

# **EXHIBIT 13**

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
JANE DOE,  
Plaintiff,  
vs.  
CASE NO. 09-A-595780  
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.  
~~~~~

DEPOSITION OF  
MICHELE SIMMONS, RN  
Thursday, November 15, 2012  
9:30 a.m.  
520 South Fourth Street  
Las Vegas, Nevada  
Carol O'Malley, CCR 178, RMR

1 BY MR. MURDOCK:

2 Q. You did. Who did you speak to?

3 A. Connie Brown.

4 Q. How did you notify Connie Brown about this?

5 A. I'm not sure a hundred percent. I believe  
6 it was through the phone. I believe.

7 Q. Did you email her?

8 A. I'm not sure.

9 Q. Now, of course when you were filling out  
10 this form, you certainly were being honest, correct?

11 A. I was gathering information and what I had  
12 in front of me.

13 Q. And you were being honest?

14 A. Yes.

15 Q. Just as you are here today, correct?

16 A. Yes.

17 Q. So under "Nature of Incident" you put an X  
18 next to this one, "Abuse of client and/or patient  
19 and/or other caregivers." Do you see that?

20 A. Yes.

21 Q. You checked that off, correct?

22 A. Yes.

23 Q. You didn't have to check it off, correct?

24 MR. VOGEL: I object to form.

25 THE WITNESS: This is asking me the

1 nature of the incident and what the incident came in  
2 as.

3 BY MR. MURDOCK:

4 Q. Right.

5 A. And that is defined as -- one of the  
6 options was that that was the allegation, as far as  
7 that would be an abusive situation.

8 Q. What would be an abusive situation?

9 A. Fraternizing with clients would be a  
10 boundary.

11 Q. Do you believe that's abusive?

12 MR. VOGEL: I object to form.

13 THE WITNESS: Only if an act had been  
14 done.

15 BY MR. MURDOCK:

16 Q. So if an act had been done, you believe  
17 it's abusive, correct?

18 A. If an act had been done, yes.

19 Q. Certainly. And on January 25, 2008 you  
20 actually checked off, "Abuse of client and/or patient  
21 or other caregivers," with regard to the information  
22 you had before you with regard to Steven Farmer,  
23 correct?

24 MR. VOGEL: I object to form.

25 THE WITNESS: It's checked off, yes.

1 BY MR. MURDOCK:

2 Q. You checked it off, correct?

3 A. Yes.

4 Q. Now, if you turn to the second page, it's  
5 got your signature again on the second page, correct?

6 A. Yes.

7 Q. This is what's called the "Incident Report  
8 Investigation" page, correct?

9 A. Yes.

10 Q. And it says, "This section to be completed  
11 by the branch manager," is that correct?

12 A. Yes.

13 Q. And you were acting as the branch manager  
14 when you filled this out, correct?

15 A. Correct.

16 Q. And so let's see. Under the first line it  
17 says, "Are there any factors that caused the  
18 occurrence?" What did you write down?

19 A. I did not write anything, because I  
20 attached a write-up. I didn't fill out everything,  
21 because I attached a write-up to this form, as to  
22 what my investigation was.

23 Q. The second question asked you, "What  
24 actions were necessary to resolve the occurrence?"

25 Your answer was, "Followed up with

1                   So what I'm getting at is, the  
2                   allegation was "abuse of a patient." You had your  
3                   side of the story. I got that. You got Steven's  
4                   side.

5                   But the investigation was not  
6                   complete at Rawson-Neal, and you still sent him out  
7                   to another hospital knowing that, correct?

8                   A. He was staffed at other facilities. He was  
9                   not DNR'd at all facilities. He was DNR'd at  
10                  Southern Nevada Adult Mental Health. So yes, he  
11                  worked at other facilities.

12                 Q. Okay. So Centennial needs a CNA.

13                         You got the contract, right? You  
14                   were the one who actually went out and got the  
15                   contract with Centennial, didn't you?

16                 A. It was signed by our corporate office.

17                 Q. Right, it was signed by, but you were the  
18                   one who referred it and got it set up, right?

19                 A. Yes.

20                 Q. Okay. And as a matter of fact, Centennial  
21                   at some point I guess told you they needed a CNA,  
22                   right?

23                 A. That's how it would work, yes.

24                 Q. Would they make a phone call? Or how would  
25                   that work?

1 Q. Now, while he was on hold during this  
2 investigation, would you have sent him out to another  
3 facility?

4 MR. VOGEL: I object to form. It calls  
5 for speculation.

6 BY MR. MURDOCK:

7 Q. Well, would there be any reason why you  
8 wouldn't send him out? He's a good employee, isn't  
9 he?

10 A. I mean this -- no, we did not send him out.

11 Q. Would you have sent him out?

12 MR. VOGEL: I object to form.

13 BY MR. MURDOCK:

14 Q. In other words, if he wasn't arrested and  
15 all you had is this, would you have sent him out  
16 to -- I don't know, Sunrise Hospital?

17 MR. McBRIDE: I object to form.  
18 Incomplete hypothetical.

19 MR. VOGEL: Foundation. Argumentative.

20 THE WITNESS: I followed the  
21 recommendation of the HR.

22 BY MR. MURDOCK:

23 Q. I understand what you did.

24 What I'm asking you is, would you  
25 have?

1 Services' possession, is that correct?

2 A. We have copies of this in his file, yes.

3 Q. And so would you agree with me that it's  
4 more likely than not that you had these Exhibits 12  
5 and 13 in the file of Mr. Farmer prior to May 18th --  
6 or May 16th, 2008?

7 A. I'm not sure about when they came in the  
8 file.

9 Q. Would you expect that they came in before  
10 he was arrested?

11 A. I'm not sure when they came into the file  
12 actually. There's no facts. There's nothing to show  
13 when they were actually put into the file.

14 Q. In other words, similar to Plaintiff's  
15 Exhibit 10; is that correct?

16 A. Like I think I stated, I'm not sure exactly  
17 when this was put into the file. To say the exact  
18 date and time, it's hard for me to know that.

19 Q. All right. All I'm asking you is, is it  
20 before a certain date, but before he was arrested?  
21 He wasn't working for you anymore at that point.

22 So what I'm saying is, I would  
23 assume the documents are in the file, Exhibits 12 and  
24 13, prior to him being arrested, correct?

25 A. I believe so, but I'm not --



1 Q. Is it more likely than not?

2 A. More likely than not.

3 Q. Thank you.

4 Have you ever attempted to speak  
5 with any of the women who were sexually assaulted?

6 MR. VOGEL: I object to form.  
7 Allegedly sexually assaulted.

8 MR. MURDOCK: Okay.

9 I don't have anything further at  
10 this time.

11 MR. McBRIDE: No questions.

12 MR. BEMIS: I don't have any questions.

13 MR. VOGEL: You're done.

14 MR. MURDOCK: Michele, thank you very  
15 much.

16

17 (The deposition concluded at 1:45 p.m.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of MICHELE SIMMONS, RN on November 15, 2012  
commencing at the hour of 9:30 a.m.

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 2nd day of December, 2012.

Carol O'Malley, CCR No. 178

CONTRACT NO. GA-474

**AGREEMENT**

**FOR**

**SUPPLEMENTAL STAFFING SERVICES  
[DESERT]**

**between**

**BROADLANE, INC.**

**and**

**AMERICAN NURSING SERVICES, INC.**

**DATED: August 12, 2007**

**EXHIBIT E**  
**CUSTOMER LIST**  
**MARKET: LAS VEGAS**

| Facility Name                          | Street Address                                       |
|----------------------------------------|------------------------------------------------------|
| Desert Springs Hospital Medical Center | 2075 East Flamingo Road Las Vegas, Nevada 89119      |
| Spring Valley Hospital                 | 5400 South Rainbow Boulevard Las Vegas, Nevada 89118 |
| Summerlin Hospital Medical Center      | 657 Town Center Drive Las Vegas, Nevada 89144        |
| Valley Hospital Medical Center         | 620 Shadow Lane Las Vegas, Nevada 89106              |
| Centennial Hills                       | 6900 North Durango Dr., Las Vegas, NV, 89149-4409    |

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
JANE DOE,  
Plaintiff,  
vs.  
CASE NO. 09-A-595780  
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.  
~~~~~

DEPOSITION OF  
SALVATORE SPARACINO

Tuesday, March 12, 2013

9:30 a.m.

520 South Fourth Street  
Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

1 "HRN Staffing." That's another company?

2 MR. BEMIS: Correct.

3 BY MR. MURDOCK:

4 Q. So at American Nursing it would say  
5 "American Nursing Services?" Or what would it say?

6 A. Usually the company's name is spelled out,  
7 however they chose to be called. If it was HRN it  
8 was HRN, and we would keep the abbreviation.

9 If it was American Nursing  
10 Services, it would be spelled that way. So if he was  
11 working for American Nursing Services, that's what it  
12 would say on the badge.

13 MR. MURDOCK: MR. MURDOCK: Why don't  
14 we mark this as 2.

15 (Plaintiff's Exhibit 2 marked.)

16 BY MR. MURDOCK:

17 Q. So we're looking at Plaintiff's Exhibit 2.  
18 On the bottom where it says "HRN Staffing 2," in  
19 Mr. Farmer's instance it would say "American Nursing  
20 Services" on the bottom?

21 A. Yes, sir, right below "Contract Staff."

22 Q. But on the top it would still say  
23 "Centennial Hills Hospital Medical Center," is that  
24 correct?

25 A. Yes.

1 Q. Okay. What does "Contract Staff" mean?

2 A. To the best of my knowledge, "Contract  
3 Staff" at that time meant personnel that were not  
4 part of our system. They were not part of us. That  
5 would be agencies, traveling nurses, that sort of  
6 thing.

7 Q. How are the patients told what a contract  
8 staff individual is?

9 A. They're not instructed one way or the  
10 other. It's simply just a badge identification.

11 Q. So in other words, if a patient sees  
12 someone wearing his badge, unless they ask, they're  
13 not going to know whether they're an employee of the  
14 hospital or not, right?

15 A. No.

16 Q. Is that correct?

17 A. Yes. They don't get instructions one way  
18 or the other.

19 Q. Thank you.

20 Now, Mr. Farmer. Let's go to  
21 Mr. Farmer. Mr. Farmer started working at Centennial  
22 Hills through American Nursing in I believe March of  
23 2008. Would that be correct?

24 A. I believe it was late winter, if I recall.  
25 He was with us for a few months on and off. He was a

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of SALVATORE SPARACINO on March 12, 2013 commencing  
at the hour of 9:30 a.m.;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

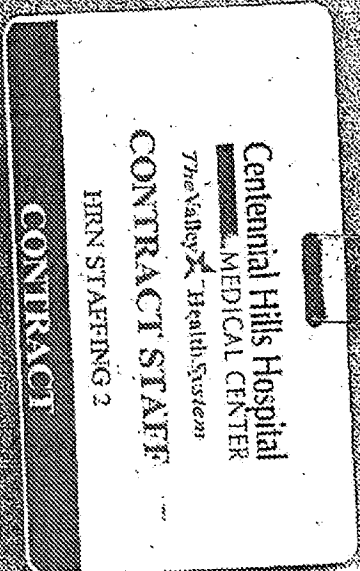
I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 24th day of March, 2013.

Carol O'Malley, CCR No. 178



215 Depo. Exh. # 2  
Carol O'Malley, CCR No. 178, RMR



DISTRICT COURT  
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, an individual, )

Plaintiff, )

vs. )

Case No.

A570756

CENTENNIAL HILLS HOSPITAL MEDICAL )

CENTER AUXILIARY, a Nevada )

corporation; VALLEY HEALTH SYSTEM )

LLC, Limited Liability Company; )

VALLEY HOSPITAL MEDICAL CENTER, )

INC., a Nevada corporation; )

UNIVERSAL HEALTH SERVICES )

FOUNDATION, a Pennsylvania )

corporation; AMERICAN NURSING )

SERVICES, INC., a Louisiana )

corporation; STEVEN DALE FARMER, )

an individual; DOES INDIVIDUALS )

1 through 10 and ROE BUSINESS OR )

GOVERNMENTAL ENTITIES 1 through )

10, inclusive, )

Defendants. )

DEPOSITION OF KAREN SUE GOODHART

Taken on January 27, 2010

At 9:03 A.M.

1640 West Alta Drive, Suite 4

Las Vegas, Nevada

LST 117315A

Reported by: Jennifer A. Caton, RDR, CRR, CCR #422



1 that a CNA would do in the ER in this type of  
2 situation? I mean, when would a CNA interact with a  
3 patient?

4 A. When -- no, sir. That's a very  
5 difficult question to answer, sir.

6 Q. Could a registered nurse like yourself  
7 ask a CNA to assist in treating a patient?

8 A. Assist in what manner, sir?

9 Q. In doing anything, getting the patient  
10 blankets or adjusting IVs, whatever, I mean, just  
11 some assistance.

12 A. They can assist in non-nursing -- or  
13 non-RN functions.

14 Q. Okay. Can we narrow that down a little  
15 bit? I mean, they obviously can't treat a patient  
16 medically.

17 A. Correct. They can get a blanket.

18 Q. Okay.

19 A. They can get a water.

20 Q. Can they --

21 A. If it was -- with permission.

22 Q. Can they touch a patient? Can they  
23 handle a patient, you know, physically touch a  
24 patient?

25 A. They can give a bed bath. They can

1 clean up stool and urine. They can give a bedpan.

2 Q. With a female patient like Roxanne  
3 Cagnina -- who we have already established was  
4 changed into a hospital gown; correct?

5 A. Correct.

6 Q. Would she have any undergarments  
7 underneath that gown?

8 MR. FERRAINOLO: Object to form.

9 THE WITNESS: She could have.

10 BY MR. HYMAN:

11 Q. Would the records indicate that?

12 A. No, sir.

13 Q. Fair to say a CNA or a nurse's assistant  
14 is not supposed to be touching underneath a female  
15 patient's gown, especially a male CNA?

16 MR. FERRAINOLO: Object to form.

17 THE WITNESS: That's another difficult  
18 question to answer, sir, because there are things  
19 that they do have to do, and sometimes that requires  
20 basically -- I'm not sure where -- what you're  
21 trying to ask.

22 BY MR. HYMAN:

23 Q. Okay. Maybe -- you know, you said you  
24 were kind of familiar with the facts of this case,  
25 but do you understand that the plaintiff was

CERTIFICATE OF REPORTER

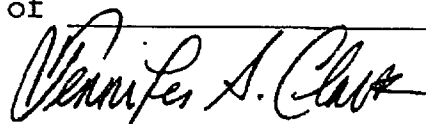
STATE OF NEVADA       )  
                              SS:  
COUNTY OF CLARK       )

I, Jennifer A. Caton, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the deposition of Karen Sue Goodhart, commencing on January 27, 2010.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes into written form, and that the typewritten transcript is a complete, true, and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

