solon
Cc: Tina Hovenkamp
Subject: Steve Farmer

Hello Mary Jo,

Further investigation helped to clarify the situation somewhat

- 1) Lorraine Ehrlington LPN stated that she was told by pt [REDACTED] that Steve was her boyfriend, that he rents a room from Nurse Katalina LPN, that he had previously called her on the clients' phone, & that he would "take her (Ethel) in" when he moves out.
- 2) Rontraniece Theard MHT II said that she also was present when the above conversation occurred.
- 3) Cynthia Holman AA stated that nurse Katalina (sp?) is agency, & is currently DNR'd (do not return).
- 4) Pt Ethel reported these phone calls to Lorraine & Rontraniece last January 2, 2008.

1/10/2008

5) Cynthia is currently at lunch, but I'll try to find out from her when the last date was that Steve worked this unit.

Matthew Ross RN III
Unit G 38
(702) 486-4447
Cell (702) 250-1600
MattRoss@SNAMHS.nv.gov
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Rawson-Neal Psychiatric Facility

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1/10/2008

P: Whom it may concern.

PT [redacted] who was on full view and under my responsibility got off the phone and came dancing to the table. PT [redacted] said "Th was my boyfriend Steve, The bearded tech that work here." Unit Tech Rontrancee and I looked at each other and ~~said~~^{asked} "Are you sure that was Steve that works here?" PT [redacted] said "Yes we are moving in together and for me to tell the social worker but not to mention his name. She look at Rontrancee and said "Remember I told you we Kiss yesterday."

Sincerely,

L Elington LPN

P.S. Unit Nurse III Matt was informed by us of PT statement!

January 25th, 2008

Steven Farmer, C.N.A
Incident GPOD 3B 1/7/08

In response to the call received from Mary Jo Solon, D.O.N from Rawson Neal Psychiatric Hospital on 1/24/08, the following statement was taken from Steven Farmer, C.N.A from American Nursing Services.

Called Steven Farmer on 1/25/07 and spoke with him about the issues addressed by Mary Jo Solon, D.O.N. Steven stated that about a month ago when he worked on GPOD 3B he had first come in contact with this particular patient. He stated that he interacted with the patient with another Tech and played cards with her through part of the night shift. Steven stated that was all the direct interaction he had, however, every-time he would come on to the unit, the patient would come up to the desk and make a point of saying "Hello" and would focus on him. About a week after his first contact with this particular patient, "Miriam" (had English accent), the RN III on GPOD stopped him and told him that it would not be a good idea for him to come on this unit while this patient was on 3B, because patient is stating "She is having an affair with Santa Claus and she thinks that she is married to him".

After this discussion with Miriam, Steven stated that he felt very uncomfortable with this situation, and called Cindy in Staffing and spoke with her about this and told her that he could not be on this unit. Cindy had called our office and spoke with Bonnie telling her that Staffing would not be putting Steven on this unit for right now, because there is a patient on that unit that is very focused on the fact that "Steven is married to her". After this point, Steven stated that he never had any contact with this patient and made every precaution not to go over there even when he was staffed on 3A. He stated that all the staff members on this unit knew about this.

As far as how this patient would know that he is renting a room with another nurse "Catalina", he was unsure except that it is common knowledge that most of the staff do know that he does rent a room from her. Catalina was one of our LPN's that was DNR'd. However, Steven stated that she still remains in contact with some of the nurses out there and staff does ask him how she is doing, because she used to work out there so frequently. He stated that maybe the patient overheard an interaction with him and another staff member discussing this.



He stated that he never called the patient and again made every effort not to see this patient, stating that he felt very uncomfortable with this situation and made everyone aware of it.


Michele Simmons

Michele Simmons, RN, BSN
Clinical Director
American Nursing Services
333 N Rancho #565
Las Vegas, NV 89106
(702) 638-1200

January 29, 2008
Statement: Steven Farmer

On or about the 30th of December I received a phone call from Matthew Ross PN III on unit G3B. He asked me if I was able to not schedule an agency worker by the name of Steven Farmer CNA (American Nursing) to work on unit G3B. I asked him if there was a problem and Matthew replied "Yes, it has to do with a patient". I asked Matthew if he had already filled out an agency evaluation. He replied "No". I told him to take the proper steps if there is indeed a problem; first fill out an agency evaluation, then speak to his nurse IV. I also explained to Matthew that I was not able to schedule staff or agency to suit any special needs unless I was advised by Mary Jo. I have not heard anything on that subject since then.

Thank You,

A handwritten signature in black ink, appearing to read 'C. Holman', with a long horizontal stroke extending to the right.

Cynthia Holman

March 20, 2008

MEMORANDUM to FILE

After reviewing the documentation from all parties involved, it appears that a patient fixated on Mr. Farmer. Mr. Farmer stated he communicated his concerns regarding this patient's fixation. However, the Staffing Coordinator does not recall any conversation with Mr. Farmer about this topic. The PN3 believes this patient was fixated on Mr. Farmer and also observed Mr.; Farmer's work on numerous occasions and assesses his performance positively as well as noting he demonstrates appropriate boundaries with patients.

Based on this information, Rawson Neal Hospital may book shifts with Mr. Farmer. However, this memorandum serves as a written request to *American Nursing Services* to reinforce appropriate boundaries with Mr. Farmer as well as the absolute need to report (verbally and in writing) any inappropriate patient fixation or concerns about patient behavior to both the supervising nurse at the Hospital and to his agency.

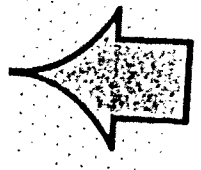
/s/s Mary Jo Solon, RN, BSN, MSN
Director of Nursing

MEMORANDUM to FILE

May 19, 2008

This memorandum serves as written notice to *American Nursing Services* that Steven Farmer is now considered DNR (Do Not Return) at SNAMHS.

/s/s Mary Jo Solon
Director of Nursing



January 28, 2008

Dear Mary Jo,

The patient [REDACTED] stated, "My boyfriend works here, his name is Steve he's a tech". The patient also said, "he calls me on the phone and said we are going to live together." She also told me that he kissed her. I told Annita on swing shift what the patient told me and Annita said, "Marion the nurse III is aware of it. It was said that Marion stated that he Steve could never work on G3B again

Respectfully Rontraneice Theard

Rontraneice Theard MD III

He stated that he never called the patient and again made every effort not to see this patient, stating that he felt very uncomfortable with this situation and made everyone aware of it.

Michele Simmons

Michele Simmons, RN, BSN
Clinical Director
American Nursing Services
333 N Rancho #565
Las Vegas, NV 89106
(702) 638-1200

Addendum

2/3/08 - Went to Summit & spoke to Mary Jo Solon. She is still gathering information in regards to this case. She would get back to me next week.

2/7/08 - LHM for Mary Jo to file on this.

2/12/08 - LHM for Mary Jo to file on this.

EXHIBIT “11”

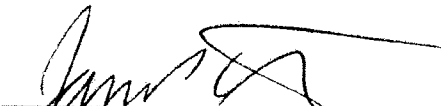
AFFIDAVIT IN SUPPORT OF REQUEST UNDER N.R.C.P. 56(f)

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JAMES P.C. SILVESTRI, Counsel for American Nursing Services herein, do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief and as proved to me by my client:

1. I am the attorney for American Nursing Services in the above-entitled action. Plaintiff has moved for summary judgments against all Defendants. If Plaintiff's theory of liability against American Nursing Services is viable, there are genuine issues of material fact still undecided for which additional discovery will be required;
2. Such discovery needed would address the following issues:
 - a. What tasks were assigned by Centennial Hills Hospital to Farmer?
 - b. Whether Farmer was assigned to enter any patient's room at Centennial Hills, including but not limited to Plaintiff's room?
 - c. Whether Plaintiff would become paralyzed, i.e. could not speak or move for up to 24 hours after a seizure?
 - d. Whether Plaintiff was in fact paralyzed at Centennial Hills Hospital on May 14, 2008?
3. Discovery regarding these facts will include
 - a. Depositions of surviving members of Plaintiff's family, including her three children;
 - b. Depositions of Plaintiff's treating health care providers, both from before and during her admittance to Centennial Hills Hospital in May 2008;
 - c. Depositions of percipient witnesses and/or persons most knowledgeable from Centennial Hills Hospital regarding Steven Farmer's tasks or tasks assigned to other CNAs.

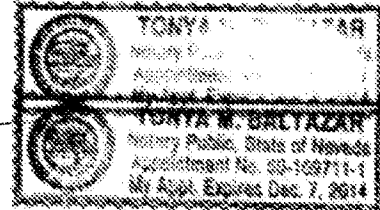
4. Further Affiant sayeth naught.


JAMES P.C. SILVESTRI, ESQ.

SUBSCRIBED AND SWORN to before me

this 15th day of October, 2014.

NOTARY PUBLIC in and for said
County and State



PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

CONFIDENTIAL

FILED

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 9/16/07
 FACILITY: SNA MHS UNIT: DIB

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () : .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	✓		
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Steven demonstrates good work ethic and is a valuable member of our team. The staff at Roush Memorial Hospital report Steven as a pleasure to work with and is professional with staff and patients. High quality care. Excellent initiative exhibited. (MWH)

Evaluator Signature & Title: M. W. H. [Signature]

Date: 9/16/07

Employee Signature: Steven Farmer

Date: 9/16/07

FILE

ANS0234



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

CONFIDENTIAL

FILED

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 9/16/07
 FACILITY: SNAMHS UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	✓		
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Steven demonstrates good report skills & skills. He
remains professional in high acuity situations.
He is an asset to our team.

Evaluator Signature & Title: Mico Alvarado Date: 9/17/07
 Employee Signature: Steve Farmer Date: 9/16/07

FILE

ANS0235

WA. 0377



NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10.20.05 SHIFT DATE: 9.17.07
 FACILITY: R. Hall UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		/	
• Demonstrates a Positive Attitude		/	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		/	
• Demonstrates comprehensive patient assessment skills		/	
• Establishes priorities for patient care activities based on acuity		/	
• Maintains a safe and therapeutic patient environment		/	
• Performs procedures and administers medications according to Facility Standards		N/A	
• Provides patient/family teaching		/	
• Responds to patient requests with promptness, empathy, and genuine interest		/	
• Recognizes deviations from patient norms and takes appropriate action		/	
• Seeks out Charge Nurse for clarification of assignment		/	
• Maintains confidentiality and patient rights		/	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		/	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		N	

Evaluator Comments: _____

FILE

FAKED

Evaluator Signature & Title: _____

Date: _____

Employee Signature: Steven Farmer

Date: _____

ANS0233



American Nursing Services
PROFESSIONALS WHO CARE

JA

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9.18.07
FACILITY: SNAHHS UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

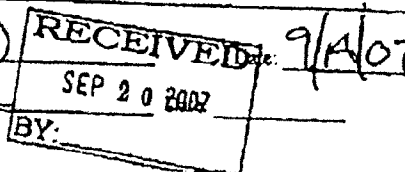
PERSONAL ATTRIBUTES	Above Average	Average	Below Average
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	✓		
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Shows initiative in patient care
13 A valuable member of our team

Evaluator Signature & Title: [Signature]

Employee Signature: [Signature]



9/24/07 M. Summers

ANS0224



American Nursing Services INC.
PROFESSIONALS WHO CARE

JD

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/18/07
FACILITY: SNAMHS UNIT: E2B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: [Signature]

Date: 09/19/07

Employee Signature: [Signature]

Date: _____

9/18/07
[Handwritten initials]

ANS0217



bc

DATE: _____

1. Outline the activities/learning activities were assigned to your unit by using the outline below.
 2. Place a check mark in the appropriate column. Please provide details on any "Below Average" marking so that we may discuss it with the owner appropriately.
 3. Enter the completed items on the number 1

GENERAL INFORMATION	Agency Rating	Agency	Review Agency
1. Agency Name: [REDACTED]			
2. Agency Address: [REDACTED]			
3. Agency Phone: [REDACTED]			
4. Agency Fax: [REDACTED]			
5. Agency E-mail: [REDACTED]			
6. Agency Website: [REDACTED]			
7. Agency Type: [REDACTED]			
8. Agency Description: [REDACTED]			
9. Agency Services: [REDACTED]			
10. Agency Contact: [REDACTED]			
11. Agency Rating: [REDACTED]			
12. Agency Comments: [REDACTED]			
13. Agency Signature: [REDACTED]			
14. Agency Date: [REDACTED]			
15. Agency Notes: [REDACTED]			
16. Agency Status: [REDACTED]			
17. Agency Remarks: [REDACTED]			
18. Agency Comments: [REDACTED]			
19. Agency Signature: [REDACTED]			
20. Agency Date: [REDACTED]			
21. Agency Notes: [REDACTED]			
22. Agency Status: [REDACTED]			
23. Agency Remarks: [REDACTED]			
24. Agency Comments: [REDACTED]			
25. Agency Signature: [REDACTED]			
26. Agency Date: [REDACTED]			
27. Agency Notes: [REDACTED]			
28. Agency Status: [REDACTED]			
29. Agency Remarks: [REDACTED]			
30. Agency Comments: [REDACTED]			
31. Agency Signature: [REDACTED]			
32. Agency Date: [REDACTED]			
33. Agency Notes: [REDACTED]			
34. Agency Status: [REDACTED]			
35. Agency Remarks: [REDACTED]			
36. Agency Comments: [REDACTED]			
37. Agency Signature: [REDACTED]			
38. Agency Date: [REDACTED]			
39. Agency Notes: [REDACTED]			
40. Agency Status: [REDACTED]			
41. Agency Remarks: [REDACTED]			
42. Agency Comments: [REDACTED]			
43. Agency Signature: [REDACTED]			
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48. Agency Comments: [REDACTED]			
49. Agency Signature: [REDACTED]			
50. Agency Date: [REDACTED]			
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52. Agency Status: [REDACTED]			
53. Agency Remarks: [REDACTED]			
54. Agency Comments: [REDACTED]			
55. Agency Signature: [REDACTED]			
56. Agency Date: [REDACTED]			
57. Agency Notes: [REDACTED]			
58. Agency Status: [REDACTED]			
59. Agency Remarks: [REDACTED]			
60. Agency Comments: [REDACTED]			
61. Agency Signature: [REDACTED]			
62. Agency Date: [REDACTED]			
63. Agency Notes: [REDACTED]			
64. Agency Status: [REDACTED]			
65. Agency Remarks: [REDACTED]			
66. Agency Comments: [REDACTED]			
67. Agency Signature: [REDACTED]			
68. Agency Date: [REDACTED]			
69. Agency Notes: [REDACTED]			
70. Agency Status: [REDACTED]			
71. Agency Remarks: [REDACTED]			
72. Agency Comments: [REDACTED]			
73. Agency Signature: [REDACTED]			
74. Agency Date: [REDACTED]			
75. Agency Notes: [REDACTED]			
76. Agency Status: [REDACTED]			
77. Agency Remarks: [REDACTED]			
78. Agency Comments: [REDACTED]			
79. Agency Signature: [REDACTED]			
80. Agency Date: [REDACTED]			
81. Agency Notes: [REDACTED]			
82. Agency Status: [REDACTED]			
83. Agency Remarks: [REDACTED]			
84. Agency Comments: [REDACTED]			
85. Agency Signature: [REDACTED]			
86. Agency Date: [REDACTED]			
87. Agency Notes: [REDACTED]			
88. Agency Status: [REDACTED]			
89. Agency Remarks: [REDACTED]			
90. Agency Comments: [REDACTED]			
91. Agency Signature: [REDACTED]			
92. Agency Date: [REDACTED]			
93. Agency Notes: [REDACTED]			
94. Agency Status: [REDACTED]			
95. Agency Remarks: [REDACTED]			
96. Agency Comments: [REDACTED]			
97. Agency Signature: [REDACTED]			
98. Agency Date: [REDACTED]			
99. Agency Notes: [REDACTED]			
100. Agency Status: [REDACTED]			
101. Agency Remarks: [REDACTED]			
102. Agency Comments: [REDACTED]			
103. Agency Signature: [REDACTED]			
104. Agency Date: [REDACTED]			

Executive Summary

Thompson Optical - skill, and line hand worker

Employer Signature St. James Date 9/20/01

Reviewed 9/24/07 M. S. M. B. R.



3

INSTRUCTIONS

1. I intend the American Nursing Services course assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" marking in that we may discuss it with the area appropriately.
3. Submit the completed form to the manager.

[illegible]

End-user Comments

Stadler

Purchaser Signature & Title: Shirley J. [Signature] Date: 9/19/07
 Employee Signature: St. [Signature] Date: 9/19/07

ANS0223



American Nursing Services, INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA

DATE OF HIRE: 10, 20, 05 SHIFT DATE: 9, 22, 07

FACILITY: SNAMHS UNIT: H4B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		NA	
• Provides patient/family teaching		NA	
• Responds to patient requests with promptness, empathy, and positive interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: J. Holliman, RN

Date: 8-22-07

Employee Signature: _____

Date: _____

9/24/07 Reviewed M. S. M. M. M. M.

ANS0220



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10, 20, 05 SHIFT DATE: 9.22.07
FACILITY: SNAMHS UNIT: H4B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		NA	
• Provides patient/family teaching		NA	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: J. J. Doffensou RN

Date: 9-22-07

Employee Signature: Steven Farmer

Date: _____

ANS0221



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/22/07
FACILITY: SHAMHS UNIT: E2A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: [Signature]

Date: 9-22-07

Employee Signature: [Signature]

Date: _____

ANS0216



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/23/07
FACILITY: SNAMHS UNIT: G3B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		N/A	
• Establishes priorities for patient care activities based on acuity		N/A	
• Maintains a safe and therapeutic patient environment		N/A	
• Performs procedures and administers medications according to Facility Standards		N/A	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignments		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		N/A	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: _____

Date: 9/23/07

Employee Signature: _____

Date: _____

ANS0232

WA. 0385



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

JA

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10, 20, 05 SHIFT DATE: 9, 24, 07
FACILITY: SNAMH UNIT: G3B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () - - - - -

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time			
• Demonstrates a Positive Attitude			
NURSING PROCESS			
• Follows Universal Precautions Guidelines			
• Demonstrates comprehensive patient assessment skills			
• Establishes priorities for patient care activities based on acuity			
• Maintains a safe and therapeutic patient environment			
• Performs procedures and administers medications according to Facility Standards			
• Provides patient/family teaching			
• Responds to patient requests with promptness, empathy, and genuine interest			
• Recognizes deviations from patient norms and takes appropriate action			
• Seeks out Charge Nurse for clarification of assignment			
• Maintains confidentiality and patient rights			
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner			
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor			

Evaluator Comments:

Evaluator Signature & Title: [Signature]
Employee Signature: [Signature]

Date: 9/24/07

Date: _____

ANS0222



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/24/07
FACILITY: SNAMH UNIT: DIA

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	<input checked="" type="checkbox"/>		
• Demonstrates a Positive Attitude	<input checked="" type="checkbox"/>		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	<input checked="" type="checkbox"/>		
• Demonstrates comprehensive patient assessment skills	<input checked="" type="checkbox"/>		
• Establishes priorities for patient care activities based on acuity	<input checked="" type="checkbox"/>		
• Maintains a safe and therapeutic patient environment	<input checked="" type="checkbox"/>		
• Performs procedures and administers medications according to Facility Standards	NA		
• Provides patient/family teaching		<input checked="" type="checkbox"/>	
• Responds to patient requests with promptness, empathy, and genuine interest		<input checked="" type="checkbox"/>	
• Recognizes deviations from patient norms and takes appropriate action	<input checked="" type="checkbox"/>		
• Seeks out Charge Nurse for clarification of assignment		<input checked="" type="checkbox"/>	
• Maintains confidentiality and patient rights		<input checked="" type="checkbox"/>	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	<input checked="" type="checkbox"/>		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	<input checked="" type="checkbox"/>		

Evaluator Comments:

Staff Support

Evaluator Signature & Title: Shirley W. [Signature]

Date: 9-24-07

Employee Signature: _____ Date: _____

Reviewed 9/25/07
and initials

ANS0218



American Nursing Services INC.
PROFESSIONALS WHO CARE

JK

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10.20.05 SHIFT DATE: 9.23.07
FACILITY: SHAMHS UNIT: G3A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____.

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	/		
• Demonstrates a Positive Attitude	/		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	/		
• Demonstrates comprehensive patient assessment skills		/	
• Establishes priorities for patient care activities based on acuity		/	
• Maintains a safe and therapeutic patient environment		/	
• Performs procedures and administers medications according to Facility Standards		/	
• Provides patient/family teaching		/	
• Responds to patient requests with promptness, empathy, and genuine interest		/	
• Recognizes deviations from patient norms and takes appropriate action		/	
• Seeks out Charge Nurse for clarification of assignment		/	
• Maintains confidentiality and patient rights		/	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		/	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		/	

Evaluator Comments:

Evaluator Signature & Title: Angela Stone RN

Date: 9-23-07

Employee Signature: Steven Farmer

Date: 9/23/07

200000
Summer

ANS0219



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

JH

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10, 20, 05 SHIFT DATE: 9/24/07
 FACILITY: SNAMH UNIT: G3B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
* Arrives promptly for work and returns from breaks on time		<input checked="" type="checkbox"/>	
* Demonstrates a Positive Attitude	<input checked="" type="checkbox"/>		
NURSING PROCESS			
* Follows Universal Precautions Guidelines		<input checked="" type="checkbox"/>	
* Demonstrates comprehensive patient assessment skills		<input checked="" type="checkbox"/>	
* Establishes priorities for patient care activities based on acuity		<input checked="" type="checkbox"/>	
* Maintains a safe and therapeutic patient environment		<input checked="" type="checkbox"/>	
* Performs procedures and administers medications according to Facility Standards		<input checked="" type="checkbox"/>	
* Provides patient/family teaching		<input checked="" type="checkbox"/>	
* Responds to patient requests with promptness, empathy, and genuine interest		<input checked="" type="checkbox"/>	
* Recognizes deviations from patient norms and takes appropriate action		<input checked="" type="checkbox"/>	
* Seeks out Charge Nurse for clarification of assignment		<input checked="" type="checkbox"/>	
* Maintains confidentiality and patient rights		<input checked="" type="checkbox"/>	
* Provides pertinent data and completes shift report in an accurate, legible, and timely manner		<input checked="" type="checkbox"/>	
* Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		<input checked="" type="checkbox"/>	

Evaluator Comments:

Evaluator Signature & Title: *[Signature]* Date: 9/24/07
 Employee Signature: *[Signature]* Date: _____

ANS0215



American Nursing Services^{INC}

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA MS
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/25/07
FACILITY: SNAMHS UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	✓		
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Steven is an asset to your
company as much as he is to ours.

Evaluator Signature & Title: [Signature] RN

Date: 9/25/07

Employee Signature: Steven Farmer

Date: 9/25/07

ANS0211



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/26/07
FACILITY: SN AM HS UNIT: E2A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards	Does Not Apply	✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignments		✓	
• Maintains confidentiality and patients rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

fills complete basic skills needs as observed
and CNA on Night Shift

Evaluator Signature & Title: _____

Date: _____

Employee Signature: Steven Farmer

Date: 9/26/07

ANS0210



American Nursing Services_{INC}
PROFESSIONALS WHO CARE

JA

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/26/07
FACILITY: SKA MHS UNIT: H4B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		N/A	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		N/A	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title: [Signature] RN/IC Date: 9/26/07
Employee Signature: [Signature] Date: _____

ANS0214



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/27/07
FACILITY: SNAMHS UNIT: E2B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		N/A	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title:

Date: 9/27/07

Employee Signature:

Date:

ANS0209



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10.20.05 SHIFT DATE: 9.27.07
FACILITY: SNAMHS UNIT: ELB

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
* Arrives Promptly for work and returns from breaks on time		/	
* Demonstrates a Positive Attitude		/	
NURSING PROCESS			
* Follows Universal Precautions Guidelines		/	
* Demonstrates comprehensive patient assessment skills		/	
* Establishes priorities for patient care activities based on acuity		/	
* Maintains a safe and therapeutic patient environment		/	
* Performs procedures and administers medications according to Facility Standards		NA	
* Provides patient/family teaching		/	
* Responds to patient requests with promptness, empathy, and genuine interest		/	
* Recognizes deviations from patient norms and takes appropriate action		/	
* Seeks out Charge Nurse for clarification of assignments		/	
* Maintains confidentiality and patient rights		/	
* Provides pertinent data and completes shift report in an accurate, legible, and timely manner		NA	
* Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		/	

Evaluator Comments:

Evaluator Signature & Title: Lorena J. Pugh RN

Date: 9-27-07

Employee Signature: Steven Farmer

Date: _____

ANS0208



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/28/07
FACILITY: SNAMHS UNIT: E2A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

PERSONAL ATTRIBUTES	Above Average	Average	Below Average
• Arrives Promptly for work and returns from breaks on time	/		
• Demonstrates a Positive Attitude	/		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	/		
• Demonstrates comprehensive patient assessment skills	/		
• Establishes priorities for patient care activities based on acuity	/		
• Maintains a safe and therapeutic patient environment	/		
• Performs procedures and administers medications according to Facility Standards	/		
• Provides patient/family teaching	/		
• Responds to patient requests with promptness, empathy, and genuine interest	/		
• Recognizes deviations from patient norms and takes appropriate action	/		
• Seeks out Charge Nurse for clarification of assignment	/		
• Maintains confidentiality and patient rights	/		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	/		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	/		

Evaluator Comments:

Evaluator Signature & Title: [Signature]

Employee Signature: [Signature]

Date: 9/28/07

Date: 9/28/07

CA

ANS0207



American Nursing Services INC.
PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARWELL TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/28/07
FACILITY: SNARHS UNIT: G38

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () - - - - -

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Evaluator Signature & Title

William Collier, RN

Date:

9/28/07

Employee Signature:

Steve Farwell

Date:

9/28/07

OK

ANS0206



American Nursing Services_{INC}
PROFESSIONALS WHO CARE

JA

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/29/07
FACILITY: SN AMHS UNIT: ELB

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	N/A	N/A	N/A
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Evaluator Signature & Title:

Employee Signature:

Date:

Date:

OK

ANS0205



American Nursing Services INC.

PROFESSIONALS WHO CARE

Handwritten initials

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 9/29/07
FACILITY: SNAMHS UNIT: E2B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" rating so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
* Arrives promptly for work and returns from breaks on time			
* Demonstrates a Positive Attitude			
NURSING PROCESS			
* Follows Universal Precautions Guidelines			
* Demonstrates comprehensive patient assessment skills			
* Establishes priorities for patient care activities based on acuity			
* Maintains a safe and therapeutic patient environment			
* Performs procedures and administers medications according to Facility Standards			
* Provides patient/family teaching			
* Responds to patient requests with promptness, empathy, and genuine interest			
* Recognizes deviations from patient norms and takes appropriate action			
* Seeks out Charge Nurse for clarification of assignment			
* Maintains confidentiality and patient rights			
* Provides pertinent data and completes shift report in an accurate, legible, and timely manner			
* Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor			

Evaluator Comments:

Evaluator Signature & Title: Gloria H. Manley, RN

Employee Signature: Steven Farmer

Date: 9/29/07

Date: 9/29/07

Handwritten initials

ANS0204



American Nursing Services INC.
PROFESSIONALS WHO CARE

JA

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10/20/05 SHIFT DATE: 10/02/07
FACILITY: SN AM HS UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	✓		
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

Evaluator Signature & Title:

Wanda Hurdick

Date: 10/2/07

Employee Signature:

Steven Farmer

Date: _____

ANS0203



American Nursing Services^{INC}

PROFESSIONALS WHO CARE

11

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 10/02/07
 FACILITY: SNA MHS UNIT: E2A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
* Arrives Promptly for work and returns from breaks on time			
* Demonstrates a Positive Attitude	/		
NURSING PROCESS			
* Follows Universal Precautions Guidelines			
* Demonstrates comprehensive patient assessment skills		/	
* Establishes priorities for patient care activities based on acuity		/	
* Maintains a safe and therapeutic patient environment		/	
* Performs procedures and administers medications according to Facility Standards		/	
* Provides patient/family teaching		/	
* Responds to patient requests with promptness, empathy, and genuine interest		/	
* Recognizes deviations from patient norms and takes appropriate action		/	
* Seeks out Charge Nurse for clarification of assignment		/	
* Maintains confidentiality and patient rights		/	
* Provides pertinent data and completes shift report in an accurate, legible, and timely manner		/	
* Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		/	

Evaluator Comments:

Complete nurse has value recognizes given
Maintains positive attitude R/T work assignment

Evaluator Signature & Title: _____

Date: 10/5/07

Employee Signature: Steve Farmer

Date: 10/02/07

ANS0202



American Nursing Services, INC.

PROFESSIONALS WHO CARE

15

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10.20.05 SHIFT DATE: 10.03.07
FACILITY: SNHHS UNIT: H4B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		/	
• Demonstrates a Positive Attitude		/	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		/	
• Demonstrates comprehensive patient assessment skills		/	
• Establishes priorities for patient care activities based on acuity		/	
• Maintains a safe and therapeutic patient environment		/	
• Performs procedures and administers medications according to Facility Standards		/	
• Provides patient/family teaching		/	
• Responds to patient requests with promptness, empathy, and genuine interest		/	
• Recognizes deviations from patient norms and takes appropriate action		/	
• Seeks out Charge Nurse for clarification of assignment		/	
• Maintains confidentiality and patient rights		/	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		/	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		/	

Evaluator Comments:

Evaluator Signature & Title: Gloria de la Cruz RN III

Date: 10/4/07

Employee Signature: Steven Farmer

Date: 10/03/07

ANS0201



American Nursing Services, Inc.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA

DATE OF HIRE: 10/30/05

SHIFT DATE: 11/22/07

FACILITY: SNAMHS

UNIT: _____

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____.

PERSONAL ATTRIBUTES	Above Average	Average	Below Average
• Arrives Promptly for work and returns from breaks on time	<input checked="" type="checkbox"/>		
• Demonstrates a Positive Attitude	<input checked="" type="checkbox"/>		
NURSING PROCESS			
• Follows Universal Precautions Guidelines			
• Demonstrates comprehensive patient assessment skills	<input checked="" type="checkbox"/>		
• Establishes priorities for patient care activities based on acuity	<input checked="" type="checkbox"/>		
• Maintains a safe and therapeutic patient environment	<input checked="" type="checkbox"/>		
• Performs procedures and administers medications according to Facility Standards	<input checked="" type="checkbox"/>		
• Provides patient/family teaching			
• Responds to patient requests with promptness, empathy, and genuine interest		<input checked="" type="checkbox"/>	
• Recognizes deviations from patient norms and takes appropriate action	<input checked="" type="checkbox"/>		
• Seeks out Charge Nurse for clarification of assignment	<input checked="" type="checkbox"/>		
• Maintains confidentiality and patient rights	<input checked="" type="checkbox"/>		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	<input checked="" type="checkbox"/>		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	<input checked="" type="checkbox"/>		

Evaluator Comments:

Steven demonstrates a positive work ethic and assists staff promptly and professionally. Steven also interacts with patients in a professional manner, and reports any significant changes observed to Charge Nurses. He is a "team player" and is an asset to our facility.

Evaluator Signature & Title: M. J. Miller, LWT

Date: 4/22/07

Employee Signature: Steven Farmer

Date: _____

EXHIBIT “5”

SW
NA ✓ D

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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DAVID P. FERRAINOLO, ESQ.
Nevada Bar No. 8452
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Nevada Bar No. 9509
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jbemis@hpslaw.com
Attorneys for Defendants
Centennial Hills Hospital

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

CASE NO. A595780
DEPT NO. II

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

**DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER'S RESPONSES TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

TO: PLAINTIFF JANE DOE, Individually

TO: ROBERT E. MURDOCK, ESQ. and ECKLEY M. KEACH, ESQ., Counsel for Plaintiff

ESD110110555

COMES NOW, Defendant, VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER (hereinafter referred to as "Centennial Hills Hospital"), by and through the law offices of HALL PRANGLE & SCHOONVELD, LLC, and pursuant to Rule 33 of the Nevada Rules of Civil Procedure responds to Plaintiff Jane Doe's First Set of Interrogatories as follows:

INTERROGATORIES

INTERROGATORY NO. 1

List, with particularity (date/treatment), each and every item of medical care and treatment performed by Steven Farmer, CNA on Jane Doe during her May 2008 admission.

RESPONSE TO INTERROGATORY NO. 1

OBJECTION. This interrogatory is vague as to "medical care and treatment," ambiguous, overbroad and not reasonably calculated to the discovery of admissible evidence. Moreover, the information is equally available to Plaintiff, as she is in possession of a true and correct copy of the medical records related to her May 2008 admission. Finally, Defendant objects on the basis that there are several sets of handwriting in Plaintiff's medical records related to her May 2008 admission. As such, Defendant is unable to identify or distinguish Mr. Farmer's handwriting.

INTERROGATORY NO. 2

Identify, by Bates stamp number, each and every notation in the medical records of Jane Doe during her May 2008 admission where Steven Farmer's name and identification is noted.

RESPONSE TO INTERROGATORY NO. 2

OBJECTION. This interrogatory is vague, ambiguous, overbroad and not reasonably calculated to the discovery of admissible evidence. Moreover, the information is equally available to Plaintiff, as she is in possession of a true and correct copy of the medical records

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 related to her May 2008 admission. Finally, Defendant objects on the basis that there are several
2 sets of handwriting in Plaintiff's medical records related to her May 2008 admission. As such,
3 Defendant is unable to indentify or distinguish Mr. Farmer's handwriting.
4

5
6 DATED this 6th day of April, 2010.

7 HALL PRANGLE & SCHOONVELD, LLC

8
9 By: 

10 MICHAEL E. PRANGLE, ESQ.

11 Nevada Bar No. 8619

12 DAVID P. FERRAINOLO, ESQ.

13 Nevada Bar No. 8452

14 JOHN F. BEMIS, ESQ.

15 Nevada Bar No. 9509

16 777 North Rainbow Blvd., Ste. 225

17 Las Vegas, Nevada 89107

18 *Attorneys for Defendant*

19 *Centennial Hills Hospital*
20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

EVETTE M. WILSON, RN, MSN, being first duly sworn and upon her oath, deposes and says:

That she is the Administrative Director of Quality Outcomes/Patient Safety Officer of Centennial Hills Hospital, Inc. a named Defendant in the foregoing District Court action;

That she has read the foregoing **DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**, knows the contents thereof, and the same is true to the best of her knowledge, except as to those matters therein stated on information and belief, and as to those matters, she believes them to be true.

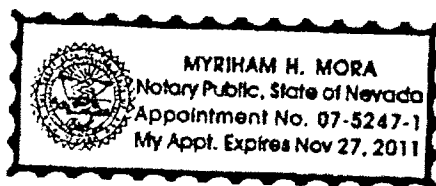
DATED this 2nd day of April, 2010.

CENTENNIAL HILLS HOSPITAL

Evette M. Wilson
EVETTE M. WILSON, RN, MSN
Administrative Director Quality Outcomes
Patient Safety Officer

Subscribed and sworn to before me this
2nd day of April, 2010.

Myriam H. Mora
NOTARY PUBLIC in and for said
County and State



HALL KRANGLE & SCHONVELD, LLC
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HALL PRANGLE & SCHOONVELD, LLC

RAINBOW CORPORATE CENTER

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TELEPHONE: 702-889-6409 FACSIMILE: 702-384-6025

CERTIFICATE OF SERVICE

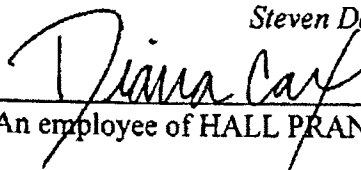
I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 6th day of April, 2010, I served a true and correct copy of the foregoing DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address:

Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Eckley M. Keach, Esq.
Eckley M. Keach, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith
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Las Vegas, Nevada 89101
Attorneys for American Nursing Services, Inc.

Robert C. McBride, Esq.
Nevada Bar No. 7082
Mandelbaum Schwarz Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Steven Dale Farmer


An employee of HALL PRANGLE & SCHOONVELD, LLC

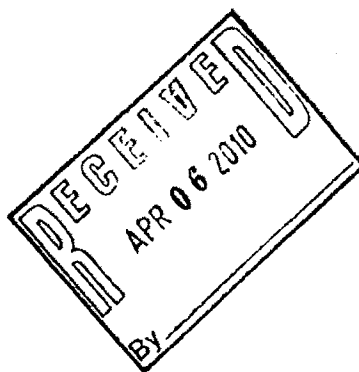


EXHIBIT “6”

HALL PRANGLE & SCHOONVELD, LLC

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RSPN

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

DAVID P. FERRAINOLO, ESQ.

Nevada Bar No. 8452

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

HALL PRANGLE & SCHOONVELD, LLC

777 North Rainbow Blvd., Ste. 225

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mprangle@hpslaw.com

dferrainolo@hpslaw.com

jbemis@hpslaw.com

Attorneys for Defendants

Centennial Hills Hospital

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;
STEVEN DALE FARMER, an individual; DOES I
through X, inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER'S RESPONSES TO PLAINTIFF'S
SECOND SET OF REQUESTS FOR ADMISSIONS**

Hearing Date: N/A

Hearing Time: N/A

ESD110110553

HALL PRANGLE & SCHOONVELD, LLC
RAINBOW CORPORATE CENTER
777 NORTH RAINBOW BLVD., STE. 225
LAS VEGAS, NEVADA 89107
TELEPHONE: 702-889-6408 FACSIMILE: 702-384-6025

COMES NOW, Defendant, Valley Health Systems, LLC, by and through their counsel of record, the law firm of Hall Prangle & Schoonveld, LLC, and hereby provides the following responses to Plaintiff's Second Set of Requests for Admissions:

REQUEST NO. 1:

Admit that Steven Farmer wrote nothing in the medical Chart of Jane Doe during her May, 2008 admission.

RESPONSE NO. 1:

Defendant, Valley Health System, LLC, cannot admit or deny this request as there is several different sets of handwriting in the medical chart of Jane Doe during her May, 2008 admission.

REQUEST NO. 2:

Admit that Steven Farmer was not specifically assigned to the room of Jane Doe during her May, 2008 admission.

RESPONSE NO. 2:

Admit, as CNA's are not assigned to specific room numbers.

DATED this 2nd day of April, 2010.

HALL PRANGLE & SCHOONVELD, LLC

By: 

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

DAVID P. FERRAINOLO, ESQ.

Nevada Bar No. 8452

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

777 North Rainbow Blvd., Ste. 225

Las Vegas, Nevada 89107

Attorneys for Defendant

Centennial Hills Hospital

CERTIFICATE OF SERVICE

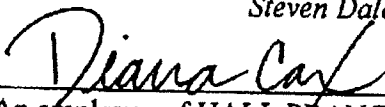
I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 2nd day of April, 2010, I served a true and correct copy of the foregoing DEFENDANT VALLEY HEALTH SYSTEM, LLC d/b/a CENTENNIAL HILLS HOSPITAL MEDICAL CENTER'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSIONS in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address:

Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

Eckley M. Keach, Esq.
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Lewis Brisbois Bisgaard & Smith
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Attorneys for American Nursing Services, Inc.

Robert C. McBride, Esq.
Mandelbaum Schwarz Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Steven Dale Farmer


An employee of HALL PRANGLE & SCHOONVELD, LLC

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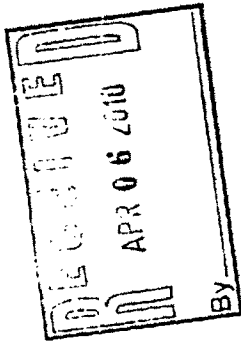


EXHIBIT “7”

12 Cal.4th 291, 907 P.2d 358, 48 Cal.Rptr.2d 510, 64
USLW 2414, 95 Cal. Daily Op. Serv. 9879, 95 Daily
Journal D.A.R. 17,103

LISA M., Plaintiff and Appellant,
v.
HENRY MAYO NEWHALL MEMORIAL
HOSPITAL, Defendant and Respondent.

No. S043581.
Supreme Court of California
Dec 26, 1995.

SUMMARY

A patient brought an action for professional negligence, battery, and intentional and negligent infliction of emotional harm against an ultrasound technician, a hospital, and others. Plaintiff alleged that the technician sexually molested her during the course of an ultrasound examination. In opposition to the hospital's motion for summary judgment, plaintiff asserted triable issues of fact existed as to whether the hospital was vicariously liable for the battery as a tort committed within the scope of the technician's employment, or was directly liable for its own negligence. The trial court granted the summary judgment motion, rejecting both arguments. (Superior Court of Los Angeles County, No. 023309, David M. Schachter, Judge.) The Court of Appeal, Second Dist., Div. Four, No. B074774, reversed, relying only on the theory of respondeat superior, and expressly declining to reach the question of the hospital's negligence.

The Supreme Court reversed the judgment of the Court of Appeal, and remanded the matter to that court for a decision on plaintiff's negligence cause of action. The Supreme Court held that the hospital was entitled to summary judgment on the ground that the technician's conduct was beyond the scope of his employment as a matter of law, and that, therefore, the hospital could not be vicariously liable under the doctrine of respondeat superior. The examination provided no occasion for a work-related dispute or any other work-related emotional involvement with plaintiff. As with nonsexual assaults, a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. A foreseeability analysis led to the same conclusion. Although the examination involved physical contact with plaintiff, the assault on her did not originate with, and was not a generally foreseeable consequence of, that contact.

Moreover, the battery did not arise from any abuse of job-created authority. The technician was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of the examination. Also, public policy behind the doctrine of respondeat superior--preventing future injuries, assuring compensation to victims, and spreading the losses equitably--did not alter the conclusion that the assault was not a risk predictably created by or fairly attributed to the nature of the employment. (Opinion by Werdegar, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring opinion by George, J., with Lucas, C. J., concurring. Separate dissenting opinions by Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

(1)

Employer and Employee § 28--Liability to Third Persons--Scope of Employment.

An employer is vicariously liable for the torts of its employees committed within the scope of the employment. An employee's willful, malicious, and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts. While the employee need not have intended to further the employer's interests, the employer will not be held liable for an assault or other intentional tort that did not have a causal nexus to the employee's work. Since an intentional tort gives rise to respondeat superior liability only if it was engendered by the employment, the disavowal of motive as a singular test of respondeat superior liability does not mean the employee's motive is irrelevant. An act serving only the employee's personal interest is less likely to arise from or be engendered by the employment than an act that, even if misguided, was intended to serve the employer in some way.

(2)

Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Required Nexus Between Employment and Employee's Act--Foreseeability Test.

The nexus required for respondeat superior liability--that

the tort be engendered by or arise from the work-is to be distinguished from "but for" causation. The fact that the employment brought the tortfeasor and victim together in time and place is not enough. The incident leading to injury must be an outgrowth of the employment; the risk of tortious injury must be inherent in the working environment, or typical of or broadly incidental to the enterprise the employer has undertaken. Respondeat superior liability should apply only to the types of injuries that are, as a practical matter, sure to occur in the conduct of the employer's enterprise. The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought. A foreseeability test is useful because it reflects the central justification for respondeat superior liability: that losses fairly attributable to an enterprise-those that foreseeably result from the conduct of the enterprise-should be allocated to the enterprise as a cost of doing business. Under that test, the tortious occurrence must be a generally foreseeable consequence of the activity. Foreseeability merely means that, in the context of the particular enterprise, an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.

(¹)
Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Question of Law or Fact.

The determination whether an employee has acted within the scope of employment ordinarily presents a question of fact. It becomes a question of law, however, when the facts are undisputed and no conflicting inferences are possible.

(²)
Employer and Employee § 28--Liability to Third Persons--Scope of Employment--Sexual Molestation During Ultrasound Examination:Healing Arts and Institutions § 11--Hospitals--Duties and Liabilities--Respondeat Superior.

In an action by a patient against an ultrasound technician, a hospital, and others, alleging the technician sexually molested plaintiff during an ultrasound examination, the hospital was entitled to summary judgment on the ground that the technician's conduct was beyond the scope of his employment as a matter of law, and that, therefore, the hospital could not be vicariously liable under the doctrine of respondeat superior. The examination provided no occasion for a work-related dispute or any other work-related emotional involvement with plaintiff. As with nonsexual assaults, a sexual tort will not be

considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. A foreseeability analysis led to the same conclusion. Although the examination involved physical contact with plaintiff, the assault on her did not originate with, and was not a generally foreseeable consequence of, that contact. Moreover, the battery did not arise from any abuse of job-created authority. The technician was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of the examination. Also, public policy behind the doctrine of respondeat superior-preventing future injuries, assuring compensation to victims, and spreading the losses equitably-did not alter the conclusion that the assault was not a risk predictably created by or fairly attributed to the nature of the employment.

[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 126 et seq.]

COUNSEL

R. Rex Parris and Michael R. Smith for Plaintiff and Appellant.

Ian Herzog, Douglas Devries, Roland Wrinkle, Harvey R. Levine, Robert Steinberg, Thomas G. Stolpman, William D. Turley, Mary E. Alexander, Bruce Broillet, Wayne McClean, Leonard Sacks, Tony Tanke, Leonard Esquina, David Rosen, Gordon, Edelstein, Krepack, Grant, Felton & Goldstein and Steven J. Kleifield as Amici Curiae on behalf of Plaintiff and Appellant.

Veatch, Carlson, Grogan & Nelson, John B. Loomis, C. Snyder Patin, Horvitz & Levy, Barry R. Levy and David S. Ettinger for Defendant and Respondent.

Beach, Procter, McCarthy & Slaughter, Thomas E. Beach, Sean D. Cowdry, Greines, Martin, Stein & Richland, Martin Stein, Marc J. Poster, Priscilla F. Slocum, Thelen, Marrin, Johnson & Bridges, Curtis A. Cole and Jason G. Wilson as Amici Curiae on behalf of Defendant and Respondent.

WERDEGAR, J.

Plaintiff Lisa M. was injured in a fall and sought treatment at defendant Henry Mayo Newhall Memorial Hospital (Hospital). Under the pretense of conducting an ultrasound imaging examination, a technician sexually molested her. In plaintiff's action against Hospital and others, the trial court granted summary judgment in favor of Hospital; the Court of Appeal reversed. The question presented is whether Hospital, even if not negligent in employing or supervising the technician, may be held vicariously liable for his misconduct under the doctrine of respondeat superior. We conclude the undisputed facts

show Hospital is not vicariously liable.

Facts and Procedural Background

The facts are taken largely from the declarations and depositions submitted in support of and opposition to Hospital's motion for summary judgment. Some undisputed facts are taken from the parties' separate statements of undisputed facts. (Code Civ. Proc., § 437c, subd. (b).)

On July 9, 1989, plaintiff, 19 years old and pregnant, was injured in a fall at a movie theater and sought treatment at Hospital's emergency room. At *295 the direction of the examining physicians, ultrasound technician Bruce Wayne Tripoli performed obstetrical and upper-right-quadrant ultrasonic imaging examinations.

Tripoli took plaintiff to the ultrasound room on a gurney. She remained in her street clothes, shorts and a maternity top. No one else was present during the examination; plaintiff had asked that her boyfriend accompany her, but Tripoli refused the request, as was his practice in conducting emergency obstetrical examinations. Tripoli turned out the room lights but left the adjacent bathroom door ajar to admit dim light.¹

Tripoli first conducted the prescribed examinations. Plaintiff pulled up her shirt and pushed her shorts down to expose the area to be examined. The obstetrical or "general pelvic" examination requires passing an ultrasound-generating wand across the patient's lower abdomen. The sound waves must be mediated by a gel, which Tripoli testified must be worked into the skin somewhat to displace all the air. The exact placement and movement of the wand varies with the patient's body type, and on some patients the best images are obtained by passing the wand as much as an inch below the pubic hairline. Tripoli found it necessary to do so in plaintiff's case. In performing the upper right quadrant examination (to see the liver), Tripoli had to lift plaintiff's right breast, which he did through a towel with the back of his hand.

After conducting the ordered examinations, Tripoli left the room for about 10 minutes to develop the photographic results. On his return, Tripoli asked plaintiff if she wanted to know the sex of the baby, and she said she did. He told her, falsely, that to determine the sex he would need to scan "much further down," and it would be uncomfortable. With plaintiff's cooperation, Tripoli pulled plaintiff's shorts down and began to scan in her pubic hair. According to plaintiff, he also inserted the wand in her vagina. After a while he put down the wand and fondled plaintiff with his fingers. Plaintiff testified he

moved his fingers "around everywhere down there." While fondling plaintiff, Tripoli said he needed to excite her to get a good view of the baby. Plaintiff found the touching uncomfortable, but Tripoli testified he thought she was getting pleasure from it because she said it tickled. Tripoli eventually stopped molesting plaintiff and returned her to the emergency room.

At the time of the misconduct, plaintiff thought it was part of a "regular procedure," albeit "kind of weird." Later that day, however, she began to *296 suspect Tripoli's actions were improper, a suspicion confirmed the next morning when she talked to her regular obstetrician. Tripoli was criminally prosecuted and pleaded no contest to a felony charge arising out of his molestation of plaintiff.

Plaintiff's suit named Tripoli, Hospital and others as defendants, and contained causes of action for professional negligence, battery and intentional and negligent infliction of emotional harm. In opposition to Hospital's motion for summary judgment, plaintiff maintained triable issues of fact existed as to whether Hospital was vicariously liable for the battery as a tort committed within the scope of Tripoli's employment, or was directly liable for its own negligence in failing to have a third person present during the examination. The superior court granted the summary judgment motion, rejecting both arguments.

The Court of Appeal reversed. The court relied only on the theory of respondeat superior and expressly declined to reach the question of Hospital's negligence. We granted Hospital's petition for review in order to decide the vicarious liability question.

Discussion

1. Review of Pertinent Law on Respondeat Superior

(¹¹) The rule of respondeat superior is familiar and simply stated: an employer is vicariously liable for the torts of its employees committed within the scope of the employment. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106, 719 P.2d 676].)² Equally well established, if somewhat surprising on first encounter, is the principle that an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even *297 though the employer has not authorized the employee to commit crimes or intentional torts. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 209 [285 Cal.Rptr. 99, 814 P.2d 1341]; *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447 [256 Cal.Rptr. 766, 769 P.2d 948]; *Carr v. Wm.*

C. Crowell Co. (1946) 28 Cal.2d 652, 654 [171 P.2d 5].) What, then, is the connection required between an employee's intentional tort and his or her work so that the employer may be held vicariously liable?

It is clear, first of all, that California no longer follows the traditional rule that an employee's actions are within the scope of employment only if motivated, in whole or part, by a desire to serve the employer's interests. (See Rest.2d Agency, § 228, subd. 1(c) [conduct must be "actuated, at least in part, by a purpose to serve the master"].) Our departure from that limiting rule dates at least from the leading case of *Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d 652.

In *Carr*, this court held a building contractor liable for injuries caused when an employee, angry at a subcontractor's employee for interfering in his work, threw a hammer at the other worker's head. We rejected the defendant's claim its employee was not acting within the scope of employment because he "could not have intended by his conduct to further" the employer's interests: "*It is sufficient, however, if the injury resulted from a dispute arising out of the employment.... 'It is not necessary that the assault should have been made "as a means, or for the purpose of performing the work he (the employee) was employed to do."*" (28 Cal.2d at p. 654, quoting *Hiroshima v. Pacific Gas & Elec. Co.* (1936) 18 Cal.App.2d 24, 28 [63 P.2d 3400], italics added; accord, *Fields v. Sanders* (1947) 29 Cal.2d 834, 839 [180 P.2d 684, 172 A.L.R. 5255] [that tortious act "was not committed in order to further the interests of the principal" does not preclude vicarious liability]; *Perez v. Van Groningen & Sons, Inc.*, *supra*, 41 Cal.3d at p. 969 ["The plaintiff need not demonstrate that the assault was committed for the purpose of accomplishing the employee's assigned tasks."]; *Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d at p. 621 ["[T]he 'motive test,' though still the 'majority rule,' has been abandoned in California."].)

While the employee thus need not have intended to further the employer's interests, the employer will not be held liable for an assault or other intentional tort that did not have a causal nexus to the employee's work. This *298 rule, too, can be traced to *Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d 652. There the court acknowledged that "[i]f an employee inflicts an injury out of personal malice, *not engendered by the employment*, the employer is not liable." (*Id.* at p. 656, italics added.) We further explained that in the case under consideration the attack was, indeed, "an outgrowth" of the employee's work: "Not only did the altercation leading to the injury arise solely over the performance of [the employee's] duties,

but his entire association with plaintiff arose out of his employment on the building under construction." (*Id.* at p. 657.)

In *Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d 608, 614-616, off-duty employees, who had been drinking beer at the jobsite, assaulted workers for another contractor after requesting and being refused a ride on a bulldozer driven by one of the victims. Applying the analysis developed in *Carr v. Wm. C. Crowell Co.*, *supra*, the Court of Appeal found substantial evidence the attack-in which the victims were seriously injured and permanently disabled-was within the scope of the assailants' employment. The assailants and victims, the court noted, were "complete strangers" until their work brought them together; thus the dispute could not have derived from "personal malice unrelated to the employment." (50 Cal.App.3d at p. 621.) Rather, a work-related dispute was the "proximate cause" of the attack. (*Ibid.*)

Because an intentional tort gives rise to respondeat superior liability only if it was engendered by the employment, our disavowal of motive as a singular test of respondeat superior liability does not mean the employee's motive is irrelevant. An act serving only the employee's personal interest is less likely to arise from or be engendered by the employment than an act that, even if misguided, was intended to serve the employer in some way.

(²) The nexus required for respondeat superior liability-that the tort be engendered by or arise from the work-is to be distinguished from "but for" causation.⁴ That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for intentional and negligent torts): the incident leading to injury must be an "outgrowth" of the employment (*Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d 652, 657); the risk of tortious injury must be "inherent in the working environment" (*id.* at p. 656) or "typical of or broadly incidental to the enterprise [the employer] has undertaken" (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 960 [88 Cal.Rptr. 188, 471 P.2d 988]). *299

Looking at the matter with a slightly different focus, California courts have also asked whether the tort was, in a general way, foreseeable from the employee's duties. Respondeat superior liability should apply only to the types of injuries that "as a practical matter are sure to occur in the conduct of the employer's enterprise." (*Hinman v. Westinghouse Elec. Co.*, *supra*, 2 Cal.3d at p.

959.) The employment, in other words, must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.

In what has proved an influential formulation, the court in *Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d at page 618, held the tortious occurrence must be "a generally foreseeable consequence of the activity." In this usage, the court further explained, foreseeability "merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Id.* at p. 619; accord, *John R. v. Oakland Unified School Dist.*, *supra*, 48 Cal.3d at p. 450, fn. 9; *Perez v. Van Groningen & Sons, Inc.*, *supra*, 41 Cal.3d at p. 968; *Martinez v. Hagopian* (1986) 182 Cal.App.3d 1223, 1228 [227 Cal.Rptr. 763]; *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal.App.3d 133, 141-142 [176 Cal.Rptr. 287].) The *Rodgers* foreseeability test is useful "because it reflects the central justification for respondeat superior [liability]: that losses fairly attributable to an enterprise—those which foreseeably result from the conduct of the enterprise—should be allocated to the enterprise as a cost of doing business." (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1004 [47 Cal.Rptr.2d 478, 906 P.2d 440].)

(13) "Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when 'the facts are undisputed and no conflicting inferences are possible.' " (*Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 213.) Neither plaintiff nor Hospital has pointed to factual disputes that would prevent us in this case from deciding the applicability of respondeat superior as a matter of law.

II. Application to This Case

(14) Was Tripoli's sexual battery of Lisa M. within the scope of his employment? The injurious events were causally related to Tripoli's employment as an ultrasound technician in the sense they would not have occurred had he not been so employed. Tripoli's employment as an ultrasound technician provided the opportunity for him to meet plaintiff and to be alone with her in circumstances making the assault possible. The employment was *300 thus one necessary cause of the ensuing tort. But, as previously discussed, in addition to such "but for" causation, respondeat superior liability requires the risk of the tort to have been engendered by, "typical of or broadly incidental to," or, viewed from a somewhat different perspective, "a generally foreseeable

consequence of," Hospital's enterprise. (*Hinman v. Westinghouse Elec. Co.*, *supra*, 2 Cal.3d at p. 960; *Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d at p. 618.)

At the broadest level, Hospital argues sex crimes are never foreseeable outgrowths of employment because they, unlike instances of nonsexual violence, are not the product of "normal human traits." Hospital urges us not to "legitimize" sexual misconduct by treating it on a par with mere fights. These generalized distinctions are not, however, compelling. Neither physical violence nor sexual exploitation is legitimate, excusable or routinely expected in the workplace. In *Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d 652, this court did not "legitimize" the act of the construction worker who, on trivial provocation, threw a carpenter's hammer at the plaintiff, "striking him on the head and seriously injuring him" (*id.* at p. 653), any more than we excused, condoned or otherwise "legitimized" a police officer's forcible rape of a detainee in *Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d 202. Nor did the Court of Appeal in *Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d 608, 615-616, indicate any inclination to approve of or excuse the intoxicated off-duty workers' brutal attack on two other workers—kicking and beating them with fists, rocks and a hardhat, rendering one unconscious and permanently injuring the other's eyesight. The references in certain cases to "the faults and derelictions of human beings" (*Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d at p. 656) and "normal human traits" (*Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d at p. 622) thus must be taken in context to include not only minor character flaws, but also the human tendency toward malice and viciousness. We are not persuaded that the roots of sexual violence and exploitation are in all cases so fundamentally different from those other abhorrent human traits as to allow a conclusion sexual misconduct is per se unforeseeable in the workplace.

Focusing more specifically on the type of sexual assault occurring here, we ask first whether the technician's acts were "engendered by" or an "outgrowth" of his employment. (*Carr v. Wm. C. Crowell Co.*, *supra*, 28 Cal.2d at pp. 656-657.) They were not.

Nonsexual assaults that were not committed to further the employer's interests have been considered outgrowths of employment if they originated in a work-related dispute. (E.g., *Fields v. Sanders*, *supra*, 29 Cal.2d at pp. 839-840 [employee truck driver's assault on another motorist following *301 dispute over employee's driving]; see, generally, *Farmers Ins. Group v. County of Santa Clara*, *supra*, 11 Cal.4th 992, 1006.) "Conversely, vicarious

liability [has been] deemed inappropriate where the misconduct does not arise from the conduct of the employer's enterprise but instead arises out of a personal dispute (e.g., *Monty v. Orlandi* (1959) 169 Cal.App.2d 620, 624 [337 P.2d 861] [bar owner not vicariously liable where on-duty bartender assaulted plaintiff in the course of a personal dispute with his common law wife]), or is the result of a personal compulsion (e.g., *Thorn v. City of Glendale* (1994) 28 Cal.App.4th 1379, 1383 [35 Cal.Rptr.2d 1] [city not vicariously liable where fire marshal set business premises on fire during an inspection].)" (*Farmers Ins. Group v. County of Santa Clara, supra*, 11 Cal.4th 992, 1006.)