  
\_\_\_\_\_  
Jennifer A. Caton, RDR, CRR, CCR 422

DISTRICT COURT

CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

CASE NO. 09-A-595780

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.  
~~~~~

DEPOSITION OF

DOUGLAS NICHOLS

Thursday, February 14, 2013

2:00 p.m.

520 South Fourth Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

1 Q. Yeah.

2 A. No.

3 Q. You never read anything about it?

4 A. No.

5 Q. You've never been taught anything about it?

6 A. I mean probably in some of the training  
7 that the hospital staff does -- there may be  
8 something in there concerning assaults on patients or  
9 on staff themselves, but that's about it.

10 Q. But I mean specific to --

11 A. Specifics, no. No.

12 Q. Let me just state that again. -- specific  
13 to Las Vegas hospitals?

14 A. No.

15 Q. Do patient doors have locks on them?

16 A. No, sir.

17 Q. And let me just be specific here.

18 Do patient doors at Centennial  
19 Hills Hospital have locks on them?

20 A. No, not that I'm aware of.

21 Q. So in other words -- I'm going to call her  
22 Jane Doe for purposes of this case, but you know her  
23 real name, I assume; is that correct?

24 A. No, I do not.

25 Q. Well, my client's name --

1 MR. MURDOCK: Off the record for a  
2 second.

3 (Discussion off the record.)

4 BY MR. MURDOCK:

5 Q. So in other words, Jane Doe could not have  
6 taken care of things for herself, and locked the door  
7 to stop people from coming in and out of her room; is  
8 that correct?

9 A. If there's no lock on the door, yes.

10 Q. Is there an eyepiece on the door?

11 A. No.

12 Q. Is there a window in the door?

13 A. No, sir.

14 Q. Okay. Now, you're aware of the room that  
15 Jane Doe was in?

16 A. No, sir.

17 Q. If I told you she was on the sixth floor,  
18 would that ring a bell?

19 A. Yeah. I know the sixth floor, yes.

20 Q. I assume you do.

21 Now, the sixth floor -- what kind  
22 of patients are on the sixth floor? Do you know?

23 A. I believe they call them sort of a medical  
24 med-surg floor. Just basic patients are on 6.

25 Q. Right. Okay. And the hospital has nurses,



1 CNAs, and other stuff, correct?

2 A. Yes.

3 Q. How do you identify somebody who actually  
4 works in the hospital? How would a patient identify  
5 them?

6 A. By their badge.

7 Q. If a nurse wanted to come in the room of a  
8 patient, does the nurse need to swipe their badge?

9 A. No, sir.

10 MR. BEMIS: And you're speaking for the  
11 sixth floor, correct?

12 MR. MURDOCK: Yeah, for the sixth  
13 floor.

14 THE WITNESS: No, sir.

15 BY MR. MURDOCK:

16 Q. Now, there's a nurses' station on the sixth  
17 floor, is that correct?

18 A. Yes, sir.

19 Q. And do you know how many patient rooms  
20 there are on the sixth floor?

21 A. I believe approximately like 30 to 35.

22 Q. Are they all private, semi private? What  
23 are they?

24 A. There's a couple rooms -- or I'd say maybe  
25 eight rooms that are sort of contact precaution

21 (Pages 78 to 81)

Page 78

1 MR. HYMAN: Would you like to look at that?  
 2 THE WITNESS: Yes.  
 3 \*\*\*  
 4 (BRIEF RECESS)  
 5 \*\*\*  
 6 BY MR. HYMAN:  
 7 Q. Okay. So during the brief break, you had an  
 8 opportunity to review ANS 195 through 199?  
 9 A. Yes.  
 10 Q. Okay. And so similar to the questions I was  
 11 asking you, based on the dates here of January 25th,  
 12 2008, it looks like this incident was reported  
 13 possibly a little less than a month before he started  
 14 working at Centennial Hills Hospital. Is this the  
 15 type of information Centennial Hills Hospital would  
 16 have wanted?  
 17 A. Yes.  
 18 Q. And had you had this information, would  
 19 Centennial Hills Hospital have made any different  
 20 decision about taking on Mr. Farmer?  
 21 A. Had I personally seen this information, I  
 22 would have wanted to get additional information about  
 23 that incident before making a decision to bring him  
 24 on.  
 25 Q. At least until that time occurred that you

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1 information about Mr. Farmer, what he did, or  
 2 anything like that?  
 3 A. No.  
 4 Q. Then when this incident occurred -- or at  
 5 least allegedly occurred -- and was reported sometime  
 6 around May 16th or 17th, 2008, did you have any  
 7 personal involvement or anything to do with Mr.  
 8 Farmer and these allegations?  
 9 A. I had no personal involvement with Mr.  
 10 Farmer. I was asked to review the agency file to see  
 11 that everything was in place.  
 12 Q. So do you mean the ANS agency file?  
 13 A. The file that was in our office submitted to  
 14 us by ANS.  
 15 Q. Does that include what we were just talking  
 16 about?  
 17 A. Yes.  
 18 Q. I mentioned that ANS provided us with  
 19 voluminous documents. Those aren't also in your  
 20 file, are they?  
 21 A. No.  
 22 Q. There was a police investigation that's  
 23 ongoing. Were you interviewed?  
 24 A. No.  
 25 Q. And I'm not going to ask you anything about

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1 received that additional information that satisfied  
 2 your concerns, would you have taken on Mr. Farmer?  
 3 A. We would not have.  
 4 Q. Do you at least feel that whatever  
 5 contractual or other relationships you had with  
 6 American Nursing Services or indirectly through a  
 7 middleman company -- do you feel that their  
 8 obligations owed to the hospital were breached?  
 9 MR. FERRAINOLO: Object to form.  
 10 A. I don't specifically know the terms of the  
 11 contract, but I do know that I would have wanted to  
 12 have had this information.  
 13 MR. HYMAN: Okay. For the purposes of the  
 14 record, we'll go ahead and mark this as an exhibit to  
 15 your deposition.  
 16 BY MR. HYMAN:  
 17 Q. Before we conclude this deposition, most of  
 18 the questions I asked you were kind of a general  
 19 nature. Do you recall any personal dealings with Mr.  
 20 Farmer yourself?  
 21 A. No.  
 22 Q. Have you ever actually seen him in person?  
 23 A. Not that I'm aware of.  
 24 Q. And before this incident happened in or  
 25 around mid-May of 2008, you don't have any personal

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1 what you talked to attorneys or anything like that,  
 2 but as far as other people at Centennial Hills  
 3 Hospital, have you talked to them about this case?  
 4 A. Our quality person asked me where she could  
 5 find the file, and I directed her to the Nurse  
 6 Staffing Office.  
 7 Q. Who was that? Who is the quality person?  
 8 A. Yvette Wilson is currently. I believe at  
 9 the time it was Janet Callahan.  
 10 Q. The file is the same file we talked about?  
 11 A. Yes.  
 12 Q. Was there anything else that wasn't in the  
 13 file that you provided her?  
 14 A. No.  
 15 Q. And from a human resources standpoint, are  
 16 you aware of any new policies that evolved due to  
 17 this specific incident?  
 18 MR. FERRAINOLO: Object to form.  
 19 A. I'm not aware of any new policies.  
 20 MR. HYMAN: Okay. That's all I have.  
 21 MR. FERRAINOLO: E-Tran, please, and the  
 22 exhibit.  
 23 (Exhibit 1 was marked.)  
 24 (Proceedings concluded at 10:49 a.m.)  
 25

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CERTIFICATE OF DEPONENT  
PAGE LINE CHANGE REASON

I, LISA DOTY, deponent herein, do hereby  
certify and declare the within and foregoing  
transcription to be my deposition in said action;  
that I have read, corrected, and do hereby affix my  
signature, under penalty of perjury, to said  
deposition.

LISA DOTY, Deponent DATE

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CERTIFICATE OF REPORTER  
STATE OF NEVADA )

) ss:

COUNTY OF CLARK )

I, KELE R. SMITH, a duly commissioned  
Notary Public, Clark County, State of Nevada, do  
hereby certify: That I reported the taking of the  
deposition of LISA DOTY, commencing on Tuesday,  
February 2, 2010, at 9:06 a.m.

That prior to being deposed, the witness was  
by me duly sworn to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
typewriting and that the typewritten transcript is a  
complete, true, and accurate transcription of said  
shorthand notes and that witness was asked to review  
and correct the transcript.

I further certify that I am not a relative or  
employee of counsel of any of the parties, nor a  
relative or employee of the parties involved in said  
action, nor a person financially interested in the  
action.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
3rd day of February, 2010.

KELE R. SMITH, CCR #672

PHS Depo. Exh. 1  
 Carol O'Malley, CCR No. 179 RMR

CENTENNIAL HILLS  
 AGENCY FILE REQUIREMENTS  
 JOB CLASS:  
 AGENCY:  
 2008

*Farmer, Steven* *CNA* *American Nurse*

| SECTION # | FILE REQUIREMENTS                     | EXPIRATION DATES     | COMMENTS             |
|-----------|---------------------------------------|----------------------|----------------------|
| 1         | APPLICATION / REFERENCES <i>red</i>   | <i>OK</i>            |                      |
|           | BACKGROUND CHECK                      | <i>OK</i>            |                      |
|           | SIGNED JOB DESCRIPTION - AGENCY       | <i>OK</i>            |                      |
| 2         | SKILLS COMPETENCY CHECKLIST           | <i>OK</i>            |                      |
|           | IV CERTIFICATION (LPN'S ONLY)         |                      |                      |
| 3         | CERTIFICATIONS: Front / back signed   |                      |                      |
|           | NEVADA NURSING LICENSE                | <i>CNA 3/11/09</i>   | <i>CNA 021509 PS</i> |
|           | CPR/BLS                               | <i>6/30/09</i>       |                      |
|           | ACLS (ICU, IMC/ER)                    | <i>NA</i>            |                      |
|           | NRP (2ND FLR)                         | <i>N/A</i>           |                      |
|           | PALS (ER, PICU)                       | <i>N/A</i>           |                      |
|           | NALS Level 2 & 3 req                  | <i>N/A</i>           |                      |
| 4         | PHYSICAL                              | <i>done 9/21/09</i>  |                      |
|           | DRUG TEST (URINE TOX. SCREEN)         | <i>done 10/21/07</i> |                      |
|           | MANTOUX (ANNUALLY)                    | <i>done 10/29/07</i> |                      |
|           | CHEST XRAY (TB SURVEILLANCE) ANNUALLY | <i>NA</i>            |                      |
| 5         | *DEPARTMENT ORIENTATION               |                      |                      |
|           | VHS ORIENTATION SHEET                 |                      |                      |
| 6         | *ANNUAL REVIEW                        |                      |                      |
|           | MED TEST / RN / LPN                   |                      |                      |
|           | *CURRENT EVALUATIONS                  |                      |                      |

\* - FOR HOSPITAL USE ONLY

CHH00326

**In the Matter Of:**  
**JANE DOE vs. VALLEY HEALTH**

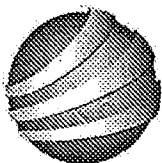
09-A-595780

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**CRYSTAL JOHNSON**

*May 28, 2013*

---



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[EsquireSolutions.com](http://EsquireSolutions.com)

1 at Centennial Hills.

2 Q. Where did you work in California?

3 A. Western Medical Center, Santa Ana.

4 Q. Is that a UHS hospital?

5 A. No.

6 Q. Western Medical, Santa Ana. Where is that?

7 A. It's off the 57 and Tustin, I believe.

8 Q. Are you from there?

9 A. Yes.

10 Q. Are you a high school graduate?

11 A. Yes.

12 Q. College graduate?

13 A. No. Some courses.

14 Q. Where did you take the courses?

15 A. At Huntington Beach.

16 Q. Community college?

17 A. Yes.

18 Q. And you said you also worked at Centennial  
19 Hills?

20 A. Yes.

21 Q. When did you work at Centennial Hills?

22 A. I started December 17th, '07, before they  
23 opened.

24 Q. How do you know that exactly?

25 A. I was excited. I was excited to open the

1 A. No.

2 Q. Did he live here for awhile?

3 A. No.

4 Q. Are you married?

5 A. No.

6 Q. Do you have any children?

7 A. No.

8 Q. How did you get your job with UHS, the  
9 first one?

10 A. I worked through the agency.

11 Q. What agency?

12 A. Apple.

13 Q. Apple Staffing or something like that?

14 A. I think so. They needed help in HR, so  
15 that's how I got in with UHS.

16 Q. So you moved over to Centennial Hills and  
17 you opened the hospital, correct?

18 A. Yes.

19 Q. And what was your job classification when  
20 you opened the hospital at Centennial Hills?

21 A. Staffing coordinator.

22 Q. What is a staffing coordinator?

23 A. We find out the needs on each floor, each  
24 department, and we call the agencies and let them  
25 know how many nurses we need, CNAs, and we try to

1 A. I think Steve was from there.

2 Q. And that was a poor question on my part.

3 Do you remember any of the  
4 individuals that you would have spoken with at  
5 American Nursing?

6 A. No.

7 Q. Do you remember a Michele Simmons?

8 A. Michele sounds familiar. I do not  
9 recognize the last name.

10 Q. Okay. Would your contacts have been all  
11 telephonic with these companies like American  
12 Nursing, or would they have also been via email?

13 A. We did not use email, but we would fax over  
14 needs to all the agencies, and telephone.

15 Q. Do you use email now?

16 A. Yes.

17 Q. When did you start using email?

18 A. Not until I went to Summerlin.

19 Q. Okay. So during all your time at  
20 Centennial you were using faxes to send over the  
21 needs, things like that, correct?

22 A. Yes, correct.

23 Q. Were there any emails sent back and forth?

24 A. Maybe for travelers, but I do not remember  
25 doing it for everyday staffing.



1 Q. What is travelers?

2 A. They would have a contract for 8 weeks, 12  
3 weeks in a certain department, so they were  
4 guaranteed shifts.

5 Q. Traveling nurses?

6 A. Yes. No CNAs.

7 Q. Okay. But would that be through an agency  
8 as well?

9 A. Yes.

10 Q. Is it possible that you used email with  
11 American Nursing for even non-traveling nurses?

12 A. It's possible.

13 Q. Okay. Did you have an email address when  
14 you were at Centennial?

15 A. Yes.

16 Q. What was it?

17 A. That I don't remember. I believe it was  
18 Crystal.Johnson@UHSinc.com.

19 Q. Okay. Now, you said one of the things you  
20 would do is background checks, billings, things like  
21 that; is that correct?

22 A. Yes.

23 Q. How would you perform a background check?

24 A. Well, we would not actually do the  
25 background checks. The agencies were required to do

1 the background checks and send us the printout.

2 Q. What were you looking for when a background  
3 check was ordered or requested?

4 A. Misdemeanors, felonies.

5 Q. Anything else?

6 A. No.

7 Q. How about like past job performance?

8 A. We would look at that, yes.

9 Q. And that's something though that would have  
10 to be given from the company, correct?

11 A. Yes.

12 Q. From like ANS to you, correct?

13 A. Yes.

14 Q. Would that be something you normally would  
15 have to ask for, or is that something they would just  
16 give you?

17 A. They should give it to us.

18 Q. And when you say "they should," how do they  
19 know they should?

20 A. We would let them know that this is what we  
21 would need. We would send them a sheet with all the  
22 requirements, the paperwork that they would need to  
23 send us.

24 Q. And would that sheet have on there  
25 something about past employment, background?

1 A. It would have references.

2 Q. Just references?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes. I'm sorry.

6 Q. But what if they were, for instance, not  
7 allowed back at their prior job that they worked at  
8 before coming to Centennial? Is that something that  
9 you would know about?

10 A. No.

11 Q. Is that something you would ask about?

12 A. We would, but it wasn't required for us to  
13 ask that.

14 Q. Well, how would you ask that, if it wasn't  
15 required?

16 A. You know, if they were good employees, had  
17 good references from their employers. We wouldn't  
18 come right out and say, "Are they allowed back  
19 there?" We were not allowed to do that. But we  
20 would ask if they had a good reference from the  
21 employers.

22 Q. Who said you weren't allowed to do that?

23 A. Our managers.

24 Q. But you would ask about references instead?

25 A. (Witness nods.)

1 Q. Is that a yes?

2 A. Yes. Sorry.

3 Q. Now, when you were talking about  
4 references, were you asking about references from the  
5 prior job they had before Centennial Hills?

6 A. Yes.

7 Q. Not some references from 2005 or that kind  
8 of stuff, right?

9 A. Correct.

10 (Plaintiff's Exhibit 1 marked.)

11 BY MR. MURDOCK:

12 Q. Let me show you what's been marked as  
13 Plaintiff's Exhibit 1. Have you ever seen a document  
14 like this before?

15 A. Yes.

16 Q. Have you ever seen this document before?

17 A. Yes.

18 Q. Okay. Now, it's got a stamp on the bottom.  
19 It says CHH00326. Do you see that?

20 A. Yes.

21 Q. Now, that's a stamp that's put on by the  
22 lawyers, so don't worry about that stamp. Okay?

23 A. Okay.

24 Q. Nevertheless, you said you've seen this  
25 document before?

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of DOUGLAS NICHOLS on February 14, 2013 commencing at  
the hour of 2:00 p.m.;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 22nd day of February, 2013.

Carol O'Malley, CCR No. 178

DISTRICT COURT  
CLARK COUNTY, NEVADA

ROXANNE CAGNINA, )  
 )  
Plaintiff, )  
 )  
v. ) CASE NO. A570756  
 ) DEPT. NO. X  
CENTENNIAL HILLS HOSPITAL MEDICAL )  
CENTER AUXILIARY, a Nevada )  
Corporation; VALLEY HEALTH SYSTEM )  
LLC, a Nevada Limited Liability )  
Company; VALLEY HOSPITAL MEDICAL )  
CENTER, INC., a Nevada )  
Corporation; UNIVERSAL HEALTH )  
SERVICES FOUNDATION, a )  
Pennsylvania Corporation; )  
AMERICAN NURSING SERVICES, INC., )  
a Louisiana corporation; STEVEN )  
DALE FARMER, an individual; DOE )  
INDIVIDUALS 1 through 10, and ROE )  
BUSINESS OR GOVERNMENTAL ENTITIES )  
1 through 10, inclusive, )  
 )  
Defendants. )  
 )

---

DEPOSITION OF  
LISA DOTY  
LAS VEGAS, NEVADA  
TUESDAY, FEBRUARY 2, 2010

Reported By Kele R. Smith, NV CCR No. 672, CA CSR No.  
13405  
LIT Job No. 117317

1 A. Yes.

2 Q. When did you see this document last?

3 A. This exact one?

4 Q. Yes.

5 A. I don't know the exact date.

6 Q. Well, was it recent, in the last year?

7 A. No.

8 Q. Would it have been two years ago, three  
9 years ago?

10 A. Maybe three years ago, four years ago.

11 Q. Okay. And what is this document?

12 A. This is a sheet that we would have in our  
13 packets, and we would check off as we got the  
14 information that was needed.

15 Q. Okay. So for instance -- first of all,  
16 whose writing is on here?

17 A. This is mine.

18 Q. All the handwriting on this document is  
19 yours, is that correct?

20 A. Yes.

21 Q. Now, it says, "Farmer, Steven." Do you see  
22 that?

23 A. Yes.

24 Q. And it says "CNA." Do you see that?

25 A. Yes.

1 Q. And it says "American Nurse," is that  
2 right?

3 A. Yes.

4 Q. Now, American Nurse -- that was the agency,  
5 right?

6 A. Yes.

7 Q. Now, under Section 1, the "File  
8 Requirements," do you see where it says  
9 "Application?"

10 A. Yes.

11 Q. And that's circled?

12 A. (Witness nods.)

13 Q. Who circled that?

14 A. I did.

15 Q. And why did you circle it?

16 A. So I would know that I had the application  
17 and not the references.

18 Q. Because in fact where it says "2  
19 References," you put a little dash next to that and  
20 you wrote "need," is that correct?

21 A. Yes.

22 Q. And in fact your initials are under the  
23 expiration date. Do you see that?

24 A. Yes.

25 Q. Now, at some point were those references



1 ever given to you?

2 A. I'm not sure.

3 Q. But if they were, it would be your habit, I  
4 would assume, to check that off saying you got it,  
5 right?

6 A. Correct.

7 Q. Okay. But for some reason in this case  
8 it's not checked off as received, is that correct?

9 A. Correct.

10 Q. Now, what references were you asking for?

11 A. Two work-related references.

12 Q. And those work-related references, would  
13 you have expected that at least one of those would  
14 come from his last position while at American  
15 Nursing?

16 A. We would expect that, yes.

17 Q. Did you ever take any steps though to  
18 ensure that?

19 A. Yes.

20 Q. What steps did you take?

21 A. Well, usually American or any of the  
22 agencies would have their own evaluation that they  
23 would send to their jobs, and they would send them  
24 back, and all we could do was ask for them to make  
25 sure that they sent them, and keep bugging them.

1 Q. But would you allow the person to work even  
2 though you didn't have them?

3 A. We should not have.

4 Q. Now, it says "Background Check" underneath,  
5 and we're still in Section 1 here. What is the  
6 background check?

7 A. The background check is what the agencies  
8 run to see if they have any criminal history.

9 Q. Okay. And your initial is next to that.  
10 What does that mean?

11 A. Just that we received it.

12 Q. Okay. Well, when you have your initials  
13 above that, where it says "Application 2 References,"  
14 does that mean you received the references or not?

15 A. No, I don't believe I received it. It was  
16 that I received the application.

17 Q. Okay. And in fact that's why you wrote  
18 "need?"

19 A. Yes.

20 Q. Okay. "Signed job description." What is  
21 that?

22 A. That is a CNA job description that the  
23 agency has them sign, what is expected of them as  
24 being a CNA.

25 Q. And then Section 2 is a "Skills Competency

1 BY MR. MURDOCK:

2 Q. This is CHH00327. Is this your  
3 handwriting?

4 A. No.

5 Q. What is this document? Do you know?

6 A. This looks like a copy of our checkoff  
7 list. I'm not sure who wrote that.

8 Q. But why would there be two in the file?

9 A. I'm not sure.

10 Q. Is it normal for there to be two in the  
11 file?

12 A. No.

13 Q. Now, it says "Application," then it says  
14 "N/A." Do you see that?

15 A. Yes.

16 Q. Would there be any reason that that  
17 wouldn't be applicable?

18 A. No.

19 Q. Now, it says "Background Check." It says  
20 this was done July 29, 2007, if I'm reading it  
21 correctly. Do you see that?

22 A. Yes.

23 Q. But this isn't something that you would  
24 have filled out, correct?

25 A. No, this is not the one I filled out.

1 A. Yes.

2 Q. Why would that happen?

3 A. They would check it off to make sure they  
4 had everything and they sent us all the information.  
5 So we wouldn't pay attention to this part, because we  
6 would still go through everything and make our own.

7 Q. So there was really no reason for this  
8 document?

9 A. No.

10 Q. And in fact it's a little different than  
11 the document you actually filled out.

12 If you compare the two, for  
13 instance, on Section 1 it says "Application" on  
14 CHH327; and then if you flip back to CHH00326, it's  
15 got on there "Application/2 References."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall a time when Centennial Hills  
19 only required an application, and not references?

20 A. No.

21 Q. Do you know why this form 327 would be  
22 different than 326?

23 A. No.

24 Q. How did Mr. Farmer start working, if you  
25 didn't have the references?

1 A. I'm not sure.

2 Q. Whose job was it to make sure that you had  
3 the references?

4 A. Staffing coordinators.

5 Q. Was that you?