As with these nonsexual assaults, a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions. Here the opposite was true: a technician simply took advantage of solitude with a naive patient to commit an assault for reasons unrelated to his work. Tripoli's job was to perform a diagnostic examination and record the results. The task provided no occasion for a work-related dispute or any other work-related emotional involvement with the patient. The technician's decision to engage in conscious exploitation of the patient did not arise out of the performance of the examination, although the circumstances of the examination made it possible. "If ... the assault was not motivated or triggered off by anything in the employment activity but was the result of only propinquity and lust, there should be no liability." (*Lyon v. Carey* (D.C. Cir. 1976) 533 F.2d 649, 655 [174 App.D.C. 422].)

Our conclusion does not rest on mechanical application of a motivation-to-serve test for intentional torts, which would bar vicarious liability for virtually all sexual misconduct. (See *ante*, p. 297.) Tripoli's criminal actions were, of course, unauthorized by Hospital and were not motivated by any desire to serve Hospital's interests. Beyond that, however, his motivating emotions were not causally attributable to his employment. The flaw in *302 plaintiff's case for Hospital's respondeat superior liability is not so much that Tripoli's actions were personally motivated, but that those personal motivations were not generated by or an outgrowth of workplace responsibilities, conditions or events.

Analysis in terms of foreseeability leads to the same conclusion. An intentional tort is foreseeable, for purposes of respondeat superior, only if "in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co.*,

supra, 50 Cal.App.3d at p. 619, italics added.) The question is not one of statistical frequency, but of a relationship between the nature of the work involved and the type of tort committed. The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.

In arguing Tripoli's misconduct was generally foreseeable, plaintiff emphasizes the physically intimate nature of the work Tripoli was employed to perform. In our view, that a job involves physical contact is, by itself, an insufficient basis on which to impose vicarious liability for a sexual assault. (Accord, *Boykin v. District of Columbia* (App.D.C. 1984) 484 A.2d 560, 562 "[T]hat physical touching was necessarily a part of the teacher-student relationship" held insufficient to impose liability on employer for teacher's molestation of deaf and blind student, who could be taught only through touch.]) To hold medical care providers strictly liable for deliberate sexual assaults by every employee whose duties include examining or touching patients' otherwise private areas would be virtually to remove scope of employment as a limitation on providers' vicarious liability. In cases like the present one, a deliberate sexual assault is fairly attributed not to any peculiar aspect of the health care enterprise, but only to "propinquity and lust" (*Lyon v. Carey, supra*, 533 F.2d 649, 655).⁶

Here, there is no evidence of emotional involvement, either mutual or unilateral, arising from the medical relationship. Although the procedure *303 ordered involved physical contact, it was not of a type that would be expected to, or actually did, give rise to intense emotions on either side. We deal here not with a physician or therapist who becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship (see, e.g., *Simmons v. United States* (9th Cir. 1986) 805 F.2d 1363, 1369-1370; *Doe v. Samaritan Counseling Center* (Alaska 1990) 791 P.2d 344, 348-349), but with an ultrasound technician who simply took advantage of solitude, access and superior knowledge to commit a sexual assault.⁷

Although the routine examination Tripoli was authorized to conduct involved physical contact with Lisa M., Tripoli's assault on plaintiff did not originate with, and was not a generally foreseeable consequence of, that contact. Nothing happened during the course of the prescribed examinations to provoke or encourage Tripoli's improper touching of plaintiff. (See *Alma W. v. Oakland Unified School Dist., supra*, 123 Cal.App.3d at p. 141 [contrasting assault cases, in which a work-related quarrel preceded the assault, with school custodian's rape

of student, which was held unrelated to custodian's duties]; *Wiersma v. City of Long Beach* (1940) 41 Cal.App.2d 8, 11, 15 [106 P.2d 45] [producer of wrestling exhibition not vicariously liable for injuries caused by wrestler who "suddenly and, apparently without provocation," attacked spectator.]. The assault, rather, was the independent product of Tripoli's aberrant decision to engage in conduct unrelated to his duties. In the pertinent sense, therefore, Tripoli's actions were not foreseeable from the nature of the work he was employed to perform.

Plaintiff contends the battery in this case, like the police officer's rape of a detainee in *Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d 202, "arose from an abuse of job-created authority." More accurately, Tripoli abused his position of trust, since he had no legal or coercive authority over plaintiff. Assuming an analogy can be fully maintained between authority and trust, *304 *Mary M.* still provides less than compelling precedent for liability here. In *Mary M.*, we held a police officer's assault was a generally foreseeable consequence of his position. "In view of the considerable power and authority that police officers possess, it is neither startling nor unexpected that on occasion an officer will misuse that authority by engaging in assaultive conduct." (*Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 217.) We expressly limited our holding: "We stress that our conclusion in this case flows from the unique authority vested in police officers. Employees who do not have this authority and who commit sexual assaults may be acting outside the scope of their employment as a matter of law." (*Id.* at p. 218, fn. 11.)

While a police officer's assault may be foreseeable from the scope of his unique authority over detainees, we are unable to say the same of an ultrasound technician's assault on a patient. Hospital did not give Tripoli any power to exercise general control over plaintiff's liberty. He was not vested with any coercive authority, and the trust plaintiff was asked to place in him was limited to conduct of an ultrasound examination. His subsequent battery of the patient was independent of the narrow purpose for which plaintiff was asked to trust him. Whatever costs may be fairly attributable to a police officer's public employer in light of the extraordinary scope of authority the community, for its own benefit, confers on the officer, we believe it would not be fair to attribute to Hospital, which employed Tripoli simply to conduct ultrasound examinations, the costs of a deliberate, independently motivated sexual battery unconnected to the prescribed examination.

In reaching our conclusion we have consulted the three

identified policy goals of the respondeat superior doctrine-preventing future injuries, assuring compensation to victims, and spreading the losses caused by an enterprise equitably-for additional guidance as to whether the doctrine *should* be applied in these circumstances. (See *Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at pp. 209, 214-217; *John R. v. Oakland Unified School Dist.*, *supra*, 48 Cal.3d at pp. 451-452.) In this case, however, we have drawn no firm direction from consideration of the first two policy goals. Although imposition of vicarious liability would likely lead to adoption of some further precautionary measures, we are unable to say whether the overall impact would be beneficial to or destructive of the quality of medical care. Hospital and its amici curiae predict imposition of respondeat superior liability would lead health care providers to overreact by monitoring, for possible sexual misconduct, every interaction between patient and health care worker. Published research, on the other hand, indicates providers have *305 available several other approaches to preventing sexual misconduct by employees.*

As for ensuring compensation, the briefing does not enable us to say with confidence whether or not insurance is actually available to medical providers for sexual torts of employees and, if so, whether coverage for such liability would drastically increase the insurance costs-or, if not, the uninsured liability costs-of nonprofit providers such as Hospital.⁹ The second policy consideration is therefore also of uncertain import here; imposing vicarious liability is likely to provide additional compensation to some victims, but the consequential costs of ensuring compensation in this manner are unclear.

Third and finally, we attempt to assess the propriety of spreading the risk of losses among the beneficiaries of the enterprise upon which liability would be imposed. As Hospital points out, this assessment is another way of asking whether the employee's conduct was "so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co.*, *supra*, 50 Cal.App.3d at p. 619.) For reasons already discussed, we conclude the connection between Tripoli's employment duties-to conduct a diagnostic examination-and his independent commission of a deliberate sexual assault was too attenuated, without proof of Hospital's negligence, to support allocation of plaintiff's losses to Hospital as a cost of doing business. Consideration of the respondeat superior doctrine's basis in public policy, therefore, does not alter our conviction that an ultrasound technician's sexual assault on a patient is not a risk predictably created by or fairly attributed to the nature of

the technician's employment. *306

Although, as we have concluded, Tripoli's criminal acts were not engendered by or broadly incidental to his work so as to render Hospital vicariously liable, Hospital's duty of due care to its patient obliged it to take all measures dictated by ordinary prudence to protect against even such unusual sources of injury. The Court of Appeal declined to decide whether plaintiff's cause of action for negligence could survive summary judgment. The court therefore did not decide whether Hospital fulfilled its duty of care under the circumstances nor did it resolve any issue as to the adequacy of, or necessity for, plaintiff's expert declaration. Consequently, we consider it appropriate to remand the matter to the Court of Appeal for decision in the first instance on plaintiff's negligence cause of action.

Conclusion

Hospital employed a technician to conduct ultrasound examinations. The technician, after completing such an examination of plaintiff, took advantage of plaintiff's trust and his own superior knowledge to commit on her a deliberate sexual battery. His reasons for doing so did not derive from any events or conditions of his employment, nor were his actions provoked by anything that occurred during the prescribed examination. Hospital, by employing the technician and providing the ultrasound room, may have set the stage for his misconduct, but the script was entirely of his own, independent invention. For this reason it would be unfair and inconsistent with the basic rationale of respondeat superior to impose liability on Hospital irrespective of its own negligence.

The judgment of the Court of Appeal is reversed and the matter is remanded to that court for further proceedings consistent with this opinion.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred.

GEORGE, J.,

Concurring.-I concur in the result and reasoning of the majority, and I have signed the majority opinion. I write separately because, for the reasons expressed in my concurring opinion in *Farmers Ins. Group v. County of*

Santa Clara (1995) 11 Cal.4th 992 [47 Cal.Rptr.2d 478, 906 P.2d 440], I would go further and overrule the decision in *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202 [285 Cal.Rptr. 99, 814 P.2d 1341].

Lucas, C. J., concurred.

MOSK, J.

I dissent. Justice Kennard demonstrates that the Court of Appeal's decision is without error and hence that its judgment should be affirmed. I join in her opinion.

I write separately to emphasize the unsoundness of the majority's reasoning and the incorrectness of their result. *307

In its narrowest scope, the doctrine of respondeat superior declares that "the employer's responsibility for the torts of his employee extends beyond his actual or possible control of the servant to injuries which are 'risks of the enterprise.' " (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 960 [88 Cal.Rptr. 188, 471 P.2d 988].) For its firmest basis, the doctrine rests on the premise that such injuries are costs that the employer's business imposes on the community-costs that the employer may equitably be required to avoid if he can or to cover if he cannot: "We are not here looking for the master's fault but rather for risks that may fairly be regarded as typical of or broadly incidental to the enterprise he has undertaken.... Further, we are not looking for that which can and should reasonably be avoided, but with the more or less inevitable toll of a lawful enterprise." (*Ibid.*, quoting 2 Harper & James, *The Law of Torts* (1956) pp. 1376-1377.)

The majority recognize, as they must, that "[n]onsexual assaults" come within the doctrine of respondeat superior "if they originate[] in a work-related dispute," as when an "employee truck driver[] assault[s] ... another motorist following [a] dispute over [the] employee's driving." (Maj. opn., ante, at p. 300.) Such an attack, of course, falls beyond the doctrine's bounds if "the misconduct ... arises out of a personal dispute," as when an "on-duty bartender assault[s] [a bystander] in the course of a personal dispute [between the bartender and] his common law wife" (Maj. opn., ante, at p. 301, quoting *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1006 [47 Cal.Rptr.2d 478, 906 P.2d 440].)

It follows that sexual assaults are within the doctrine of respondeat superior if they originate in work-related concupiscence, as when "a physician or therapist ...

becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship” (Maj. opn., ante, at p. 303.) Similarly, an attack of this sort is outside the doctrine’s limits if the impropriety springs from a particularized lust, as when a meat cutter makes a sexual advance on a customer as he fills an order. (*Great Atlantic & Pacific Tea Co. v. Luntrip* (1934) 26 Ala.App. 79 [153 So. 296, 298] [applying Alabama law].)

In my view, it is at least a question for the trier of fact whether the sexual assault in this cause comes within the doctrine of respondeat superior. The facts are undisputed that, in the course of his employment at Henry Mayo Newhall Memorial Hospital, Bruce Wayne Tripoli, an ultrasound technician, was required to have intimate physical contact with female patients, like Lisa M., which involved the touching of their breasts and the rubbing of their pubic areas—all without a chaperon. The facts are also undisputed that Tripoli had no acquaintance whatever with Lisa apart from the event with *308 which we are here concerned. In a word, it is certainly arguable that the itch that Tripoli improperly scratched arose from intimate physical contact that was altogether proper to his work. The majority claim to discern a particularized lust rather than work-related concupiscence. They blink reality. Worse still, they ignore the undisputed facts. The “[h]ospital,” they admit, “may have set the stage for [Tripoli’s] misconduct” (Maj. opn., ante, at p. 19.) “[B]ut the script,” they assert “was entirely of his own, independent invention.” (*Ibid.*) On that point, perhaps they are right. They are wrong, however, in refusing to acknowledge that his inspiration arose from the mise-en-scene established by the hospital.¹

In conclusion, having found no error in the Court of Appeal’s decision, I would affirm its judgment.

KENNARD, J.

I dissent.

The majority holds that, *as a matter of law*, a hospital employee was not acting within the scope of his employment when he sexually molested a pregnant woman while purportedly conducting an ultrasound examination necessitating that he have physical contact with intimate areas of the woman’s body. I disagree. Scope of employment in this case, as in most cases, is a question of fact to be resolved by the trier of fact.

The scope-of-employment question presented here is very similar to one this court addressed just a few weeks ago in

Farmers Ins. Group v. County of Santa Clara (1995) 11 Cal.4th 992 [47 Cal.Rptr.2d 478, 906 P.2d 440]. In that case, an employee had sexually harassed coemployees, whereas here an employee sexually assaulted a nonemployee, but both cases pose the question whether an employee’s on-the-job sexual misconduct arises in the scope of employment. In *Farmers*, as here, the majority concluded, as a matter of law, that the sexual misconduct was outside the scope of employment. In *Farmers*, as here, I have concluded that because reasonable minds may differ as to the proper resolution of the issue, it should not be resolved as a matter of law. *309

I

Plaintiff Lisa M., injured in a fall, went to defendant Henry Mayo Newhall Memorial Hospital for treatment. Because plaintiff was pregnant, the emergency room physician ordered an obstetrical ultrasound examination to determine whether the fetus had been injured. The ultrasound technician, Bruce Tripoli, rejected plaintiff’s request that her mother and boyfriend be present during the procedure. Plaintiff was wearing shorts and a maternity top (the hospital did not provide a gown), and she raised her top and pulled down her shorts so that Tripoli could perform the examination. Tripoli rubbed a gel on plaintiff’s abdomen, going as low as one inch below the pubic hairline; he then pressed the ultrasound wand against her abdomen. He also raised plaintiff’s right breast to place the wand in the area below it; he did this with the back of his hand, through a towel.

After the examination, Tripoli left the room. Moments later, he returned and asked plaintiff if she would like to know the sex of her baby. Plaintiff said she would; with plaintiff’s cooperation, Tripoli pulled down plaintiff’s shorts to perform the examination. Tripoli coated the ultrasound wand with gel, and rubbed it around and inside plaintiff’s vagina. Tripoli then fondled her with his fingers, telling her that he needed to sexually excite her to stop the baby from moving. An ultrasound procedure to determine the sex of a fetus does not, however, require touching of the vagina, vaginal insertion of the ultrasound wand, or sexual excitation of the patient. Plaintiff did not object to Tripoli’s improper touching because she was unsure whether or not his acts were a necessary part of the examination. The next day, after discussing the matter with her sister and her obstetrician, plaintiff concluded that she had been molested. Tripoli was arrested, and was later convicted of a felony arising from his sexual assault on plaintiff.

Plaintiff sued Tripoli and his employer, defendant

hospital;¹ as to the latter she asserted that (1) defendant was vicariously liable for Tripoli's tortious conduct, and (2) defendant was negligent in not providing her with a hospital gown and a female observer during the ultrasound examination. Defendant hospital moved for summary judgment, contending that it was not vicariously liable because Tripoli had not acted in the course of his employment when he molested plaintiff, that plaintiff had failed to produce evidence that it had acted negligently, and that it was not negligent as a matter *310 of law. The trial court granted defendant's motion. The Court of Appeal reversed, holding that whether Tripoli had acted in the scope of employment was a triable issue of fact, and that therefore the trial court should not have granted defendant hospital's motion for summary judgment.²

II

Under the doctrine of respondeat superior, an employer may be held vicariously liable for acts committed by an employee in the scope of employment. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208 [285 Cal.Rptr. 99, 814 P.2d 1341].) In *Farmers Ins. Group v. County of Santa Clara*, *supra*, 11 Cal.4th 992 (hereafter *Farmers*), I summarized the principles governing scope of employment as follows: "'A risk arises out of the scope of employment when 'in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business. [Citations.] In other words, where the question is one of vicarious liability, the inquiry should be whether the risk was one "that may fairly be regarded as typical of or broadly incidental" to the enterprise undertaken by the employer. [Citation.]' "' (*Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 209, citing *Perez v. Van Groningen & Sons, Inc.* [(1986)] 41 Cal.3d 962, 968 [227 Cal.Rptr. 106, 719 P.2d 676], and *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 619 [124 Cal.Rptr. 143], brackets in *Mary M.*) [¶] Acts that do not benefit the employer may nonetheless fall within the scope of employment; so may acts that are willful or malicious, and those that violate the employer's express orders or policies. (*Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 209.)" (*Farmers*, *supra*, 11 Cal.4th 992, 1042 (dis. opn. of Kennard, J.).)

Elaborating upon these principles of respondeat superior, the majority notes that an employee's tortious conduct is within the scope of employment when there is a "causal nexus" between an employee's tortious conduct and the employee's job. (Maj. opn., *ante.* at p. 297.) As the majority explains: "The question is not one of statistical

frequency, but of a relationship between the nature of the work involved and the type of tort committed. The *311 employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought." (*Id.* at p. 302.) I have no quarrel with this observation. My disagreement stems from the manner in which the majority applies these general principles of respondeat superior to the facts of this case.

III

The issue in this case is whether the trial court erred when it granted a defendant's motion for summary judgment, concluding as a *matter of law* that ultrasound technician Tripoli's sexual misconduct occurred outside the scope of his employment, and that therefore defendant hospital could not be held vicariously liable for Tripoli's actions. A motion for summary judgment may be granted only when "there is no triable issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

As the majority concedes (maj. opn., *ante.* at p. 299), whether an employee's tortious acts are within the scope of employment is in general a question of *fact*. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447 [256 Cal.Rptr. 766, 769 P.2d 948]; *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 722 [159 Cal.Rptr. 835, 602 P.2d 755]; *Loper v. Morrison* (1944) 23 Cal.2d 600, 605 [145 P.2d 1]; *Westberg v. Willde* (1939) 14 Cal.2d 360, 373 [94 P.2d 590].) The majority, however, treats scope of employment in this case as a question of *law*, reasoning that it may do so because the parties have not "pointed to factual disputes that would prevent us in this case from deciding the applicability of respondeat superior as a matter of law." (Maj. opn., *ante.* at p. 299.) Not so.

True, there is no dispute as to the *predicate* facts underlying the question whether ultrasound technician Tripoli acted in the scope of his employment; that is, the parties agree on where, when, and how Tripoli molested plaintiff, and they agree that defendant was Tripoli's employer. (See fn. 2, *ante.*) But the absence of a dispute regarding the *predicate* facts does not necessarily mean that the *ultimate* question—that is, whether Tripoli's conduct fell within the scope of employment—is one of law, to be decided on summary judgment. As I shall explain, whether Tripoli's acts arose within the scope of his employment is itself a disputed factual question, notwithstanding the parties' agreement on the predicate facts.

This court has long held that whether an employee's

tortious conduct falls outside of the scope of employment is generally a question of fact, even when the facts underlying that determination are not in dispute. In *Westberg* *312 v. *Willde*, *supra*, 14 Cal.2d 360, a truck driver making deliveries for the Reliable Delivery Service stopped at his home for lunch, then left to deliver a letter to his father's place of employment before returning to his office. On the way, he negligently collided with another car, killing the driver. The decedent's heirs sued the owner of the delivery service, contending that the accident occurred in the scope of employment, and that the owner was therefore liable for the damages arising from his employee's negligence. This court affirmed a jury verdict for the plaintiffs, rejecting the defendant's contention that the accident occurred, as a matter of law, outside the scope of employment. The court explained: "Whether there has been a deviation so material or substantial as to constitute a complete departure is usually a question of fact. In some cases the deviation may be so marked, and in others so slight relatively, that the court can say that no conclusion other than that the act was or was not a departure could reasonably be supported; while in still others the deviation may be so uncertain in extent and degree in view of the facts and circumstances as to make the question of what inferences should be drawn from the evidence properly one for the jury" (*Id.* at p. 373.)

More recent cases, expressing the same principle in shorthand form, have said that scope of employment is a question of fact unless "the facts are undisputed and no conflicting inferences are possible." (*Mary M. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 213, italics added, quoting *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968 [227 Cal.Rptr. 106, 719 P.2d 676].) In other words, if the parties agree as to the underlying facts, but dispute the inferences as to scope of employment that may reasonably be drawn from those facts, scope of employment is a question of fact. Or, as the court more clearly stated in *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal.App.3d 133, 138 [176 Cal.Rptr. 287]: "Where the facts of the case make it arguable whether the employee has acted within the scope of his employment, then the scope of employment issue is one properly decided by the trier of fact." (See also Rest.2d Agency, § 228, com. d, p. 505 ["The question whether or not the act done is so different from the act authorized that it is not within the scope of the employment is decided by the court if the answer is clearly indicated; otherwise, it is decided by the jury."]; *O'Leary v. Brown-Pacific-Maxon* (1950) 340 U.S. 504, 506-508 [95 L.Ed. 483, 486-487, 71 S.Ct. 470] [Whether employee committed an act "arising out of and in the course of employment" is a question of fact under federal workers' compensation law].)

In this case, as shown below, the parties dispute the inferences that may reasonably be drawn from ultrasound technician Tripoli's conduct when he sexually molested plaintiff; that is, they dispute whether that conduct was so *313 closely related to the performance of his duties that it may reasonably be inferred that the conduct occurred in the scope of his employment.

The majority asserts that ultrasound technician Tripoli's conduct fell outside the scope of employment because Tripoli molested plaintiff, a patient, for personal reasons unrelated to Tripoli's employment at defendant hospital. In the words of the majority: "[T]here is no evidence [here] of emotional involvement, either mutual or unilateral, arising from the medical relationship" (maj. opn., *ante*, at p. 302), and "[n]othing happened during the course of the prescribed examinations to provoke or encourage Tripoli's improper touching of plaintiff" (*id.* at p. 303). Thus, the majority concludes, Tripoli's sexual assault on plaintiff "is fairly attributed not to any peculiar aspect of the health care enterprise, but only to 'propinquity and lust' [citation]." (*Id.* at p. 302.)

Perhaps. But a trier of fact might also reasonably conclude that Tripoli's employment as an ultrasound technician did have certain "peculiar aspects" that played a not insignificant role in the sexual assault. To perform an ultrasound examination on a pregnant woman, a technician rubs a gel on the woman's exposed lower abdomen. This intimate contact, inherent in the job, put plaintiff in a vulnerable position and permitted Tripoli to dupe plaintiff into believing that his sexual assault was actually part of a standard medical procedure, thereby giving Tripoli a basis to hope that his misconduct would remain undetected. Moreover, it is not unreasonable to infer that the intimate contact inherent in the job contributed to Tripoli's sexual arousal and incited him to engage in the misconduct. In short, a reasonable trier of fact could conclude that this sexual assault would never have occurred had Tripoli been employed by defendant in a capacity other than ultrasound technician, and that therefore the misconduct may fairly be attributed to risks arising from, and inherent in, the "peculiar aspects" of Tripoli's employment. (See *Stropes v. Heritage House Childrens Ctr.* (Ind. 1989) 547 N.E.2d 244 [question of fact whether nurse's aide acted in the scope of employment when he sexually molested severely retarded patient]; *Marston v. Minneapolis Clinic of Psychiatry* (Minn. 1982) 329 N.W.2d 306 [question of fact whether sexual acts by licensed psychologist during "biofeedback" sessions were within scope of employment]; *Samuels v. Southern Baptist Hosp.* (La.Ct.App. 1992) 594 So.2d 571, 574 [upholding as "not clearly wrong" determination that

nursing assistant was acting in the scope of his employment when he raped psychiatric patient[.])

When an employee's personal motivations are so enmeshed with the employee's performance of occupational duties that reasonable minds can differ as to whether the employee's tortious act is incidental to those duties, *314 the issue of whether the act arose in the scope of employment should be resolved by the trier of fact, rather than a trial court acting on a motion to dismiss. (Note, *A Matter of Trust: Institutional Employer Liability for Acts of Child Abuse by Employees* (1992) 33 Wm. & Mary L.Rev. 1295, 1316.) Reasonable minds can differ with regard to whether the nexus between Tripoli's tortious conduct and the scope of employment is sufficiently close to conclude that the conduct arose in the scope of employment; therefore, that issue is a question of fact to be resolved at trial.

Conclusion

I do not suggest, by the foregoing comments, that the question whether an employee's tortious conduct is within the scope of employment may *never* be resolved on

summary judgment. Although scope of employment is ordinarily a question of fact, it becomes a question of law "where the undisputed facts would not support an inference that the employee was acting within the scope of his employment." (*John R. v. Oakland Unified School Dist.*, *supra*, 48 Cal.3d at p. 447.) Thus, this court held in *John R.* that, as a matter of law, a junior high school teacher acted outside the scope of his employment when he molested one of his students, and that therefore no liability could be imposed on the school district that employed him. But the converse is also true: when an employee's tortious acts, although personally motivated, are so integrally entwined with his or her employment that reasonable minds can differ as to whether the acts arose in the scope of employment, then scope of employment is a question of fact, rather than one of law, and may not be decided on a motion for summary judgment. This is the case here.

I would affirm the judgment of the Court of Appeal, which held that the trial court erred when it granted plaintiff's motion for summary judgment. *315

Footnotes

- 1 Tripoli's deposition testimony was inconsistent as to whether the door to the ultrasound room was open or closed; although he testified he usually left the door slightly open, and did so on this occasion, he also testified the room door's magnetic latch was not working properly, and the door closed instead of remaining ajar.
- 2 Civil Code section 2338, which has been termed a codification of the respondeat superior doctrine (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 618, fn. 2 [124 Cal.Rptr. 143]), is not limited to employer and employee but speaks more broadly of agent and principal; it makes the principal liable for negligent and "wrongful" acts committed by the agent "in and as part of the transaction of such [agency] business."
Tripoli was not formally employed by Hospital, but by Mediq Imaging Services, Inc., with which Hospital contracted for his services. Hospital, however, concedes it did not seek summary judgment on the ground Tripoli was not its employee, did not argue that issue in the Court of Appeal, and does not rely on it in this court. For purposes of reviewing the ruling on summary judgment, therefore, we will treat Tripoli as Hospital's employee, without considering or deciding whether Tripoli was Hospital's nonemployee agent or ostensible agent (see *Quintal v. Laurel Grove Hospital* (1964) 62 Cal.2d 154, 167-168 [41 Cal.Rptr. 577, 397 P.2d 161]) or a special employee for whose torts Hospital is liable under the "borrowed servant" rule (see *Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 455-456 [183 Cal.Rptr. 51, 645 P.2d 102]).
- 3 See also *Ira S. Bushey & Sons, Inc. v. United States* (2d Cir. 1968) 398 F.2d 167, 171 (discussing "inadequacy" of the motivation-to-serve test generally); LeGrand & Leonard, *Civil Suits for Sexual Assault: Compensating Rape Victims* (1979) 8 Golden Gate L.Rev. 479, 507 (the "motive-benefit" test, which would preclude respondeat superior liability for most sexual assaults, has been "abandoned" in California).
- 4 The distinction is reflected in the common meaning of "engender": "to bring into being." (Webster's New World Dict. (3d college ed. 1991) p. 450.)
- 5 Because we do not apply a motivation-to-serve test as the sole standard of vicarious liability, our rationale differs from that of most other courts that have considered factually similar cases, although several courts have reached the same result as we do: sexual assault by a medical technician is not within the scope of employment. (Compare *Hendley v. Springhill Memorial Hosp.* (Ala. 1990) 575 So.2d 547, 551 [technician "acted from wholly personal motives"]; *Matayas v. North Shore University Hosp.* (1995) 211 A.D.2d 762 [621 N.Y.S.2d 683, 684] [radiology technician's molestation of patient "committed ... for purely personal

motives"], and *Taylor v. Doctors Hosp. (West)* (1985) 21 Ohio App.3d 154 [486 N.E.2d 1249, 1251] [radiology orderly's sexual assault on patient committed "from intensely personal motives" and "in no way served to further or promote the business of the employer-hospital"], with *Samuels v. Southern Baptist Hosp. (La.Ct.App. 1992)* 594 So.2d 571, 574 [vicarious liability imposed for rape of patient by nursing assistant] and *Stropes v. Heritage House Childrens Ctr. (Ind. 1989)* 547 N.E.2d 244, 249-250 [same for molestation of disabled child by nurse's aide].)