6 A. Yes, I'm one of them.

7 Q. And you do not believe that you had the  
8 references, is that correct?

9 A. Correct.

10 Q. And as you testified before, he should not  
11 have been working until you had the references; is  
12 that correct?

13 A. Yes.

14 MR. BEMIS: I object to form.

15 BY MR. MURDOCK:

16 Q. Now, is your job as staffing coordinator  
17 solely -- and I don't mean this in a negative way --  
18 but solely to put the file together, and somebody  
19 else makes the decision on that person, or do you  
20 actually make the decision on that person?

21 A. No, I did not make the decision on that  
22 person.

23 Q. Who does, or who did back at Centennial  
24 Hills?

25 A. They would just go to the floors and start

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                              )     ss.  
COUNTY OF CLARK     )

I, Carol O'Malley, Nevada Certified Court  
Reporter 178, do hereby certify:

That I reported the taking of the deposition  
of CRYSTAL JOHNSON on 28th commencing at the hour of  
1:00 p.m.;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
typewritten transcription of said deposition is a  
complete, true, and accurate transcription of my said  
shorthand notes taken down at said time. Review of  
the transcript was requested.

I further certify that I am not a relative or  
employee of an attorney or counsel involved in said  
action, nor financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 5th day of June, 2013.

*Carol O'Malley*

Carol O'Malley, CCR No. 178

# **EXHIBIT 4**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 1

**CONFIDENTIAL**

EVENT #:080516-1021

**SPECIFIC CRIME:** SEXUAL ASSAULT: OPEN AND GROSS LEWDNESS

**DATE OCCURRED:**

**TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS**

**CLARK COUNTY**

**NAME OF PERSON GIVING STATEMENT:** MURRAY, CHRISTINE

|                       |  |                           |        |
|-----------------------|--|---------------------------|--------|
| <b>DOB:</b>           |  | <b>SOCIAL SECURITY #:</b> |        |
| <b>RACE:</b>          |  | <b>SEX:</b>               | Female |
| <b>HEIGHT:</b>        |  | <b>WEIGHT:</b>            |        |
| <b>HAIR:</b>          |  | <b>EYES:</b>              |        |
| <b>WORK SCHEDULE:</b> |  | <b>DAYS OFF:</b>          |        |
| <b>HOME ADDRESS:</b>  |  | <b>HOME PHONE:</b>        |        |
| <b>WORK ADDRESS:</b>  |  | <b>WORK PHONE:</b>        |        |

**BEST PLACE TO CONTACT:**

**BEST TIME TO CONTACT:**

The following is the transcription of a tape-recorded interview conducted by Detective M. Saunders, P# 6076, LVMPD Sexual Assault Detail, on 06/13/2008 at 0635 hours.

Q. Good morning, Operator, this is Detective M. Saunders, S-A-U-N-D-E-R-S. A conducting one taped interview reference event number 080516-1021. This interviews taking place at 6900 North Durango Las Vegas, Nevada 89149.



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 2

CONFIDENTIAL

EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

Centennial Hills Hospital, sixth floor, um, nurse, nurses supervisors room. A it is approximately 0635 hours on the thirteenth of June, 2008. Present for this interview um, last name of Murray, M-U-R-R-A-Y, first name of Christine, C-H-R-I-S-T-I-N-E. Date of birth of 04-0 - or, [REDACTED], a address of 3350 North Durango Drive #1, 120 Las Vegas, Nevada 89129. She has a contact phone number of [REDACTED]. Is that information true and correct?

A. Um-hum, yes it is.

Q. Okay. And is it alright if I call you Christine or -

A. Chris is fine.

Q. Chris is fine, okay.

A. Um-hum.

Q. Um, Chris, I=m here to speak to you about an ongoing investigation that I have um, a reference a CNA that a was arrested out of this hospital. Are, are you familiar with what I=m talking about?

A. Yes, I am.

Q. Okay. And do you know the name of that individual?

A. Yes.

Q. That CNA?

A. Steve Farmers.

LVMPD0168

WA. 0636

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 3

**CONFIDENTIAL**

EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. And I wanna direct your attention back to the sixteenth of May, a 2008.  
Were you working that night?
- A. Yes, I was.
- Q. In which capacity were you working?
- A. Registered nurse.
- Q. Okay.
- A. On the seventh floor.
- Q. On the seventh floor. And that, that particular morning did you have a patient brought up from the ER by the name of Roxanne Cagnina (phonetic)?
- A. Yes, I did.
- Q. Okay, and do you remember, by chance, what room number she went into?
- A. I believe it was 727.
- Q. 727, okay, it could of been 725?
- A. Yes.
- Q. Okay, 725, okay. Um, when she was brought up, um, can you, can you explain to me the, the details um, of the first time that you had contact with her. As, as best you remember.
- A. With her?
- Q. Well, yes, we=ll, we=ll get back to Mr. Farmer.
- A. Okay.

LVMPD0169

WA. 0637

**CONFIDENTIAL**

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 4**

**EVENT #:080516-1021**

**STATEMENT OF: MURRAY, CHRISTINE**

Q. But we just, like what time was she brought up to the floor, that you remember?

A. She came up to the floor about four-twenty. The first that I saw her was when myself and the CNA, Corrine, walked in. We had been told that she had, had seizures. So we wanted to pad the bed rails. We found um, Mr. Farmer, walking her into the bathroom. We said, we would take it from there and he left immediately. And we walked her back, back to the bedroom. Back a, to the bed, after.

Q. Okay. Did she say anything to you after Mr. Farmer left? Did she appear distraught, distressed, anything?

A. She seemed confused. A when somebody has a lot of a drugs in them -

Q. Um-hum.

A. -a like that. Um, she did say, when we were walking her back, from the bathroom to the bed, are, is it all girls here? And we said, yes. And she said, oh good, I wanna pull my gown this way so when I sit down, I don=t choke myself. Which a lot of people do.

Q. Okay.

A. And so we said, oh yes, it=s all girls here, you go right ahead. And she did and then she got into bed.

**LVMPD0170**

WA. 0638

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 5

**CONFIDENTIAL**

EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. Um, when she was first brought, you say she got in, in about four-twenty. Was that the first time you physically saw her or did you see him like coming off the elevator with her at four-twenty?
- A. No, that was the first time I saw her, in her room, was the first time I saw her.
- Q. Okay. Saw her, okay. And how did you know that she was a put into her room? She was brought-
- A. Because - well, I was standing in another patients room, speaking to the family members.
- Q. Um-hum.
- A. Mr. Farmer came into the other patients room and told me that the patient he had just brought up and put in a room twenty-five was um, on a lot of drugs, pain killers and such and that she was kinda loopy and that she wouldn't notice if I didn't come right over there to see her.
- Q. Okay. And is that common? Has he, has he ever -
- A. I -
- Q. - done something like that before?
- A. I had never had him do that before.
- Q. Okay, and how long would you say, I know you didn't work directly with him, but how often, a how long have Mr. Farmer - had you seen Mr. Farmer at the hospital?

LVMPD0171

WA. 0639

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- A. I=d say for at least two months on and off, you know, cause we work different days but I=d seen him around quite a bit.
- Q. Right. Okay, so he=d been there awhile?
- A. Yea.
- Q. And that was the first time he ever made a comment to you like that about a -
- A. Yes.
- Q. -a patient.
- A. Yes.
- Q. Okay, did you find that odd?
- A. I found that strange, first of all, cause their not supposed to just walk into another patients room. You=re not supposed to walk into a patients room unless you have business in there. And he didn=t have business in there, he could of told that to my charge nurse.
- Q. Okay. Um, at um, okay and he told you \_\_\_\_\_ that, that she=s ready, ready to go be seen and then when you went in, um, in the room that=s when you found him about to take her to the bathroom and you guys -
- A. He actually was walking her into the bathroom.
- Q. Okay. Was she exposed in any way?
- A. No.

LVMPD0172

WA. 0640

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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CONFIDENTIAL

EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. Um, and that was at, you said about four-twenty.
- A. Um-hum.
- Q. Okay.
- A. Yes.
- Q. And what time, do you, do you recall what time that you annotated on your notes, for arrival?
- A. A around a quarter to five.
- Q. Okay. And is, would this um, I=m gonna show you this paper right here and it=s a - it=s a, looks like nurses notes.
- A. Um-hum.
- Q. It=s um, given to me by Centennial Hills. It says, 0445 a, patient to floor on stretcher. A vi., \_\_\_\_\_.
- A. Vital signs stable.
- Q. Okay. Heavily sedated, needed assistance to walk to bathroom, stated my headache is still not gone.
- A. Um-hum.
- Q. Okay. Alright. Now, did she disclose or she say anything to you at that time about anything that a, a might of happened to her or occurred?
- A. No.
- Q. And did she seem distressed or scared?

LVMPD0173

WA. 0641

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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- A. No, she seemed, the thing that she seemed the most was distress cause her headache. She had come in with a headache, she=d had it for a couple days. And that was the one thing, she said it doesn=t seem to matter what their, they=re giving me, il=s not getting rid of this headache.
- Q. Okay. Alright. So, um, you had made a comment to me earlier that a - when you were \_\_\_\_\_ the gur..., the gurney was outside the door .
- A. Um-hum.
- Q. Can you explain that to me? What, what was the -
- A. When he came to me and I finished talking to the patients.
- Q. Um-hum.
- A. The other patients and a it took me, I=d say, three to five minutes to finish up there and walk around where her room was.
- Q. Um-hum.
- A. It was on the other side. And I noticed his gurney was still there, which surprised me because our transport people usually bring the person up. Get them into the bed as quickly as possible, and then get back downstairs because we don=t have a lot of transporters and we, their usually called on their walkie talkies, like come on down. We=ve got somebody else to transport. So you usually don=t see a gurney and a trans..., and a transporter hanging around.

LVMPD0174

WA. 0642

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STATEMENT OF: MURRAY, CHRISTINE

Q. Okay.

A. So when we walked in and we saw him, and we said, we would take over from here - a Corrine and I, the CNA. He um, disappeared. He like grabbed the gurney and went.

Q. Okay. Cause normally he did, he wouldn't of even been there, he would of already -

A. Right, right, he would of gotten her into the bed, handed her the call light, and showed her how to use it, and been gone.

Q. Okay. And was that um, and that was at about, what time do you think, four-twenty?

A. Probably about, yea, around four-twenty.

Q. Okay. Um, lets see, \_\_\_\_\_. Um, as far as, well, \_\_\_\_\_ well, back to that. Did um, at about seven a.m, did you go and check on the patient again?

A. No, I had been in there around six-thirty. A I was trying to find out if she had had a seizure, I was trying to a anticipate what her - um, her needs were for the next shift when they were coming on.

Q. Yea.

A. If she needed anymore medicine or if she could have anymore medicine. At about six-thirty, she seemed like she was kind of dozing off so, I didn't wanna interrupt

LVMPD0175

WA. 0643



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STATEMENT OF: MURRAY, CHRISTINE

her. Cause sometimes sleep will get rid of the headache. So, I left her about six-thirty and I, I did not see - I was not looking toward her room.

Q. Okay.

A. The majority of my patients were on the other side.

Q. Okay.

A. So, I really didn't ch..., I figured she had gone to sleep. We weren't gonna disturb her.

Q. Okay. Do you ever recall seeing Mr. Farmer back up on the floor, anytime between six-thirty, seven o'clock?

A. No, I do not.

Q. Okay.

A. But then I wasn't looking for him.

Q. Did, has any other nurses or anyone else said anything to you that they saw him at about seven o'clock, standing in her room?

A. No.

Q. Walked in on, \_\_\_\_\_.

A. Nobody mentioned that to me.

Q. Okay. Um, did - when did you first find out about the allegations of that, the patient Roxanne Cagnina, had against Mr. Farmer?

LVMPD0176

WA. 0644

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STATEMENT OF: MURRAY, CHRISTINE

- A. When I woke up the next day and there were a couple messages from you, on my phone, and I called you because of course, the first thing I thought was my daughters, my granddaughter.
- Q. Okay.
- A. Those were the things I thought because nobody had the courtesy from here, to call and say that something had happened and they had given you my telephone number. Which I was really upset about.
- Q. Okay. You=re -
- A. Not that I gave you the number -
- Q. Right.
- A. -but that they didn=t call me and tell me so I -
- Q. That they didn=t bother to no..., notify you on -
- A. Yea.
- Q. -on what was happening.
- A. Yea.
- Q. Did um, okay. On a - did Ms. um, Cagnina, at any time, make any disclosures to you about anything that Mr. Farmer had done to her?
- A. No, she did not.
- Q. Okay. Alright. And can, what are - well let me, let me back up. You had made a comment earlier um, that he seemed to be very um, attentive.

LVMPD0177

WA. 0645

**CONFIDENTIAL**

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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**EVENT #:080516-1021**

**STATEMENT OF: MURRAY, CHRISTINE**

A. Um-hum.

Q. Can you, can you go over those details with me. What, what was it that you o..., you observed about um, Mr. Farmer?

A. Well, when he brought a patient up, if they had to have a \_\_\_\_\_ on, he would offer to put the \_\_\_\_\_ on. Which means of course, you know, behind the chest and a they have to go on the rib cages. So of course, on women it=s usually, you have to move the breast to put the, underneath the breast and stuff. He would always say, oh I=ll do that for you, you know, and you do what you have to do. He was always very complementary to everybody. He was always willing to do something extra if you wanted to. Very um, you know, just very helpful. He just wouldn=t -

Q. Did it seem to be more for female patients or any patient?

A. Actually, I think it was more for female patients.

Q. Okay, and when you say he had to put on the to..., \_\_\_\_\_ -

A. Um-hum.

Q. -how many, how many points of um, these, these leads?

A. There=s five leads.

Q. There=s five leads.

A. On our portable monitors, \_\_\_\_\_.

LVMPD0178

WA. 0646

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

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STATEMENT OF: MURRAY, CHRISTINE

- Q. And there=s, so one on basically on top of a, a below the clavicle -
- A. Right here.
- Q. -above, above the breast.
- A. Yea, by the belly area here.
- Q. And then two, one under each side of the breast -
- A. Right.
- Q. -and then one in between the breast.
- A. Right.
- Q. Okay. And he always seemed more than willing to -
- A. Oh, I=ll put that on for you, yup.
- Q. Did um, as far as his job, um, a is - where a CNA is concerned, does that normally does, when somebody puts on the \_\_\_\_\_, is that usually conduc..., um, completed by a nurse?
- A. No, we do have the CNA=s do that.
- Q. \_\_\_\_\_ (inaudible, both talking).
- A. So, see that=s not really out of the realm of his responsibilities.
- Q. Um-hum.
- A. So, nobody thought anything of it.

LVMPD0179

WA. 0647

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STATEMENT OF: MURRAY, CHRISTINE

- Q. Okay. Would, does CNA duties change from floor to floor? Like if somebody, like would ER have their own set of, of things that CNA=s can do and things that they can=t as compared to a CNA that was assigned to a, a floor for recovery?
- A. I think they would, yes.
- Q. Okay.
- A. I=m not positive.
- Q. Um-hum.
- A. Because I=ve never worked ER. Um, but I would think they would because that=s the first assessment is to \_\_\_\_\_ first everything that their coming in and their usually pretty serious down there.
- Q. Oh, okay. Um, can you think of anything else that I didn=t ask you or I might not be aware of that you feels important, that might assist me in my investigation or something that I need to be made aware of?
- A. The only thing I can think of like I said, is the older lady that he did the one to one sittings with.
- Q. Um-hum.
- A. Which means that the doctor ordered for somebody to be in the room with her at all times. He was in there, on the evening shift, it was dark because he has the lights out. The door was closed. Which usually for a one to one, I, if I had been the

LVMPD0180

WA. 0648

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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STATEMENT OF: MURRAY, CHRISTINE

nurse, which I wasn't. I would want the door open. I wanna see what=s going on. But we did hear her yelling. I don=t want you by me, get outta here. And we thought, she=s a little crazy.

Q. Um-hum.

A. She=s a little crazy, old lady, that=s why she has the sitter.

Q. Um-hum.

A. So we didn=t put any credence into what she was saying.

Q. Okay. Do you remember when that occurred?

A. I don=t.

Q. Okay. Before or after this incident, that we=re talking about?

A. Before. Before.

Q. Okay. A couple of weeks, couple of days?

A. A it had to be more toward the beginning of when we opened up because it was on the sixth floor here and we didn=t open the seventh floor until about two in a half, three months after we opened. So, obviously, it have to be probably in February or March, something like that.

Q. Okay. Do you remember what she was um, in for, what that victim -

A. I don=t know.

Q. -or \_\_\_\_\_ the patient, \_\_\_\_\_.

LVMPD0181

WA. 0649

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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EVENT #:080516-1021

STATEMENT OF: MURRAY, CHRISTINE

- A. Cause I, you know what, I never had her as a patient.
- Q. Okay.
- A. So.
- Q. Um, ever observe or see anything else that just didn't seem right with you? A  
anything that Mr. Farmer ever did that was, a out of the scope or realm of his duties  
or anything else that just appeared - professional. From, from your professional  
opinion and, and your knowledge of the, the nursing field. Of something that he  
wasn't doing that was correct with patients?
- A. No. But you know what, I didn't pay much attention to him.
- Q. Okay. Alright. Is there anything else?
- A. No.
- Q. Okay. Operator, this will end the interview. The time is approximately 0649  
hours, on the 13<sup>th</sup> of June, 2008. Same people present, same location. Thank  
you.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT 6900 N. DURANGO ON THE  
13<sup>th</sup> DAY OF JUNE, 2008 AT 0649 HOURS.**

MS:sl

LVMPD0182

WA. 0650

# **EXHIBIT 5**





Niccole Parker &lt;keachmurdock2@gmail.com&gt;

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**Rule 11**1 message

---

**Robert E. Murdock, Esq.** <lasvegasjustice@aol.com>

Wed, Oct 15, 2014 at 3:01 PM

To: jbemis@hpslaw.com

Cc: keachmurdock2@gmail.com, emkeach@yahoo.com

John,

This email is being sent with regard to Rule 11. As you well know, you cited a case (twice) that is Unpublished by the Nevada Supreme Court, **Vaughan v. Harrahs**.

While you have provided the case (and the case itself states it is unpublished), the body of the pleading, in both places, does not advise the Court that the case is unpublished. The latter would certainly not cure the issue at all. Indeed, what it does is cement the fact that you have intentionally attempted to deceive the Court.

Demand is hereby made that you withdraw the pleading immediately and withdraw the citation. Failing that, be advised that we will be filing a Rule 11 application and ask for harsh sanctions against you, your firm, and your client. John, you and your firm know better. Nevertheless, you are hereby on notice.

Robert E. Murdock, Esq.  
MURDOCK & ASSOCIATES  
521 S. 3rd Street  
Las Vegas, Nevada 89101  
702-685-6111 office  
702-685-6222 fax  
702-497-7560 cell

HPS

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F 702.384.6025  
www.hpslaw.com

John F. Bemis, Esq.  
[jbemis@hpslaw.com](mailto:jbemis@hpslaw.com)

October 16, 2014

ELECTRONICALLY SERVED  
10/16/2014 04:08:10 PM

**VIA ELECTRONIC SERVICE**

Robert Murdock, Esq.  
521 South Third Street  
Las Vegas, Nevada 89101

✓

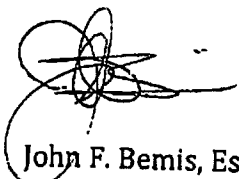
Re: Estate of Jane Doe vs. Centennial Hills Hospital

Dear Mr. Murdock,

Please allow this correspondence to respond to your October 15, 2014 correspondence requesting we withdraw our Opposition to your client's Motion for Summary Judgment. As you are aware, we filed an Errata to our Opposition on October 16, 2014. We believe this has correctly identified the *Vaughan v. Harrahs* case as an unpublished opinion. As articulated in the Errata, the case is cited for purposes consistent with SCR 123.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC



John F. Bemis, Esq.

JFB/djc

4820-6046-5439, v. 1

**From:** Robert E. Murdock, Esq. <lasvegasjustice@aol.com>  
**To:** jbemls <jbemls@hpslaw.com>  
**Cc:** emkeach <emkeach@yahoo.com>  
**Subject:** Citation to Unpublished Decision  
**Date:** Mon, Oct 20, 2014 2:50 pm

---

Mr. Bemis,

I am in receipt of your letter and "errata." You must be looking at a different SCR 123 than I am for your excuses. This is not the Ninth Circuit. You have absolutely no basis at all to cite an Unpublished Nevada Supreme Court opinion per SCR 123.

And, your "errata" drawing even more attention to it, is even more evidence of the intentional nature of the citation and violation of the Rule. Your reasoning therein is flawed. Most important, you know better.

You are in absolute violation of Rule 11 and we will be requesting the severest of sanctions for your flagrant violation of the Rules.

Robert E. Murdock, Esq.  
MURDOCK & ASSOCIATES  
521 S. 3rd Street  
Las Vegas, Nevada 89101  
702-685-6111 office  
702-685-6222 fax  
702-497-7560 cell

# **EXHIBIT 6**



# American Nursing Services INC.

PROFESSIONALS WHO CARE

## NURSE PERFORMANCE EVALUATION

NAME: Steve Farmer TITLE: CNA

DATE OF HIRE: 1/1/08 SHIFT DATE: 1/2/08

FACILITY: SNAHNS 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.
3. Return the completed form to fax number ( )

|                                                                                                 | Above Average | Average | Below Average |
|-------------------------------------------------------------------------------------------------|---------------|---------|---------------|
| <b>PERSONAL ATTRIBUTES</b>                                                                      |               |         |               |
| • Arrives Promptly for work and returns from breaks on time                                     |               |         |               |
| • Demonstrates a Positive Attitude                                                              |               |         |               |
| <b>NURSING PROCESS</b>                                                                          |               |         |               |
| • 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. Zoss RN III

Date: 1-7-08

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

P.H.S. Depo. Exh. 1  
Carol O'Malley, CCR No. 176, RNR

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](mailto:MattRoss@SNAMHS.nv.gov)  
6150 Community College Dr.  
Rawson-Neal Psychiatric Facility

*P.H.S.* Depo. Exh.# 2  
Carol O'Malley, CCR No. 178, RMR

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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 Ehrington 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) Rontranece 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 & Rontranece 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 3B  
(702) 486-4447  
Cell (702) 250-1600  
[MattRoss@SNAMHS.nv.gov](mailto:MattRoss@SNAMHS.nv.gov)  
6150 Community College Dr.  
Rawson-Neal Psychiatric Facility

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1/10/2008

# **EXHIBIT 7**



January 28, 2008

PHJ Depo. Exh. # B  
Carol O'Malley, CCP No. 178, RMR

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 M.D.

# **EXHIBIT 8**

To: Whom it may concern.

PT [redacted] who was on full view and under my responsibility go off the phone and came dancing to the table. PT [redacted] said "It was my boyfriend Steve, The hearded tech that work here." But Tech Rontrancee and I looked at each other and ~~said~~ <sup>asked</sup> "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 workers 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 Math was informed by us of PT statement!

P/Hs Depo. Exh. 12  
Carol O'Malley, CCR No. 176 RHP

# **EXHIBIT 9**



# American Nursing Services INC.

PROFESSIONALS WHO CARE

## INCIDENT REPORT

Name: SEVEN JAMMER CNA ☒ ANS Employee ☐ Subcontractor ☐ Client  
 Name of Facility: PAULSON NURSING  
 Date of Occurrence: 11/19/08 Time of Occurrence: 3:41 PM AM ☐ PM ☒  
 Date Occurrence Reported: 11/24/08 Time Reported: 4:30 AM ☐ PM ☒  
 Physical Address of Occurrence: 11050 COMMUNITY CENTER DRIVE, LV NV 89146  
 Name of Facility Supervisor or contact person: MARY JO BAKER DON Phone number: (702) 482-6206  
 Description of place of Occurrence: Psychiatric facility  
 Who was involved: SEVEN JAMMER Contact #: 702-332-5894  
 Witness(s): \_\_\_\_\_ Contact #: \_\_\_\_\_

### Nature of Incident:

- ☒ Alleged violations as defined in Practice Acts of respective regulatory body
- ☐ Mishaps due to faulty equipment or misuse of the equipment
- ☐ Client alleges theft
- ☐ Failure of staff/client to report accident causing hazards in the facility
- ☐ Damage to personal property of the client
- ☒ Abuse of client an/or patient or other caregivers
- ☐ Failure to respond to request for assistance, information, or treatment
- ☐ Any complaints the client voices regarding services
- ☐ Any unsafe situations in the facility
- ☐ Any threat to employee safety
- ☐ Any injury the employee sustains while delivering care or while en route or returning from the facility
- ☐ Non Compliance with Laws
- ☐ Misuse of company assets
- ☐ Inappropriate business gifts
- ☐ Conflicts of Interest

Description of exactly what happened: (If additional space or supporting documentation is needed, attach separately)

See attached write up

Branch Manager Notified: ☒ yes ☐ no Corporate Compliance Department Notified: ☐ yes ☐ no  
 Human Resources Department Notified: ☐ yes ☐ no

Signature of person completing report: MURIEL SIMMONS Date: 11/25/08  
Clinical Director

Rev. Date:

Effective Date: May 3, 2007

# **EXHIBIT 10**

## MEDICATION ADMINISTRATION RECORD

- ① ABDOMEN  
② RIGHT UPPER OUTER QUADRANT BUTTOCK  
③ LEFT UPPER OUTER QUADRANT BUTTOCK

- ④ RIGHT UPPER ARM  
⑤ LEFT UPPER ARM  
⑥ RIGHT ANTERIOR THIGH  
⑦ LEFT ANTERIOR THIGH

| PATIENT NAME | BED NO. | AGE | WEIGHT    | BSA m <sup>2</sup> | ADM. DATE  | DOSE PERIOD       |
|--------------|---------|-----|-----------|--------------------|------------|-------------------|
|              | 614 01  |     | 63.504 kg | 1.746 M2           | 05/13/2008 | 05/14/08-05/15/08 |

| MEDICAL RECORD NO. | ACCOUNT NO. | PHYSICIAN         | DIAGNOSIS |
|--------------------|-------------|-------------------|-----------|
|                    |             | Bazerore, Curtis. | SEIZURES  |

| ALLERGIES | MEDICATION ADMINISTRATION TIMES |
|-----------|---------------------------------|
|-----------|---------------------------------|

|                                                                                                   |                   |                   |                   |                   |
|---------------------------------------------------------------------------------------------------|-------------------|-------------------|-------------------|-------------------|
| 5-ALFA REDUCTASE INHIBITOR, AZASTEROIDS, ACETAMINOPHEN, BENZODIAZEPINES, CARBAMAZEPINE DER *MORE* | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                                                                                                   |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|                                                  |                   |                   |                   |                   |
|--------------------------------------------------|-------------------|-------------------|-------------------|-------------------|
| Ativan 2mg IV<br>Q4° PRN <i>2030</i> <i>2030</i> | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                                                  |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|                             |                   |                   |                   |                   |
|-----------------------------|-------------------|-------------------|-------------------|-------------------|
| Kcl 20mg IV<br>per protocol | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                             |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|                                     |                   |                   |                   |                   |
|-------------------------------------|-------------------|-------------------|-------------------|-------------------|
| Tylenol 1gm P.O.<br>Q4° PRN for H/A | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                                     |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|                         |                   |                   |                   |                   |
|-------------------------|-------------------|-------------------|-------------------|-------------------|
| prozac 20mg PO<br>daily | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                         |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|                                  |                   |                   |                   |                   |
|----------------------------------|-------------------|-------------------|-------------------|-------------------|
| Lerodroxine 0.15mg<br>P.O. daily | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|                                  |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|  |                   |                   |                   |                   |
|--|-------------------|-------------------|-------------------|-------------------|
|  | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|  |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|  |                   |                   |                   |                   |
|--|-------------------|-------------------|-------------------|-------------------|
|  | ORDER CHECK NURSE | 07:01-19:00       | 19:01-07:00       |                   |
|  |                   | TIME SITE INITIAL | TIME SITE INITIAL | TIME SITE INITIAL |

|             |                                                 |             |                                                 |
|-------------|-------------------------------------------------|-------------|-------------------------------------------------|
| DATE & TIME | OMISSIONS/RESPONSE TO MEDS/ADVERSE EFFECTS/ETC. | DATE & TIME | OMISSIONS/RESPONSE TO MEDS/ADVERSE EFFECTS/ETC. |
|             |                                                 |             |                                                 |
|             |                                                 |             |                                                 |

|                               |  |
|-------------------------------|--|
| 24-HR VALIDATION CHECK NURSE: |  |
|-------------------------------|--|

|              |         |  |
|--------------|---------|--|
| PATIENT NAME | BED NO. |  |
|              | 614 01  |  |

# **EXHIBIT 11**



**Subject:** Cagnina v. ANS/Steve Farmer et al.  
**Date:** Thu, 09 Apr 2009 15:55:03 -0700  
**From:** "Brent Vogel" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>  
**To:** [roundtsa@co.clark.nv.us](mailto:roundtsa@co.clark.nv.us)  
**Attachments:** [cagnina mot compel 20090409154419.pdf](#)

---

Stacey,

It was a pleasure speaking with you today. Attached is the Motion to Compel Mrs. Cagnina filed against Metro seeking the statements, DNA/Rape kit records, etc. It is set before the Discovery Commissioner on 4/22 at 10:00 a.m. Mrs. Cagnina's depo remains set for 4/28 at 9:00 a.m. at Hall, Prangle & Schoonveld, 777 N. Rainbow Blvd., #225. Mr. Cagnina's depo is the same day at 1:00 p.m. I would appreciate copies of any statements, medical records, etc., that you have that may help our investigation. I am happy to share whatever information I can. Thank you.

Yours truly,

S. Brent Vogel  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 South Fourth Street  
5th Floor  
Las Vegas, Nevada 89101

702.693.4320 - Direct  
702.893.3383 - Main  
702.893.3789 - Facsimile  
[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)  
[www.lbbslaw.com](http://www.lbbslaw.com)

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Please consider the environment before printing this e-mail

**Subject:** RE: Steven Farmer  
**Date:** Mon, 14 Sep 2009 14:42:54 -0700  
**From:** "Jane Everitt" <everittj@co.clark.nv.us>  
**To:** "Brent Vogel" <bvogel@lbbslaw.com>  
**Cc:** "Stacey Roundtree" <roundtsa@co.clark.nv.us>

---

Hello Brent,

I spoke with Stacey and Wednesday at 2:00 will work fine for both us. We will meet at your office. Thank you very much for your assistance.

Jane

---

**From:** Brent Vogel [mailto:bvogel@lbbslaw.com]  
**Sent:** Monday, September 14, 2009 2:19 PM  
**To:** Jane Everitt  
**Subject:** Steven Farmer

Jane,

This is to follow up on our phone conversation this afternoon and the voice mail message I just left for you. Are you and Stacey available this Wednesday, 9/16 at 2:00 p.m. to meet with Michele Simmons from American Nursing? She can meet you at my office at that time. Thank you.

Yours truly,

S. Brent Vogel, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
400 South Fourth Street  
5th Floor  
Las Vegas, Nevada 89101  
702.693.4320 - Direct  
702.893.3383 - Main  
702.893.3789 - Facsimile  
bvogel@lbbslaw.com  
www.lbbslaw.com

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Please consider the environment before printing this e-mail

**Subject:** Steven Farmer

**Date:** Wed, 27 Jan 2010 15:10:54 -0600

**From:** "Dave Ferrainolo" <dferrainolo@HPSLAW.COM>

**To:** "Stacey Roundtree" <roundtsa@co.clark.nv.us>

**Cc:** "Bob McBride" <bob@mandelbaumschwarz.com>, "Brent Vogel" <bvogel@lbbslaw.com>

---

Hi Stacey:

Hope all is well with you. Just wanted to let you know that Christine Murray (the former nurse of Centennial Hills who received Cagnina from Farmer on the floor after the alleged assault occurred) is being deposed right now. I think she has a lot of information that will help you. She is a bit difficult to get in touch with so I'd be happy to share the details with you when you get some time.

Also, I have a question. Can you tell me where there was any DNA evidence to support the claims of Cagnina? With her assertion that he was licking his fingers and using them on her I would have expected to see some DNA. Can you let me know?

Thanks.

David P. Ferrainolo, Esq.  
HALL PRANGLE & SCHOONVELD, LLC  
777 North Rainbow Blvd., Ste. 225  
Las Vegas, NV 89107  
702.889.6400 (office)  
702.384.6025 (fax)

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Let me know if you have any time the begging of March or whenever it is most helpful to you in the criminal case.

David P. Ferrainolo, Esq.

HALL PRANGLE & SCHOONVELD, LLC

777 North Rainbow Blvd., Ste. 225

Las Vegas, NV 89107

702.889.6400 (office)

702.384.6025 (fax)

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---

**Subject:** RE: Cagnina

**Date:** Thu, 11 Feb 2010 20:48:16 -0800

**From:** "Stacey Roundtree" <roundtsa@co.clark.nv.us>

**To:** "Dave Ferrainolo" <dferrainolo@HPSLAW.COM>

---

Thanks for keeping me in loop. When you open in FLA, are you going to have a SEX TEAM? If so, I know someone who's interested, and would LOVE to re-locate. =)

---

**From:** Dave Ferrainolo [mailto:dferrainolo@HPSLAW.COM]

**Sent:** Wednesday, February 10, 2010 2:59 PM

**To:** Stacey Roundtree

**Cc:** John Bernis

**Subject:** Cagnina

Hi Stacey:

Subject: RE: Cagnina

Date: Wed, 19 May 2010 10:37:20 -0700

From: "Stacey Roundtree" <roundtsa@ClarkCountyNV.gov>

To: "John Bemis" <JBemis@HPSLaw.com>

---

Thanks. Haven't connected (telephonically) with the DNA expert yet! I confess that because I begin trial next week, I've been scarce around here. Will let you know when I do.

---

From: John Bemis [mailto:JBemis@HPSLaw.com]  
Sent: Wednesday, May 19, 2010 9:03 AM  
To: bob@mandelbaumschwarz.com; Stacey Roundtree  
Subject: Cagnina

Bob and Stacy:

I am attaching Plaintiff's counter-motion to open discovery in Mr. Farmer's criminal case. It is being heard in front of the Discovery Commissioner this Friday at 9:30 a.m.

We moved the hearing from Walsh to Bonnie as Dave had a conversation with Bonnie for another issue and she intimated she would kick the trial and not allow the discovery to be opened. I wanted you to be aware of this, especially in light of the recent Doe hearing where Bonnie would not allow Murdoch to conduct discovery until the criminal trial is over.

Call me with any questions

Thanks,

John F. Bemis, Esq.

HALL PRANGLE & SCHOONVELD, LLC

777 North Rainbow Blvd., Ste. 225

Las Vegas, NV 89107

702.889.6400 (office)

702.384.6025 (fax)

**Subject:** RE: Steven Farmer  
**Date:** Fri, 21 Sep 2012 07:58:56 -0700  
**From:** Jeffrey Maningo <[maningis@ClarkCountyNV.gov](mailto:maningis@ClarkCountyNV.gov)>  
**To:** John Bemis <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>

---

Hi John:

No results yet, testing still not done. Still trying to find a common ground between Steve and DA for negotiations, so might need your help there once we find a reasonable deal. Otherwise just waiting on trial date. I'm sure myself and Jane(investigator) will be contacting you soon for clarification on some of this discovery we have.

Thanks for all your help and interest. I will keep you updated.

Jeff

---

**From:** John Bemis [<mailto:JBemis@HPSLaw.com>]  
**Sent:** Thursday, September 20, 2012 4:54 PM  
**To:** Jeffrey Maningo  
**Subject:** RE: Steven Farmer

Hi Jeff,

I hope all is well. I wanted to follow up on this matter with the new criminal trial date. Do we know whether the retesting of the DNA has been completed? do we know any results?

Is there anything going on in this matter or is it just waiting for trial?

Please let me know if there is anything we can help you with.

Thanks and have a nice evening,

John

---

**From:** Jeffrey Maningo [<mailto:maningis@ClarkCountyNV.gov>]  
**Sent:** Friday, June 01, 2012 12:21 PM  
**To:** John Bemis  
**Subject:** RE: Steven Farmer

well, so far it's a go, however, we are still waiting for the DNA to be retested. That was at the DA's request and was recently litigated. So depending on timing and results, and possible need for our own expert to review the results...

but I'll keep you updated when I know for sure.

have a good weekend

JSM

---

**From:** John Bemis [<mailto:JBemis@HPSLaw.com>]  
**Sent:** Friday, June 01, 2012 10:03 AM  
**To:** Jeffrey Maningo

**Subject:** RE: Steven Farmer criminal trial  
**Date:** Wed, 16 Jan 2013 14:06:00 -0800  
**From:** Bob McBride <bob@memlaw.net>  
**To:** 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>  
**Cc:** Jeffrey Maningo <maningis@ClarkCountyNV.gov>, "JBemis@HPSLaw.com" <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

---

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.

Bob

---

**From:** Amy Feliciano [mailto:johnsoaa@ClarkCountyNV.gov]  
**Sent:** Wednesday, January 16, 2013 1:28 PM  
**To:** Bob McBride  
**Cc:** Jeffrey Maningo  
**Subject:** FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to meet with you and the others in the civil case to talk about about the status of our file. We are missing a lot of documents, have witnesses to interview, and experts to retain, and it would be great if you and the others could help us out with that.

Do you have time for a meeting early next week with us and the the others in the civil case, and do you mind coordinating the meeting? I'm available any day next week, anytime, except for early Wednesday morning. Jeff may or may not be finished with trial and able to join us. We can come to your office or we can all meet here - whatever is easiest for you and everyone else.

Please let me know if we can meet up next week. Thanks so much.

Amy A. Feliciano  
Deputy Public Defender  
Clark County Public Defender's Office  
(702) 455-5733 (direct)  
(702) 366-9370 (fax)

---

**From:** Jeffrey Maningo  
**Sent:** Wednesday, January 16, 2013 1:10 PM  
**To:** Amy Feliciano  
**Subject:** Fwd: Steven Farmer criminal trial

**Subject:** RE: Steven Farmer criminal trial  
**Date:** Wed, 16 Jan 2013 14:09:09 -0800  
**From:** Amy Feliciano <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>  
**To:** 'Bob McBride' <[bob@memlaw.net](mailto:bob@memlaw.net)>  
**Cc:** Jeffrey Maningo <[maningis@ClarkCountyNV.gov](mailto:maningis@ClarkCountyNV.gov)>, "JBemis@HPSLaw.com" <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>, "bvogel@lbbslaw.com" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

---

**From:** Bob McBride [<mailto:bob@memlaw.net>]  
**Sent:** Wednesday, January 16, 2013 2:06 PM  
**To:** Amy Feliciano  
**Cc:** Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com  
**Subject:** RE: Steven Farmer criminal trial  
**Importance:** High

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.  
 Bob

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]  
**Sent:** Wednesday, January 16, 2013 1:28 PM  
**To:** Bob McBride  
**Cc:** Jeffrey Maningo  
**Subject:** FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to meet with you and the others in the civil case to talk about about the status of our file. We are missing a lot of documents, have witnesses to interview, and experts to retain, and it would be great if you and the others could help us out with that.

Do you have time for a meeting early next week with us and the the others in the civil case, and do you mind coordinating the meeting? I'm available any day next week, anytime, except for early Wednesday morning. Jeff may or may not be finished with trial and able to join us. We can come to your office or we can all meet here - whatever is easiest for you and everyone else.

Please let me know if we can meet up next week. Thanks so much.



**Subject:** RE: Steven Farmer criminal trial  
**Date:** Wed, 16 Jan 2013 14:10:54 -0800  
**From:** Bob McBride <[bob@memlaw.net](mailto:bob@memlaw.net)>  
**To:** 'Amy Feliciano' <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>  
**Cc:** Jeffrey Maningo <[maningis@ClarkCountyNV.gov](mailto:maningis@ClarkCountyNV.gov)>, "JBemis@HPSLaw.com" <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>, "bvogel@lbbslaw.com" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>

---

Amy,  
Why don't we shoot for 10? Is that good for you Brent and John?

Bob

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]  
**Sent:** Wednesday, January 16, 2013 2:09 PM  
**To:** Bob McBride  
**Cc:** Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com  
**Subject:** RE: Steven Farmer criminal trial

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

---

**From:** Bob McBride [<mailto:bob@memlaw.net>]  
**Sent:** Wednesday, January 16, 2013 2:06 PM  
**To:** Amy Feliciano  
**Cc:** Jeffrey Maningo; JBemis@HPSLaw.com; bvogel@lbbslaw.com  
**Subject:** RE: Steven Farmer criminal trial  
**Importance:** High

Amy,

Thanks for the quick response. Absolutely! We would be happy to help out in any way we can. Mr. Bemis has been involved with the Cagnina case after the Plaintiff's attorney, for some reason, dismissed Steven and his employer, so he has the most information about her that I am sure he will gladly share. I previously gave Jeff the name of our expert for the Petersen (Doe) case. I thought he had retained her already. All of us are available to meet Monday morning if that works. I would suggest my office which has plenty of room and is easily located behind UMC hospital, off Tonopah. 2012 Hamilton Lane. What time works? 9? 10? Let us know.

Thanks.  
Bob

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]  
**Sent:** Wednesday, January 16, 2013 1:28 PM  
**To:** Bob McBride  
**Cc:** Jeffrey Maningo  
**Subject:** FW: Steven Farmer criminal trial

Hi Bob - Jeff's in trial right now on another case, so I told him I would get back to you. I'm the second chair on this case and am entrenched in nothing but this file right now trying to get everything up to speed. As of right now, we are hoping to be ready for the 03/04/13 trial setting, but there's a lot left to do. I would really like to

**Subject:** RE: Steven Farmer criminal trial

**Date:** Wed, 16 Jan 2013 14:21:52 -0800

**From:** Amy Feliciano <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>

**To:** 'John Bemis' <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>, Bob McBride <[bob@memlaw.net](mailto:bob@memlaw.net)>

**Cc:** Jeffrey Maningo <[maningis@ClarkCountyNV.gov](mailto:maningis@ClarkCountyNV.gov)>, "bvogel@lbbslaw.com" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>

10 is perfect for us. We are missing almost all of the civil filings - the Responses to RFPDs, Answers to Interrogatories (if any), depositions (we only have a few transcripts), etc. My secretary can access some docs on Odyssey and is working on getting what's been filed for me. Let's talk on Monday and I'll let you know what depositions we have and what we don't and we can talk about if you have other things we don't have (and vice versa).

Also, we don't have Cagnina's records from when she was Legal 2000'd, her Monte Vista records, the records from when she OD'd and was in a coma, and the records from Las Vegas Recovery Center. If you have those, that would shortcut so much for us.

Thank you so much, everyone.

---

**From:** John Bemis [mailto:[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)]

**Sent:** Wednesday, January 16, 2013 2:16 PM

**To:** Bob McBride; Amy Feliciano

**Cc:** Jeffrey Maningo; [bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)

**Subject:** RE: Steven Farmer criminal trial

10 sounds just fine for me. Are there any documents that are needed?

Thanks,

John

---

**From:** Bob McBride [mailto:[bob@memlaw.net](mailto:bob@memlaw.net)]

**Sent:** Wednesday, January 16, 2013 4:11 PM

**To:** 'Amy Feliciano'

**Cc:** Jeffrey Maningo; John Bemis; [bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)

**Subject:** RE: Steven Farmer criminal trial

Amy,

Why don't we shoot for 10? Is that good for you Brent and John?

Bob

---