- 6 We part company at this point with the dissenting justices, who would hold summary judgment improper because either the patient's vulnerability or the intimate physical contact inherent in the examination might have encouraged or incited Tripoli to assault her. On the present record, such inferences would be wholly speculative. Lacking evidence the assault was a product of the therapeutic relationship, to impose vicarious liability on a hospital for a technician's deliberate sexual assault on a patient would stretch the rationale of respondeat superior too far. To do so would make the hospital potentially liable, irrespective of its actual fault, whenever an employee used force, coercion or trickery to exploit criminally a patient's physical or psychological vulnerability, vulnerability that is characteristic of hospitalized patients generally. An analysis that, in the field of health care, deems a conscious sexual assault to have arisen from the employment *simply because* the patient involved was vulnerable, surrendered his or her privacy or submitted to physical contact unusual for strangers in a nonmedical context, would, in effect, expose health care providers to potential liability without fault for sexual assault by virtually any employee on any patient.
- 7 The American Medical Association has described and distinguished two broad types of sexual misconduct by physicians: first, misconduct arising from the physician's inability properly to contain and control his or her emotional involvement with the patient; and second, conscious exploitation of the physician's status, knowledge and power to coerce or trick the patient into allowing sexual contact. (American Medical Association, Council on Ethical and Judicial Affairs, Council Rep., *Sexual Misconduct in the Practice of Medicine* (1991) 266 JAMA 2741-2742.) Tripoli, of course, was a technician rather than a physician. In any event, his conduct belongs in the second category-conscious exploitation-and we need not decide here whether sexual misconduct of the first type might, under some circumstances, create respondeat superior liability on the employer's part.
- 8 See Jorgenson, *Employer / Supervisor Liability and Risk Management*, in *Breach of Trust: Sexual Exploitation by Health Care Professionals and Clergy* (Gonsiorek edit. 1995) pages 296-297; Schoener, *Liability and Risk: An Administrator's View*, in *id.* at pages 305-315; American Medical Association, Council on Ethical and Judicial Affairs, *supra*, 266 JAMA at pages 2744-2745; Plaut et al., *Roles of the Health Professional in Cases Involving Sexual Exploitation of Patients*, in *Sexual Exploitation of Patients by Health Professionals* (Burgess et al. edit. 1986) pages 20-23.
- 9 Whether a health care professional's sexual misconduct is covered under the professional's malpractice policy is "a much litigated issue," depending in part on the exact factual relationship between the misconduct and the professional services for which the professional was engaged. (Louisell & Williams, 4 *Medical Malpractice* (1994) § 20.03[1], p. 20-36.) But even where the misconduct is not sufficiently related to the provision of professional services to be covered under malpractice insurance, the hospital or other institutional provider may be covered for its vicarious liability under a commercial general liability policy. (*Id.*, § 20.01, p. 20-11.) Neither Insurance Code section 533 nor related policy exclusions for intentionally caused injury or damage preclude a California insurer from indemnifying an employer held vicariously liable for an employee's willful acts. (*Arenson v. Nat. Automobile & Cas. Ins. Co.* (1955) 45 Cal.2d 81, 83-84 [286 P.2d 816]; *Fireman's Fund Ins. Co. v. City of Turlock* (1985) 170 Cal.App.3d 988, 1000-1001 [216 Cal.Rptr. 796].)
- 1 The unfortunate but inevitable result of the majority's analysis is to exempt the health care employer, at least in part, from the doctrine of respondeat superior. I merely note that what they call the "three identified policy goals of the respondeat superior doctrine-preventing future injuries, assuring compensation to victims, and spreading the losses caused by an enterprise equitably" (maj. opn., *ante*, at p. 304)-do not justify exemption. Even if application of the doctrine furthers none of these objects, it nevertheless compels the health care employer to avoid or cover the costs his business imposes on the community. "Fairness is served thereby," and the "efficient use of limited resources is furthered." (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 161 [44 Cal.Rptr.2d 441, 900 P.2d 690].)
- 1 In this case, ultrasound technician Tripoli was not directly employed by defendant; he worked for Mediq Imaging Services, Inc. (a codefendant in this case), with which defendant contracted for Tripoli's services. Defendant, however, does not rely on the absence of a direct employment relationship between it and Tripoli as a basis to avoid vicarious liability in this case, and both parties have litigated the issue on the assumption that defendant is, for all intents and purposes, Tripoli's employer. Accordingly, like the majority (see maj. opn., *ante*, at p. 296, fn. 2), I have treated defendant as Tripoli's employer.
- 2 Because the Court of Appeal held that the trial court erred in finding that, as a matter of law, plaintiff was not entitled to recover on her cause of action for vicarious liability, it did not address plaintiff's claim that the trial court also erred in finding, as a matter of law, that plaintiff was not entitled to recover on her cause of action for negligence. As a result of the majority's conclusion today that plaintiff may not recover on her claim of vicarious liability, the Court of Appeal must now, on remand, consider the merits of plaintiff's cause of action for negligence. Because I agree with the Court of Appeal that whether ultrasound technician Tripoli had acted within the scope of his employment presents a triable issue of fact, I do not address the merits of plaintiff's cause of action

Lisa M. v. Henry Mayo Newhall Memorial Hospital, 12 Cal.4th 291 (1995)
907 P.2d 358, 48 Cal.Rptr.2d 510, 64 USLW 2414, 95 Cal. Daily Op. Serv. 9879...

for negligence.

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EXHIBIT “2”

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EIGHTH JUDICIAL DISTRICT COURT

ORIGINAL

CLARK COUNTY, NEVADA

FILED

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BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

CLERK OF THE COURT

0249693

THE STATE OF NEVADA,

Case No. 08AGJ078X

Plaintiff,

-vs-

STEVEN DALE FARMER,

Defendant.

Taken at Las Vegas, Nevada

Tuesday, November 18, 2008

1:44 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

DANETTE L. ANTONACCI, C.C.R. 222 (702) 361-0115

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GRAND JURORS PRESENT ON NOVEMBER 18, 2008:

2

3

[REDACTED] Foreman

4

[REDACTED], Deputy Foreman

5

[REDACTED], Secretary

6

[REDACTED], Assistant Secretary

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

19

[REDACTED]

20

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23

Also present at the request of the Grand Jury:

24

Summer Clarke,

Michael Bolenbaker,

Deputy District Attorneys

25

DANETTE L. ANTONACCI, C.C.R. 222 (702) 361-1947

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 18, 2008

* * * * *

DANETTE L. ANTONACCI,

having been first duly sworn to faithfully
and accurately transcribe the following
proceedings to the best of her ability.

14

MS. CLARKE: Ladies and gentlemen, my name is
Summer Clarke. This is Michael Bolenbaker who is going to
be sitting in who is prosecuting the case with me. We are
assigned to present Grand Jury case number 08AGJ078X, State
of Nevada versus Steven Dale Farmer. I'd like the record
to reflect that we have marked a copy of the proposed
Indictment as Exhibit Number 1. Do all members of the
Grand Jury have a copy of that?

A JUROR: Yes.

A JUROR: Yes.

MS. CLARKE: The defendant Steven Dale Farmer
in this case is charged with one count of sexual assault,
five counts of open or gross lewdness and two counts of
indecent exposure, committed at and within Clark County, on
or between May 13, 2008 and May 20th of 2008. I am
required by law to advise you of the elements of these
charges.

14 1 Sexual assault. A person who subjects
2 another person to sexual penetration against the victim's
3 will or under conditions in which the perpetrator knows or
4 should know that the victim is mentally or physically
5 incapable of resisting or understanding the nature of his
6 conduct, is guilty of sexual assault.

7 As used in these instructions, sexual
8 penetration means any intrusion, however slight, of any
9 part of a person's body or any object manipulated or
10 inserted by a person into the genital or anal openings of
11 the body of another.

12 Physical force is not a necessary
13 ingredient in the commission of the crime of sexual
14 assault.

15 Open or gross lewdness. Every person
16 who willfully commits any lewd or lascivious act upon the
17 body of another person in an offensive manner is guilty of
18 the crime of open or gross lewdness.

19 With reference to this crime, you are
20 instructed that the word open is used to modify the term
21 lewdness. As such, it includes acts which are committed in
22 a private place, but which are nevertheless committed in an
23 open as opposed to a secret manner.

24 You are further instructed that the term
25 gross is defined as being indecent, obscene or vulgar.

14

1 The term lewdness is defined as any act
2 of a sexual nature which the actor knows is likely to be
3 observed by the victim who would be affronted by the act.

4 Finally indecent exposure. Every person
5 who makes any open and indecent or obscene exposure of his
6 person or of the person of another, is guilty of indecent
7 exposure.

8 Do any members of the Grand Jury have
9 questions with regard to the charged offenses?

10 And if I could -- I'm sorry, who is the
11 secretary?

12 If I could get this marked as Grand Jury
13 proposed Exhibit 2. Thank you.

14 My first witness is [REDACTED].
15 And I'll go get her.

16 THE FOREPERSON: Please raise your right hand.

17 MS. CLARKE: [REDACTED], if you could raise your
18 right hand. They are going to administer the oath.

19 THE FOREPERSON: Do you solemnly swear the
20 testimony you are about to give upon the investigation now
21 pending before this Grand Jury shall be the truth, the
22 whole truth, and nothing but the truth, so help you God?

23 MS. [REDACTED]: I do.

24 THE FOREPERSON: You are advised that you are
25 here today to give testimony in the investigation

14 .1 pertaining to the offenses of sexual assault, open or gross
2 lewdness, indecent exposure, involving Steven Dale Farmer.

3 Do you understand this advisement?

4 MS. [REDACTED]: I couldn't hear you. I'm
5 sorry.

6 THE FOREPERSON: Okay. You are advised that
7 you are here today to give testimony in the investigation
8 pertaining to the offenses of sexual assault, open or gross
9 lewdness and indecent exposure, involving Steven Dale
10 Farmer.

11 Do you understand this advisement?

12 MS. [REDACTED]: Yes.

13 THE FOREPERSON: Please state your first and
14 last name and spell both for the record.

15 MS. [REDACTED] [REDACTED] [REDACTED] [REDACTED],

16 [REDACTED].
17 THE FOREPERSON: Thank you.

18 MS. CLARKE: Thank you.

19
20 [REDACTED],
21 having been first duly sworn by the Foreperson of the Grand
22 Jury to tell the truth, the whole truth, and nothing but
23 the truth, testified as follows:

24
25 ///

14

EXAMINATION

BY MS. CLARKE:

Q Miss [REDACTED], I would like to direct your attention to May 13th to May 20th of this year. Were you a patient at Centennial Hills Hospital?

A Yes.

Q And is that located here in Las Vegas, Clark County?

A Yes.

Q What is your date of birth?

A [REDACTED]

Q What medical condition do you suffer from currently?

A I suffered brain trauma in March which left me with a seizure disorder and uncontrollable sensory overload.

Q How long have you suffered from seizures?

A Off and on since '92 but haven't ever had to have medication for them nor have they ever been this extensive or damaging to me.

Q You could actually if you want to put that back in if that would be easier, that ear plug.

Is it okay?

A Yes, I can hear you. Then can I move this?

14 1 Q Yes, you can.

2 A Thank you. My depth perception is affected so
3 seeing that, it's --

4 Q Is that better?

5 A Uh-huh.

6 Q Okay. How many seizure episodes might you
7 suffer from at a given time?

15 8 A If I have a seizure it's not just one seizure,
9 I can have anywhere from seven to thirty-two seizures in an
10 episode.

11 Q When is the last seizure that you had?

12 A This past Saturday.

13 Q And do you have seizures multiple times in a
14 month?

15 A Yes. Like in the month of July I had a
16 seizure every other day.

17 Q What happens after you have a seizure?

18 A After -- when I have -- when I have a seizure
19 my body clenches up and tightens up, everything seizes up,
20 I don't know what's going on around me. When I come out of
21 my seizure I can't talk and when I can finally talk it's a
22 long, drawn out stutter. I can't move.

23 Q Would it be fair to say that you're completely
24 immobilized after a seizure?

25 A Yeah, I can't move anything after a seizure.

15

1 Q Can that state last for a long time?

2 A It can last up to forty-eight hours.

3 Q So the time that you can't move your body or
4 you can't speak can last up to two days after a seizure?

5 A Yes.

6 Q During May 13th to May 20th when you were in
7 Centennial Hills, did you go there because of a seizure?

8 A Yes. I was in the parking lot of a grocery
9 store and started to have seizures.

10 Q How did you get to Centennial Hills Hospital?

11 A Ambulance.

12 Q While there did you come into contact with
13 someone named Steve?

14 A Yes.

15 Q And I'm sorry, if I could I'm going to get up
16 and grab something that I should have grabbed before we
17 started.

18 [REDACTED], I'm showing you what has been
19 marked as Grand Jury, State's Grand Jury proposed Exhibit
20 2. Do you recognize that?

21 A Steve.

22 Q Is that the same person that you met when you
23 were at Centennial Hills Hospital?

24 A Yes.

25 Q Did you later learn his name to be Steve

15

.1 Farmer?

2 A Later I learned his last name, but while,
3 first thing he introduced himself to me.

4 Q And is this a fair and accurate depiction the
5 way he looked back in May of 2008?

6 A Yes. White hair.

7 Q Do you remember what Steve told you when he
8 first introduced himself to you?

9 A He introduced himself as my name is Steve, and
10 I know he said I'll be taking care of you.

11 Q What was he wearing?

12 A Some blue --

13 Q Blue shirt?

14 A Yeah. You know what they wear, nurse's smock
15 I think, something like that.

16 Q And did you, when you were first, when he
17 first introduced himself to you, were you able to speak at
18 that point?

19 A No, I couldn't speak or move at that time he
20 introduced himself.

21 Q So you were lying on the hospital bed
22 immobilized?

23 A Yes.

24 Q Can you describe the room that you were in?

25 A I was the only one in the room, it's just one,

15 1 just me, one, one bed. I remember the door to, to the foot
2 2 of the bed to the left and a window next next to it over
3 3 here.

4 Q Can you tell me about the time that Steve was
5 5 lifting your hospital gown?

6 A Yeah. He said he needed -- straightening my
7 7 bed, but had hem of my gown and was lifting it up and
8 8 looking at me and then putting it down and then lifting it
9 9 up and putting it down.

10 Q What were you wearing underneath your hospital
11 11 gown?

12 A Nothing.

13 Q Was your vagina exposed?

14 A Yes.

15 Q And was your buttocks exposed?

16 A I was laying on my back but my whole top was
17 17 exposed so.

18 Q You said that he said that he was trying to
19 19 straighten your bed?

20 A Yes.

21 Q And then he pulled up your gown how many
22 22 times?

23 A Twice that I remember at that time.

24 Q Can you tell me about a time that he woke you
25 25 up concerning a bowel movement?

15 1 A Yeah. I, actually I woke up and he was
2 2 standing there and moved my right leg and then told me that
3 3 I had some bowel movement, but I knew I didn't, and then he
4 4 lifted my leg up into the air as if he were like putting --
5 5 I don't know how to explain.

6 6 Q Let me ask you this. You said you knew you
7 7 didn't have a bowel movement?

8 8 A Right.

9 9 Q So even though your body is immobilized after
10 10 a seizure you still know if you have a bowel movement?

11 11 A Yeah. Yeah. I know if I'm having bodily
12 12 functions or -- yeah, like urination or bowel movement.

13 13 Q At this point in your stay were you still
14 14 unable to speak?

15 15 A Yes.

16 16 Q And were you still unable to move?

17 17 A Yes.

18 18 Q After he lifted your leg up in the air --

16 19 actually let me ask you a different question.

20 As a result of the seizures have you spent
21 21 time in hospitals before, in different hospitals before?

22 22 A If --

23 23 Q Before this time at Centennial Hills.

24 24 A Before -- I don't understand. I'm sorry.

25 25 Q Would it be fair to say that you've spent time

16 1 in hospitals after seizures, after you have had seizures
2 over the years?

3 Bad question too? Let me rephrase that.

4 Has anyone ever lifted your leg like
5 that after you've had a bowel movement?

6 A No. I've been hospitalized before and never,
7 never had, never had anybody do that. And if you, if you,
8 if you have something like that you have blue pads under
9 you that would need to be changed and, bed changed, and
10 none of that happened.

11 Q After he lifted your leg what he do with his
12 hand?

13 A He put his, he put his thumb in my rectum.

14 Q Prior to -- and did his thumb actually go
15 inside of your rectum?

16 A Yes.

17 Q Prior to his thumb going inside of your
18 rectum, did he place his hand or move his hand anywhere
19 else?

20 A One of his fingers, yes, was on my vagina.

21 Q You mentioned the pad and changing the bed.
22 After he inserted his thumb -- actually let me ask a
23 different question.

24 Did he say anything to you after he,
25 when he was doing that?

16

1 A No, not that I remember. I just remember him
2 telling me that I had some bowel movement.

3 Q At this point were you on medication in the
4 hospital?

5 A Yes.

6 Q Were you still aware of what was going on
7 around you?

8 A Yes.

9 Q Do you recall that blue pad being changed at
10 all?

11 A No.

12 Q Was that blue pad changed?

13 A No. No.

14 Q Were any of the bed sheets changed?

15 A No.

16 Q Did anyone come into your room and help --

17 A No.

18 Q -- clean up?

19 A No, nobody came into my room when he was in my
20 room at all.

21 Q Do you remember how long that lasted?

22 A No.

23 Q After it happened did you tell anyone right
24 away?

25 A I couldn't talk. I couldn't talk and -- I

16 1 couldn't talk.

2 Q Did the defendant touch any other part of your
3 body?

4 A Yes. He came into my room and told me that
5 one of my heart leads had come undone and he was pinching
6 my right nipples. Nipple.

7 Q Your right nipple?

8 A Yes.

9 Q Was he saying anything when he was doing that?

10 A Only thing I remember is that he said that my,
11 one of my leads had come undone.

12 Q Let me ask you, [REDACTED], did you feel any of
13 your leads come undone?

14 A No.

15 Q Did you see any of your leads come undone?

16 A No, nor did I hear my monitor in my room give
17 off a beep that tells you that something is undone.

18 Q So based on the time you've spent in hospitals
19 in the past you knew that when the lead was undone you
20 usually heard beeping?

21 A Yes.

22 Q And there was no beeping this time?

23 A No.

24 Q When he was pinching your right nipple, was
25 this still during the time period that you couldn't speak?

16

1 A Yes.

2 Q Was it still during the time period that you
3 couldn't move?

4 A Yes.

5 Q How many times -- actually, other than that
6 time was there any other time the defendant touched you
7 inappropriately?

8 A Yes, he came in and did, said the same thing,
9 that one of my heart leads, one of the leads was undone,
10 and he then was pinching both my nipples.

11 Q So this other time he was pinching both of
12 your nipples?

13 A Yes.

14 Q Was he doing that at the same time with both
15 hands or was it one nipple and then the other?

16 A Both ways.

17 Q Okay. Both ways that time?

18 A Yes.

19 Q Okay. So let me just make sure I understand.
20 He would touch one nipple and then the other and also touch
21 them both at the same time?

22 A Yes.

23 Q So it was more than just one time when he
24 placed his hands on your nipples?

25 A Yes.

16 1 Q And all of this was during the May 13th to May
2 20th hospital stay?

3 A Yes.

4 Q And was it your belief that he worked for
5 Centennial Hospital?

6 A Yes.

7 Q Okay. Other than having the blue smock that
8 he had on, was there anything else that made you think he
9 worked at the hospital?

10 A Just that he, the way he introduced himself
11 and then next day my heart went in a fibrillation and I, I
12 had lots of people in my room because my heart went into a
13 fib, and he came into the doorway and told me that I was
14 not assigned to him that day but he just wanted to see how
15 I was doing and hoped that I felt better soon.

16 Q Was anyone else in the room when he said that?

17 A Yes, nurse and I think a doctor or another
18 nurse.

19 Q When your heart went into a defibrillation,
20 were you taken to a different room?

21 A Yes, I was taken to a different floor, to I
22 think it's MCU so they could regulate my heart.

23 Q When the defendant inserted his thumb into
24 your rectum, did you want that to happen?

25 A No.

17 1 Q Did you want him to touch you anywhere on your
2 body?

3 A No.

4 Q And had you not been immobilized -- actually
5 let me ask it a different way.

6 Every time he touched you you were
7 unable to speak; is that true?

8 A Yes.

9 Q And you were unable to move; is that true?

10 A Yes.

11 Q Can you tell us about the time you had the
12 catheter in when he came into your room?

13 A He came in and said to check my catheter but
14 was, was touching, touching my, my vagina, lower than where
15 a catheter is and had one of his fingers touching it, my
16 vagina.

17 Q Did any of his fingers actually go inside your
18 vagina that you remember?

19 A Yes.

20 Q Okay. Were there any other times Steve
21 touched you either on your breasts or your vagina or your
22 buttocks while you were staying at Centennial Hospital in
23 May?

24 A No, I don't believe so. And after I, after I
25 went to the other room I was on a completely different

17

1 floor.

2 Q And you never saw him after that?

3 A Right.

4 Q Who did you first tell about what happened to
5 you at the hospital?6 A It took about twenty-four hours for my heart
7 to become steady and after my heart became steady I told my
8 two sons, I told them that there was a nurse on the other
9 floor, his name was Steve and he had white hair and that
10 he, what he had done.11 Q And did you tell your sons about what happened
12 while you were still in the hospital?

13 A Yes.

14 Q Did you have a conversation with one of your
15 sons after you got out of the hospital?

16 A Yes.

17 Q Okay. In between that time did you call the
18 police at all?

19 A What?

20 Q After you first told your sons about what
21 happened, did your sons call the police?

22 A No.

23 Q Did you call the police?

24 A Not at that time. Not at that time.

25 Q Okay. Tell me about the conversation you had

17

.1 with your son about a month later in June.

2

A My oldest son came outside where I was sitting and asked me what, what I, the guy's name was that I had told them about in the hospital and I told him that the guy's name was Steve, and he said with white hair, and I said yeah, it's Steve and he had white hair, and he said he had just seen him on TV, he had been arrested for assaulting a patient in Centennial.

9

Q Okay. Just one minute.

10

Just for the record, the statements of her son are offered only for presence sense impression in terms of what she did next as a result of that. You are not to consider the fact that he was arrested in relation to any other case or any other patient, only this case. It's only meant to explain how and when she reported the defendant's actions.

17

And why was it that you waited a month before you finally reported it?

19

A Because of the number of seizures that I've had, I've been in the hospital every month since May because of seizures, anywhere from three to ten days hospitalized so.

23

Q In case I didn't ask you, when Steve inserted his finger into your vagina the time with the catheter, you didn't consent to that behavior, did you?

25

17 .1 A No.

2 Q Okay. And you didn't want that to happen?

3 A No.

4 Q In fact you didn't want any of this to happen?

5 A No.

6 Q Okay.

7 A No.

8 Q Okay.

9 A He's -- he's a --

10 Q Okay. Thank you. That's fine. Thank you.

11 Ladies and gentlemen, at this time I

12 have concluded my questioning of this witness. Do any

13 members of the Grand Jury have any questions?

14 BY A JUROR:

15 Q How many instances were there when he touched

16 your breasts?

17 A I'm sorry, say it again.

18 Q How many different times were there that he

19 touched your breasts?

20 A How -- how --

21 BY MS. CLARKE:

22 Q How many different times did the defendant

23 come in and touch your breasts?

24 A Two. Two different, two different times.

25 A JUROR: Thank you.

18

1 MS. CLARKE: Any other questions?

2 And I will be making some amendments to
3 the Indictment.

4 THE FOREPERSON: No?

5 By law these proceedings are secret and
6 you are prohibited from disclosing to anyone anything that
7 has transpired before us, including evidence and statements
8 presented to the Grand Jury, any event occurring or
9 statement made in the presence of the Grand Jury, and
10 information obtained by the Grand Jury.

11 Failure to comply with this admonition
12 is a gross misdemeanor punishable by a year in the Clark
13 County Detention Center and a \$2,000 fine. In addition,
14 you may be held in contempt of court punishable by an
15 additional \$500 fine and 25 days in the Clark County
16 Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Thank you for your testimony.
20 You are excused.

21 THE WITNESS: Okay.

22 MS. CLARKE: Thank you [REDACTED]. I'm going to
23 have someone take you.

24 THE WITNESS: Okay.

25 Not, not backwards, not backwards.

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MS. CLARKE: Ladies and gentlemen, at this time that concludes the presentation of evidence this morning, however I would be amending the Indictment to add one count of sexual assault. It would read "did then and there willfully, unlawfully and feloniously sexual assault and subject [REDACTED], a female person, to sexual penetration, to-wit: digital penetration, by inserting his finger," open paren close paren, "into the genital opening of the said [REDACTED], against her will or under conditions in which the defendant knew or should have known that the said [REDACTED] was mentally or physically incapable of resisting or understanding the nature of the defendant's conduct."

The State would be asking that for Count 2, open or gross lewdness, that that be an alternative to Count, to the count that I just added. So if at trial the jury determines that the finger was not actually inserted into her vagina so there wasn't penetration we would have an alternative count of open or gross lewdness. So I ask that Count 2 be alternative to the count I just added.

I'd ask you not deliberate on Count 3, I would ask that you not deliberate on Count 6, because the witness stated that he touched or rubbed or pinched her breasts on two occasions. That would be Count 4 and 5. And I would ask that you not deliberate on Count 8, but

18 .1 that instead on Count 7, to look at her genital opening
2 and/or anal opening and/or buttocks and/or breasts. So I
3 would actually be combining that eighth count into 7.

4 So again it would be, Count 1 would be
5 sexual assault, Count 2 would be open or gross lewdness as
6 an alternative to a later count -- sorry, it's confusing --
7 not deliberate on Count 3, deliberate on Counts 4 and 5,
8 not deliberate on Count 6, deliberate on Count 7 with the
9 amendment of and/or breast, not deliberate on Count 8, and
10 then there would be the additional count of the sexual
11 assault, digital penetration, inserting fingers into her
12 genital opening.

13 Does anyone have any questions about
14 those amendments?

15 A JUROR: That very last one, what number
16 would that be?

17 MS. CLARKE: It would actually be renumbered
18 after we take out Counts 3, 6, 8.

19 A JUROR: How do we vote?

20 MS. CLARKE: Yes, I'm going to step out. I
21 just wanted everyone to be aware of the amendments and see
22 if there are any questions in regard to those.

23 Yes.

24 A JUROR: Was it ever established that this
25 guy worked at the hospital?

18 1 MS. CLARKE: I don't think she -- I can't
2 2 answer that for you. She cannot -- she didn't know. But
3 3 he had the gowns on and the scrubs. I would ask that based
4 4 on -- my response to that would be even if he did he would
5 5 have a burden to show that that was within his scope or
6 6 his, that he would have to show that was within his duties.
7 7 I've proven enough with the fact that it was against her
8 8 will, that it constituted those criminal acts, and then
9 9 that would be something later at trial that we would
10 10 address.

11 Any other questions?

12 Thank you for your time and I will step
13 13 out so you can deliberate.

14 Oh, and I would ask that State's
15 15 proposed 2, I'm going to ask that it be -- never mind.
16 16 It's been awhile since I've been down here.

17 (At this time, all persons, other than
18 18 members of the Grand Jury, exit the room at 2:24 p.m. and
19 19 return at 2:29 p.m.)

20 THE FOREPERSON: Madame District Attorney, by
21 21 a vote of twelve or more Grand Jurors a true bill has been
22 22 returned against Defendant Steven Dale Farmer charging the
23 23 crimes of sexual assault, open or gross lewdness, indecent
24 24 exposure, in Grand Jury case number 08AGJ078X. We instruct
25 25 you to prepare an Indictment in conformance with the

18 .1 proposed Indictment previously submitted to us with the
2 corrections set forth prior.

3 MS. CLARKE: Thank you very much.

4 THE FOREPERSON: Including Count 9, sexual
5 assault.

6 MS. CLARKE: Thank you. Appreciate it.

7
8 (Proceedings concluded.)

9
10 --ooOoo--

11

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18

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript constitutes a
full, true and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, December 1, 2008.


Danette L. Antonacci, C.C.R. No. 222

DANETTE L. ANTONACCI, C.C.R. 222 (702) 361-1947

CAG000254 48

18

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER

08AGJ078X:

✓
Does not contain the social security number of any
person,

-OR-

Contains the social security number of a person as
required by:

A. A specific state or federal law, to-
wit: NRS 656.250

-or-

B. For the administration of a public program or
for an application for a federal or state grant.

Danette L. Antonacci
Signature

12/1/08
Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

DANETTE L. ANTONACCI, C.C.R. 222 (702) 361-1947

CAG000255 0349

EXHIBIT “3”

[California Home](#) [CDHS Home](#) [CDHS Commission](#) [CDHS Search](#) [CDHS Organization](#)[Home](#)**Professional Certification Branch
Aid & Technician Certification Section**

By CA

Verification of CNA/HHA/CHT Certification and NHA Licenses**(Last Updated 10/16/2006)**[To Begin Search](#)

This information displays current Certified Nurse Assistants (CNA), Home Health Aides (HHA), Certified Hemodialysis Tech and Nursing Home Administrators (NHA). Names will appear more than once for holders of multiple certificates. These p employed.

If you discover an error or have a concern about the validity of a CNA/HHA/CHT certificate on this list, please send an e-mail [and Certification Program](#). Please do not call the Professional Certification Branch, the Licensing and Certification Pr Department of Health Services, as sending an e-mail will provide a quicker response.

The Nursing Home Administrator (NHA) information displays active/inactive licensed NHAs and the expiration date. Licensee are currently employed in the industry. Licensed inactive NHAs are not employed as NHAs but maintain a current license. concern about the accuracy of the list or would like further information regarding NHAs, please send an e-mail to [Administrator Program](#).