**From:** Amy Feliciano [mailto:[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)]

**Sent:** Wednesday, January 16, 2013 2:09 PM

**To:** Bob McBride

**Cc:** Jeffrey Maningo; [JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com); [bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)

**Subject:** RE: Steven Farmer criminal trial

Thanks so much, Bob. Monday morning at your office is perfect. Either 9 or 10 works for us - what does everyone else prefer? And we have retained the Petersen expert (Higelin), but we need additional experts that hopefully you can help us with. Thanks so much - and just let me know what time works the best for everyone. I really appreciate the help!

**Subject:** RE: Farmer  
**Date:** Tue, 22 Jan 2013 11:18:58 -0800  
**From:** Amy Feliciano <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>  
**To:** 'John Bemis' <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>  
**Cc:** Diana Cox <[DCox@HPSLaw.com](mailto:DCox@HPSLaw.com)>

---

You are the best. Thanks so much.

I'll get together the police files for those cases. Do you have their voluntary statements to the police or do you need those too?

---

**From:** John Bemis [<mailto:JBemis@HPSLaw.com>]  
**Sent:** Tuesday, January 22, 2013 11:15 AM  
**To:** Amy Feliciano  
**Cc:** Diana Cox  
**Subject:** RE: Farmer

Thanks Amy,

I am putting all the depositions on a disk and getting the video depo of Scott copied for you. I will also be putting all the divorce files on a disk, including the settlement information. I am working with our nurses (in house) to get expert names for you. I am in mediation all day, so I won't be able to get that to you until tomorrow.

I would appreciate the Peterson, Cagnina and Francis Rose police files.

I am going to be going through my record summaries and get everything I have to you.

Thanks, and don't hesitate to ask if you need anything.

Have a great day,

John

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]  
**Sent:** Tuesday, January 22, 2013 1:08 PM  
**To:** Heather Hall; 'Bob McBride'; [bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com); John Bemis  
**Cc:** Jeffrey Maningo  
**Subject:** Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

My work contact info is below, and my cell is (702) 465-7365. Please don't hesitate to contact me anytime.

Bob - I hope that your brother is okay, and I'm sending my best wishes to you and your family.

John - I know you wanted police reports - do you need them for all six cases (including Frances Rose) or just for the Marcia Peterson case? Let me know what you need, and I'll get it to you.

Also, if anyone else needs police reports, etc., please let me know, and I will get them to you.

Thank you so much.

Amy A. Feliciano  
Deputy Public Defender  
Clark County Public Defender's Office  
(702) 455-5733 (direct)  
(702) 366-9370 (fax)

**Subject:** RE: Farmer

**Date:** Tue, 22 Jan 2013 11:27:58 -0800

**From:** Amy Feliciano <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>

**To:** "Vogel, Brent" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>, Heather Hall <[Heather@memlaw.net](mailto:Heather@memlaw.net)>, 'Bob McBride' <[bob@memlaw.net](mailto:bob@memlaw.net)>, 'John Bemis' <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>

**Cc:** Jeffrey Maningo <[maningjs@ClarkCountyNV.gov](mailto:maningjs@ClarkCountyNV.gov)>

---

Will do. Same cases? And do you have the voluntary statements to police or do you need them?

---

**From:** Vogel, Brent [<mailto:bvogel@lbbslaw.com>]

**Sent:** Tuesday, January 22, 2013 11:25 AM

**To:** Amy Feliciano; Heather Hall; 'Bob McBride'; 'John Bemis'

**Cc:** Jeffrey Maningo

**Subject:** RE: Farmer

Thank you!

I like to have all the police reports please.

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**

Brent Vogel, Esq.

Las Vegas Administrative Partner

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118

Main: (702) 893.3383 | Direct: (702) 693.4320 | Fax: (702) 893.3789

[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com) <http://www.lbbslaw.com>

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**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

**Sent:** Tuesday, January 22, 2013 11:08 AM

**To:** Heather Hall; 'Bob McBride'; Vogel, Brent; 'John Bemis'

**Cc:** Jeffrey Maningo

**Subject:** Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

My work contact info is below, and my cell is (702) 465-7365. Please don't hesitate to contact me anytime.

Bob - I hope that your brother is okay, and I'm sending my best wishes to you and your family.

John - I know you wanted police reports - do you need them for all six cases (including Frances Rose) or just for the Marcia Peterson case? Let me know what you need, and I'll get it to you.

**Subject:** RE: Farmer

**Date:** Tue, 22 Jan 2013 11:40:17 -0800

**From:** Amy Feliciano <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>

**To:** 'John Bemis' <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>

**Cc:** Diana Cox <[DCox@HPSLaw.com](mailto:DCox@HPSLaw.com)>

---

I'll get you the voluntary statements too.

---

**From:** John Bemis [<mailto:JBemis@HPSLaw.com>]

**Sent:** Tuesday, January 22, 2013 11:35 AM

**To:** Amy Feliciano

**Cc:** Diana Cox

**Subject:** RE: Farmer

We don't have any police information

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

**Sent:** Tuesday, January 22, 2013 1:19 PM

**To:** John Bemis

**Cc:** Diana Cox

**Subject:** RE: Farmer

You are the best. Thanks so much.

I'll get together the police files for those cases. Do you have their voluntary statements to the police or do you need those too?

---

**From:** John Bemis [<mailto:JBemis@HPSLaw.com>]

**Sent:** Tuesday, January 22, 2013 11:15 AM

**To:** Amy Feliciano

**Cc:** Diana Cox

**Subject:** RE: Farmer

Thanks Amy,

I am putting all the depositions on a disk and getting the video depo of Scott copied for you. I will also be putting all the divorce files on a disk, including the settlement information. I am working with our nurses (in house) to get expert names for you. I am in mediation all day, so I won't be able to get that to you until tomorrow.

I would appreciate the Peterson, Cagnina and Francis Rose police files.

I am going to be going through my record summaries and get everything I have to you.

Thanks, and don't hesitate to ask if you need anything.

Have a great day,

John

---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

**Sent:** Tuesday, January 22, 2013 1:08 PM

**Subject:** RE: Farmer

**Date:** Tue, 22 Jan 2013 19:24:51 +0000

**From:** "Vogel, Brent" <[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com)>

**To:** 'Amy Feliciano' <[johnsoaa@ClarkCountyNV.gov](mailto:johnsoaa@ClarkCountyNV.gov)>, Heather Hall <[Heather@memlaw.net](mailto:Heather@memlaw.net)>, 'Bob McBride' <[bob@memlaw.net](mailto:bob@memlaw.net)>, 'John Bemis' <[JBemis@HPSLaw.com](mailto:JBemis@HPSLaw.com)>

**Cc:** Jeffrey Maningo <[maningois@ClarkCountyNV.gov](mailto:maningois@ClarkCountyNV.gov)>

Thank you!

I like to have all the police reports please.

**LEWIS** Brent Vogel, Esq.  
**BRISBOIS** Las Vegas Administrative Partner  
**BISGAARD** LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Blvd., Suite 600, Las Vegas, Nevada 89118  
Main: (702) 893.3383 | Direct: (702) 693.4320 | Fax: (702) 893.3789  
[bvogel@lbbslaw.com](mailto:bvogel@lbbslaw.com) <http://www.lbbslaw.com>

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---

**From:** Amy Feliciano [<mailto:johnsoaa@ClarkCountyNV.gov>]

**Sent:** Tuesday, January 22, 2013 11:08 AM

**To:** Heather Hall; 'Bob McBride'; Vogel, Brent; 'John Bemis'

**Cc:** Jeffrey Maningo

**Subject:** Farmer

Hi All - It was a pleasure meeting with everyone yesterday, and I really appreciate your time and all of your help. I'm attaching a copy of the Sorenson DNA report, the State's Fifth Supplemental Notice of Witnesses, and the list of witnesses that I compiled (Heather printed this out at the meeting for us). Just FYI. . . the list of witnesses that I compiled is still in a very rough state - it's basically my thoughts and notes made as I've been going through the file.

My work contact info is below, and my cell is (702) 465-7365. Please don't hesitate to contact me anytime.

Bob - I hope that your brother is okay, and I'm sending my best wishes to you and your family.

John - I know you wanted police reports - do you need them for all six cases (including Frances Rose) or just for the Marcia Peterson case? Let me know what you need, and I'll get it to you.

Also, if anyone else needs police reports, etc., please let me know, and I will get them to you.

Thank you so much.

Amy A. Feliciano  
Deputy Public Defender  
Clark County Public Defender's Office  
(702) 455-5733 (direct)  
(702) 366-9370 (fax)

**Subject:** RE: Farmer criminal docs

**Date:** Thu, 31 Jan 2013 15:11:02 -0800

**From:** Heather Hall <Heather@memlaw.net>

**To:** 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>, Bob McBride <bob@memlaw.net>, John Bemis <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <bvogel@lbbslaw.com>

---

That works for us. Thanks for doing this!

---

**From:** Amy Feliciano [mailto:johnsoaa@ClarkCountyNV.gov]

**Sent:** Thursday, January 31, 2013 2:58 PM

**To:** Bob McBride; Heather Hall; John Bemis; bvogel@lbbslaw.com

**Subject:** Farmer criminal docs

Hi All - the Farmer criminal docs and audio files are ready and on a disc. They will go out in the mail tomorrow, and you should have them by Monday. If you would like to send a runner over to our office to pick them up so you can have them faster, please let me know. Thanks.

Amy A. Feliciano  
Deputy Public Defender  
Clark County Public Defender's Office  
(702) 455-5733 (direct)  
(702) 366-9370 (fax)



# **EXHIBIT 12**



## Office of the Public Defender

309 So. Third St. • Second Floor • PO Box 552810 • Las Vegas NV 89155-2610

(702) 455-4685 • Fax (702) 455-5112

Philip J. Kohn, Public Defender • Daran B. Richards, Assistant Public Defender

### PRIVILEGED AND CONFIDENTIAL

January 31, 2013

Robert C. McBride, Esq.  
Heather S. Hall, Esq.  
Mandelbaum, Ellerton & McBride  
2012 Hamilton Lane  
Las Vegas, Nevada 89106

John F. Bemis, Esq.  
Hall, Prangle & Schoonveld LLC  
777 North Rainbow Boulevard, #225  
Las Vegas, Nevada 89107

S. Brent Vogel, Esq.  
Lewis, Brisbois, Bisgaard & Smith  
6385 South Rainbow Boulevard, #600  
Las Vegas, Nevada 89118

RE: State of Nevada v. Steven Dale Farmer  
Case No. C245739

Dear Messrs McBride, Bemis, and Vogel and Ms. Hall:

We appreciate your consulting with us on the above-named case. Enclosed, per our January 21, 2013 meeting, please find the documents necessary for your review to assist with your consultation with us on this case. If you have any questions, please do not hesitate to contact me at (702) 455-5733. Thank you.

Very truly yours,

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

Amy A. Feliciano  
Deputy Public Defender

/saf  
Enclosure(s)

# **EXHIBIT 2**

1                                    **AFFIDAVIT OF PAUL B. HOFMANN, DR. P.H., FACHE**

2    STATE OF NEVADA            )  
3    COUNTY OF CLARK         ) ss.

4            PAUL B. HOFMANN, Dr. P.H., FACHE, being first duly sworn, deposes and says:

5            1.        That I am a Doctor of Public Health with an extensive background in hospital  
6    administration, including experience in the development, implementation and monitoring of  
7    policies, and have been retained as an Expert Witness in Jane Doe v. Valley Health System LLC,  
8    et al.

9            2.        That my Curriculum Vitae is attached hereto and made a part hereof.

10          3.        That for this Affidavit, I have reviewed the testimony of Jane Doe, the testimony of  
11    Michelle Simmons (and Exhibits), the Judgment of Conviction of Steven Farmer, the deposition of  
12    Crystal Johnson (and Exhibits), and base my opinions herein on same, as well as my experience  
13    and employment.

14          4.        That while I have significant opinions regarding the conduct of both American  
15    Nursing Services and Centennial Hills Hospital/Universal Health Services, the principal issue is  
16    whether it is foreseeable in general that a certified nursing assistant could sexually assault a  
17    patient, particularly patients who are severely compromised, physically and/or emotionally.

18          5.        That the answer to this question is – absolutely.

19          6.        That it is well known in the health care field that sexual abuse by staff against  
20    patients does occur. Hospital departments of human resources and staffing agencies clearly have  
21    an undeniable professional and ethical obligation to employ personnel who would not engage in  
22    such activity, but the serious possibility for sexual abuse still exists. Sexual assaults of patients by  
23    staff is a known foreseeable risk for which most insurance companies that insure hospitals and  
24    their staffing agencies offer coverage riders. In this case, I have been made aware that ANS  
25    maintained such coverage.

26          7.        That although there is a potential for sexual abuse in every organization, hospitals  
27    and other health care facilities must be especially vigilant to ensure that vulnerable patients like  
28    Jane Doe are not at risk because of the very nature of the tasks required of the clinical staff of a

1 hospital which, for certified nursing assistants, includes bathing patients, cleaning feces and urine  
2 from patients, and other activities where patients have their bodies exposed.

3 8. That because the sexual assaults of patient is a known foreseeable risk, most  
4 hospitals and staffing agencies have appropriate policies to prevent sexual abuse of patients in  
5 place, but they are truly meaningless if they are not followed consistently. When those policies are  
6 breached, a sexual assault is not startling or unusual because the very policy instituted to protect  
7 patients against the sexual assault has not been followed. While it is certainly a horrific event, it is  
8 foreseeable that when policies are breached, patients can be irreversibly compromised. Hence, the  
9 reason for the policies in the first place.

10 9. That codes of ethics, codes of conduct and/or value statements have been adopted  
11 by almost every health care institution, but if their eloquent content is not matched by daily and  
12 consistent compliance, they simply create the illusion that patients are safe and free from harm.

13 10. That with regard to the specific foreseeability concerning Steven Farmer's  
14 behavior, it is evident American Nursing Services was on notice of a prior issue of alleged abuse  
15 of a patient. An institution identified Mr. Farmer as "Do not return" due to both "Alleged  
16 violations as defined in Practice Acts of respective regulatory body" and "Abuse of client and/or  
17 patient or other caregivers" (per American Nursing Services' Incident Report signed on January  
18 25, 2008 by Ms. Simons, Clinical Director of Clinical Operations), and an investigation was still  
19 underway on February 12, 2008. Nonetheless, Mr. Farmer was assigned by American Nursing  
20 Services to Centennial Hills Hospital on February 18, 2008. This action directly contributed to  
21 placing Jane Doe at a preventable risk of harm.

22 11. That the Hospital was not told about the prior abuse by Mr. Farmer nor the related  
23 incomplete investigation, but the Hospital should not have relied exclusively on American Nursing  
24 Services for its background check. According to Ms. Johnson, who was then the Hospital's  
25 staffing coordinator, the organization requires receipt of references prior to allowing agency staff  
26 to work at the Hospital. However, in this instance, that policy was not followed. Ms. Johnson  
27 admitted the Hospital would not have allowed Mr. Farmer to work there if it had known of the  
28 prior abuse. Furthermore, Ms. Johnson could not explain why his references were not checked,  
and she confirmed Mr. Farmer should not have been working at the Hospital until references were

1 provided. The reason for background checks is to confirm a candidate's qualifications,  
2 competence and personal behavior meet the organization's performance standards and  
3 expectations. Since sexual assaults by hospital staff is a known foreseeable risk, one of the reasons  
4 hospitals, such as Centennial Hills, conduct background checks is to insure that a person with a  
5 history of sexual assaults is not allowed to work in a situation that could place a patient at risk.  
6 The Hospital's failure to comply with its own policies directly contributed to placing Jane Doe at a  
7 preventable risk of harm.

8 12. While I anticipate having other opinions based upon review of additional  
9 information, as to the issue of foreseeability, it is my opinion, to a reasonable degree of  
10 probability, that Mr. Farmer's actions were foreseeable in general and specifically to both  
11 American Nursing Services, Inc., and Centennial Hills Hospital/Universal Health Services.

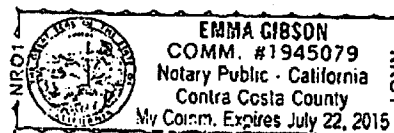
12 13. That I reserve the right to change, modify, or add to my opinions herein as the facts  
13 warrant.

14 FURTHER AFFIANT SAYETH NAUGHT.

15  
16  
17   
18 PAUL B. HOFMANN, Dr. P.H., FACHE

19  
20 Subscribed and sworn to before me  
21 this 17 day of November, 2014

22  
23   
24 Notary Public in and for said  
25 County and State



## Curriculum Vitae

**Paul B. Hofmann, Dr. P.H., FACHE**

**Office Address:** 1042 Country Club Drive, Suite 2D  
Moraga, California 94556

**Home Address:** 133 Greenbriar  
Moraga, California 94556

**Telephone:** (925) 247-9700 (office)  
(925) 376-9671 (home)

**Educational Background:**

1994 Doctor of Public Health  
University of California  
School of Public Health  
Berkeley, California

1965 Master of Public Health  
University of California  
School of Public Health  
Berkeley, California

1963 Bachelor of Science  
University of California  
School of Public Health  
Berkeley, California

**Professional Experience:**

9/05 – President  
Hofmann Healthcare Group  
Moraga, California

1/01 – 9/05 Provenance Health Partners  
Moraga, California

1/00 – 12/00 President  
Hofmann Healthcare Group  
San Francisco, California

6/97 – 12/99 Senior Vice President  
Healthcare Industry Practice  
Aon Consulting  
San Francisco, California

|             |                                                                                                                                              |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 9/94 - 6/97 | Senior Consultant<br>Strategic Health Care Practice<br>Alexander & Alexander Consulting Group (acquired by Aon)<br>San Francisco, California |
| 2/93 - 7/97 | Distinguished Visiting Scholar<br>Stanford University<br>Center for Biomedical Ethics<br>Palo Alto, California                               |
| 6/92 - 1/95 | Consultant<br>Health Care Unit<br>Alexander & Alexander<br>San Francisco, California                                                         |
| 2/93 - 7/94 | Senior Fellow<br>Stanford University Hospital<br>Stanford, California                                                                        |
| 6/91 - 6/92 | Consultant<br>Alta Bates Corporation<br>Emeryville, California                                                                               |
| 9/87 - 6/91 | Executive Vice President and<br>Chief Operating Officer<br>Alta Bates Corporation<br>Emeryville, California                                  |
| 1/78 - 9/87 | Executive Director<br>Emory University Hospital<br>Atlanta, Georgia                                                                          |
| 1/78 - 9/87 | Associate Professor<br>Department of Community Health<br>Emory University School of Medicine<br>Atlanta, Georgia                             |
| 4/74 - 1/78 | Director<br>Stanford University Hospital and Clinics<br>Stanford, California                                                                 |
| 9/72 - 1/78 | Lecturer<br>Department of Family, Community and Preventive Medicine<br>Stanford University Medical School<br>Stanford, California            |
| 6/72 - 4/74 | Deputy Director<br>Stanford University Hospital<br>Stanford, California                                                                      |



|             |                                                                                                                                            |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 6/70 - 6/72 | Associate Administrator<br>San Antonio Community Hospital<br>Upland, California                                                            |
| 4/70 - 6/72 | Lecturer in Hospital Administration<br>University of California, Los Angeles<br>School of Public Health<br>Los Angeles, California         |
| 3/69 - 6/70 | Assistant Administrator<br>San Antonio Community Hospital<br>Upland, California                                                            |
| 7/68 - 3/69 | Instructor in Computer Applications<br>Harvard University<br>School of Public Health<br>Boston, Massachusetts                              |
| 7/68 - 3/69 | Assistant Director<br>Laboratory of Computer Science<br>Massachusetts General Hospital<br>Boston, Massachusetts                            |
| 7/66 - 7/68 | Research Associate in Hospital Administration<br>Laboratory of Computer Science<br>Massachusetts General Hospital<br>Boston, Massachusetts |
| 1/66 - 7/66 | Administrative Resident<br>Thayer Hospital<br>Waterville, Maine                                                                            |
| 7/65 - 1/66 | Administrative Resident<br>New England Medical Center Hospitals<br>Boston, Massachusetts                                                   |
| 7/64 - 9/64 | Administrative Assistant<br>Kaiser Foundation Hospital<br>Oakland, California                                                              |
| 7/63 - 7/64 | Administrative Intern<br>Herrick Memorial Hospital<br>Berkeley, California                                                                 |

**Professional Affiliations:**

Alumni Association, Graduate Program in Health Management, University of California,  
Berkeley (1965- ) Past President  
American College of Healthcare Executives (Fellow) - Education Committee (1976-1979),  
Nominating Committee (1979-1984), Ethics Committee (1992-1993), Leadership Advisory

Committee (1994-2002), Judging Committee for Hill-Rom Management Essay Competition in Healthcare Administration (2001), Code of Ethics Task Force (2002-2003), Consultant in Healthcare Management Ethics (1994- )  
 American Hospital Association - Council on Research and Development (Chairman 1976-1978), Special Committee on Biomedical Ethics (Chairman 1983-1985), Advisory Committee on Biomedical Ethics (Chairman 1986-1988), Governing Council for Section on Metropolitan Hospitals (1987-1989), Institutional Practices Committee (1988-1990), Technical Panel on Biomedical Ethics (1989-1993, Chairman 1992-1993), Committee on Education and Programs for Section for Health Care Systems (1990-1992), Organizational Ethics Task Force (1995-1997), Circle of Life Awards Committee (1999- 2004), Quest for Quality Prize Criteria Work Group (2004), AHA McKesson Quest for Quality Prize Committee (2004- )  
 American Medical Association - Work Group on Evaluation, Assessment and Control, Health Policy Agenda for the American People (1983-1986)  
 American Physical Therapy Association - Committee on Accreditation in Education (1981), Advisory Council on Physical Therapy Education (1983-1986)  
 Association of Schools of Public Health – DrPH Concepts Identification and Specification Task Force (2008)  
 California AIDS Leadership Subcommittee on Health Care Financing and Service Issues (1988-1989)  
 California Hospital Association – Committee on Hospital Licensure (1974), Committee on Insurance (1975)  
 Carter Center Task Force for Health Policy (1983-1987)  
 Center for Clinical Medical Ethics, University of Chicago - National Advisory Board (Chairman 1985-1990)  
 Council of Teaching Hospitals - Representative to American Association of Medical Colleges Assembly (1979-1981)  
 Duke University Department of Health Administration - Board of Visitors (1983-1985)  
 Education Development Center - Bioethics Advisory Board (1987-1993), Board of Trustees (2011- ), Finance and Management Committee (2012- )  
 Georgia Hospital Association - Council on Nursing (Chairman 1980-1982), Strategic Planning Committee (1983-1984), North Central District Executive Committee (1984-1986)  
 Georgia State University Institute of Health Administration - Preceptor (1980-1987)  
 Greater Atlanta Coalition on Health Care, Inc. - Data Project Committee (Vice Chairman 1983-1986)  
 Healthcare Executives Study Society – President 2002 (1984- )  
 HealthCPA Advisory Board (2011- )  
 Health Research and Educational Trust – Senior Fellow (2009-2012)  
 Hospital Community Benefit Standards Program - National Steering Committee (1989-1992)  
 Healthcare Research and Development Institute (1984-1992)  
 Hospital Research and Educational Trust - Advisory Council (Chairman 1976-1978)  
 International Bioethics Institute - Board of Directors (1991-1995)  
 Joint Commission International - Standards Subcommittee (2006-2011), Standards Advisory Panel (2012- )  
 Lumetra Medicare Mediation Advisory Group (2004-2005)  
 MedShare International – Board of Trustees (2007- ), Executive Committee (2008-2012), MedShare West Regional Council (2007- ), Board of Trustees Nominating and Governance Committee (2010- ), Programs Committee (Chairman 2012- )  
 National Commission for Health Certifying Agencies - Advisory Committee (1984-1986)  
 New Century Healthcare Institute - Board of Directors (1995 – 2002, Chairman 1997- 2002)

On Lok Ethics Committee – Chairman (2005-2011)  
 Operation Access - Board of Directors (Vice Chairman 1993-2002), Advisory Council (2004-2007), Board of Directors (Chairman 2008- )  
 Pew Health Professions Commission (1993-1995)  
 Practice Fusion – Advisory Board (2007- )  
 Seton Hall University – Adjunct Professor (2001-2002)  
 Society of Critical Care Medicine - Ethics Committee (1988-1995), Business Ethics Subcommittee (1992-1995)  
 Southeastern Hospital Conference - Program Committee (1985)  
 Sun Alliance - Charter Board Member (1979-1985), Chairman of the Board (1983-1985)  
 Sun Health - Board of Directors (1986-1987)  
 University of California, San Francisco, The Center for Health Professions – Integrated Nurse Leadership Program Advisory Council (2004-2006)

#### **Editorial Boards:**

ADMINISTRATIVE RADIOLOGY (1989-1990)  
 AMERICAN COLLEGE OF HEALTHCARE EXECUTIVES MANAGEMENT SERIES (1988-1992), (1994-1998)  
 ASSN. OF UNIVERSITY PROGRAMS IN HEALTH ADMIN. PRESS (1986-1992)  
 CAMBRIDGE QUARTERLY OF HEALTHCARE ETHICS (2002-2012)  
 COMPUTERS IN HOSPITALS (1982-1983)  
 HEALTH MANAGEMENT QUARTERLY (1985-1994)  
 HEALTH PROGRESS (1981- 2001)  
 HOSPITAL ETHICS (1985-1995)  
 MANAGED CARE OUTLOOK (1989-1991)  
 MEDICAL ETHICS ADVISOR (2001- )

#### **Honors:**

Recipient of the Robert S. Hudgens Memorial Award for the Young Hospital Administrator of the Year in 1976, sponsored by American College of Hospital Administrators and Alumni Association, School of Hospital Administration, Virginia Commonwealth University  
 Recipient of the 1982 Cover Story Award from *Computers in Hospitals* for "Hospital Computer Planning: Beyond Rhetoric"  
 U.S. Delegate to the International Seminar for Administrators, initiated in 1975 and sponsored by King Edward's Hospital Fund for London (selected 1975 through 1983)  
 Distinguished Visiting Faculty Member, Intensive Colloquy on Biomedical Ethics for Health Care Executives, June 11-16, 1989, University of Virginia, Charlottesville, VA  
 Recipient of the American College of Healthcare Executives 1999 Senior Level Executive Regent's Award  
 Recipient of 2004 Distinguished Leadership Award from the University of California Graduate Program in Health Management Alumni Association  
 Recipient of 2009 Award of Honor from the American Hospital Association  
 Recipient of 2012 Schweitzer Leadership Award from the Albert Schweitzer Fellowship

#### **Military Service:**

U.S. Army, Active Duty, February - August 1959. Active Reserve until November 1962 as a medical corpsman (reserve obligation completed)

## Publications:

- Gouveia, W.A., P.B. Hofmann and G.O. Barnett. Computers: Basic Principles and Hospital Pharmacy Implications, *American Journal of Hospital Pharmacy*, Vol. 25, pp. 4-11, January 1968.
- Hofmann, P.B. and G.O. Barnett. Time-sharing Increases Benefits of Computer Use, *Hospitals*, Vol. 42, pp. 62-67, June 16, 1968.
- Hofmann, P.B., W.A. Gouveia and G.O. Barnett. Computers: Great Future, Perilous Present, *Modern Hospital*, Vol. III, No. 1, pp. 98-100, July 1968. Also published in *The Hospital Data Processing Review*. Edited by B.G. Alford and F.E. Colvin. New York: Medical Examination Publishing Co., 1970.
- Barnett, G.O. and P.B. Hofmann. Computer Technology and Patient Care: Experiences of a Hospital Computer Project, *Inquiry*, Vol. V., No. 3, pp. 51-57, September 1968.
- Hofmann, P.B., J.H. Grossman, B.J. Thoren and G.O. Barnett. An Automated Patient Census Operation: Design, Development and Evaluation, *Hospital Topics*, Vol. 47, No. 5, pp. 39-41, May 1969.
- Hofmann, P.B. and J.F. Rockart. Implications of the No-Show Rate for Scheduling OPD Appointments, *Hospital Progress*, Vol. 50, No. 8, pp. 35-40, August 1969.
- Rockart, J.F. and P.B. Hofmann. Physician and Patient Behavior Under Different Scheduling Systems in a Hospital Outpatient Department, *Medical Care*, Vol. VII, No. 6, pp. 463-470, November-December 1969.
- Hofmann, P.B., J.F. Rockart and G.O. Barnett. Planning for an Automated Outpatient Appointment System, *Hospital Topics*, Vol. 47, No. 10, pp. 37-42, 62, October 1970. Also published in *Outpatient Services Journal Articles*. Edited by V.V. Clark. New York: Medical Examination Publishing Co., 1973.
- Hofmann, P.B. Meeting Resistance to Hospital Automation, *Hospital Progress*, Vol. 52, No. 4, pp. 44-47, 60, April 1971.
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# **EXHIBIT 3**



1                                    **AFFIDAVIT OF E. DWAYNE TATALOVICH, ICPS**

2    STATE OF ARIZONA                                    )  
3    COUNTY OF Maricopa                                    ) ss.

4                    E. DWAYNE TATALOVICH, ICPS, being first duly sworn, deposes and says:

5                    1.        That I am an International Crime Prevention Specialist (ICPS) designated by the  
6    International Society of Crime Prevention Practitioners (ISCPP), and Chairman of Tatalovich &  
7    Associates Incorporated.

8                    2.        That my CV is attached hereto and made a part hereof.

9                    3.        That for this Affidavit I have reviewed the testimony of Jane Doe, the testimony of  
10   Michelle Simmons (and Exhibits), the Judgment of Conviction of Steven Farmer, the deposition of  
11   Crystal Johnson (and Exhibits), the deposition of Douglas Nichols, insurance information, part of  
12   the LVMPD file, and base my opinions herein on same, as well as my experience and  
13   employment.

14                   4.        That I have been awaiting various documents from American Nursing Services  
15   regarding Steven Farmer and have been told that I may be receiving at least some of them shortly.  
16   I am similarly awaiting much of the LVMPD reports and other information. However, based upon  
17   what I have thus far, I can testify to the following.

18                   5.        That, unfortunately, the hospital industry is plagued with persons who commit  
19   crimes, including the crime of sexual assault on patients. That this comes about for many reasons,  
20   including the fact that patients are in compromised positions with staff, and exposing their most  
21   private parts and functions.

22                   6.        That Hospital Risk Management Journals, books and media reports discuss patient  
23   sexual abuse and the need for prevention of same.

24                   7.        That because the prevalence of such sexual abuse is significant, hospitals and  
25   medical staffing agencies routinely perform background and reference checks.

26                   8.        That, when a hospital or staffing agency fails to perform such checks, criminal  
27   behavior is often the result, and thus such is foreseeable.  
28

1           9.     That as a security analyst for various entities, including healthcare entities, I am  
2 frequently called upon to review security needs. One of the first areas that I review are employee  
3 policies and procedures. I am aware that most hospitals will have policies in place to investigate  
4 employees and their prior behavior. The issue is generally not writing the policy; the problem is  
5 that many healthcare entities fail to implement those very policies designed to look out for  
6 dangerous people.

7           10.    That patient sexual abuse by nursing assistants and clinical staff in hospitals is  
8 foreseeable, not shocking and not surprising. I am aware that most healthcare entities will insure  
9 against this loss and ANS did in this instance.

10          11.    That my review of the documentation and evidence makes clear that American  
11 Nursing Services was on notice of Mr. Farmer's predatory background issues.

12          12.    That American Nursing Services should have notified the authorities when it was  
13 put on notice, in January of 2008, that Mr. Farmer had abused a patient at Rawson Neal  
14 Psychiatric Hospital. Notification to authorities allows for an impartial and proper investigation.  
15 ANS' failure to do so was negligent, if not reckless.

16          13.    That since it was foreseeable to American Nursing Services that Mr. Farmer was a  
17 danger to patients, American Nursing Services should never have sent Mr. Farmer to Centennial  
18 Hills Hospital. It seems as though ANS was more interested in dollars than patient safety.

19          14.    That Mr. Farmer's conduct was also foreseeable to the hospital.

20          15.    While the hospital was allegedly not made aware of the Rawson Neal situation, it  
21 also failed to ask about for a job reference from the last place of employment for Mr. Farmer,  
22 which was Rawson Neal. So, had they properly asked the questions, they would have known  
23 about the issues. This goes back to my statement earlier that if policies are not implemented,  
24 foreseeable actions that those policies were put in place to prevent, will occur.

25          16.    The Staffing Coordinator at Centennial, Crystal Johnson, stated that asking for a  
26 job reference from the last employer was a policy of Centennial.

27          17.    That Ms. Johnson testified that Centennial never received the reference.

28          18.    That Ms. Johnson testified that without the reference, Mr. Farmer should not have  
been working at Centennial.

1        19. That since hospitals like Centennial are well aware of patient sexual abuse by  
2 CNA's and clinical staff, and since Centennial had a policy about receiving the last job reference,  
3 which when combined with background checks is a good way of attempting to weed out problem  
4 employees like Steven Farmer, but yet they failed to implement this policy, sexual abuse of a  
5 patient by Steven Farmer was plainly foreseeable. As I have stated, when entities fail to adhere to  
6 policies put in place to specifically weed out issues, criminal or other, those issues are readily  
7 foreseeable. While Centennial certainly should have been upset about what Mr. Farmer did, it  
8 cannot be said to be surprised.

9        20. In addition, Centennial was aware of incident regarding Mr. Farmer but did nothing  
10 about it. I have reviewed the LVMPD statement of Christine Murray. Ms. Murray, a nurse at  
11 Centennial, testified that a couple months earlier to Farmer's assault on Jane Doe, an incident took  
12 place whereby Mr. Farmer was sitting with a patient with the door closed. She, and other  
13 Centennial staff, apparently heard yelling to the effect that the woman wanted him out of the  
14 room. Instead of completing an incident report or starting an investigation, Nurse Murray stated  
15 that because she was a "crazy old lady", she and Centennial staff did not put any credence into  
16 what she was saying. So, just like at Rawson Neal, instead of investigating properly, they just  
17 blamed the patient. Accordingly, based upon this incident, I believe that Centennial (through its  
18 Nurses, including but not limited to Ms. Murray) was well aware of Mr. Farmer's foreseeable  
19 criminal nature. But, instead of doing anything about it, they blamed a "crazy old lady." Hence,  
20 his criminal conduct later on should not be surprising or startling.

21        21. That while I have significant other opinions and issues that I will be requiring  
22 additional information for in this matter, as to the issue of foreseeability, it is my opinion, to a  
23 reasonable degree of probability, that Mr. Farmer's actions were foreseeable in general and  
24 specifically to both American Nursing Services, Inc., and Centennial Hills Hospital.

22. That I reserve the right to change, modify, or add to my opinions herein as the facts warrant.

FURTHER AFFIANT SAYETH NAUGHT.

~~E. DWAYNE TATALOVICH, ICPS~~

Subscribed and sworn to before me  
this 17<sup>th</sup> day of November, 2014

Notary Public in and for said  
County and State



**E. Dwayne Tatalovich, ICPS  
FORENSIC SECURITY EXPERT**

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**CURRICULUM VITAE**

***Introduction***

My name is E. Dwayne Tatalovich. I am an International Crime Prevention Specialist (ICPS) designated by the International Society of Crime Prevention Practitioners (ISCPP)<sup>1</sup> and Chairman of Tatalovich & Associates Incorporated, which I founded in 1968 as the Tatt Investigating Firm (hereinafter "Tatt"). Tatt was registered with the Arizona Secretary of State on April 1, 1968, registration number 092483. Tatt subsequently evolved into Tatt Companies International, Tatt/Pedus, an International security firm World Headquarters Munich, Germany, and Tatalovich & Associates Incorporated. Tatt Companies International was the largest security, investigative and consulting firm in Arizona, and was one of the twenty largest firms in the United States. Tatt/Pedus, when combined, was one of the ten largest security firms in the United States.

Tatt provided security services in Arizona, Colorado, New Mexico, Oregon, Texas, Utah, Washington State, and Wyoming. Tatt employed approximately 1,500 security personnel. Tatt's seven service divisions included: 1) security, patrol, and loss prevention for a variety of industries which encompassed vulnerability studies, risk analysis, threat assessments, security surveys, security signage, executive protection, special events, workplace violence, nuclear security, and many others; 2) truth verification (Psychological Stress Evaluation - P.S.E. and Polygraph) pre-employment screening, periodic testing, and specific examinations; 3) electronic detection systems, residential and commercial, security and fire detection systems, electronic access controls, Closed-Circuit Television (hereinafter "CCTV") design and installation, barrier design, perimeter fence detection, security signage, others; 4) nuclear security services, providing nuclear qualified security guards, employee and vendor background screening, criminal background inquiries for nuclear and non-nuclear clients; 5) electronic countermeasures and secure communications, telephonically and within buildings, offices, etc; 6) consulting services including vulnerability studies, risk and threat assessments, surveys, audits, staffing

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<sup>1</sup> ISCPP is an offshoot of the nationally and internationally recognized National Crime Prevention Institute (NCPI) located at the University of Louisville, Louisville, Kentucky, that was founded in approximately 1970. Crime prevention training was originally conducted at the university; however, to promote updated training, an alumni association was formed and for three years met in Louisville. The NCPI was known throughout the world as a premiere crime prevention center, and many attended from around the world. As the group began to grow, in 1977 the Alumni Association separated from NCPI and formed ISCPP. The organization has been involved in pro-active security, law enforcement, and crime prevention since. ISCPP have members throughout the world from the public and private sectors. The ISCPP provides a training symposium every other year and the organization provides crime prevention updates to its members on a regular basis. The ISCPP provides formal training and testing. Applicants are rigorously tested on "15 core chapters", "14 electives", and "7 resource chapters". Applicants who successfully pass a 200-question examination are designated as "International Crime Prevention Specialists."

analysis, barrier design, special events, guard deployment, security policies and procedures, post orders, and numerous other security related services; and, 7) investigations involving fraud, workers' compensation, medical malpractice, wrongful death, automobile and construction accidents, product liability, others.

### *Tatt Specialized Services*

In 1979, at the request of Arizona's two largest utility companies, Tatt formed an eight-man Special Weapons and Tactical Response Team to respond in the event of an attempted takeover by a radical dissident group of two power-generating stations located on the Navajo Nation. The Team was comprised of highly trained former military personnel, led by retired Lieutenant Colonel, United States Army, Joseph E. Griffith, Tatt's Director of Security, a highly decorated combat veteran of World War II, Korea, and Vietnam. I established the policies, procedures, training criteria, rules of engagement, type of weapons issued, use and continuum of force. Colonel Griffith reported directly to me. The Team was featured in Phoenix Magazine in May 1977. This engagement enhanced my experience in security policies, procedures, adequate training, communications, chain of command, guard deployment, and use and continuum of force.

### *Tatt Merged with Pedus Services, World Headquarters Munich West Germany, United States Headquarters, Los Angeles, California*

On January 1, 1984, Tatt merged with Pedus Services, World Headquarters Munich West Germany, United States Headquarters, Los Angeles, California. The Tatt/Pedus Group's headquarters were located in Scottsdale, Arizona. I was the Chairman of Tatt/Pedus, an Arizona based group during 1984 and a Consultant to Pedus through 1987.<sup>2</sup> Tatt/Pedus was one of the ten largest security firms in the United States employing approximately 3,000 security personnel with services ranging from the multi-housing industry to nuclear generating plants, presidential libraries, security guard and patrol services, electronic detection systems, access controls, barrier design and others. My position and experience with this international security organization enhanced my knowledge of the national and international security industries.

### *Management Qualifications as an Expert in Security and Business Management*

My former firm, Tatt Companies International was the largest security firm in the State of Arizona, and one of the twenty largest security firms in the United States. Subsequent to the 1984 Tatt/Pedus merger, the combined Tatt/Pedus companies were one of the ten largest security firms in the United States employing approximately three thousand people.

### *Firstar Bank and Trust (U.S. Bank)*

My business management experience also includes: chairman of the Metropolitan Bank and Trust, its subsidiaries, a board member of Metropolitan Bank and subsequently Firstar Bank and Trust, which is now U.S. Bank, spanning from approximately 1986 through 1999. My management responsibilities included oversight of loan committee, examining committee,

<sup>2</sup> 1984 Press Release by Pedus Services.

directors trust committee, compliance with the Federal Bank Protection Act of 1968 as amended, required security procedures, security measures and devices, which I consulted with the bank as requested. *Refer to following section of vitae regarding the "banking industry" requirements for greater detail.*

#### ILX Resorts

During 1989, I was chairman of ILX a national real estate time-share and real estate development company, and a board member from 1987 through 1992. I was involved in the day-to-day management of the Los Abrigados Resort located in Sedona Arizona and the Craig's Lodge located in Estes Park, Colorado. *Refer to following section of vitae for details.*

#### Paragon Publishing Company

I was the president of Paragon Publishing Company, which owned the Zane Grey publishing rights from 1987 through 1991. I was accountable for day-to-day operations.

#### Across the Road Adventures (ARA)

I was the chairman of ARA, a real estate, bar, and restaurant development company, which owned and operated two bars and restaurants located in Crown King, Arizona, from 1995 through 2006. The revenue of ARA was approximately \$700,000.00 annually. *Refer to following section of vitae for details.*

#### Nutatt/Phoenix Law Enforcement Association (PLEA)

1991 - NUTATT - PHOENIX LAW ENFORCEMENT ASSOCIATION (PLEA) – Former Chairman and Managing Partner of the joint venture with PLEA to provide off-duty police officers to private industries throughout Arizona including the multi-dwelling unit industry, exterior areas of bars, clubs and restaurants, traffic control, special events, resort, hotel and motel, special events, retail shopping centers, construction sites, parking structures, parking lots, the exteriors of bars and restaurants, fast food restaurants, convenience stores, and others. Accordingly, I am familiar and experienced with the utilization of off-duty police officers, the gold standard of security guards in the private sector, off-duty policies, practices and procedures, use and continuum of force, supervision policies and restrictions for services to the private sector. I am experienced in the practices and policies of law enforcement and have worked in conjunction with the public sector throughout my 40-plus year career.

#### Maricopa County Sheriff's Office (MCSO) Advisory Posse, Former Chief of Operations, Currently Secretary to the Memorial Fund

I am currently on the board of the MCSO Advisory Posse and was appointed chief of operations in 2008, 2009, and chief administrative officer for 2010, 2011, 2012, 2013, and 2014. I have also been involved in numerous other business ventures and investments. I have 40-plus years of uninterrupted management experience in security and other industries, which includes

all aspects of management operations. My management experience and expertise speaks for itself.