☒ License/Certificate Number ☐ Last Name First Name ☐ Last Name Starting With License/Certificate Category [Back to Top of Page](#)**Detail License/Certificate Information**

<u>Name</u>	<u>License/Cert Number</u>	<u>Expiration Date</u>	<u>License/Cert Type</u>
FARMER, STEVEN D	CNA00659300	2008-03-16	CERTIFIED NURSE ASSI
FARMER, STEVEN	HHA00199703	2008-03-16	CERTIFIED HOME HEAI

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EPLS

Excluded Parties List System

★ Search Parties
Current Exclusions:

- ▶ Name
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- ▶ DUNS
- ▶ Agency
- ▶ State/Country
- ▶ Action Dates
- ▶ Termination Dates
- ▶ Exact Name and SSN/TIN
- ▶ CT Code

★ View Cause and Treatment Code Descriptions:

- ▶ Reciprocal Codes
- ▶ Procurement Codes
- ▶ Nonprocurement Codes

★ Agency & Agency Info:

- ▶ Agency Contacts
- ▶ Agency Descriptions
- ▶ State/Country Code Descriptions

★ Related Links:

- ▶ Debar Maintenance
- ▶ Administration
- ▶ Upload Login

Search Results for Parties Excluded

by Partial Name : Farmer,Steven

As of 02-Nov-2005

No records were found matching your search request.

- ▶ Public User's Manual
- ▶ FAQ

★ Reports Menu:

- ▶ Lists Report
- ▶ Supplemental Report
- ▶ Agency Report
- ▶ Supplemental Agency Report
- ▶ State/Country Report
- ▶ Lists Data Report
- ▶ Supplemental Data Report
- ▶ Cause and Treatment Code

★ Archive Menu:
Past Exclusions:

- ▶ Name
- ▶ Multiple Names

★ Contact Information:

- ▶ Email: support@epls.gov
- ▶ 1-866-GSA-EPLS
- Phone: 1-866-472-3757
- ▶ Email: eplscomments@epls.gov



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"Farmer," Steven



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Date: 7/29/2007

Client: AMERICAN NURSING SERVICES
1 GALLERIA BLVD., #2200
METAIRIE LA 70001
Attention: LISA LAMBERT

Subscriber Code E8123303
Reference #:
Location : LAS VEGAS
Mailbox :

CAUTION

Information contained herein should not be the sole determining factor in evaluation of the individual. This report is submitted in STRICT CONFIDENCE, and except where required by law, no information provided in this report may be revealed directly or indirectly to any person except to one whose official duties require them to pass on the transaction in relation to which this report was ordered. This report is prepared for purposes pursuant to personal and/or agent selection, and human error in compiling this information is possible. County felony criminal records are checked at the court of general jurisdiction only. Felony records are typically housed in one location; however, jurisdictional variations may occur.

Note: Pre and Post notification requirements under the Fair Credit Reporting Act are required. If any information contained in the report will be used for an adverse action, please discuss that information with the applicant. If the applicant disputes the information, please contact us with additional identification on the applicant so we can further verify the item before any adverse action is taken.

Applicant Name: FARMER, STEVEN
Social Security No: [REDACTED]
Phone: ()
Maiden Name/Alas:
Address: [REDACTED]

Control # 12416903
Ordered By LISA LAMBERT

Applicant's Status: Complete
Services Ordered:

National Access Search	C		Clear
TRUSS	C	FARMER, STEVEN	Informational
Global Terrorist Watchlist Search	C		Clear
FACIS	C	FARMER, STEVEN	Informational
County Record Check	C	SAN DIEGO, CA	Clear
County Record Check	C	RIVERSIDE, CA	Clear
County Record Check	C	DENVER, CO	Clear
County Record Check	C	CLARK, NV	Clear

National Access Search

Search Performed On 07/26/2007

****CLEAR****

The search criteria submitted did not find any matching offenders in the National Criminal Access Database. Acxion Information Security Services recommends that the NCA search be used as an adjunct to the county/state criminal record searches. The information amassed in this database is compiled from numerous government agencies and may not contain information that is available in the public record through other sources. Agencies providing information to this database may change without notice. For a complete listing of jurisdictions covered, please contact customer service.

TRUSS

EU EP AMERICAN NURSING S TRANSUNION ID REPORT

<FOR> <SUB NAME> <MKT SUB> <INFILE> <DATE> <TIME>

Page: 1 of 3

Applicant Name: FARMER, STEVEN
(I) E AF8123303 AMER NURSING

SSN: ***-**-1676
12 SD 5/76 07/25/07

Control Number: 12416803
15:51CT

*** BEST MATCH ***

<SUBJECT>
FARMER, STEVEN DALE
<ALSO KNOWN AS>
DIESEL, STEVEN
ARMER, STEVEN

<SSN>
000-00-1676

<TELEPHONE>
[REDACTED]

<CURRENT ADDRESS>
[REDACTED]

<DATE RPTD>
3/00

<FORMER ADDRESS>
[REDACTED]

2/94

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2 BALDWIN PLACE, P. O. BOX 1000, CHESTER, PA. 19022

800-888-4213

END OF TRANSUNION REPORT Global Terrorist Watchlist Search

Global Terrorist Watch List *** CLEAR ***

No Match was found in the Global Terrorist Watchlist
FACIS

FACIS DATABASE SEARCHED

NO RECORD FOUND

Verified By: FRAUD AND ABUSE CONTROL INFORMATION SYSTEM

County Record Check

Felony/Misdemeanor Record Check *** CLEAR ***

Jurisdiction: SAN DIEGO, CA

Records Were Checked For a Minimum of Seven Years

The above court was checked and no Felony/Misdemeanor records were found.
This search includes Misdemeanors found at the county court level.

County Record Check

Felony/Misdemeanor Record Check *** CLEAR ***

Jurisdiction: RIVERSIDE, CA

Records Were Checked For a Minimum of Seven Years

The above court was checked and no Felony/Misdemeanor records were found.
This search includes Misdemeanors found at the county court level.

County Record Check

County Criminal Record Check *** CLEAR ***

Applicant Name: FARMER, STEVEN
Jurisdiction: DENVER, CO

SSN: ***-**-1678

Control Number: 12416903

Records Were Checked For a Minimum of Seven Years

The above court was checked and no Felony records were found
County Record Check

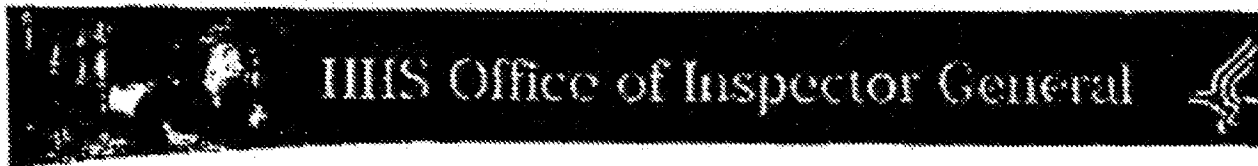
County Criminal Record Check *** CLEAR ***

Jurisdiction: CLARK, NV

Records Were Checked For a Minimum of Seven Years

The above court was checked and no Felony records were found

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Search Result

No results were found for Farmer, Steven;

Search conducted 11/2/2003 10:58:39 AM EST on OIG LEIE Exclusions database.
Source data updated on 10/11/2005 3:09:45 PM EST

In addition to conducting name and business searches, we have made cumulative exclusions data available in a variety of ways. Simply click on the appropriate link below to see exclusions data segregated into these areas:

<u>State</u>	<u>General Classification</u>	<u>Exclusion Type</u>
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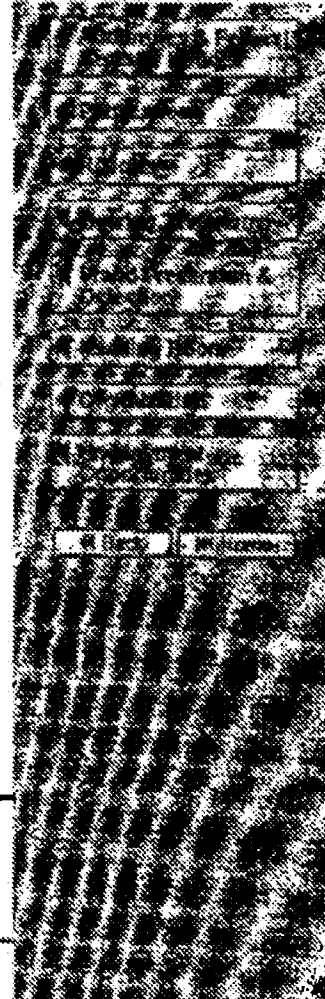


EXHIBIT “4”



American Nursing Services^{INC.}

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: Steven Faumer TITLE: C.N.A.
 DATE OF HIRE: 10/20/05 SHIFT DATE: 7/23/07
 FACILITY: Dept. of Family Services UNIT: Clinic - Private Duty
Chidawaun

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number (702) 1638-8522.

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	N/A/CN		
• Provides patient/family teaching	N/A/CN		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

"CNA Steve Faumer has been taking excellent care of Dylan, an autistic 10 year old boy in Big Bear center. He has interacted with Dylan consistently, keeping him safe and clean. Steve has been very caring and attentive to all of Dylan's needs. Steve does not let Dylan out of his site and stays close to him at all times. Dylan has made tremendous progress while in

Evaluator Signature & Title:

Employee Signature:

Telephone: 661-360-5600 Supervisor: Dylan Date: 7/23/07 J. M. Munn

Steve's care and how thank him for his trust in Steve to take good care of him. Please

ANS0231



American Nursing Services^{INC}
PROFESSIONALS WHO CARE

2/26
Review 2/

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 10, 20 05 SHIFT DATE: 9, 10, 07 2400-0700
FACILITY: SNA mts UNIT: 1B

RECEIVED
2/26/07

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

• Steven is very professional with his work and we are glad to work with him.

Virginia Macasero, RN
Evaluator Signature & Title: V. Macasero, RN

Date: 9/10/07 0635

Employee Signature: Steven Farmer Date: _____

ANS0227



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA

DATE OF HIRE: 1/1 SHIFT DATE: 09/10/2007

FACILITY: RAWSON NEAL HOSPITAL UNIT: E2A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	N/A		
• Provides patient/family teaching	N/A		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

takes initiative in doing
his job & good team work.

FILE

Evaluator Signature & Title: ANGELIKA L. MARCHESTER

Date: 9/10/07

Employee Signature: STEVEN FARMER Date: _____

ANS0213



American Nursing Services, INC.

PROFESSIONALS WHO CARE

Review 2/

NURSE PERFORMANCE EVALUATION

FILED
CONFIDENTIAL

NAME: STEVEN FARMER TITLE: CNA
DATE OF HIRE: 1/1/07 SHIFT DATE: 9/10/07 2900-0730
FACILITY: SNAMHS UNIT: 1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
* Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

• Steven is very professional with his work and we are glad to work with him.

FILE

Evaluator Signature & Title: VIRGINIA MACASERO, RN Date: 9/11/07 0635
Employee Signature: Steven Farmer Date: _____

ANS0212



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

FILED

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 01-1-07 SHIFT DATE: 9-11-07
 FACILITY: Ramsey-Neal Hospital UNIT: D1B

CONFIDENTIAL

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards	NA		
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Steven reports at the unit at the beginning of the shift. On time for shift report, carries out his assigned duties without any problems, transfers pts. Sets in with patients and reports any problems that may occur, and he has good pt. care skills.

FILE

Evaluator Signature & Title: Vicki Wallis RN III

Date: 9-11-07

Employee Signature: Steven Farmer

Date: 9-11-07



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

RECEIVED

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 07-1-07 SHIFT DATE: 9-11-07
 FACILITY: Ramsey-Heal Hospital UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrated competent/accurate patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards		✓	
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Steven reports to the unit at the beginning of the shift. On time, on shift, good. Carries out his duties well. No problems. Transfers pt. Sita to unit with spirit and reports any problems that may occur. and he has good pt. care skills.

Evaluator Signature & Title: Veda Waller, RN Date: 9-11-07
 Employee Signature: Steven Farmer Date: 9-11-07



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 09/12/07
 FACILITY: SNAMHS UNIT: D1B

FAKED
CONFIDENTIAL

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () : .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	✓		
• Demonstrates a Positive Attitude	✓		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	✓		
• Demonstrates comprehensive patient assessment skills	✓		
• Establishes priorities for patient care activities based on acuity	✓		
• Maintains a safe and therapeutic patient environment	✓		
• Performs procedures and administers medications according to Facility Standards	NA	NA	NA
• Provides patient/family teaching	✓		
• Responds to patient requests with promptness, empathy, and genuine interest	✓		
• Recognizes deviations from patient norms and takes appropriate action	✓		
• Seeks out Charge Nurse for clarification of assignment	✓		
• Maintains confidentiality and patient rights	✓		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	✓		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	✓		

Evaluator Comments:

staff support

FILE

Evaluator Signature & Title: Shirley Weetern Date: 9/12/07
 Employee Signature: Steven Farmer Date: 9/12/07



American Nursing Services^{INC.}

PROFESSIONALS WHO CARE

CONFIDENTIAL

FILED

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 09/12/07 11:00-730
 FACILITY: SNAMHS UNIT: DIA

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
* Arrives promptly for work and returns from breaks on time		✓	
* Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
* Follows Universal Precautions Guidelines	✓		
* Demonstrates comprehensive patient assessment skills	N/A		
* Establishes priorities for patient care activities based on acuity	✓		
* Maintains a safe and therapeutic patient environment	✓		
* Performs procedures and administers medications according to Facility Standards	N/A		
* Provides patient/family teaching		✓	
* Responds to patient requests with promptness, empathy, and genuine interest	✓		
* Recognizes deviations from patient norms and takes appropriate action	✓		
* Seeks out Charge Nurse for clarification of assignment		✓	
* Maintains confidentiality and patient rights		✓	
* Provides pertinent data and completes shift report in an accurate, legible, and timely manner	N/A		
* Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

FILE

Evaluator Signature & Title:

W. Balisi RN

Date: 9/13/07

Employee Signature:

Steve Farmer

Date:

ANS0238

WA. 0370



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 09/13/07
 FACILITY: SNAMHS UNIT: DIA

FILED
CONFIDENTIAL

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	<input checked="" type="checkbox"/>		
• Demonstrates a Positive Attitude	<input checked="" type="checkbox"/>		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	<input checked="" type="checkbox"/>		
• Demonstrates comprehensive patient assessment skills	<input checked="" type="checkbox"/>		
• Establishes priorities for patient care activities based on acuity	<input checked="" type="checkbox"/>		
• Maintains a safe and therapeutic patient environment	<input checked="" type="checkbox"/>		
• Performs procedures and administers medications according to Facility Standards	<input checked="" type="checkbox"/>		
• Provides patient/family teaching	<input checked="" type="checkbox"/>		
• Responds to patient requests with promptness, empathy, and genuine interest	<input checked="" type="checkbox"/>		
• Recognizes deviations from patient norms and takes appropriate action	<input checked="" type="checkbox"/>		
• Seeks out Charge Nurse for clarification of assignment	<input checked="" type="checkbox"/>		
• Maintains confidentiality and patient rights	<input checked="" type="checkbox"/>		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	<input checked="" type="checkbox"/>		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	<input checked="" type="checkbox"/>		

Evaluator Comments:

staff support - great asset

FILE

Evaluator Signature & Title: Shirley Wheeler Date: 9/13/07
 Employee Signature: Steve Farmer Date: 9/13/07



American Nursing Services^{INC.}

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA

DATE OF HIRE: 10/20/05 SHIFT DATE: 09/13/07

FACILITY: SNAMHS UNIT: DIA

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____.

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time	<input checked="" type="checkbox"/>		
• Demonstrates a Positive Attitude	<input checked="" type="checkbox"/>		
NURSING PROCESS			
• Follows Universal Precautions Guidelines	<input checked="" type="checkbox"/>		
• Demonstrates comprehensive patient assessment skills	<input checked="" type="checkbox"/>		
• Establishes priorities for patient care activities based on acuity	<input checked="" type="checkbox"/>		
• Maintains a safe and therapeutic patient environment	<input checked="" type="checkbox"/>		
• Performs procedures and administers medications according to Facility Standards	<input checked="" type="checkbox"/>		
• Provides patient/family teaching	<input checked="" type="checkbox"/>		
• Responds to patient requests with promptness, empathy, and genuine interest	<input checked="" type="checkbox"/>		
• Recognizes deviations from patient norms and takes appropriate action	<input checked="" type="checkbox"/>		
• Seeks out Charge Nurse for clarification of assignment	<input checked="" type="checkbox"/>		
• Maintains confidentiality and patient rights	<input checked="" type="checkbox"/>		
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner	<input checked="" type="checkbox"/>		
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor	<input checked="" type="checkbox"/>		

Evaluator Comments:

Staff support - great asset

Evaluator Signature & Title: Shirley Wheeler RN Date: 9/13/07

Employee Signature: Steve Farmer Date: 9/13/07

ANS0230



American Nursing Services

PROFESSIONALS WHO CARE

CONFIDENTIAL

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 10/20/05 SHIFT DATE: 9/14/07
 FACILITY: SNAMHS UNIT: D1B

FAKED

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () _____.

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives Promptly for work and returns from breaks on time		✓	
• Demonstrates a Positive Attitude		✓	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		✓	
• Demonstrates comprehensive patient assessment skills		✓	
• Establishes priorities for patient care activities based on acuity		✓	
• Maintains a safe and therapeutic patient environment		✓	
• Performs procedures and administers medications according to Facility Standards	NA		
• Provides patient/family teaching		✓	
• Responds to patient requests with promptness, empathy, and genuine interest		✓	
• Recognizes deviations from patient norms and takes appropriate action		✓	
• Seeks out Charge Nurse for clarification of assignment		✓	
• Maintains confidentiality and patient rights		✓	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		✓	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		✓	

Evaluator Comments:

Follows direction. Cooperative and works well with others. Appropriate interaction with patients

FILE

Evaluator Signature & Title: Diana Knight RN

Date: 9/14/07

Employee Signature: Steven Farmer

Date: _____

ANS0236



American Nursing Services_{INC.}
PROFESSIONALS WHO CARE

JA -

NURSE PERFORMANCE EVALUATION

NAME: STEVEN JAMMER TITLE: CNA
DATE OF HIRE: 9/14/07 SHIFT DATE: 9/14/07
FACILITY: Lawson Neal Psychiatric Hospital UNIT: 3A

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number () .

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time		/	
• Demonstrates a Positive Attitude		/	
NURSING PROCESS			
• Follows Universal Precautions Guidelines		/	
• Demonstrates comprehensive patient assessment skills		/	
• Establishes priorities for patient care activities based on acuity		/	
• Maintains a safe and therapeutic patient environment		/	
• Performs procedures and administers medications according to Facility Standards		/	
• Provides patient/family teaching		/	
• Responds to patient requests with promptness, empathy, and genuine interest		/	
• Recognizes deviations from patient norms and takes appropriate action		/	
• Seeks out Charge Nurse for clarification of assignments		/	
• Maintains confidentiality and patient rights		/	
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner		/	
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor		/	

Evaluator Comments:

Evaluator Signature & Title: M. Saunders RN

Date: 9/14/07

Employee Signature: Steven Jammer

Date: 9/14/07

abulad B... M... P...

ANS0226



American Nursing Services INC.

PROFESSIONALS WHO CARE

NURSE PERFORMANCE EVALUATION

NAME: STEVEN FARMER TITLE: CNA
 DATE OF HIRE: 1/1 SHIFT DATE: 9.15.07
 FACILITY: SNAMHS UNIT: D1B

INSTRUCTIONS:

1. Evaluate the American Nursing Services nurse assigned to your area by using the criteria below.
2. Place a check mark in the appropriate column. Please provide details on any "Below Average" ranking so that we may discuss it with the nurse appropriately.
3. Return the completed form to fax number ()

	Above Average	Average	Below Average
PERSONAL ATTRIBUTES			
• Arrives promptly for work and returns from breaks on time			
• Demonstrates a Positive Attitude			
NURSING PROCESS			
• Follows Universal Precautions Guidelines			
• Demonstrates comprehensive patient assessment skills			
• Establishes priorities for patient care activities based on acuity			
• Maintains a safe and therapeutic patient environment			
• Performs procedures and administers medications according to Facility Standards			
• Provides patient/family teaching			
• Responds to patient requests with promptness, empathy, and genuine interest			
• Recognizes deviations from patient norms and takes appropriate action			
• Seeks out Charge Nurse for clarification of assignment			
• Maintains confidentiality and patient rights			
• Provides pertinent data and completes shift report in an accurate, legible, and timely manner			
• Reports changes in patient condition to Charge Nurse, Physician, Nurse Manager/Supervisor			

Evaluator Comments:

Evaluator Signature & Title:

Margie Kuylenstierna RN

Date: 9.15.07

Employee Signature:

Steven Farmer

Date: _____

ANS0225

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IN THE SUPREME COURT OF THE
STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, a
Delaware limited liability company,
d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER and
UNIVERSAL HEALTH SERVICES,
INC., a Delaware corporation,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, and THE
HONORABLE RICHARD F.
SCOTTI,

Respondents,

and

AMERICAN NURSING SERVICES,
INC., a Louisiana corporation;
ESTATE OF JANE DOE, by and
through its Special Administrator,
Misty Peterson; STEVEN DALE
FARMER, an individual; DOES I
through X, inclusive; and ROE
CORPORATIONS I through X,
inclusive,

Real Parties in Interest.

Supreme Court Case

No. _____ Electronically Filed
Apr 29 2015 08:43 a.m.
District Court No. Tracie K. Lindeman
09-A-595780-C Clerk of Supreme Court

Dept. II

PETITIONERS' APPENDIX
TO THE PETITION FOR
WRIT OF MANDAMUS
AND/OR WRIT OF
PROHIBITION

VOLUME 2 of 4

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

HALL PRANGLE & SCHOONVELD, LLC

1160 N. Town Center Drive, Suite 200

Las Vegas, Nevada 89144

Attorneys for Petitioners

*Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center and
Universal Health Services, Inc.*

**ALPHABETICAL INDEX TO PETITIONERS' APPENDIX TO THE
PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF
PROHIBITION**

<u>DOCUMENT TITLE</u>	<u>VOL.</u>	<u>PAGE NO(S).</u>
Amended Complaint (August 21, 2009)	I	WA0007 - WA0012
American Nursing Services, Inc.'s Answer to Amended Complaint (September 23, 2009)	I	WA0036 - WA0041
American Nursing Services, Inc.'s Opposition to Plaintiffs' Motion for Summary Judgment Re: Liability (October 15, 2014)	II	WA0246 - WA0500
American Nursing Services, Inc.'s Sur-Reply Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment (December 10, 2014)	IV	WA0732 - WA0761
Complaint (July 23, 2009)	I	WA0001 - WA0006
Defendant Centennial Hills Hospital's Answer to Plaintiff's Amended Complaint (September 10, 2009)	I	WA0013 - WA0022
Defendants Centennial Hills Hospital and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited Opposition (October 14, 2014)	I	WA0125 - WA0245
Defendants Centennial Hills Hospital and Universal Health Services, Inc.'s Errata to Their Opposition to Plaintiff's Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited Opposition (October 16, 2014)	III	WA0501 - WA0504

1	Defendants Centennial Hills Hospital and		
2	Universal Health Services, Inc.'s		
3	Supplemental Briefing in Opposition to		
4	Plaintiff's Motion for Partial Summary		
	Judgment (December 10, 2014)	IV	WA0762 - WA0816
5	Defendant Universal Health Services, Inc's		
6	Motion to Dismiss for Lack of Personal		
7	Jurisdiction (September 10, 2009)	I	WA0023 - WA0035
8	Defendant Universal Health Services, Inc's		
9	Answer to Plaintiff's Amended Complaint		
	(September 11, 2013)	I	WA0044 - WA0052
10	Jane Doe's Medical Records	IV	WA0855 - WA0862
11	Order on Plaintiff's Motion for Summary		
12	Judgment Re: Liability (February 27, 2015)	IV	WA0847 - WA0854
13	Plaintiff's Motion for Summary Judgment		
14	Re: Liability (September 29, 2014)	I	WA0053 - WA0124
15	Relevant portions of Steven Farmer's		
16	Personnel File From Centennial Hills		
17	Hospital	IV	WA0863 - WA0864
18	Reply to Defendants' Oppositions to		
19	Plaintiff's Motion for Summary Judgment		
20	Re: Liability (November 21, 2014)	III	WA0505 - WA0731
21	Suggestion of Death on the Record		
22	(September 10, 2013)	I	WA0042 - WA0043
23	Transcript Re: Plaintiff's Motion for		
24	Summary Judgment Re: Liability		
25	(December 31, 2014)	IV	WA0817 - WA0846


CLERK OF THE COURT

OPPO

JAMES P.C. SILVESTRI, ESQ.

Nevada Bar No. 3603

PYATT SILVESTRI

701 Bridger Avenue, Suite 600

Las Vegas, Nevada 89101

(702) 383-6000

S. BRENT VOGEL, ESQ.

Nevada Bar No. 6858

AMANDA J. BROOKHYSER, ESQ.

Nevada Bar No. 11526

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Blvd., Suite 600

Las Vegas, Nevada 89118

Attorneys for Defendants

AMERICAN NURSING SERVICES, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

CENTENNIAL HILLS HOSPITAL MEDICAL
CENTER AUXILIARY, a Nevada corporation;

VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company; UNIVERSAL

HEALTH SERVICES FOUNDATION, a
Pennsylvania corporation; AMERICAN

NURSING SERVICES, INC., a Louisiana
corporation; STEVEN DALE FARMER, an

individual; DOES I through X, inclusive; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-09-595780-C

DEPT NO.: II

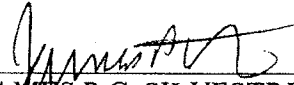
**AMERICAN NURSING SERVICES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT RE: LIABILITY**

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1 COMES NOW, Defendant AMERICAN NURSING SERVICES ("ANS"), by and through
2 its attorneys of record James P. C. Silvestri, Esq., of the Law Firm PYATT SILVESTRI, S. Brent
3 Vogel, Esq., and Amanda J. Brookhyser, Esq. of the law firm of LEWIS BRISBOIS BISGAARD
4 & SMITH LLP and hereby submits its Opposition to Plaintiffs' Motion for Summary Judgment re:
5 Liability.
6

7 DATED this 15 day of October, 2014.

8 PYATT SILVESTRI

9
10 
11 JAMES P.C. SILVESTRI, ESQ.
12 Nevada Bar No. 3603
13 701 Bridger Avenue, Suite 600
14 Las Vegas, Nevada 89101
15 (702) 383-6000

16 S. BRENT VOGEL, ESQ.
17 Nevada Bar No. 6858
18 AMANDA J. BROOKHYSER, ESQ.
19 Nevada Bar No. 11526
20 LEWIS BRISBOIS BISGAARD & SMITH LLP
21 6385 S. Rainbow Blvd., Suite 600
22 Las Vegas, Nevada 89118

23 Attorneys for Defendants
24 *AMERICAN NURSING SERVICES, INC.*

25 I.

26 SUMMARY OF CASE

27 This case arises out of the sexual abuse of JANE DOE ("DOE") while she was a patient at
28 Centennial Hills Hospital in May 2008. DOE has alleged that Steven Farmer, a certified nursing
assistant, employed by American Nursing Services and assigned to Centennial Hills Hospital,
assaulted her on two occasions. In fact, a criminal trial has now been concluded wherein Farmer
was convicted of six (6) crimes against DOE, specifically two (2) counts of sexual assault, three (3)
counts of open and gross lewdness and one (1) count of indecent exposure.

Plaintiff¹ now moves for summary judgment against all Defendants. The sole basis for seeking summary judgment against all Defendants is the criminal conviction of Farmer. Specifically, Plaintiff contends that Farmer is liable by operation of the criminal conviction, relying upon NRS 41.133. Plaintiff also contends that Defendants, American Nursing Service ("ANS") and Centennial Hills Hospital are vicariously liable for the acts committed by Farmer. *See* Plaintiff's Motion, p. 12.

Although Plaintiff might be correct in her assessment of liability against Farmer under NRS 41.133, her assessment of vicarious liability as it applies against ANS is both factually and legally incorrect. ANS is not liable for the claims made by Plaintiff. First, NRS 41.745 bars recovery against ANS by Plaintiff since Farmer's acts were truly independent ventures, were not committed in the course and scope of the very task assigned to him and were not reasonably foreseeable under the facts and circumstances of this case considering the nature and scope of his employment.

II.

FACTS WHICH ARE UNDISPUTED, DISPUTED AND OMITTED BY PLAINTIFF

In her Motion, Plaintiff alleges 29 "Uncontested Facts." Although several of these facts are "uncontested," many are, in fact "contested," many are not "genuine" and "material" to the substantive law governing these issues, and many genuine and material facts have simply been omitted by Plaintiff in her Motion.

A. UNDISPUTED FACTS

ANS concedes the following facts:

1. Plaintiff was a patient at Centennial Hills in May 2008. (Fact #1)
2. Centennial had an agreement with ANS for nurse staffing. (Fact #2)

¹ DOE is deceased. Throughout this pleading, however, reference will be made to "Plaintiff."