### ***Practice Specializations***

1983 to present - TATALOVICH & ASSOCIATES INCORPORATED - I specialize as a trial expert and/or consultant with regard to premises liability primarily related to third-party criminal acts. With over 40-plus years of experience (I started at age 21), practice areas include, however, are not limited to: multi-dwelling units, hotel, motel, and resort industry, hotel and casino security, parking structures and parking lots, security officers, off-duty police officers, pre-employment practices, including criminal background checks in compliance with the Fair Credit Reporting Act (FCRA) and Equal Employment Opportunity Commission (EEOC) rules and regulations, NFPA 730 standards and ASIS pre-employment background screening guidelines, security officer training, supervision, deployment, special events, concerts, motocross and vehicle racing, crowd control, crowd dynamics, demonstrations, security barriers, labor disputes, bank and Automatic Teller Machine (ATM) security, Regulation H security measures and device requirements, false arrest, civil rights violations, adequate illumination levels, retail shopping centers, loss prevention security, shoplifting, (reasonable cause, manner, and duration), cocktail lounges, bar and restaurant security, security policies and procedures, standard of care regarding investigations, adequate pre-employment practices, use and continuum of force, fast food outlets, convenience stores, electronic alarm and fire detection systems, crime statistics analysis, notice and foreseeability of violent crimes, including: 1) homicide; 2) aggravated assault; 3) sexual assault; 4) robbery; 5) kidnapping; and, 6) major property losses.

I have extensive experience regarding private sector and proprietary security officers, loss prevention agents, investigators, and the utilization of off-duty police officers as security guards. I have performed over twenty-five hundred security surveys to include vulnerability assessments, risk analysis, threat assessments and management audits. I have supervised or been involved in over two thousand security stops. My security and investigative expertise also encompasses other related areas of private, commercial, industrial, nuclear and electronic security.

### **Investigative**

I also practice as an expert, consultant and investigator that reflects my 40-plus years of experience in the following areas: litigation, witness interviews, workplace violence, Department of Defense contractor investigative or security requirements, in-depth background investigations, criminal background checks, pre-employment policies, procedures, practices, industry standards of care, generally accepted investigative practices and procedures, management audits, sexual harassment, libel and slander, securities fraud, product liability, acquisition and sale of businesses, commercial transactions, environmental matters, contract and partnership disputes, fraud, representations and warranties, labor disputes, criminal matters and electronic countermeasures. My broad range of experience and expertise reflects 40-plus years of practice.



*States where I have been Engaged or Consulted as a Forensic Security Expert*

Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nevada, New Mexico, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington D.C., Washington State, and West Virginia, a total of 31 states.

***Summary of Experience and Credentials***

September 1984 through the present date, President, Chairman and Chief Executive Officer of Tatalovich & Associates Incorporated, a security consulting and investigative firm.

September 1984 to 1987. PEDUS SERVICES - Consulted as an expert to this international corporation, U.S. Headquarters Los Angeles, California; World Headquarters Munich, Germany. Consultations have included various areas of security management and national multi-state operations. Specialized consulting services included: utility security, loss prevention, security policies, procedures and practices, security for retail centers, special events, labor disputes, demonstrations, electronic protective systems, multi-dwelling unit security, parking structures and related areas, executive protection, multi-story buildings, vulnerability assessments, security audits and surveys, industrial, governmental, utility and nuclear security.

January 1984 to August 1984. TATT/PEDUS GROUP, PHOENIX, ARIZONA - President, Chairman and Chief Executive Officer. Pedus Services acquired Tatt on January 1, 1984, forming one of the ten largest security, consulting and investigation firms in the United States. Tatt Companies International and Pedus Services jointly employed approximately three thousand security professionals throughout nine states with combined annual revenues for 1984 of approximately \$30,000,000.00.

April 1968 to December 1983. TATT COMPANIES INTERNATIONAL AND/OR AFFILIATES - President, Chairman and Chief Executive Officer. Tatt's U.S. Headquarters were located in Scottsdale, Arizona. I founded each of the firm's seven operating divisions. All vice presidents and division directors reported directly to me. The divisions included; however, were not limited to: 1) security, patrol and loss prevention including vulnerability assessments to include industrial, retail and corporate security, risk analysis, threat assessment, executive protection, special events, labor disputes, crowd control, crowd dynamics, and workplace violence; 2) truth verification (Psychological Stress Evaluation - P.S.E. and Polygraph) a pre-employment requirement for Tatt security officers. Services were also provided to the public; 3) electronic protective systems, access controls, security barriers, design and installation of monitored and unmonitored CCTV systems; 4) nuclear security services providing nuclear qualified security officers and enhanced security for employees, contractors and executives, performing all employee and vendor background screening including criminal history checks; 5) electronic countermeasures (debugging) for secure on-site and electronic communications; 6) consulting services to include vulnerability assessments, risk and threat assessments, security surveys, audits, staffing analysis, pre-employment policies, practices, training, supervision, deployment, policies, procedures, post orders; and, 7) investigations involving workers'

compensation fraud, medical malpractice, workplace violence, product liability, pre-employment practices including criminal background checks, wrongful death, and business disputes to mention a few of Tatt's services.

Tatt was one of the twenty largest security firms in the United States, and the largest in the State of Arizona, which employed approximately fifteen hundred professionals in nine states. The firm's offices were located in: 1) San Diego, California; 2) Farmington, New Mexico; 3) Houston, Texas; 4) Denver, Colorado; 5) Dallas, Texas; 6) Scottsdale and Tucson, Arizona; 7) Portland, Oregon; 8) Austin, Texas; 9) Seattle, Washington; and, 10) operations in the States of Wyoming and Utah. Tatt's annualized fees in 1984 were approximately \$15,000,000.00.

**The Following Represents a Brief Summary, in Inverse Chronological Order of Significant Developments of Tatt Companies International and my Career Spanning 40-plus Years**

1980 - The Nuclear Service Division provided nuclear qualified security officers at Palo Verde Nuclear Generating Plant, conducted level one and level two employee and vendor pre-employment background investigations, including criminal history checks. During 1980, the responsibility for non-nuclear client background screening was transferred from the Investigation Division to the Nuclear Division. Tatt also provided security for nuclear demonstrations at the plant. All services were in compliance with the Nuclear Regulatory Commission (NRC) regulations, federal and state laws for the Palo Verde and Nuclear Generating Plant located approximately thirty-five miles west of Phoenix, Arizona. Tatt also provided executive protection, intelligence services, electronic countermeasures, loss prevention, fraud, risk analysis and threat assessment services for Arizona Public Service Company (APS), the managing partner for Palo Verde. The Palo Verde Nuclear Generating Station was and is the largest nuclear generating facility in the United States. All services met or exceeded all applicable nuclear regulatory standards.

1978 - The Systems Consulting Division offered; however, was not limited to, expert consultation in various areas of security, including electronic protective systems, security policies and procedures, training, post orders including multi-dwelling units, resort and retail security, security barriers, parking structures and surface parking lot security, special events, concerts, adequate illumination levels, security officer deployment (quantity and quality), vulnerability assessments, security surveys, audits, risk analysis, notice and foreseeability of third-party criminal acts, and other areas. During 1981, I was first engaged as a security expert and provided testimony in Arizona regarding a premise liability case related to private sector security issues.

1977 - The Electronic Countermeasures Division provided counter-electronic surveillance for commercial and residential buildings, including telephonically secure communications. This division also coordinated and performed related risk analysis, threat assessment and intelligence services regarding external and/or internal eavesdropping threats to private sector clients.

1976 - The Electronic Protective Systems Division designed, installed, and monitored commercial and residential, burglary, robbery, fire, duress and medical alert systems. Tatt's

commercial and residential systems were monitored by Tatt's hardened 24-hour state-of-the-art bullet and intrusion resistant Operations Center located in Scottsdale, Arizona. Services also included: access control, CCTV, mechanical locking mechanisms, structure design, and physical protective barriers. By 1984, the firm's Electronic Division was ranked in the top ten full service electronic alarm providers in the State of Arizona and provided electronic systems for other selected offices throughout the United States. Tatt was also the first computerized radionics central station in Arizona, and was one of the ten largest alarm companies in Arizona and the southwest.

1975 - The Truth Verification Division combined the use of polygraph and psychological stress evaluation (P.S.E.) for pre-employment, specific examinations, and to detect deception and fraud. Clients included: utility companies, restaurant chains, security companies, insurance carriers, law firms and others. As part of the firm's pre-employment screening policies, all security applicants were pre-tested as a condition of employment and retested as required as a condition of continuing employment. Tatt was the first firm in the State of Arizona to utilize P.S.E.

1972 - The Security, Patrol and Loss Prevention Division provided; however, were not limited to: retail, resort, special events, concerts, industrial, retail, and corporate security services to the Phoenix and Tucson metropolitan areas. I received the 007<sup>th</sup> security license issued by the State of Arizona, license #75-01007. Clientele ultimately included banks, multi-dwelling units, hotels, motels, resorts, high-rise buildings, government facilities, special events, concerts, utility companies, aviation, fossil and nuclear generating plants, manufacturing, the retail industry, defense contractors, high-tech electronic firms, convenience stores, fast food restaurants, airports, a presidential library, and various other clients throughout the nine states. This division ultimately provided armed executive protection agents and specialized in workplace violence, special events, and crime prevention.

### Investigative

1968 - Tatt was originally formed as a private investigation firm on April 1, 1968. The firm was registered with the Arizona Secretary of State, Trade Name Registration Number 092483. *I received the fifty-first investigative license issued by the State of Arizona, license number 10051.* Services included litigation related investigation primarily for law firms, corporations and insurance carriers. Specializations included: workers' compensation fraud, wrongful death, personal injury, product liability, loss prevention, and criminal investigations. During 1977, I was selected by both Arizona Public Service Company and Salt River Project, Arizona's largest utility companies, to develop and implement a power diversion program (theft of electricity and/or natural gas) leading to numerous unprecedented successful criminal prosecutions. Annual fees for the firm in 1968 were approximately \$9,600.00.

### Security and Investigative Licensing

I have been the principal for licensing, license holder and/or appointed a qualifying party where applicable, for licensing in security, investigation and electronics for the States of: 1) Arizona; 2) California; 3) Colorado; 4) New Mexico; 5) Oregon; 6) Texas; 7) Utah; 8)

Washington; and, 9) Wyoming. During my career, my companies or companies I managed and/or had an interest in and have earned in excess of approximately \$100,000,000.00 in professional fees.

***Related Industry Experience in Specific Areas; However, not Limited to***

**Parking Lots and Multi-Level Structures**

The vast majority of clients that I have represented during the prior 40-plus years had parking lots and/or parking structures. The types of businesses ranged from multi-housing, high-rise office buildings, industrial facilities, special events, hotels, motels, bars, restaurants, retail centers, fast food, convenience stores, a presidential library, and the Palo Verde Nuclear Generating Station, the largest nuclear power plant in the United States.

Tatt and Tatt/Pedus routinely provided security services to retail industries, multi-housing communities, including strip-type centers, regional shopping centers, parking lots, and parking structures, all of which had parking structures and/or parking lots. I am experienced and familiar with the NFPA 730 2006, 2008 or 2011 ANSI national premises security standards, ASIS, and other organizations' guidelines, practices, and specifically the industry standards of care as applied to premises liability involving third-party criminal acts occurring within multi-level parking structures and/or surface parking areas.

A significant number of my engagements are related to parking areas. My experience in this area was developed by providing security and vulnerability assessments on a national basis to hundreds of parking structures and/or parking lots throughout the United States.

**Healthcare Industry Experience**

I have been engaged as a workplace violence consultant by the Mayo Clinic and Scottsdale Memorial Hospital located in Scottsdale, Arizona. In the course of my examinations, I performed limited vulnerability, threat and risk assessments. I subsequently arranged executive protection for staff members.

I was also selected to perform management audits, including vulnerability, risk, and threat assessments for St. Joseph's Hospital and the Barrow Neurological Institute located in Phoenix, Arizona. My examination included a comprehensive review of security staffing, training, supervision, security measures, security policies, procedures, emergency room design, and interviews with executive management, beginning with the chief executive officer.

I have been engaged as a forensic security expert in the healthcare industry on six occasions to include, Arizona, Tennessee, Connecticut, Florida, and New Mexico. I was engaged on four occasions as a plaintiff's expert and twice as a defense expert.

Most recently, on March 28, 2013, I was accepted as a defense expert in healthcare security by the First Judicial District Court, County of Santa Fe, State of New Mexico. I am experienced in healthcare security both as a practitioner and as a forensic security expert.

### Navajo Nation Security Experience

I am experienced in the security practices of the sovereign Navajo Nation, which is located within the States of Arizona and New Mexico. I was offered and accepted as a forensic security expert in the matter of Jensen v. Giant Industries, in the District Court of the Navajo Nation, Judicial District of Chinle. I provided security to Arizona Public Service, Four Corners Power Plant and to the New Mexico Public Service Company, San Juan Generating Station located near Farmington, New Mexico; and the Salt River Project, Navajo Generating Station located in Page, Arizona. Tatt and Tatt/Pedus employed an average of approximately one hundred fifty Navajo security officers on the Navajo Nation from approximately 1978 through 1988. I am one of the very few security experts with security experience on the Navajo Nation.

### Retail Industry, Loss Prevention Agents, Merchants Statutes, Adequate Policies, Procedures, and Training

Tatt provided loss prevention agents and security guards to the retail industry. The scope of Tatt's services were to develop adequate security policies and procedures, particularly continuum and use of force in order to detain shoplifters, recover stolen merchandise, monitor CCTV systems to detect and observe shoplifters in the act of removing and/or concealing merchandise, and provide uniformed security guards to deter, detect and prevent crimes.

All stops were performed in compliance with the industry standards of care and applicable merchant statutes, specifically reasonable cause, manner, and duration of shoplifter detentions, including documentation, preservation of evidence, and preparation for prosecution.

### Convenience Store Industry

Tatt provided security guards, loss prevention agents, designed and installed alarm and CCTV systems, bandit barriers, robbery deterrence practices and procedures, performed vulnerability assessments and prepared security plans for the convenience store industry. I am familiar with the industry as both security practitioner and forensic security expert.

### Special Events, Concerts and Arena Security

I am a member of International Festival and Events Association (IFEA). I am very familiar with the security standards, guidelines and practices of the industry including emergency management planning and emergency response, including evacuations. I have been engaged as both a plaintiff and defense expert in litigation regarding concerts, arena security, special events, race and motocross events.

Tatt provided special event security to include: concerts, arena security, motocross, racing events, celebrations, providing crowd control, parking areas and accessing crowd dynamics. Tatt routinely utilized security barriers and other security measures and/or devices to control large crowds often comprised of aggressive individuals including concert attendees in order to deter, detect, prevent accidents, injuries and/or violent acts. Other services included:

special events, retail sales and/or facility closures, labor disputes, nuclear and other demonstrations, protests, annual board meetings where shareholder protests were predictable, and others.

*Resort, Hotel, Motel, Lodging and Multi-Dwelling Unit Industries' Experience*

In 1988, a group of investors and myself formed a publicly traded company to purchase the Los Abrigados Resort located in Sedona, Arizona, which had 195 units and was situated on 20 acres.

Our business plan was to convert the resort to a timeshare property, which is similar to a multi-housing community, except the residents generally stay from one week to six months. I was a member of the board of directors, and was appointed to and served on the executive committee from 1988 to 1992. I was elected chairman of the board in 1989. During 1989 and 1990, I was directly responsible for the oversight of day-to-day management operations of Los Abrigados located in Sedona, Arizona; The Historic Craggs Lodge located in Estes Park, Colorado; and, The Ventura Resort located in Boca Raton, Florida. My responsibilities specifically included oversight of security, safety, parking, common areas, bars and/or lounges that served alcoholic beverages, restaurants, live entertainment, special events at Los Abrigados and The Historic Craggs Lodge. I was ultimately responsible for the success and profitability of the company. ILX went on to purchase numerous timeshare properties in Arizona, Nevada, Indiana, and Mexico.

ILX's Premiere Vacation Club (PVC) was formerly located at 4813 Paradise Road, Las Vegas, Nevada, which was situated on approximately forty-four acres. ILX has an interest in The Carriage House Hotel, which is located at 105 East Harmon Avenue, Las Vegas, Nevada. The Carriage House Hotel is a one hundred fifty-five room multi-story hotel. ILX formerly operated Joey's Bistro, a gourmet restaurant that was located on the top floor overlooking the Las Vegas Strip. I consulted with ILX on security issues from my Phoenix office until the sale of ILX in 2012. ILX also owns and/or operates resorts which include: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites, which are located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Craggs Lodge at the Golden Eagle Resort, Estes Park, Colorado; the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico - Sea of Cortez.

My management and security experience with ILX has enhanced my knowledge of the hotel, motel, resort, and multi-dwelling unit industries. Very few security practitioners have both board and property level management experience in combination with experience as a security practitioner. I remain a security consultant to ILX.

*Hotel and Casino Experience*

I have been engaged as a defense forensic security expert on behalf of Gold Coast Hotel and Casino, Silverton Hotel and Casino, Texas Station and Casino, Sam's Town Hotel and Casino, Suncoast Hotel and Casino, Orleans Hotel and Casino, Orleans Arena, Imperial Palace

Hotel and Casino, Aztec Inn, Moulin Rouge, Stratosphere Tower Casino and Hotel, and Grand Sierra Resort. I am familiar with hotels' and casinos' flat surfaces and multi-level parking area designs and security measures.

I have been engaged as a plaintiffs' expert in three actions filed against Riverside Hotel and Casino located in Laughlin, Nevada, the Bellagio, and the Riviera Hotel and Casino located in Las Vegas, Nevada.

My practice includes, however, is not limited to: security officer operations, pre-employment practices, security policies and procedures, use and continuum of force, detention practices, procedures, investigative policies, procedures and practices, training, recurring training, supervision, traffic control, and parking area security.

#### Bar, Restaurant and Alcoholic Beverage Industries

May 1995 to 2006. Chairman - Crown King Investment Group, Inc., (hereinafter "CKIG"), an Arizona real estate, restaurant and bar development company.

CKIG owned a partnership interest in Across the Road Adventures, LLC (hereinafter "ARA"). ARA formerly owned and operated two bars and restaurants, the Crown King Saloon, a 100-year-old historic site, and the Switchback Grill and Saloon located in Crown King, Arizona. Both bars dispensed spirituous beverages and provided live entertainment to patrons. I have been a party to three Arizona liquor licenses including the Los Abrigados Resort located in Sedona, Arizona, and The Historic Crags Lodge that provided a full service bar located at the Golden Eagle Resort, Estes Park, Colorado. I was also a limited partner in the Pastaria Grill and Bar, which was located at Central Avenue and Clarendon in Phoenix, Arizona. My respective relationship with CKIG and ILX have enhanced my experience and operating knowledge of the alcoholic beverage, bar, and restaurant industries, particularly statutory regulations governing the alcohol beverage industry, dram shop laws, security standards, guidelines, practices, and/or recommendations relating to security measures. I am familiar with alcohol awareness practices, duties, and responsibilities of a licensee, security and pre-employment practices, adequate security policies and procedures, adequate staffing, security training and supervision for employees, security guard qualifications, training, staffing, security coverage, CCTV systems, robbery deterrence, prevention and detection, limitations regarding use and continuum of force, reasonable cause and manner for the ejection of disorderly and/or patrons involved in violent acts from an establishment and beyond the establishment's premises when and if possible in a safe manner, and overall invitee and employee safety and security.