3. In May 2008 Steven Farmer was a certified nursing assistant employed by ANS and assigned to Centennial Hills Hospital. (Fact #3)
4. Farmer was assigned by Centennial Hills Hospital to the 6th floor as a "floater" on May 14, 2008 at or around 9:30 p.m. (Fact #7)
5. At some time on May 14, 2008, Plaintiff was in Room 614 at Centennial Hills Hospital. (Fact #8)
6. Farmer entered Plaintiff's room at Centennial Hills Hospital. (Partial Fact #10)
7. Farmer had contact with Plaintiff in her room at Centennial Hills Hospital. (Fact #12)
8. Farmer pinched and rubbed Plaintiff's nipples. (Fact #14)
9. Farmer lifted up Plaintiff's hospital gown. (Fact #15)
10. Farmer lifted Plaintiff's leg and inserted his thumb in her anus. (Partial Facts #s 16 and 19)
11. Farmer did not change the Plaintiff's bed pad. (Fact #18)
12. Farmer digitally penetrated Plaintiff's anus, vagina and pinched and rubbed her nipples against Plaintiff's will. (Fact #23)
13. Farmer was convicted of certain crimes for his actions including two felony counts of sexual assault, three counts of gross misdemeanor open and gross lewdness and one gross misdemeanor count of indecent exposure. (Facts #s 24-29)

B. CONTESTED FACTS

However, ANS contests certain facts as alleged by Plaintiff. These facts are contested because they are either incorrectly alleged by Plaintiff, there has been no discovery on such

allegations, or there has been no opportunity for the parties to conduct discovery in order to rebut these facts.² Therefore, such contested facts include:

1. What tasks were assigned by Centennial Hills Hospital to Farmer?
2. Whether Farmer was assigned to enter any patient's room at Centennial Hills, including but not limited to Plaintiff's room?
3. Whether Plaintiff would become paralyzed, i.e. could not speak or move for up to 24 hours after a seizure?
4. Whether Plaintiff was in fact paralyzed at Centennial Hills Hospital on May 14, 2008?
5. Whether Plaintiff failed to notify anyone of improper and illegal acts perpetrated upon her?

C. UNDISPUTED FACTS OMITTED BY PLAINTIFF

There are also several genuine and material facts related to the substantive law governing the issues raised in the current motion that have been left out. These are:

1. Farmer told Plaintiff that he had to reattach one of her heart monitor leads as he was pinching and rubbing her nipples. *See* Preservation of Witness Testimony, DOE, January 20, 2012, p. 8, Ex. 1, and Grand Jury Testimony, DOE, November 18, 2008, pp. 17-19, Ex. 2.
2. The Plaintiff had no heart monitor leads on her nipples or breasts while in her room at Centennial Hills Hospital. Ex. 1, p. 8 and Ex. 2, pp. 17-19.

² This case has been stalled for several reasons, including the bankruptcy of ANS and the criminal process against Steven Farmer. This point is conceded by all parties. As a result, Plaintiff has never responded to one discovery question or request. Her children have not yet been deposed, who are now the heirs of Plaintiff's estate and are Plaintiffs in their own right in a recently filed wrongful death action. Several witnesses and party representatives have never been deposed. Such discovery, where it can be completed, is now being scheduled. Additional discovery is needed on these facts and the motion is premature under NRCP 56 (f). *See* affidavit of James P.C. Silvestri, Ex. 11.

3. The Plaintiff had heart monitor leads placed on her body prior to being admitted to Centennial Hills Hospital and had never had any medical personnel touch her in the same way. Ex. 1, p. 9 and Ex. 2, pp. 17-19.
4. When Farmer told Plaintiff that she had feces on her bottom that he had to clean, there was in fact no feces there. Plaintiff did not have a bowel movement. There was no need for Farmer to clean Plaintiff from any feces. Ex. 1, pp. 11-13, 16 and Ex. 2 pp. 13-16.
5. Farmer did not clean any feces on Plaintiff's body. Ex. 1, pp. 11-13, 16 and Ex. 2 pp. 13-16 and Ex. 2 pp. 13-16.
6. Farmer did not replace the old bed pad with a new bed pad. Ex. 1, pp. 11-13, 16 and Ex. 2 pp. 13-16.
7. There was no reason for Farmer to be in contact with or near Plaintiff's anus. Ex. 1, pp. 11-13, 16 and Ex. 2 pp. 13-16.
8. When Farmer inserted his fingers and hand into Plaintiff's vagina, he told her that he was adjusting her catheter. Ex. 1, pp. 11-13, 16, Ex. 2, p. 20.
9. Plaintiff never had a catheter in her vagina. Ex. 1, pp. 11-13, 16, Ex. 2, p. 20.
10. There was no reason for Farmer to be in contact with or near Plaintiff's vagina. Ex. 1, pp. 11-13, 16, Ex. 2, p. 20.
11. The Plaintiff had catheters placed on her body prior to being admitted to Centennial Hills Hospital and had never had any medical personnel touch her in the same way. Ex. 1, p. 16.
12. There is no record, testimony or other evidence that prior to May 2008 the Farmer had ever committed sexual assault, was ever arrested for any violent or sexual crime. See criminal background checks, Ex. 3.
13. Prior facilities where Farmer had worked provided written evaluations of Farmer. Not one mark on these reviews was ever "below average." See evaluations, Ex. 4.

14. 21 of the evaluations contained at least one "above average" grade. *See* employment evaluations, Ex. 4.
15. Compliments in the reviews included:
- a. "demonstrates good work ethic," "positive work ethic," Ex. 4, September 16, 2007, September 17, 2007, November 22, 2007.
 - b. "very professional," "professional with staff and patients," "Professional," Ex. 4, September 11, 2007, September 16, 2007, September 17, 2007, November 22, 2007
 - c. "good team work," "valuable member to our team," "team player," Ex. 4, September 10, 2007, September 16, 2007, November 22, 2007,
 - d. "great asset," "asset to our team," "valuable member of our team," "asset to our family," Ex. 4, September 13, 2007, September 17, 2007, September 18, 2007, November 22, 2007
 - e. "takes initiative," "excellent initiative," "shows initiative in patient care," Ex. 4, September 10, 2007, September 16, 2007, September 18, 2007.
 - f. "Steven is an asset to your company as much as he is to ours," Ex. 4, September 25, 2007.
 - g. "good patient care skills," "works well with others, appropriate interactions with his patients," Ex. 4, September 11, 2007, September 14, 2007, September 20, 2007

III.

LEGAL STANDARD FOR SUMMARY JUDGMENT

A properly supported motion for summary judgment must demonstrate, through pleadings and other evidence on file, that no genuine issue as to any material fact remain and the moving party is entitled to a judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005). A

1 nonmoving party defeats a motion for summary judgment by affidavit or otherwise, setting forth
2 facts demonstrating the existence of a genuine issue for trial. *Id.* Further, the court should consider
3 the substantive law in determining which factual disputes are material. Factual disputes not related
4 to the substantive law are irrelevant. *Id.* at 731.

5 IV.

6 **POINTS AND AUTHORITIES**

7
8 This Opposition addresses Plaintiff's claim for summary judgment against ANS, only.
9 Plaintiff goes to great lengths to assert to this Court that Farmer's conviction is proof of liability
10 under NRS 41.133.³ Although this might be true as to the civil allegations that Plaintiff has alleged
11 against Farmer, such argument does not carry over to ANS and the vicarious liability argument
12 propounded by Plaintiff.

13 The "operative facts," as Plaintiff has attempted to lay out and has relied upon in her
14 Motion, are insufficient for this court to enter judgment on the issue of vicarious liability. First, a
15 consideration of just these facts leaves open too many genuine issues and questions such that
16 judgment is totally inappropriate at this time if these were all that were to be considered.⁴ All
17 substantive facts related to the subject issue must be considered.
18

19 NRS 41.745 is the substantive law that governs which facts are genuine and material. The
20 relevant portion of NRS 41.745 states:

21 **Liability of employer for intentional conduct of employee; limitations.**

22
23 1. An employer is not liable for harm or injury caused by the intentional conduct of an
24 employee if the conduct of the employee:

25 (a) Was a truly independent venture of the employee;

26 ³ NRS 41.133 provides, "If an offender has been convicted of the crime which resulted in the injury
27 to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose
28 civil liability for the injury."

⁴ In fact, once the court considers the truly genuine and material facts identified by the substantive
law, it is clear that summary judgment is more appropriately entered in favor of ANS.

(b) Was not committed in the course of the very task assigned to the employee; and

(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.

For the purposes of this subsection, conduct of an employee is reasonably foreseeable if person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

A. FARMER'S CRIMINAL ACTS WERE "INDEPENDENT" AND NOT PART OF VERY TASK ASSIGNED TO HIM

Plaintiff tries in vain to contend that Farmer's criminal and abhorrent behavior was not a "truly independent venture" and that somehow these disgusting acts were committed in the "course of the very task assigned to [Farmer]."⁵ Despite the fact that nothing can be further from the truth, Plaintiff either misstates "facts" or omits critical facts needed to address whether liability can be imposed under NRS 41.745.⁶

First, there is nothing in the record as to what "very task"⁷ was assigned to Farmer. Centennial Hills would have assigned such tasks. So far, other than a note that Farmer was a "floater," Centennial has been unable to state what Farmer was assigned to do. See Valley Health System Answer to Plaintiff's First Set of Interrogatories, Interrogatory No. 1, Ex. 5. Centennial also denies that Farmer was assigned to DOE's room. See Responses to Plaintiff's Second Set of Requests For Admissions, Response No. 2, Ex. 6.

Plaintiff tries to *generalize* the specific requirements of NR 41.745 by stating in her "uncontested facts" that it was within "the course and scope of [Farmer's] employment . . . [to]"

⁵ Plaintiff fails to discuss the requirement of "foreseeability" which is mandatory to finding liability under NRS 41.745. This deficiency is fatal to the request for summary judgment.

⁶ Plaintiff references NRS 41.130 as a source of liability against ANS and Centennial. However, Plaintiff does not express in her Motion the exception clearly stated in this statute. NRS 41.130 states: "*Except as otherwise provided in NRS 41.745*, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for the conduct of the person causing the injury, that other person or corporation so responsible is liable to the person injured for damages." Emphasis added.

⁷ Valley Health System is the corporate identity for Centennial Hills Hospital.

1. "enter patients' rooms," and
2. "have contact" with patients.

See Motion, p. 6, uncontested facts nos. 9 and 11.

Such *generalized* facts however, cannot neutralize the more specific mandate of NRS 41.745 which references the "*very* task assigned" to the employee. If Plaintiff's argument were accepted as true, the mere entering of a room and/or having contact with a patient would be sufficient to prove that murder or rape of a hospital patient or hotel guest constitutes the "very task assigned" to that employee. Such a radical interpretation is not the intent of the legislature and is not how the Nevada Supreme Court has explained the application of NRS 41.745.

In fact, in this case, no one knows the "very task assigned" to Farmer as it pertains to Plaintiff.⁸ The true facts specifically state that his assaults on Plaintiff had nothing to do with tasks assigned to him. This evidence comes from Plaintiff herself.

First, Farmer was convicted twice for gross misdemeanor "open or gross lewdness," for "touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of" Plaintiff. According to Plaintiff, this occurred when she awoke to find Farmer pinching her nipples. Farmer said that he was fixing her heart monitor leads. However, the Plaintiff testified that there were no such leads on her nipples or breasts, that the leads were not unattached, that there was no beeping alarm indicating that any such leads need to be reattached, and that in her past hospitalizations, her nipples were never touched or pinched when a nurse fixed her leads. See Exhibits 1 and 2, *supra*.

Second, Farmer was convicted of two counts of felony sexual assault. One conviction was for "digital penetration, by inserting his finger(s) into the anal opening" of Plaintiff. The second conviction was for "digital penetration, by inserting his finger(s) into the genital opening" of Plaintiff. Neither of these instances, according to Plaintiff, could conceivably fall within a

⁸ One is certain, however, that neither ANS nor Centennial "assigned" Farmer to sexually assault Plaintiff.

description of the “*very task assigned*” to Farmer. In one instance, Plaintiff has testified that she
1 awoke to find Farmer holding her leg up telling her that he had to clean some feces from her.

2 However, Plaintiff knew that she had not had a bowel movement, that in the past no one had ever
3 lifted her leg to clean her in that manner, that Farmer had not brought any cleaning supplies with
4 him such as wipes or a new bed pad, and that he did nothing to clean her. Instead, he placed his
5 entire thumb into her anus. See Exhibits 1 and 2, *supra*.
6

7 In the second instance, Plaintiff felt pressure on her vagina. Farmer stated he was adjusting
8 her catheter. But Plaintiff, having been catheterized before, knew that the catheter was not in her
9 vagina. What Farmer was doing instead was putting one or more of his fingers in her vagina, totally
10 unrelated to any issue involving her catheter. See Exhibits 1 and 2, *supra*.
11

12 In fact, during the multiple hospitalizations experienced by Plaintiff, never had such vicious
13 attacks occurred. Such could never be described as providing any type of nursing service. Such
14 could never be attributed to the “very task assigned” to Farmer. See Exhibits 1 and 2, *supra*.
15

16 The overwhelming case law, from Nevada and other jurisdictions, hold that sexual assaults
17 are independent ventures and DO NOT fall within the “very task” assigned to the employee. In the
18 seminal Nevada case, *Wood v. Safeway, Inc.*, 121 P.3d 1026, (Nev. 2005), a mentally impaired
19 young woman who was employed at the Safeway grocery store, was sexually assaulted three times
20 by an employee of an independent contractor hired to clean the Safeway store.⁹ The woman
21 (“Doe”) “bagged groceries, cleaned and replenished supplies at the check stands, cleaned the break
22 room and various public areas of the store, and collected shopping carts from the parking lot. . .
23 Doe’s employment duties required her to be in many areas of the store, including the outside areas,
24 at various times. She was working the swing shift (4 p.m. to midnight) at the time of the assaults.”
25
26 *Id.* at 1028.
27

28 ⁹ Plaintiff incorrectly states that in *Wood* a “security guard raped a customer.” See Motion at p. 10.

1 The perpetrator, Mr. Ronquillo-Nino, was an employee of the independent contractor,
2 Action Cleaning. He "worked as a nighttime janitor." *Id.* Ronquillo-Nino assaulted Doe three
3 times, once in the cleaning supply room, and the second and third times behind a dumpster while
4 Doe was outside collecting shopping carts. The assaults resulted in Doe becoming pregnant. Doe
5 sued both Safeway and Action Cleaning.

6 Both Safeway and Action filed motions for summary judgment. In its holding affirming the
7 order granting summary judgment in favor of Action Cleaning,¹⁰ the Nevada Supreme Court
8 specifically considered NRS 41.745. In that case, the Court focused on the fact that Ronquillo-Nino
9 was "employed as a janitor. . . He was not acting on behalf of Action Cleaning when he assaulted
10 Doe, or *out of any sense of duty owed* to Action Cleaning. The sexual assault was also not
11 committed in the course of the tasks assigned to Rnquillo-Nino as a janitor." *Id.* at 739, emphasis
12 added.¹¹ The Court also noted that "Doe's employment with Safeway brought her into contact with
13 the assailant. While the nature of her work required her to interact with employees and the public,
14 her specific job duties included cleaning various area of the store and collecting shopping carts from
15 the parking lot." *Id.* at 736.

16
17
18 Other cases, specifically involving medical services, have concluded the same. The facts in
19 *Lisa M. v. Henry Mayo Newhall Memorial Hospital*, 907 P.2d 358 (Cal. 1995), are similar to those
20 in this case.¹² In *Lisa M.*, a 19 year old pregnant woman was injured in a fall. In seeking treatment
21 at the Hospital emergency room, she underwent an obstetrical ultrasound by a male ultrasound
22

23 ¹⁰ The Court also affirmed the summary judgment in favor of Safeway, but this ruling was based
upon employer immunity under Nevada's workers comp law, NRS Chapters 616A to 616D.

24 ¹¹ Plaintiff's reliance upon *Prell Hotel Corp. v. Antonacci*, 469 P.2d 399 (Nev. 1970) is misplaced.
25 In that case, "the Plaintiff was an invited guest of the hotel to whom the *hotel served several free*
26 *drinks*, apparently to *encourage his continued presence and participation in gaming*. When the
27 guest lost his money, became angered and called the dealer an opprobrious name, the dealer '*dealt*
one card to each player all the way round, and then just like this he hit him, very spontaneously, no
28 warning of any kind. He just hit him.' The dealer *did not leave his position* behind the 21 table to
accomplish the assault and battery." *Id.* at 400. Emphasis added. Unlike the dealer in *Prell*,
Farmer's attacks are totally unrelated to any task assigned to him.

¹² A copy of *Lisa M. v. Henry Mayo Newhall Memorial Hospital* is attached as Ex. 7.

1 technician. Under the guise of offering to tell the plaintiff what the sex of the baby was, the
2 technician falsely told the patient that he would need to scan "much further down." He then
3 proceeded to insert the ultrasound wand into the plaintiff's vagina and fondled her with his fingers.
4 He then told her that he needed to "excite her" in order to get a good view of the baby. During this
5 "exam," the plaintiff was alone with the technician and the lights were off.

6 In discussing whether the Hospital was liable for the acts of its technician, the Court held:
7 Focusing more specifically on the type of sexual assault occurring here, we ask first whether
8 the technician's acts were "engendered by" or an "outgrowth" of his employment. (*Carr v.*
9 *Wm. C. Crowell Co.*, *supra*, 28 Cal.2d at pp. 656-657.) They were not.

10 ...
11 As with these nonsexual assaults, a sexual tort will not be considered engendered by the
12 employment unless its motivating emotions were fairly attributable to work-related events or
13 conditions. Here the opposite was true: a technician simply took advantage of solitude with a
14 naive patient to commit an assault for reasons unrelated to his work. Tripoli's job was to
15 perform a diagnostic examination and record the results. The task provided no occasion for a
16 work-related dispute or any other work-related emotional involvement with the patient. The
17 technician's decision to engage in conscious exploitation of the patient did not *arise out of*
18 the performance of the examination, although the circumstances of the examination made it
19 possible. "If ... the assault was not motivated or triggered off by anything in the employment
20 activity but was the result of only propinquity and lust, there should be no liability." (*Lyon v.*
21 *Carey* (D.C. Cir. 1976) 533 F.2d 649, 655 [174 App.D.C. 422].)

22 *Id.* 907 P.2d at 363, 364.

23 The same result was found (i.e. summary judgment for the employer) in *Robert D. v.*
24 *Paradise Valley Hospital*, 2004 WL 898769 (Cal. App. 2004).¹³ In this case, a male nurse, while
25 giving another patient a sponge bath, assaulted the plaintiff by "fondling him and performing oral
26 copulation on him" while the plaintiff was a patient. The plaintiff sued the hospital under a theory
27 of vicarious liability. In referring to *Lisa M.*, the court held:

28 For the employer to be liable for an intentional tort, the employee's act must have a "causal
nexus to the employee's work." (*Id.* at p. 297.) While an injury arising out of a work-related
dispute has a sufficient causal nexus, an injury inflicted out of the employee's personal
malice, not engendered by the employment, does not.

¹³ A copy of *Robert D. v. Paradise Valley Hospital* is attached as Ex. 8.

1 The incident must involve an act which is “ ‘an outgrowth’ of the employment,” a risk
2 which is “ ‘inherent in the working environment” ‘ “ or a risk “ ‘ “typical of or broadly
3 incidental to the enterprise the employer has undertaken.” ‘ “ (*Ibid.*) For a sexual tort, the
4 employee’s act is not “engendered by the employment unless it’s motivating emotions were
5 fairly attributable to work-related events or conditions.” (*Id.* at p. 301.) Physical contact as a
6 part of the employment, without more, is insufficient. (*Id.* at p. 302.) In cases of hospital
7 employees with duties involving “examining or touching patients’ otherwise private areas,”
8 a sexual assault is attributable to “propinquity and lust” rather than “any peculiar aspect of
9 the health care enterprise.”

10 *Id.* at p. 2.

11 The court went on and stated the significance (or insignificance) of facts similar to this case.

12 Although the circumstances of the sponge bath made it possible for Viray to commit the
13 assault, Viray’s decision to exploit Robert’s trust and solitude did not arise out of the
14 performance of the sponge bath. Like the technician in *Lisa M.*, Viray simply took
15 advantage of solitude with Robert “to commit an assault for reasons unrelated to his work.”
16 (*Ibid.*) In providing care for Robert which required access to and touching of Robert’s
17 “otherwise private areas,” Viray committed a sexual assault attributable to “propinquity and
18 lust” rather than “any peculiar aspect of the health care enterprise.” (*Id.* at p. 302.)

19 *Id.*

20 In the present case, it would be absurd for anyone to contend that Farmer’s acts were
21 “engendered by” or an “outgrowth of” his duties as a CNA. His criminal acts can only be
22 determined as “truly independent.” Further, his criminal acts clearly were *not* committed within the
23 very task assigned to him. Even if his general job description included “entering a patient’s room,”
24 or “having contact with a patient,” such generalized descriptions cannot possibly include
25 committing the crimes of sexual assault or open and gross lewdness.

26 In *Lisa M.* and *Robert D.*, the courts described actual nurse/technician responsibilities which
27 specifically described physical touching of the patients in private genital areas. Despite this, these
28 courts still found that sexual assault does not, as a matter of law, have any causal nexus to the
specific work at hand. Likewise, in the present case, Plaintiff did not require having her EKG leads
adjusted, she did not require having any feces cleaned from her and she did not require having her
catheter adjusted by touching her genital area. In Plaintiff’s own words, there is no causal nexus
between Farmer’s unlawful touching and the alleged treatment he was providing.

B. FARMER'S ACTS WERE NOT FORESEEABLE

Plaintiff ignores the third requirement of NRS 41.745. However, this requirement is as important as the other two and, clearly, should be part of the court's analysis.¹⁴ Subsection 3 states that the employee's intentional conduct must not be "reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment." The statute goes on to explain, "For the purposes of this subsection, conduct of an employee is reasonably foreseeable if person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury."¹⁵

As noted in *Wood*, employers can only be held "liable when the employee's intentional conduct is reasonably foreseeable under the circumstances." *Id.* at 1036. In reaffirming the rejection of the foreseeability standard stated in the *Jimenez* case, the Court found that as a matter of law Ronquillo-Nino's criminal acts were not foreseeable. The Court focused on the fact that (1) Ronquillo-Nino had no prior criminal history, (2) his employer required proper proof of identification, checked employment references and (3) completed proper Immigration and Naturalization forms of its employees. The employer's manager state that he had not received complaints of sexual harassment regarding Ronquillo-Nino or any other employee in the past 10 years. *Id.* at 1037.

¹⁴ Once again, Plaintiff's reliance upon *Prell Hotel Corp. v. Antonacci*, *supra*, is misplaced. Nowhere in the *Prell* decision is the issue of "foreseeability" discussed or noted to be a required element for imposing vicarious liability upon an employer.

¹⁵ It is clear that this legislative mandate stemmed from a previously written and subsequently withdrawn decision by the Nevada Supreme Court, *State of Nevada v. Jimenez*, 113 Nev. 356, 935 P.2d 274 (1997), where the Court had used a very different definition of "foreseeability." "However, 'foreseeability' in this context must be distinguished from 'foreseeability' as a test for negligence. In the latter sense 'foreseeable' means a level of probability which would lead a prudent person to take effective precautions whereas 'foreseeability as a test for respondeat superior merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.'"

Likewise, in this case, Farmer had no record of any criminal conviction. References from past employers were well above average, with relevant comments like, "positive work ethic," "professional with staff and patients," "appropriate interactions with patients," and "team player."

Although Plaintiff's Motion fails to address this issue, in an effort to be candid with the Court, it is anticipated that Plaintiff will attempt to argue that "foreseeability" arises out of an allegation occurring months before at the Rawson Neal Psychiatric Hospital here in southern Nevada. In this allegation, it was suggested that Farmer called a patient at Rawson Neal and that Farmer had kissed this patient. These suggestions were apparently raised by the patient, not as accusations but as things that had happened. Based upon these suggestions, Rawson Neal placed Farmer on "DNR" status, Do No Return. Appropriately, Rawson Neal and ANS conducted an investigation. The results of the investigation showed the following:

1. No one at Rawson Neal witnessed Farmer kissing anyone, including the specific patient.
See Deposition of Mary Jo Solon¹⁶, September 20, 2012, pp. 71, Ex. 9;
2. It was determined by Rawson Neal that the particular patient had become fixated on Farmer. Ex. 9, pp. 41;
3. The finding of the patient being fixated on Farmer was a clinical assessment made of the patient. Ex. 9, pp. 56;
4. Following the investigations completed by Rawson Neal and ANS, Rawson Neal stated that Farmer could return to work at Rawson Neal as of March 20, 2008. Ex. 9, pp. 46, 68, 77-78 and 92-93.¹⁷

This allegation amounted to nothing as it pertained to the issue of "foreseeability." In other words, ANS could not have reasonably foreseen Farmer committing multiple sexual assaults on a patient based upon unfounded and unwitnessed suggestions that Farmer had kissed a patient and

¹⁶ Mary Jo Solon was the chief nursing officer at Rawson Neal during this time.

¹⁷ See also, related written correspondence related to this investigation, Ex. 10.

made a telephone call to her at another facility. This is especially true in light of the following facts revealed to ANS:

1. A clinical assessment had been made that the patient had fixated on Farmer;
2. As soon as the investigation was completed, Rawson Neal removed the DNR status and allowed Farmer to return to the Rawson Neal facility.

Similarly, in *Lisa M.* and *Robert D.*, the courts held that sexual assaults in the course of providing medical treatment were not reasonably foreseeable. Even when using a "foreseeability" standard more akin to that found in *Jimenez*, the Court in *Lisa M.* rejected that the medical provider's sexual assault on the patient was foreseeable.

To hold medical care providers strictly liable for deliberate sexual assaults by every employee whose duties include examining or touching patients' otherwise private areas would be virtually to remove scope of employment as a limitation on providers' vicarious liability. In cases like the present one, a deliberate sexual assault is fairly attributed not to any peculiar aspect of the health care enterprise, but only to "propinquity and lust" (*Lyon v. Carey*, supra, 533 F.2d 649, 655).

...

Although the procedure ordered involved physical contact, it was not of a type that would be expected to, or actually did, give rise to intense emotions on either side. We deal here not with a physician or therapist who becomes sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship (see, e.g., *Simmons v. United States* (9th Cir. 1986) 805 F.2d 1363, 1369-1370; *Doe v. Samaritan Counseling Center* (Alaska 1990) 791 P.2d 344, 348-349), but with an ultrasound technician who simply took advantage of solitude, access and superior knowledge to commit a sexual assault.

Id. at 302-303.

Likewise in *Robert D.*, the court held that the providing of a sponge bath would not be the type of act likely to give rise to a sexual assault.

A sponge bath, like an ultrasound, is not the type of procedure expected to give rise to "intense emotions on either side." (*Lisa M.*, supra, 12 Cal.4th at pp. 302-303.) In this respect, this case differs from a physician or therapist becoming "sexually involved with a patient as a result of mishandling the feelings predictably created by the therapeutic relationship." (*Id.* at p. 303.) The contact of a nurse with a patient during a sponge bath lacks a foreseeable risk of a sexual tort in the same way as does the contact of an ultrasound technician with a patient during an ultrasound examination. (*Id.* at p. 303.) Consequently,

Viray's conduct, in this context, is so unusual or startling that it is unfair for the costs of it to be passed on to PVH as a business expense. (*Id.* at p. 304.).

Id. at 3.

V.

CONCLUSION

To suggest that liability for Farmer's abhorrent acts should be vicariously imposed on his employer based upon the facts of this case is reckless. In short, Plaintiff seeks to hold ANS liable simply because Farmer was able to "enter" the Plaintiff's room and to have "contact" with the Plaintiff. Plaintiff's suggestion that these general "assignments" are sufficient to impose vicarious liability would essentially make every hospital/health care employer liable for every intentional act committed by one of its employees. Fortunately, the law does not support Plaintiff's conclusion.

Steven Farmer, for whatever reason, decided to go well outside the noble profession of nursing. His criminal wonderings were never nurtured nor supported by ANS. To suggest otherwise is ludicrous. No Court has concluded that such criminal actions by a nurse (pinching nipples, sticking a thumb up a patient's anus, putting a finger in a patient's vagina) are part of the tasks assigned to the nurse. The Plaintiff herself confirms that Farmer had no medical reason to even come close to such behavior.

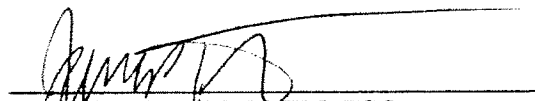
Plaintiff's Motion is deficient. If Plaintiff bases her Motion for Summary Judgment solely upon the facts that she has cherry picked from the case, then there remain genuine issues of material fact in dispute. But what is more relevant to this discussion is that Plaintiff leaves out critical facts that this Court should consider. When reviewed in the light of NRS 41.745 and *Wood*, the only conclusion that can be drawn is that ANS, as a matter of law, is not vicariously liable for the acts committed by Farmer.¹⁸

¹⁸ See ANS's Motion For Summary Judgment.

Defendant ANS respectfully requests that Plaintiff's Motion be denied.

DATED this 15 day of October, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of October, 2014, service of the foregoing

AMERICAN NURSING SERVICES, INC.'S OPPOSITION TO PLAINTIFFS' MOTION

FOR SUMMARY JUDGMENT RE: LIABILITY, on the following person(s) by the following

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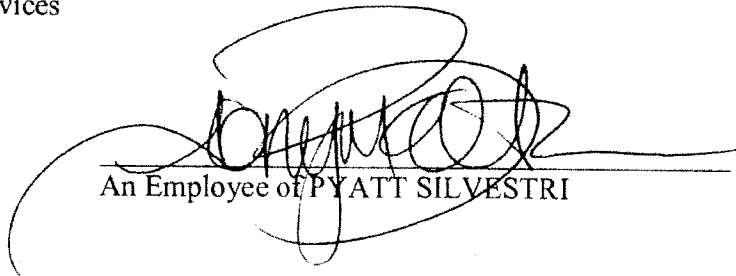

An Employee of PYATT SILVESTRI

EXHIBIT “1”


CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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8

THE STATE OF NEVADA,

9

Plaintiff,

CASE#: C245739

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vs.

DEPT. V

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STEVEN DALE FARMER,

12

Defendant.

13

14

15

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

16

FRIDAY, JANUARY 20, 2012

17

RECORDER'S TRANSCRIPT OF PROCEEDINGS
HEARING: PRESERVATION OF WITNESS TESTIMONY

18

APPEARANCES:

19

For the State:

WILLIAM JAKE MERBACK, ESQ.
Chief Deputy District Attorney

20

For the Defendant:

JEFFREY S. MANINGO ESQ.
AMY FELICIANO, ESQ.
Deputy Public Defenders

21

22

23

24

25

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 FRIDAY, JANUARY 20, 2012 AT 10:11 A.M.

2
3 THE COURT: All right. Case number C245739, State of Nevada versus
4 Steven Dale Farmer. We are here to havr a hearing to preserve the witness
5 testimony in this case. Is the State ready to proceed?

6 MR. MERBACK: We are Judge,

7 THE COURT: Proceed.

8 MR. MERBACK: Thank you. Does the Court want to swear in the witness?

9 THE COURT: Yes, of course.

10 MR. MERBACK: Okay.

11 THE COURT CLERK: Raise your right.

12 THE COURT: You're calling -- what's the witness's name?

13 MS. MERBACK: I'm sorry. The State's going to call [REDACTED], Judge.

14 THE COURT: [REDACTED]

15 [REDACTED]
16 [having been called as a witness and being first duly sworn, testified as follows:]

17 THE COURT CLERK: Thank you. Could you please state your name and
18 spell it for the record?

19 THE WITNESS: [REDACTED]

20 THE COURT: Thank you. Proceed.

21 MR. MERBACK: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MR. MERBACK:

24 Q Ms. [REDACTED], can you tell the Court something about your current
25 medical condition?

1 A I didn't hear your last part.

2 Q What is your current medical condition? Do you have any medical
3 issues right now?

4 A Yeah. I suffered brain trauma and its left me with seizures and
5 uncontrollable sensory overload so my senses don't connect correctly any longer.

6 Q Okay. And is that condition a result of the brain trauma that you
7 suffered?

8 A Yes.

9 Q Do you when it was when you suffered that brain trauma?

10 A March 12th of '08.

11 Q Of 2008 you said? Could you repeat that?

12 THE MARSHAL: Excuse me, counsel. Court's indulgence, Your Honor,
13 please.

14 THE COURT: There you go.

15 THE WITNESS: March 12th of '08.

16 MR. MERBACK: Is that better? Okay.

17 BY MR. MERBACK:

18 Q And as a result of your condition you said that sometimes you'll have
19 seizures; is that correct?

20 A Yes.

21 Q What kinds of things trigger you to have these seizures?

22 A Loudness, loud noises, riding in cars. I can't filter out the motion.
23 When the car stops my brain doesn't -- I keep feeling the motion and being startled;
24 things outside the norm of my world.

25 Q When you have a seizure, are you aware of how long they normally

1 last?

2 A No.

3 Q Okay. Will you normally just have one seizure at a time or will you have
4 multiple seizures?

5 A I have clonic-tonic style seizures and what that is is that I contract up,
6 all of my body contracts up. So, my hands curl up, my arms curl up. I can seize --
7 we've counted and I can seize anywhere from like minimum of maybe three times
8 up to 42 times.

9 Q Okay. Now you indicated that that's your current medical condition.
10 Now was that your condition as well back in 2008 after you had the brain trauma?

11 A It started with my hospitalization in May. That's when the seizures
12 started.

13 Q Okay. Now after you've had a seizure, what condition is your body in
14 after the seizure is over?

15 A I can't talk and I can't move for up to 24 hours.

16 Q Now when you're in that state, are you conscious? Can you -- do you
17 know what's going on around you or are you completely unconscious?

18 A No, I'm aware of everything going on around me. I just can't participate
19 in any of it.

20 Q Okay. Now are there times in that period after you had a seizure where
21 you will come in and out of sleep?

22 A Yes, uh-huh.

23 Q Okay. But when you're awake, you indicated that you're aware of
24 what's going on around you?

25 A Yes.

1 Q Now you talked about a hospitalization in May. Do you recall -- I'm
2 going to call your attention to May 13th of 2008. Were you admitted to Centennial
3 Hills Hospital on that day?

4 A Yes.

5 Q Okay.

6 A But I think I went there the 12th. I was admitted the 13th.

7 Q Okay. So, you went on the 12th and were admitted on the 13th?

8 A I believe so.

9 Q Okay. Is that Centennial Hills Hospital here in Las Vegas, Clark
10 County, Nevada?

11 A Yes, I believe so.

12 Q Why did you go to Centennial Hills Hospital on that day? What
13 occurred that caused you go there?

14 A I've been grocery shopping at Smith's and went out and felt funny. And
15 I called my son and actually started having a seizure in the parking lot and
16 Centennial is just down the parking lot from Smith's. And they called an ambulance
17 and that's where I was taken.

18 Q Do you recall how long you stayed or how you were admitted to
19 Centennial Hills Hospital on that occasion?

20 A I think it was about ten days.

21 Q If I said that you were there until May 20th, would that sound about
22 right?

23 A May 20th, 23rd, somewhere in there.

24 Q Okay. Now did something happen to you during that stay at the
25 hospital that causes you to be here in Court today?

1 A Yes.

2 Q What was that?

3 A Do you want me to --

4 Q What generally happened to you that causes you to be here today?

5 A I was assaulted by -- I believed him to be a nurse, nurse aide there.

6 Q Okay. Did you know the name of that person that assaulted you?

7 A He introduced himself as Steven.

8 Q Do you see that person here in this courtroom today?

9 A Yes.

10 Q Could you point to that person and describe something that they are
11 wearing?

12 A The white hair, and he's wearing red, and white beard and he's wearing
13 black glasses.

14 MR. MERBACK: Judge, can the record reflect the identification of the
15 Defendant?

16 THE COURT: Yes, it will.

17 BY MR. MERBACK:

18 Q Now, Ms. [REDACTED], you indicated that the Defendant introduced himself
19 as Steve; is that correct?

20 A Yes.

21 Q What, if anything else, did he say to you when he introduced himself to
22 you?

23 A He said: Hi, I'm Steve and I've been assigned to you tonight. So, I'll be
24 looking in on you.

25 Q Could you repeat that last phrase for me? I'm sorry.

1 A He said: So, I'll be looking in on you. That was the first thing he said.
2 He came back one other time, that my heart was in A-fib at that time and there were
3 a lot of people in my room.

4 Q Okay. Let's go back --

5 A Okay.

6 Q -- I'm just going to go back to that first time when he introduced himself.
7 When he said that to you that he was going to check in on you, what was your
8 condition at that point?

9 A I'd had a seizure the night before so I couldn't talk to him or move or
10 acknowledge him.

11 Q So, you could not speak or move at that point?

12 A No.

13 Q Okay. But you were able to hear and understand what he was saying?

14 A Yes.

15 Q And you said you believed him to be a nurse; is that correct?

16 A Yes.

17 Q Now you indicated that you were, I think you used the word attacked, by
18 the Defendant. Can you describe for the Court any of those instances -- actually let
19 me ask you this. Was there just one instance or were there multiple instances?

20 A Multiple.

21 Q Okay. Can you --

22 MR. MANINGO: Excuse me. Judge, may we approach for a moment?

23 [Bench conference -- not recorded]

24 THE COURT: Okay. The record will reflect that the exclusionary rule has
25 been invoked and a witness is leaving the courtroom.

1 BY MR. MERBACK:

2 Q Ms. [REDACTED] you indicated that there were multiple instances. Can
3 you describe one of those instances that you remember for the Court?

4 A One of -- I woke up and I was aware that my nipples were being
5 pinched, and I looked straight into his face because he was that close to me, and he
6 said: Oh, one the leads has come off on your heart monitor. But the thing about my
7 heart or the telemetry buttons that they put on, it makes a noise if one becomes
8 detached so that telemetry is advised as well. That was one instance.

9 Q Let me go back and ask you a few questions about that. You said the
10 Defendant said your leads were off. Do you recall where your leads were located
11 on your body at that point in time?

12 A Yes; they're not on my nipples.

13 Q Do you recall where they were?

14 A They have like one here and they have numerous ones underneath the
15 abdomen.

16 MR. MERBACK: And, Judge, for the record, she's pointing to it looks like
17 about the middle of her chest, kind of in the middle of her sternum, I would say.

18 THE COURT: Towards the right, yes, on her upper chest well above her
19 breasts.

20 THE WITNESS: And then underneath.

21 MR. MERBACK: And then he also has indicated -- I think she showed both
22 sides well beneath her breasts on kind of the side of her torso.

23 THE COURT: Correct; approximately at waist level.

24 BY MR. MERBACK:

25 Q Now could you feel or did you notice if any of the leads were actually off

1 of your body?

2 A No, I could not physically feel it and I couldn't move to, you know, to
3 find out but, again I didn't hear the beeping sound that, you know, that the telemetry
4 machine makes when a lead is off.

5 Q Okay. You've been in the hospital before; is that correct?

6 A Yes.

7 Q Have you had leads come off before and actually heard that sound?

8 A Yes.

9 Q And you didn't hear it this time?

10 A No.

11 Q You indicated that he was -- and I'll have you say it. What exactly was
12 he doing to your nipples?

13 A He was pinching them, rubbing them.

14 Q Had you had people, nurses or doctors place leads on your body
15 before?

16 A Yes.

17 Q Have you ever had anyone touch you in the same way that the
18 Defendant did on this occasion?

19 A No, never, never.

20 Q And do you recall was he touching -- was he pinching both of your
21 nipples or just one of them; do you recall?

22 A He pinched both.

23 Q When he was doing this, was it over your clothes or under your
24 clothes?

25 A Under.

1 Q Do you recall what you were wearing at the time?

2 A Just a hospital nightgown.

3 Q And do you know how – could you tell how it was that his hands had
4 gotten underneath your nightgown?

5 A No.

6 Q Could you speak or move at this point in time?

7 A No, still not.

8 Q Do you recall whether the Defendant said anything to you besides that
9 your leads had come off?

10 A Nothing.

11 Q Do you recall about how long that lasted that he was pinching your
12 nipples?

13 A No.

14 Q And do you recall what if anything that caused him to stop doing it?

15 A I think me continually looking at him and me becoming awake.

16 Q And you continued to look at him, is that what you said?

17 A Yes, because like I said, I woke up and he was doing it.

18 Q Now was the only time, the only occasion on which he touched your
19 nipples or your chest in that way or were there other occasions?

20 A I'm sorry?

21 Q You just talked about an incident where he was pinching your nipples?

22 A Yes.

23 Q Was that the only time that you recall that happened or do you recall
24 whether there was other times that that occurred?

25 A That that specific pinching of my nipples occurred?

1 Q Or did he pinch your nipples on any other occasion?

2 A No, I believe that was -- I believe that was the one time.

3 Q Okay. Now were there any other instances that you can tell the Court
4 about besides when he pinched your nipples?

5 A Yes. I woke up and he was walking around the left side of my bed and
6 he pulled the sheets down off of me, and all I had on was my gown, and he lifted my
7 gown up. You know how you go to billow something, you know, a sheet, but he kept
8 it up high so that it was -- if I was laying down it was up high like that.

9 Q Now are you talking about the sheet or your gown?

10 A The sheet. He'd already pulled off of me my gown; he had lifted up
11 high enough to see my entire body.

12 MR. MERBACK: And, Judge, for the record, she made a hand movement
13 where she indicated with one hand her body would be laying flat and the other hand
14 where the gown would maybe like -- I don't know -- a forty-five degree angle or
15 based upon her hand movement.

16 THE COURT: Probably more like fifty-five degrees but, yes.

17 MR. MERBACK: That's why I'm lawyer because I don't do math; right?

18 THE WITNESS: You know, right like that. He brought it up like that.

19 MR. MERBACK. Thank you.

20 THE COURT: Okay.

21 BY MR. MERBACK:

22 Q Now when he lifted your gown like that, were you wearing anything
23 underneath?

24 A No.

25 Q You didn't have a bra on?

1 A No.

2 Q you didn't have any underwear on?

3 A No. He did it more than once, lifting my nightgown up and down.

4 Q Did he tell you at that point why he was taking up the sheets or what he
5 was doing? Did he say anything to you?

6 A No, not at that point. But he then walked around to my right, to the right
7 side of my bed and he said: Oh, you have some feces, and he took my right leg and
8 instead of rolling me to my side he took my right leg and brought it all the way up
9 and -- he had nothing to clean me with. He had not gotten new pads to put under
10 me or wipes or anything. And that's when I became aware of a very uncomfortable
11 feeling and realization that he had his thumb in my anus.

12 MR. MERBACK: Okay. Your Honor, for the record, she made a motion with
13 her finger showing the Defendant lifting her leg, about a 90 degree angle I would
14 say.

15 THE COURT: That's correct.

16 BY MR. MERBACK:

17 Q Now you said that he had indicated to you that there was some feces
18 on you?

19 A That's what he said.

20 Q But he had not done anything to change anything?

21 A Correct.

22 Q Is that correct? Was there a pad or anything of that nature that you had
23 in case you had a bowel movement?

24 A Yeah, a pad underneath me 'cause I also had a catheter so -- in case,
25 you know, there's a leak of any sort, I had a blue pad underneath me.

1 Q This blue pad, did he do anything to change that pad?
2 A No.
3 Q Were you wearing any underwear at the time?
4 A No.
5 Q Do he do anything to change your hospital gown?
6 A No.
7 Q Now you indicated that you felt his thumb go into your anus; is that
8 correct?
9 A Yes.
10 Q Was it just his thumb or was there fingers as well; do you recall?
11 A How many I couldn't tell you but -- is that what you're asking me.
12 Q You indicated that his thumb went into your anus.
13 A Right.
14 Q I'm asking did any of his fingers also go into your anus or was it just his
15 thumb?
16 A I couldn't -- I can't -- couldn't look down there but -- so I would have to
17 say it was his thumb.
18 Q Okay. Could you tell how far into your anus his thumb went?
19 A Probably as far as his thumb is long.
20 Q Okay. And how did it feel when he did that? Did you have any pain or
21 anything like that?
22 A Yes, it hurt and my -- him holding my leg as he was hurt and the next
23 thing he said to me -- one thing during this because then I felt pressure on my
24 vagina. And he said he was checking my catheter. But from knowledge, a catheter
25 is not inside your vagina, it's above it. But the pressure I was feeling was inside my

1 vagina.

2 Q When you felt this pressure on your vagina, was your leg still up or
3 brought your leg down?

4 A It was still up.

5 Q Did you feel whether or not -- do you know what was causing the
6 pressure on your vagina?

7 A Yes, I knew it was his hands, his fingers.

8 Q Do you know whether or not his hands stayed on the outside of your
9 vagina or did it ever go inside of your vagina?

10 A It was inside.

11 Q What part of his hands was inside your vagina?

12 A A finger.

13 Q His finger. Was there one finger, more than one finger; could you tell?

14 A No, I can't tell. I couldn't tell you that.

15 Q And could you tell how far his finger went inside your vagina?

16 A Maybe up to this knuckle.

17 MR. MERBACK: And, Judge, for the record, she's indicating it looks like the
18 second knuckle on one of her fingers.

19 THE COURT: Correct.

20 BY MR. MERBACK:

21 Q And I know this is a difficult question, but I'm going to have to ask you
22 again. What did you feel when that happened? Did it hurt? How did you feel?

23 A Yes, I felt pain. I felt a multitude of feeling, one feeling being that there
24 was absolutely nothing I could do. I couldn't ring the bell, I couldn't scream, I
25 couldn't move. I couldn't -- I just had to lay there. I was humiliated, I was

1 embarrassed. I was shocked that I'm in a hospital being taken care of and I'm
2 having things like this done to me and at the point in time I can't tell anybody.

3 Q Did you actually have a catheter in at that point?

4 A Yes.

5 Q And you indicated previously that as you have had previously, the
6 catheter was much higher on your body than where your vagina is located; is that
7 correct?

8 A Well, yes, it's right above. You don't have anything to do with the
9 vagina to put in a catheter.

10 Q When this whole incident occurred that you've talked about where he
11 lifted your gown and penetrated your anus and then penetrated your vagina, was
12 there anyone else in the room during that point in time?

13 A No.

14 Q Okay. And your condition, you indicated already, was the same that
15 you could not speak and you could not move; is that correct?

16 A Yes.

17 Q Now you had previously been to the hospital on multiple occasions; is
18 that correct?

19 A Yes.

20 Q Prior to this incident?

21 A You mean that year?

22 Q Yeah, in your life, you'd been to the hospital a number of times?

23 A Yes.

24 Q And you've been to the hospital a number of times since then?

25 A Yes.

1 Q Okay. Have you ever had anything like this occur to you on other
2 occasions at the hospital?

3 A Never.

4 Q Have you ever had a nurse or a doctor or anyone else do the things
5 you're talking about to you under these conditions in a hospital?

6 A No, never.

7 Q And this might be a difficult question to answer, but since that point in
8 time since this incident in May of 2008, how many times do you think you've been to
9 the hospital since then; can you guess?

10 A I was hospitalized every month May through December of '08 due to my
11 seizures and sometimes I was there for three days, sometimes ten days. I was in
12 the hospital just the night before last night for seizures. I was in the hospital
13 probably -- now it's down to maybe once, twice a year because I just stay home for
14 my seizures now.

15 Q You talk -- you just mentioned this, but just to talk about it briefly, so the
16 last time you actually had a seizure was two nights ago; is that correct?

17 A Yes, Wednesday night, Wednesday night.

18 Q And between then and now you've spent the time recovering in
19 preparation for testifying today; is that right?

20 A Yes.

21 Q Now let's go back to your stay in the hospital in May of 2008. Did there
22 come a point in time during that stay when you gained back the ability to speak?

23 A Yes, later -- later that morning.

24 Q So, there was a morning that you gained the ability to speak?

25 A Yeah, I believe it was morning.

1 Q Once you had ability to speak, did you tell anyone about what had
2 occurred?

3 A No, I didn't really have a chance 'cause my heart went into A-fib and
4 immediately they had me rushed down to a different floor because my heart was in
5 A-fib. While all that activity was going on though in my room, he stopped inside the
6 door and said: I'm not assigned to you today but I just wanted to see how you were
7 doing, and I thought was very bizarre.

8 Q That what you're talking about where he stopped and said that to you,
9 that was after these incidents that you've talked about occurred; is that right?

10 A Yes.

11 Q Okay. But before you moved to the other room?

12 A Right.

13 Q Now when you were moved to this other room because of your heart,
14 did you see the Defendant again at any point after that?

15 A No, I was on a different floor.

16 Q Did you eventually -- were you eventually able to tell anyone about the
17 things that had happened?

18 A I had told my two sons as soon as I could talk, but it was probably
19 another good 24 hours before my heart came out of A-fib. But as soon as it did, that
20 was the very first thing I told them, that there was a nurse on the other floor, his
21 name was Steve, he had white hair, and that he had put his thumb in my rectum and
22 he had been pinching my nipples. I did not tell them the rest because they're my
23 sons so --

24 Q Now your sons, what are their names?

25 A Marshall and Micah [phonetic] Petersen, both.

1 Q Did you tell anyone at the hospital about what had happened?

2 A No.

3 Q And why didn't you do that?

4 A Because it was kind of like not knowing who to trust or who to -- you go
5 to a hospital because you need to and your one expectation is to be safe and to be
6 treated humanly and decently and that had been taken away. And so I didn't trust
7 this hospital anymore. I didn't trust --

8 Q Now I'm going to call your attention to about a month later to sometime
9 in June of 2008. Actually strike that. Let me go back. You said you didn't tell
10 anyone at the hospital. Did you at that point in May call the police?

11 A No, because at that point in time, the start of those -- of that -- the
12 seizures in May, I seized, they told me, I think it was like nine times in the
13 ambulance from the Smith's parking lot to the hospital, which is just through the
14 parking lot, I seized nine times. And that started a series of seizures to where some
15 months I was seizing like every two days.

16 Q Now you didn't call the police at that point, but did there come a point in
17 time later on when the police were called?

18 A Yes.

19 Q Okay. Was that about a month later in June?

20 A Sounds right, yes.

21 Q So, if I said June 15th of 2008, would that sound about right to you?

22 A Yes, because my son had seen him on -- the Defendant, I guess, on TV
23 and he came and told me about it and that there are multiple women and at that
24 point in time, I said I have to do this no matter what my health is doing, I have to do
25 this. Of course, I didn't foresee -- I didn't foresee how bad my health would actually

1 get but, yes.

2 Q Who called the police? Was it you or was it someone else?

3 A I did.

4 Q Now you talked about your son seeing something about the Defendant
5 on the news. Did you also see something on the news or was it just your son told
6 you about it?

7 A He told me about it.

8 Q So, you personally didn't see it? Is that a no?

9 A No -- yeah, no.

10 Q And then a few days later after you called the police, did a detective
11 come out and interview you?

12 A Yes, somebody from the Sexual Crime Unit.

13 Q I'm going to go back just briefly. The incidents that you've talked about
14 that the Defendant did to you at the hospital, did you want him to do any of those
15 things to you?

16 A No.

17 Q Okay. Did you ever do anything to indicate to him that it was okay to do
18 any of those things to you?

19 A There'd be no way for me to indicate that, no.

20 Q I'm going to ask you -- I'm going to give you some names and I want to
21 know whether or not you know any of these people. Do you know an individual by
22 the name of [REDACTED]?

23 A No.

24 Q Do you know a people named [REDACTED]?

25 A No.

1 Q Do you know a person named [REDACTED]?

2 A No.

3 Q Do you know a person named [REDACTED]?

4 A No.

5 Q Are you aware of whether or not any of these individuals were at the
6 hospital around the same time you were?

7 A No.

8 Q Have you ever spoken with any of these people about the Defendant or
9 the things he did to you?

10 A No.

11 MR. MERBACK: Court's indulgence. Your Honor, I have no further questions
12 at this time.

13 MR. MANINGO: Judge, would the Court or counsel have any objection if I
14 were to remain seated during my examination.

15 THE COURT: Well would you be able to see him if he's sitting?

16 MR. MANINGO: I'll just slide over this way. I don't want to get in the way of
17 any cameras or anything.

18 THE COURT RECORDER: The camera's locked on the witness so we can't
19 see anyone.

20 THE COURT: No, I just want her to be able to see him.

21 THE COURT RECORDER: Oh, okay. If he stands, if he stands up, he's
22 going to be in the way and blocks her.

23 THE COURT: I know --

24 MR. MANINGO: Right. That's why it be best if I --

25 THE COURT RECORDER: Phil, can you move those two things out of the

1 way and then she can see him.

2 **CROSS-EXAMINATION**

3 BY MR. MANINGO:

4 Q Hello, Ms. [REDACTED]. My name is Jeff Maningo and I'm just going to ask
5 you some questions to follow-up on what Mr. Merback was talking about; okay?

6 A Okay.

7 Q During the time period of May of 2008, you were having a lot of seizure
8 activity at that time; correct?

9 A It started May 12th.

10 Q Okay. During that time though you were having a lot of seizures;
11 correct?

12 A During what time? I don't --

13 Q May of 2008.

14 THE COURT: Her answer was it started May 12th, counsel.

15 MR. MANINGO: All right.

16 THE WITNESS: I guess I don't understand the timeframe. They started May
17 12th.

18 BY MR. MANINGO:

19 Q Now you were having seizures before May 12th, though; correct?

20 A No. I had seizures like five years ago. I hadn't had any seizures up
21 until I hit my head.

22 Q And you hit your head in March; correct?

23 A And then I had no seizures until in May 12th.

24 Q Okay.

25 A And that's when they started and everything else came with it.

1 Q Okay. Once they did start, was it common to have several seizures in a
2 single day?

3 A Explain what you mean.

4 Q Would you have more than one seizure in a day?

5 A Maybe I should explain my seizures again. Can I do that?

6 THE COURT: Yes.

7 THE WITNESS: Okay. I get an aura and a taste and then I know that a
8 seizure's coming. I will seize up, my whole body seizes up. I stop breathing while
9 I'm having one. My legs curl up, my arms curl up, and then I'll relax and then I'll curl
10 up again. But if what you're asking me is will I have this happen in the morning and
11 then maybe happen in the afternoon and the evening, no. I may have a seizure, you
12 know, in the morning and then I'm done for that entire day. I have to go to sleep and
13 take medicine and sleep because I'm in pain.

14 BY MR. MANINGO:

15 Q Okay. When you would have one of these seizures it would be very
16 traumatic for you; correct?

17 A Yes.

18 Q Okay. As you explained just a few minutes ago, you would seize up
19 and then relax and then seize up again and that could happen, you said I think, up
20 to 42 times?

21 A Yes.

22 Q Okay. And each time that you would seize up, you would be -- you
23 would become unaware of what was happening; is that fair to say?

24 A No. From the very -- from when I -- when I get that aura, I have like five
25 minutes and then as soon as the seizing starts, I'm not there.

1 Q Okay.

2 A So, even when I relax I will seize. I'm still not there until I come all the
3 way out of it and then I'll just start blinking and licking and – my lips and looking
4 around and then I'm back.

5 Q Okay. But for the duration then while you're seizing, you're blacked
6 out?

7 A Right.

8 Q Okay. And then after the seizing stops and you start to come back from
9 that, it takes time to recover; correct?

10 A Yes.

11 Q And you have to rest?

12 A I normally have to go to sleep.

13 Q Okay. And you have to take medication, you said?

14 A Yes.

15 Q Okay. And when you first come out of it you said, you start blinking and
16 it takes a while to sort of realize where you're at; is that fair to say? Yes?

17 A Yes.

18 Q Okay. And so when you're first coming out of one of these episodes,
19 you're confused; correct?

20 A I can't say that.

21 Q Well you're certainly not thinking clearly right after you get done having
22 one of these seizure episodes; are you?

23 A Right, right.

24 Q Okay.

25 A For the first few seconds as they lay there and blink, I realize I've had a

1 seizure. And then as I look around, I know where I am. It's not like -- it doesn't take
2 me three hours to remember or to know.

3 Q Okay.

4 A I mean --

5 Q Okay.

6 A Only a matter of minutes.

7 Q Okay. Thank you. During the episode, you lose time though; correct?

8 A Right.

9 Q Okay. And when you're recovering from one of the episodes, you'll be
10 in and out of consciousness. You'll fall asleep and then wake up and fall asleep
11 easily again; correct?

12 A Well, yes, yes.

13 Q You're in and out of it?

14 A Normally if I'm at home I just pretty much sleep straight 12 hours
15 through.

16 Q Okay. Is it fair to say though that during recovery though you're in and
17 out of consciousness?

18 A In and out of sleep, yes.

19 Q Okay. Do you remember speaking to a detective about this case?

20 A Back in '08?

21 Q Yes.

22 A Yes.

23 Q Okay. And the words you used were in and out of consciousness?

24 A Okay.

25 Q Okay. So, is that fair to use?

1 A Yes.

2 Q Okay. Now you said that part of the recovery after you have one of
3 these seizures is that you have to take medication; correct?

4 A Correct.

5 Q And during the week of May 13th to May 20th, 2008 when you were in
6 Centennial Hills Hospital, you were on a number of different medications; correct?

7 A I believe so. I mean, my medications have changed since then so --

8 Q Would you be surprised to learn that based on your own medical
9 records, you are on Prozac, an anti-depressant; does that sound right?

10 A Yes.

11 Q Okay. You are also on Benzodiazapenes which is -- the most common
12 source would be like Valium; does that sound correct?

13 A I [Inaudible response].

14 Q You are also on sedatives; does that sound correct?

15 A Well to mean -- no.

16 Q Okay. So, if that's on your medical report and on your charts that the
17 doctors filled out. Do you think it's correct?

18 A Well, yes, I would.

19 Q Okay And you were also on an anti-seizure medication called Dilantin;
20 correct?

21 A Yes, they started me on that, yes.

22 Q Okay. And you're aware that with the anti-depressants such as Prozac
23 that it affects your brain chemistry; correct?

24 A Uh-hm.

25 Q Okay. And you also know that Dilantin will also affect your brain

1 chemistry?

2 A Dilantin is for epileptic seizures.

3 Q Yes.

4 A Yes, I didn't stay on Dilantin.

5 Q I'm asking about the time period though of May 13th to May 20th while
6 you were at Centennial Hills Hospital. At that time you were on Dilantin.

7 A Okay.

8 Q Are you aware that one of the side affects of Dilantin is confusion?

9 A No.

10 Q Are you aware that one of the side affects of Dilantin is delirium?

11 A No.

12 Q Besides being on the drugs I've already listed, you were also being
13 given doses of morphine; correct?

14 A It's the only pain medication I can take.

15 Q Okay. And you understand that morphine is a very strong narcotic?

16 A Yes.

17 Q Okay. And morphine can certainly cause a change in someone's
18 awareness; would you agree?

19 A No.

20 Q No?

21 A No.

22 Q So, you think that it would be okay for someone to drive while on
23 morphine?

24 A I take -- I can no longer drive because of the brain trauma.

25 Q That wasn't my question though. My question is: Do you think it's okay

1 for someone to drive then if they're taking seven doses of morphine in five days?

2 A It depends on the doses.

3 Q Okay. Do you think it makes any difference that the morphine is being
4 mixed with Prozac, Valium and Xanax?

5 MR. MERBACK: Judge, at this point, I'm going to object. I think the
6 questions are going beyond the scope of her knowledge. I mean, these are
7 questions that are for a doctor or someone of that nature to answer.

8 MR. MANINGO: Well it's going towards the witness's ability to perceive.

9 THE COURT: Right. Well you're asking her now her opinion as to the affects
10 of drugs, and she can't offer that kind of opinion testimony. She's not qualified as an
11 expert witness. I'll sustain the objection. Move on.

12 BY MR. MANINGO:

13 Q During this time then, you do realize that a number of different drugs
14 were being mixed together? You were taking more than one drug?

15 A When you say during this time, are you saying while I'm in the hospital?

16 Q Yes. Still talking about the hospital, May 13th to May 20th, 2008.

17 A Okay.

18 Q And do you remember that period of time that you were on more than
19 just one medication?

20 A Yes. What all medications I was on, no I couldn't tell you.

21 Q Okay.

22 A And especially since then, it took quite a while for them to actually dial
23 in the medications I actually needed.

24 Q Okay. Thank you. During this week long period at Centennial Hills in
25 2008, you spent that entire week recovering from the seizures; correct?

1 A And?

2 Q Is that correct?

3 A No. I spent most of the time -- I should say I spent more time

4 recovering from the A-fib.

5 Q Okay. And that happened while you were in the hospital recovering

6 from the seizures?

7 A Correct.

8 Q Okay. And also during this week long period, you were on a number of

9 different medications?

10 A Yes.

11 Q Okay. And it's from this one week period where you were covering

12 from the seizures, your heart went into A-fib, and you were on a number of different

13 medications that these allegations against Mr. Farmer come from, that one week

14 period; correct?

15 A Yes.

16 Q Okay. You discussed on your direct examination an incident where Mr.

17 Farmer he lifted up your gown?

18 A Yes.

19 Q Was that the first time that you met Mr. Farmer?

20 A Yes.

21 Q Okay. And he introduced himself to you?

22 A Yes.

23 Q Okay. And he told you what his name was?

24 A Yes.

25 Q Okay. He -- as it turned out he gave you the correct name; right? He

1 didn't give you a fake name or anything like that?

2 A Okay; yes.

3 MR. MERBACK: Actually, Judge, I'm going to object to that question. It's
4 beyond the scope of her knowledge. I mean, she doesn't know his name beyond
5 what he told her so I think that that's -- that question to her is objectionable.

6 MR. MANINGO: I'll re-ask.

7 THE COURT: Your objection is assumes facts not in evidence?

8 MR. MERBACK: Correct.

9 THE COURT: All right. Sustained.

10 BY MR. MANINGO:

11 Q Did he tell you that his name was Steve?

12 A Yes.

13 Q Okay.

14 A I believe he said Steven.

15 Q Steven. Okay. Now at that point you said he lifted up your gown;
16 correct? Is that correct?

17 A At some point, yes, he lifted up my gown.

18 Q Okay. And you had a catheter at that point; correct?

19 A Yes.

20 Q Okay. You also at this point in time you were unable to move?

21 A Yes.

22 Q Okay. Now you've -- I think you told Mr. Merback you've had quite a bit
23 of experience spending time in hospitals?

24 A Unfortunately.

25 Q Okay. Have you ever heard the term intimate care?

1 A No.

2 Q Okay. You do understand that nurses are asked to take care of
3 personal hygiene tasks at certain points?

4 A Yes.

5 Q Okay. You understand that nurses are asked to clean up any leaks or
6 bowel movements, that's part of their job; you know that?

7 A Yes.

8 Q Okay. You know that nurses are asked to check on a patient's catheter
9 if they have one?

10 A Yes.

11 Q Okay. During this incident where Mr. Farmer, you say, he lifted up your
12 gown, at this point you're also on medications; correct?

13 A Yes.

14 Q Okay. And one of the medications that you're on at that point is
15 Morphine?

16 A Yes.

17 Q You discussed another incident where you said Mr. Farmer had told
18 you that you had feces on you?

19 A Yes.

20 Q And that he lifted your leg up?

21 A Yes.

22 Q And his hand moved from your leg to your rectum?

23 A Yes.

24 Q Okay. Mr. Farmer explained to you that he was cleaning you?

25 A No.

1 Q No? Did he explain to you that he was checking your catheter?
2 A At one point he said that.
3 Q And you still had a catheter at that point --
4 A Yes.
5 Q -- during that incident?
6 A Yes.
7 Q Okay. You were still unable to move at that point?
8 A Yes.
9 Q You couldn't look down and see what was going on?
10 A No.
11 Q Okay. You couldn't look down to see if, you know, what Mr. Farmer
12 was doing; correct?
13 A Correct.
14 Q Okay.
15 A But I could feel that he was not wiping me. I could feel that nothing --
16 Q That wasn't my question, Ms. [REDACTED]. We'll get to that. Thank you.
17 Because of your inability to move you couldn't sit up and see anything either
18 obviously; is that correct?
19 A Correct, but I was not laying flat.
20 Q Okay. So, you were at an angle?
21 A Yes.
22 Q Okay. Was -- at that point as he had your leg up, you had a gown on;
23 correct?
24 A Yes.
25 Q And you couldn't see past the gown; correct?

1 A See past --

2 Q You have a gown on and he lifts your leg up?

3 A Right.

4 Q Okay. You're not able to see what was going on?

5 A That's if you're assuming that he had the gown with my leg while it was
6 up, which it was not. The gown was across my lap.

7 Q Well actually I'm just assuming from you already testified to which is
8 you weren't able to see what was going on. You've already said that.

9 THE COURT: Counsel, you testifying? I don't hear a question

10 MR. MANINGO: My question is: Would you like to now change your testify?

11 MR. MERBACK: Objection, Judge, it's argumentative.

12 THE COURT: All right. So, I'm sustaining her -- the objection because you're
13 mischaracterizing her previous testimony. So, if you'd let her answer.

14 MR. MANINGO: Judge, her previous testimony is that she was not able to
15 see what was going on. I asked that direct question and that was her answer. Now
16 she's saying, well, the gown was down. So, I'm asking her again were you able to
17 see what was going on.

18 THE COURT: Rephrase the question and don't give me a narrative response
19 and argue with me about the testimony.

20 BY MR. MANINGO:

21 Q Ms. [REDACTED], were you able to see what was going on when Mr.
22 Farmer said he was checking your catheter?

23 A No.

24 Q Okay. Thank you. He had told you that you had a bowel movement or
25 that there was fecal matter?

1 A Yes.

2 Q Okay. You didn't notice any wipes or pads?

3 A No.

4 Q Okay. You didn't feel any -- you didn't feel yourself go to the bathroom?

5 A Right; no, I did not.

6 Q Okay. But before Mr. Farmer had come in to check it, you were

7 sleeping; correct?

8 A Off and on, yes.

9 Q You woke up and Mr. Farmer was already there?

10 A Yes.

11 Q And you were still on your medications during this incident, correct, to

12 the best of your knowledge?

13 A I would assume so if, I mean, I had just taken some, no, I don't believe I

14 did.

15 Q Do you remember?

16 A I don't remember taking any during this time, no. But some medications

17 I had through the IV as well.

18 Q Okay. But you had just awoken as Mr. Farmer was already there?

19 A Yes.

20 Q Okay. Based on your experience that you've talked about from being a

21 patient in hospitals you know that they will check patients who cannot move

22 themselves for bed sores; right?

23 A Yes.

24 Q Okay. And you know that date they look at different factors with

25 patients to see if you're at risk for bed sores such as whether or not you can feel

1 pain or discomfort; are you aware of that?

2 A Not so much, no.

3 Q Okay. Are you aware of the fact that your doctor noted that you have a
4 very limited ability to feel pain or discomfort during that time that you were there?

5 MR. MERBACK: Judge, I'll actually object to that question on a number of
6 reasons. I think it calls for a hearsay response because it's the statement of -- it's
7 an out of court statement of another witness and also it would be -- I guess that
8 would be my main objection at this point.

9 THE COURT: Well it also lacks foundation and assumes facts not in
10 evidence so I'll sustain it on those grounds.

11 BY MR. MANINGO:

12 Q Well let me ask you this, Ms. [REDACTED] Did you feel like you had full
13 feeling in your body that you could feel discomfort normally?

14 A Could I feel pain?

15 Q Well pain or discomfort.

16 A Yes.

17 Q Okay. I mean, on a normal level.

18 A I don't know how to answer that because -- I mean, on a normal level if
19 you feel discomfort or pain -- you know, like if your shoulder is getting tight, well you
20 move it; right? You move so you can get comfortable. I can't move, but I can feel
21 the discomfort. I just can't do anything about. So, I don't know how to answer your
22 question.

23 Q Now you mentioned one other incident, I believe. You said that there
24 was -- Mr. Farmer had come in and pinched your nipples?

25 A Yes.

1 Q Okay. And did you testify that that happened, how many times, once?
2 Once or more than once?

3 A Explain.

4 Q How many times did that happen where Mr. Farmer came in and
5 pinched your nipples or touched your nipples?

6 A I'm aware of him pinching my nipples a total of four times, two times
7 each.

8 Q I'm sorry. I'm not sure I understand.

9 MR. MERBACK: Judge, I think the question's vague. I mean, is the issue
10 that how many times he pinched her nipples on this one occasion or were there
11 multiple occasions and I think that's where the confusion's coming from so my
12 objection is vague.

13 MR. MANINGO: How many incidents.

14 THE COURT: Well I'll sustain that and let you rephrase.

15 BY MR. MANINGO:

16 Q How many incidents occurred where Mr. Farmer touched your breasts?

17 THE COURT: He's talking about separate incidents.

18 THE WITNESS: Like at the --

19 THE COURT: Not each touching at one time. He's asking you was there
20 more than one occurrence.

21 THE WITNESS: Two.

22 BY MR. MANINGO:

23 Q Two? Okay. Each of those times he stated that he was adjusting the
24 heart monitor leads?

25 A Yes.

1 Q Okay. Now you had approximately eight leads placed across your
2 torso; correct?

3 A I don't know if that's correct.

4 Q Okay. Was it -- did you have only one lead?

5 A I had more than one, but I don't know that I had eight; I didn't count.

6 Q Did you have more than two; do you remember?

7 A Yes, I know I had more than two. I just can't see that -- yes, I had
8 exactly eight.

9 Q Okay. And I just want to get an approximation. So, was it more than
10 four?

11 A Yes, probably.

12 Q Okay. Could it be more than eight?

13 A That's what I'm saying. I can't -- you said you had eight leads; did you
14 know that. Well, no, I don't know that. I don't know exactly how many I had.

15 Q Okay. I'm just asking you what you do remember. Do you remember if
16 there were more than five?

17 A No, I'm sure there were.

18 Q Okay. I'm sorry, Ms. [REDACTED]. I'm just asking how many there were on
19 your body. It's not -- I'm not trying to trick you.

20 A You're asking me though a question that -- when these are put on me,
21 I'm in a seizure state. So, I can't -- I'm not around to count 'em. Does that make
22 sense to you? It's like being in a seizure --

23 Q It does make sense to me. However, you did speak to a detective and
24 told the detective quite easily without all this extra argument that it was seven to
25 eight leads on your chest; do you remember saying that to the detective?

1 A No.

2 Q Okay. You said that you know he wasn't adjusting the leads on your
3 chest because you didn't hear any beeping?

4 A Right.

5 Q Okay.

6 MR. MERBACK: Objection. That's misstates her testimony. She said she
7 knew the leads didn't come off because she didn't hear the beeping.

8 MR. MANINGO: I'm sorry. What did I say?

9 MR. MERBACK: You said you knew he wasn't adjusting the leads which is
10 different than what she testified to.

11 THE COURT: Well restate the question because she had answered so --

12 MR. MANINGO: I think --

13 THE COURT: Yeah.

14 MR. MANINGO: -- I think she understood.

15 BY MR. MANINGO:

16 Q Ms. Petersen, You believed that none of your leads had come loose
17 from your body because you didn't hear any alarm go off; correct?

18 A Correct.

19 Q Okay. Are you aware of the fact that at Centennial Hills Hospital in the
20 room that you were in the telemetry monitors are actually at the nursing station in
21 the hall and that's where the alarms go off; did you know that?

22 A I --

23 Q Were you aware of that?

24 A No.

25 Q Okay. It was your understanding that the -- there would be a telemetry

1 monitor and an alarm in your room; correct?

2 A Yes, from my recollection there was.

3 Q Okay. And so if I told you that there are pictures taken and research
4 done showing that the monitors aren't even the room, they're in the hallway so that
5 the patient wouldn't hear the alarm go off; could that change any of your testimony?

6 A No.

7 Q Okay.

8 A Because when my heart went into A-fib there was a machine by my bed
9 that did start going off and did when the all the nurses came running in, turned it
10 off --

11 Q Okay.

12 A -- and this machine actually went up to the room I went to for my A-fib.

13 Q When you said that Mr. Farmer was adjusting the leads on your chest,
14 before you noticed him doing that you had been asleep; correct?

15 A Yes.

16 Q And then you started to wake up?

17 A I woke up, yes.

18 Q Okay. And you were looking at him you said?

19 A Yes.

20 Q Okay. But before he had come in you were out if it, you were asleep?

21 A I was asleep.

22 Q Okay. So, you were not aware of him coming in in the first place?

23 A No.

24 Q Okay.

25 A You mean did I hear him walk in, you mean? No.

1 Q During the time of this incident you were still on your medications;
2 correct?

3 A I don't know. I mean, was I still being given medications; is that what
4 you mean?

5 Q Yes.

6 A Yes.

7 Q Okay. And you were still being given morphine?

8 A I think so. I mean, I honestly don't know what the medications all were
9 at that time, but I live on morphine every day of my life.

10 Q Okay. Now I know this sounds very obvious, but why you were at
11 Centennial Hills Hospital that week there were other people in the hospital around;
12 correct? You weren't the only patient obviously?

13 A I don't think so.

14 Q Okay. And you saw other staff members besides Mr. Farmer?

15 A Yes.

16 Q And there were doctors, nurses coming in and out of the room?

17 A Yes.

18 Q Okay. And what you testified to is that all these incidents that took
19 place with Mr. Farmer happened in a location where anyone would have walked into
20 your room and caught Mr. Farmer doing what he was doing; that was possible?

21 A Possible.

22 Q Nobody did that as far as you know?

23 A As far as I know.

24 Q Okay. And all the incidents that you described took place in a location
25 where someone else could have seen Mr. Farmer doing something inappropriate;

1 correct?

2 A I don't know if that's correct or not. I mean -- because what happened
3 was I was rushed down to another room after my heart went in A-fib and I'd been in
4 a seizure prior so, no, I don't know that -- I don't know the lay of the hospital floor no,
5 I don't. I don't know where the room was located or anything.

6 Q To the best of your knowledge though no one else saw Mr. Farmer do
7 anything inappropriate to you?

8 A I don't know if anybody saw or not.

9 Q No one's come to said: Ms. [REDACTED] I saw this happen?

10 A No, nobody's done that.

11 Q You did not come forward with any of these allegations until a month
12 after being released from the hospital; correct?

13 A Correct.

14 Q After this happened to you, the very first incident, when this happened
15 to you in the hospital, you didn't tell your doctors what had happened; did you?

16 A No.

17 Q Okay. And you didn't tell any of the other nurses what had happened?

18 A No.

19 Q Okay. You didn't ask to speak with the police or for the police to be
20 called and come to your room?

21 A No. I didn't even -- I didn't -- didn't -- didn't -- didn't --didn't -didn't --

22 THE MARSHAL: Your Honor.

23 THE COURT: Do you need to take a short rest, a recess? Yes?

24 THE WITNESS: Yes, yes, yes, yes, yes.

25 THE COURT: Okay. Court will be in recess for five minutes.

1 [Recess taken at 11:28 p.m.]

2 [Proceedings resumed at 12:03 p.m.]

3 THE COURT: All right. Are we ready to go back on the record? All right.
4 We're back on the record. Go ahead with your cross.

5 MR. MANINGO: Thank you.

6 BY MR. MANINGO:

7 Q Ms. [REDACTED], let's get this finished up now.

8 A Okay.

9 Q Do you remember what we were just talking about a minute ago?

10 A A lot of things.

11 Q That's true. I had asked you about the fact that you did not come
12 forward with any of these allegations until about a month after you were released
13 from the hospital?

14 A Correct.

15 Q Okay. And while you were still in the hospital between the dates of May
16 13th and May 20th of 2008, you didn't speak to any doctors at the hospital about what
17 happened with Mr. Farmer; correct?

18 A Correct.

19 Q Okay. And you did not speak with any of the other nurses about what
20 had happened; correct?

21 A Correct.

22 Q Okay. And did you not ask for the police to come to your room and
23 speak to them; correct?

24 A Correct.

25 Q Okay. Now earlier when you were speaking with Mr. Merback, you said

1 the reason you didn't talk to anybody from the hospital was because you didn't trust
2 the hospital anymore; right?

3 A Correct.

4 Q And do you remember saying that earlier?

5 A Yes.

6 Q Okay. However, do you remember that you went back to that same
7 hospital on June 19th, 2008 for an emergency room visit?

8 A Yes.

9 Q Do you remember that?

10 A Yes.

11 Q Okay. And then you also went back to that same hospital that you said
12 you no longer trust on June 24th of 2008 and stayed for a couple of days; do you
13 remember that?

14 A Yes, I was taken by ambulance both times and had no say in where
15 they would take me.

16 Q Okay.

17 A I asked to be taken to UMC and they would not take me. My -- both my
18 sons requested I be taken to UMC.

19 Q Okay.

20 A And the ambulance drivers did not do it.

21 Q Okay. Now do you remember speaking to the detective about this case
22 back in '08; correct?

23 A Yes.

24 Q Okay. And the detective asked you why you didn't tell anyone at the
25 hospital; do you remember that?

1 A Not specifically. We talked about a lot of things.

2 Q Okay. Do you remember telling the detective that the reason you didn't
3 tell anyone was because you couldn't speak?

4 A Which is true. At the time it was happening I could not speak.

5 Q Right. But during your visit you were able to speak?

6 A Right, and I told my sons.

7 Q Okay. After you told your sons, they did not report it to the hospital staff
8 as far as you know; correct?

9 A Correct.

10 Q And they did not call the police; correct?

11 A As far as my knowledge, no.

12 Q Okay. After you told your sons about what had happened, you still
13 remained in that hospital for the duration of your stay; correct?

14 A Correct; I believe I did, yes.

15 Q Okay. What I'm asking, I guess, Ms. [REDACTED] is your sons allowed
16 you to remain in Centennial Hills Hospital after you told them what happened with
17 Mr. Farmer; correct?

18 A Correct.

19 Q Okay. Now after May 20th you were released from Centennial Hills; is
20 that right?

21 A I believe so, yes.

22 Q Okay. And you went back home at that time?

23 A Yes.

24 Q Okay. Once you got home you still didn't contact the police, correct,
25 right away I should say? You didn't call the police right away when you got home?

1 A Correct.

2 Q All right. And you didn't call the hospital to inform them of what had
3 happened; correct?

4 A Correct. Part of the reason I didn't call the hospital is I had been in
5 Centennial previously for the flu and had several items stolen and making phone
6 calls to get resolution got me nowhere.

7 Q Okay. And, Ms. [REDACTED], I'm sorry, I didn't mean to interrupt. You
8 have to answer just from the questions I ask otherwise it gets confusing. And so
9 you did answer me and I appreciate it. Now once you did get home after May 20th
10 you were able to at least speak and communicate; correct?

11 A Yes.

12 Q And you were able to make phone calls if you needed to; correct?

13 A Yes.

14 Q Okay. But at that time you still chose not to contact anyone about what
15 had happened?

16 A At that time my body started experiencing -- when I hit my head and got
17 the brain trauma, all the sudden I could do Suduko in like two minutes; finish a
18 puzzle which was totally abnormal for me. And then when the seizure started in
19 May it's like all the sudden I was down the chute of a rollercoaster. I started
20 experiencing high blood pressure. All my --

21 Q Ms. [REDACTED] I'm going to interrupt you just for a second. I'm sorry,
22 Your Honor, but I think this is all non-responsive.

23 A No, I'm answering why I didn't call right away because my health
24 started deteriorating so fast that that was on the front burner at the time. I started
25 having seizures like every other day. I started experiencing uncontrollable sensory

1 overload and I had things happening I've never experienced before and my body
2 and health was just going down a sieve and that was my top priority at that point in
3 time.

4 Q You weren't concerned that if Mr. Farmer had assaulted you that he
5 may continue assaulting somebody else at the hospital?

6 MR. MERBACK: I object as to argumentative and not relevant.

7 THE COURT: Yeah, I think that's argumentative so I'll sustain that.

8 BY MR. MANINGO:

9 Q Well let me rephrase, Ms. [REDACTED]. Once you got home from the
10 hospital, were you concerned that anyone else might get hurt at the hospital?

11 A Of course.

12 Q Yes?

13 A Yes, of course.

14 Q And yet you still didn't call and report anything about Mr. Farmer even
15 though you were concerned about that?

16 A Right.

17 Q Okay.

18 A But --

19 Q You answered the question. Thank you.

20 THE COURT: Well I'm going to allow her to explain her answer.

21 MR. MANINGO: Judge, I --

22 THE COURT: Are you trying to finish your answer?

23 THE WITNESS: Yes.

24 MR. MANINGO: Judge, I'm going to object because she answered the
25 question and now we're giving her free reign to make these narratives.

1 THE COURT: All right. The District Attorney can follow up if he wants to. Go
2 ahead.

3 BY MR. MANINGO:

4 Q It was a month later after release from the hospital around June 15th,
5 you were still concerned about your health at that point; correct?

6 A Yes.

7 Q It was still a priority for you; correct?

8 A Yes.

9 Q Okay. But at that time your son saw Mr. Farmer on the television;
10 right?

11 A Yes.

12 Q And it was seeing Mr. Farmer on the television that prompted you to
13 make the phone call to the police; correct?

14 A It was the story associated with him being on TV that prompted it; to
15 find out that I was not the only one.

16 Q Knowing that that was your nurse, that he was your nurse at the
17 hospital also?

18 A And the story went on to say that there were more victims than just one.

19 Q Uh-hm.

20 A So, at that point in time, yes, I called.

21 Q Okay. And you were -- you had the physical capacity to make the
22 phone call to the police yourself; correct?

23 A Yes.

24 Q Okay. You didn't have to have somebody else call for you?

25 A No.

1 Q Okay. And you could have made that phone call weeks earlier if you
2 wanted to? I mean, you were physically capable of making that phone call?
3 A I was capable --
4 Q Okay.
5 A -- physically.
6 Q Okay.
7 A But medically not so much.
8 Q Earlier you said that you -- that because of your medical condition you
9 live with Morphine every day?
10 A Yes.
11 Q Okay. Are you on morphine today?
12 A Yes.
13 Q Okay. What kind of dosage did you take today?
14 A My normal dosage. I take 7.5 milligrams three times a day.
15 Q Three times a day?
16 A Yes.
17 Q Okay. And at this point, how many doses -- how many 7.5 milligram
18 doses have you had?
19 A One.
20 Q One. And then you'll take one midday and then another one in the
21 evening?
22 A Yes.
23 Q Okay. While you were in the hospital, do you remember how many
24 times your doctor saw you?
25 A No.

1 Q Okay. Do you remember how many times the nurses came through to
2 check on you?

3 A No.

4 Q The incidents that you described to Mr. Merback, the incident where
5 you said Mr. Farmer had pinched your nipples, did that happen -- what time of the
6 day did that happen; do you remember?

7 A I believe it was nighttime.

8 Q Okay. Are you sure about that or --

9 A No.

10 Q Okay.

11 A Because it was dark in my room whether it was because the lights were
12 out or because it was nighttime. I do believe it was nighttime though because the
13 next morning when the day shift nurses came on is when my heart, I believe, went
14 into A-Fib.

15 Q Okay. Now do you remember how many days you were at the hospital
16 before you told your sons about Mr. Farmer?

17 A Well like I said earlier, it happened and I believe what he did to me was
18 at night. The next morning, my heart went into A-Fib. It took 24 hours for it to out of
19 A-Fib and the very first thing I said when I came to or came out of the A-Fib that was
20 the first thing I told my boys, the very first thing.

21 Q Okay. So, how many days was that -- how many days had you been in
22 the hospital at that point when you came out of A-Fib; do you remember?

23 A I had seizures on the second -- I mean, the 12th; I got admitted the 13th
24 and it's either the 14th or the 15th. I'm not quite certain.

25 Q Okay. Ms. [REDACTED], you currently have a pending lawsuit against

1 Centennial Hills Hospital regarding these allegations against Mr. Farmer; correct?

2 A Yes.

3 Q I'm sorry?

4 A Yes.

5 Q Okay. And that was filed in July of '09, July 23rd of 2009?

6 A Okay. Somewhere in there.

7 Q And in the lawsuit what you're seeking is money; correct?

8 MR. MERBACK: Your Honor, I would object to this point beyond -- I mean,
9 it's one thing -- I think it's not relevant at this point. It's one thing to ask the question
10 about the lawsuit, but questions beyond that aren't relevant.

11 THE COURT: Beyond the scope of direct.

12 MR. MANINGO: And, Judge, I think it goes directly towards motive and bias
13 especially if a witness has a financial motive regarding her testimony. I think it's
14 definitely -- and which my co-counsel is explaining -- is covered under *Chavez*
15 *versus* -- v. *State* -- that it does not need to be within the scope of the direct when
16 you're talking about the motive and bias of a witness.

17 THE COURT: Okay. So, the objection's overruled. Proceed.

18 BY MR. MANINGO:

19 Q Ms. [REDACTED], the question was are you aware that -- excuse me let me
20 rephrase that -- by filing a lawsuit what you're looking to accomplish is to receive
21 money damages form the hospital; correct?

22 A From --

23 Q From Centennial Hills Hospital?

24 A From this lawsuit here?

25 Q Because of what happened with Mr. Farmer you're suing the hospital?

1 A Right.

2 Q Okay. And you're suing the hospital for money; right?

3 A Right.

4 Q Okay.

5 A My attorney is.

6 Q And you're aware that a conviction in this criminal case will help the
7 lawsuit?

8 MR. MERBACK: Objection, Judge. That's clearly beyond her -- lack of
9 foundation. It's beyond her scope of knowledge and it's not relevant.

10 THE COURT: Lacks foundation and assumes facts not in evidence. It's
11 sustained.

12 MR. MANINGO: Court's indulgence.

13 BY MR. MANINGO:

14 Q Ms. [REDACTED] we're just about finished. You had started to mention a
15 situation where Centennial Hills Hospital, you had property stolen from you while
16 you were there?

17 A Yeah.

18 Q And did you ever file any kind of a complaint or anything with the
19 hospital?

20 A Yes.

21 Q Okay. And you did not receive any satisfaction from them regarding
22 that?

23 A No.

24 Q And did you pursue it by calling the police or just by contacting the
25 hospital?

1 A The hospital and their security department. I believe I did paperwork
2 with them.

3 Q Okay. And nothing ever came of it. You never found out anything or
4 received your property?

5 A No.

6 Q And that happened -- that all happened before any incidents with Mr.
7 Farmer?

8 A Yes.

9 MR. MANINGO: Okay. Thank you, Ms. [REDACTED]. Pass the witness.

10 THE COURT: Redirect.

11 MR. MERBACK: No questions, Judge.

12 THE COURT: All right. May the witness then be excused?

13 MR. MERBACK: Yes, Your Honor.

14 THE COURT: Thank you. You're excused.

15 MR. MERBACK: Your Honor, can I slip out and get her son; is that okay?

16 THE COURT: Yes.

17 THE WITNESS: Do I have a chance to say anything or no?

18 THE COURT: No, you have to just answer questions of counsel so --

19 THE WITNESS: Okay.

20 THE COURT: -- you can speak to the District Attorney or anybody that you
21 wish to about this, but you don't have to speak to anybody that you do not wish to.

22 MR. MANINGO: Judge, actually -- are we on the record still?

23 THE COURT: Yes.

24 MR. MANINGO: Okay. Thanks. We're asking the Court to advise the
25 witness that this is actually trial testimony at this point and that the witness is not

1 allowed to discuss her testimony with anybody else or what went on here because
2 there are other potential witnesses, in particular her family members and her sons.

3 So --

4 THE COURT: Let me admonish her. All right.

5 MR. MANINGO: Yes, please.

6 THE COURT: All right. So, Ms. [REDACTED] because what we did today is in
7 order to preserve your testimony for trial and later your testimony will be played for
8 the jury. The reason your son was asked to step out into the hall and wait there was
9 because he will be a witness in the trial and so don't discuss your testimony here
10 today with your son. It's important that we maintain that exclusion of the witness
11 and so don't discuss your testimony with your son or other members of your family
12 who might be trial witnesses in this matter. All right.

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 Anything further?

16 MR. MANINGO: Oh, no, Judge. Thank you.

17 THE COURT: Thank you. Court is adjourned.

18 MR. MERBACK: Thank you, Your Honor.

19

20 [Proceedings concluded at 12:24 p.m.]

21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24

25

Patricia Slattery