#### Banking Industry

1986 to 1999. FIRSTAR METROPOLITAN BANK AND TRUST - I served on and consulted with the board of directors for Metro Bancorp, Inc. from 1986 through 1989 and its subsidiaries Metropolitan Bank, MB Mortgage Company, and MB Residential Services. I was elected Chairman of Metropolitan Bank and Metro Bancorp in 1987 and served through 1989. I provided consulting to the bank on security, safety, investigation, and related issues.

**Firststar Corporation**

During 1989, I was active in the negotiations regarding the sale of Metro Bancorp to Firststar Corporation and subsequently was offered a Firststar director's position. From 1989 through 1999, I served on the Firststar Metropolitan Bank & Trust Board of Directors, Loan Committee, Examining Committee, Directors Trust Committee, and continued to advise the Arizona based bank on security matters.

Firststar was the fourteenth largest bank in the United States with over seventy-three billion dollars in assets. During late 1999, all wholly owned subsidiaries of Firststar Bank & Trust merged into the Firststar Corporation. On October 21, 1999 at 4:50 p.m., the Phoenix, Arizona Firststar Metropolitan Bank Board of Directors approved the Arizona Firststar merger. Accordingly, the legal board for Arizona Firststar was dissolved as of November 12, 1999. I was offered a position by Firststar as an advisory director, which I declined. Firststar acquired U.S. Bancorp in February 2001, becoming the ninth largest bank in the United States.

I am experienced in bank management and security as a former thirteen-year board member of a major national bank and as a security practitioner. Very few security experts have board-level management experience in the banking industry.

**Federal Banking Requirements Pursuant to the Bank Protection Act of 1968 as Amended**

The Bank Protection Act as amended, Part 326, Minimum Security devices and Procedures and Bank Secrecy Act Compliance, Subpart A, Minimum Security Procedures under section 326.0 Authority, purpose, and scope requires the following:

(a) This part is issued by the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882.). It applies to insured state banks that are not members of the Federal Reserve System. It requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of the bank's board of directors to comply with this part and ensure that a written security program for the bank's main office and branches is developed and implemented.

(Emphasis added).

Section 362.2 Designation of security officer requires "Upon the issuance of federal deposit insurance, the board of directors of each insured nonmember bank shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office." (Emphasis added).



Under Section 326.3 Security program required compliance with (a) (1) through (5) (vi), and under Section 326.4 Reports requires The security officer for each insured nonmember bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program. (Emphasis added).

The board, which I served on for thirteen years, was ultimately responsible for the bank's security policies, procedures, security measures, devices, employee training, and the overall security program. My experience with Metropolitan Bank and Firststar Bank & Trust has enhanced my credentials in bank management, security, bank secrecy laws, ATM's, illumination, CCTV systems, cash management, robbery deterrent policies and procedures, robbery prevention policies and procedures to follow during a robbery, security guards, alarm systems, parking area security, bandit barriers and bullet resistant glass, financial analysis, asset searches, commercial lending, related areas of security and investigation.

#### *Restaurant and Fast Food Industry*

Tatt provided security services and security guards to the fast food industry throughout the states where Tatt operated. Other services provided were: robbery prevention, employee training, vulnerability assessments, security policies, procedures, CCTV systems, barriers, and Crime Prevention Through Environmental Design (CPTED) principles and practices.

#### *Pre-Employment Industry Standards of Care, Guidelines, Policies, Practices, and Background Screening*

I specialize in pre-employment background screening regulations, policies, procedures, and criminal background checks. As an expert, I examine the adequacy of pre-employment policies, procedures, background screening, regulatory issues, risk assessments, criminal history checks, and compliance with the industry standards of care.

The firm also provides background investigations for a variety of employment and non-employment issues, including but not limited to: 1) review of employment applications for adequacy and for omissions; 2) criminal background checks; 3) credential and education verification, particularly on expert witnesses; 4) interviews of employees and verification of references listed on an employment application; 5) sex offender registration; 6) outstanding warrants; 7) civil record examination; and, 8) assessment of qualifications of an applicant for the position applied for.

I was personally responsible to provide nuclear approved security services to Arizona Public Service (APS), the managing utility company for the Palo Verde Nuclear Generating Plant, the largest nuclear plant in the United States. Aside from providing nuclear qualified security officers, Tatt, under my direction, performed all level one and level two employee and vendor pre-employment background investigations including local and national criminal history checks.

All services are in compliance with the Fair Credit Reporting Act (FCRA) and the Equal Employment Opportunity Commission (EEOC) rules and regulations.

*Experience Utilizing Off-Duty Police Officers as Private Sector Security Officers*

1991 - NUTATT - PHOENIX LAW ENFORCEMENT ASSOCIATION (PLEA) - Former Chairman and Managing Partner of the joint venture with PLEA to provide off-duty police officers to private industries throughout Arizona including the multi-dwelling unit industry, exterior areas of bars, clubs and restaurants, traffic control, special events, resorts, hotels and motels, special events, retail shopping centers, construction sites, parking structures, parking lots, bars and restaurants, fast food restaurants, convenience stores, and others. Accordingly, I am familiar and experienced with the utilization of off-duty police officers in the private sector, off-duty policies, practices and procedures, use and continuum of force, supervision policies and restrictions for services to the private sector. PLEA is the certified bargaining representative for approximately twenty-three thousand certified Phoenix Police Officers. I am experienced in the practices and policies of law enforcement and have worked in conjunction with the public sector throughout my 40-plus year career.

I have also testified twice as an expert before the Arizona Industrial Commission regarding acts of off-duty police officers, which resulted in serious injury or death. The issues in both cases were the officers' acts outside or within the course and scope of off-duty employment. *Robertson v. Sixpense Inn* and *Wargo v. Riddle Group/Maricopa Court/State Compensation Fund*.

*Special Event Experience*

I am a member of the International Festivals and Events Association (IFEA). I am very familiar with the industry standards of care for the special event industry, including the service of alcoholic beverages, crowd control, crowd management, adequate policies, procedures, training, supervision, and security posts. I have been engaged as both a plaintiff and defense expert relative to special events to include concerts, arena security, providing temporary retail security services, celebrations, and emergency management planning.

Tatt specialized in special events to include: concerts, arena security, motocross, racing events, celebrations, sales of merchandise, store closings, exterior parties utilizing temporary liquor extension permits, vulnerability assessments, crowd control, crowd dynamics, and emergency responses and evacuations, if necessary. Tatt routinely utilized security barriers and other security measures and/or devices to manage large crowds often comprised of aggressive individuals including concert and/or special event attendees in order to deter, detect, prevent accidents, injuries, and/or violent acts. Other services included: emergency management planning, labor disputes, nuclear and other non-nuclear demonstrations, protests, annual board meetings where shareholder protests were predictable, and others.

*Racing and Motocross Events*

I am experienced in racing events. I was involved in semiprofessional drag racing, both as a pit crewmember and driver from 1967 through 1970. My last non-semi professional race occurred in 1981. During 1970, I was featured in a Champion Spark Plug Commercial and printed media advertisements including TV Guide, Esquire, Time Magazine, and others. My

opinions are based on experience as a security practitioner, expert, pit crewmember, driver and spectator. *Refer to Champion Spark Plug Advertisement and Champion Television Commercial.*

I have a unique understanding of special events as a practitioner and a forensic security expert.

*Industrial Facilities, Truck Stops, and Equipment Storage Yards*

Tatt and Tatt/Pedus provided security to industrial-type facilities and truck stops that included: manufacturing, enclosed equipment storage areas, semi-truck pick up and/or drop off storage yards/overnight parking, exterior fixed or mobile-type industrial equipment areas, aerospace, warehouses, and open storage exterior areas, utilizing a variety of security and safety measures and/or electronic devices including CCTV systems.

*Law Enforcement Related Experience, Maricopa County Sheriff's Office Advisory Posse*

The Maricopa County Sheriff's Office (hereinafter "MCSO") is one of the largest sheriff's offices in the nation with law enforcement responsibilities for Maricopa County, one the largest counties in the nation, encompassing nine thousand two hundred square miles, an area larger than some states.

In September 2006, Mr. Leroy Schneider, the former Chairman of Security Title of Arizona and Commander of the Advisory Posse recommended me for consideration by the MCSO as a sworn posse member.

The MCSO performed a comprehensive background investigation to determine if I met the posse's criteria as a member of the MCSO Advisory Posse. On September 8, 2006, Sheriff Joe Arpaio, a nationally recognized sheriff, administered my oath as a sworn member of the MCSO Advisory Posse. My rank is Captain, Serial No.: PA0196.

On October 18, 2007, I was nominated and elected to the Advisory Posse Board of Directors and appointed Chief of Operations for the years 2007 and 2008. I was re-nominated in October 2008 and elected to the Board as Chief of Operations for 2009. I was re-nominated in 2010 and 2011 and re-elected to the Advisory Posse Board as the Chief Administrative Officer. In 2012, I was re-nominated and elected to the Advisory Posse Board, Memorial Fund for 2013 as secretary.

MCSO policy G-J27 governs the posse. The policy sets forth in part:

Due to the limited staff available, and his extensive responsibilities, the Sheriff has the authority to call upon qualified personnel to assist him as members of recognized posses.

The principal purpose of posse groups is to provide the Sheriff with a force of volunteers to assist in carrying out the duties of the Office. ...

Since the Sheriff, or his designee, must call upon the individual or posse group for assistance, THE POSSE COMMISSION CARRIES NO LAW ENFORCEMENT AUTHORITY UNTIL AN INDIVIDUAL IS ACTIVATED. At that time the authority is established. Authority is limited to the conditions of the call out. A posse member is only vested with law enforcement powers of arrest when a Maricopa County Sheriff's Deputy or reserve deputy directs him to make an arrest. ...

(Emphasis added).

According to the sheriff's office information, the posse performs the following functions; however, not limited to, which I quote in part:

Posse members provide valuable assistance to virtually every division within the Sheriff's Office. Posse members assist the patrol deputies by providing back-up on dangerous calls, transport prisoners to jail, and provide traffic control at accident scenes. Posse members are also used to process paperwork for the Civil/Criminal Process Sections, Records and Identification Section, Enforcement Support Division, and the special Investigations Division. [www.mcso.org/submenu.asp?file=posse](http://www.mcso.org/submenu.asp?file=posse)

The primary purpose of the MCSO Advisory Posse was to establish and continue to raise funds for the MCSO memorial fund for fallen officers. The Advisory Posse to date has raised in excess of \$800,000.00 for the MCSO memorial fund. The fund is disbursed to the families of seriously injured or fallen deputies of the MCSO, or any police officer employed by any Arizona police agency. The purpose of the fund is to assist the surviving family members in a time of crisis. The board is responsible for raising additional memorial funds, the management of and distribution of the fund.

Sheriff Joe Arpaio also meets with the posse members biannually to discuss various law enforcement or other topics. The board consults with senior officers of the MCSO on a biannual basis and/or as required, regarding various requirements to support field operations to include requests for specialized training, equipment or other requirements.

My position with the MCSO Advisory Posse provides valuable law enforcement interaction and experience with the law enforcement community, and provides the availability for continued law enforcement training, which is offered to posse members. I remain available for a "call out as an advisor," and serve at the pleasure of Joe Arpaio, Sheriff of Maricopa County.

### ***Professional Memberships***

Former member American Nuclear Society (ANS) - April 1983 through December 31, 2010

American Society for Industrial Security (ASIS) - January 1, 1977 through December 31, 2014

Arizona Multihousing Association (AMA) - October 1, 1998 through September 30, 2015

Arizona Crime Prevention Association (ACPA) - January 1999 through December 31, 2018

Arizona Lodging & Tourism Association (AzLTA) - 1999 through December 2014

Former member Forensic Expert Witness Association - June 2009 through December 2013

Illuminating Engineering Society of North America (IESNA) - February 1999 through January 31, 2014

International Association for Healthcare Security and Safety (IAHSS) - October 12, 1998 through November 1, 2015

National Association of Chiefs of Police (NACP) - 1987 through December 1, 2014

International Council of Shopping Centers (ICSC) - October 10, 1998 through September 30, 2015

International Festivals and Events Association (IFEA) - June 2003 through December 2014. The IFEA today is The Premiere Association Supporting and Enabling Festival & Event Professionals Worldwide.

International Society of Crime Prevention Practitioners, Inc. (ISCPP) - October 12, 1998 through December 31, 2014

Former member International Special Events Society (ISES)

National Apartment Association (NAA) - February 2000 through September 1, 2014

National Criminal Justice Association (NCJA) - November 2000 through December 31, 2014

National Fire Protection Association (NFPA) - July 1994 through July 31, 2015

Maricopa County Sheriff's Office Advisory Posse - September 2006 through December 31, 2014

***Industry Publications Routinely Reviewed in my Continuing Education Regarding the Standards, Guidelines, Practices and Recommendations of the Private Sector Security Industry***

8<sup>th</sup> Edition, Illuminating Engineers Society North America Lighting Handbook

9<sup>th</sup> Edition, Illuminating Engineers Society North America Lighting Handbook

10<sup>th</sup> Edition, Illuminating Engineering Society of North America, The Lighting Handbook Reference and Application, Lighting for Emergency, Safety, and Security

An ICSC White Paper, International Council of Shopping Centers

Apartment News, Official Publication of the Arizona Multi-Housing Association

Arizona Hotel & Lodging Association

Arizona Multi-Housing Association Newsletter

ASIS Newsletters

ASIS Security Management Daily Briefing

Crime Prevention Curriculum by International Society of Crime Prevention Practitioners (ISCPP)

HospitalityLawyer.com – Loss Prevention Newsletter

International Association for Health Care Security and Safety Newsletter (IAHSS)

International Council of Shopping Centers Publications (ICSC)

ICSC Asia and Euro Briefs

ISCPP Enews

Journal of Health Care Protection Administration

Lighting Design and Application by IESNA

National Fire Protection Association (NFPA) 2006, 2008 and 2011 ANSI Premises Security Standards

Morgan Quitno City Crime Rankings from 2002 through 2012

Protection of Assets Manual by ASIS

SCT Xtra, a Publication of Shopping Centers Today

Shopping Center Management Insider

Special Event Risk Management Manual, Volume I

Special Event Security Management, Loss Prevention and Emergency Services, Volume II

The Chiefs of Police, National Association of Chiefs of Police

The Practitioners, International Society of Crime Prevention Practitioners, Inc. (ISCPP)

Units, Publication of the National Apartment Association (NAA)

The firm invests in excess of \$3,000.00 annually for membership and/or association dues, including publications, reference materials, educational seminars and internet access, in order to access industry publications, research, databases, security standards, guidelines, practices, recommendations and/or emerging security, standards, guidelines, practices and trends.

***Industry Recognition***

"Who's Who in American Law Enforcement," 1983

Former member of ASIS Nuclear Utilities Sub-Committee, 1983 - 1987

Former member ASIS Standing Committee on Utility Security, 1983 - 1987

Moderator, American Society for Industrial Security, Chattanooga, Tennessee.  
"Facility Drug Abuse", 1987

Contributed to and consulted in the publication of the Utility Security Managers' Handbook (ASIS) published, January 1, 1988

Consultant, ASIS Standing Committee on Utility Security, 1988 - 1990

"Who's Who in American Law Enforcement," 1989

Tatalovich & Associates Incorporated was chosen to consult and audit the Arizona State Lottery for compliance with existing security standards of care, guidelines, practices and operations, May 1996

I was approved by the City of Phoenix City Attorney's Office to provide investigative services, 1997-1998.

Lorman Education Services faculty member regarding premises liability related to third parties, 2003 and 2004

I was sworn in as a Maricopa County Sheriff's Office Advisory Posse Member by Sheriff Joe Arpaio on September of 2006. I have served on the Advisory Board of Directors from 2007 through 2011 and was reelected to the board for 2012.

I was invited on January 18, 2011 to lecture at the American Association of Justice (AAJ) annual convention to be held in New York, New York. On July 10, 2011, my lecture included "Using an Expert in Security Cases: Why, When and How" and a discussion of the NFPA 730 national ANSI premises security standards of care.

### ***Papers***

On May of 2011, I prepared a paper on Why, When and How to utilize a premises security expert and the application of industry standards of care to determine adequate or inadequate security.

### ***Continuing Education, Seminars, Lectures and Workshops***

1970 - Officed at Johnson & Tucker, a prominent Phoenix law firm. During a one and one-half year internship, I received instruction and supervision in investigations relating to premises and general liability, negligence, wrongful death, auto accidents, burglaries, product liability, witness interviews and written statements by Kenneth L. Tucker, a lawyer since 1967, and Arthur Johnson, a legendary Arizona trial lawyer. Mr. Tucker is A.V. Martindale Hubble rated, and is listed in the National Registry of Who's Who - 1999 Edition. Mr. Tucker is also recognized by Woodward/White, Inc. National Survey: Selected as one of the Top 3000 Lawyers in America 1997 - 1998, and is certified as a specialist in personal injury and wrongful death by the State Bar of Arizona.

1971 - Accident Scene Investigation and Reconstruction, Buckeye, Arizona, by Lieutenant Lowell Hicks, Expert Reconstructionist, Phoenix Police Department.

1971 - 1972 Two year internship with Debus, Busby & Green, Ltd., a prominent Phoenix law firm, now Debus, Kazan & Westerhausen, Ltd. The firm is A.V. Martindale Hubble rated and Mr. Debus is listed in the publication Best Lawyers in America. The internship provided training in civil and criminal investigations, security issues, interviewing techniques, crime scene examinations, custody and control of evidence, search and seizure, use and continuum of force and police procedures. Mr. Debus, a lawyer since 1971, was a former Phoenix Police Detective, Maricopa County Prosecutor and Criminal Justice Professor at Glendale Community College.

1972 - Educational seven day seminar regarding patrol procedures, facilities security, and security officer placement by Detective Ronald W. Cherry, Narcotics Division, Maricopa County Sheriff's Office.



1973 - Educational five day seminar regarding training criteria, firearms training, and range qualification with classroom instruction for security officers, by Detective Ronald W. Cherry, Narcotics Division, Maricopa County Sheriff's Office.

1976 - American Society for Industrial Security, Annual Convention Exhibits and Security Workshops.

1976 - Educational five day seminar regarding industrial security, post orders and patrol techniques by Lieutenant Colonel Joseph E. Griffith, Retired United States Army.

1976 - Educational seminar regarding electronic alarm system design and digital reporting by Security Corporation of America (SCOA).

1976 - Five day workshop regarding the design of alarm systems to include panic, holdup, mobile transmitter, smoke detectors, rate of rise detectors, under carpet mats, glass breakage detection, and digital technology, by Douglas A. Knall, former President, Bay Shore Security, Industry Expert.

1977 - Workshop regarding power diversion, theft of natural gas, vulnerability to tampering as defined by A.R.S. Title §13, presented by Arizona Public Service.

1977 - Workshop regarding power diversion, theft of electricity, vulnerability to tampering, as defined by A.R.S. Title §13, presented by Arizona Public Service.

1977 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1977 - Lecture regarding security requirements for a 24-hour operations center, including telecommunications, by Jerry L. Grissom, Chief Investigator, Salt River Project.

1979 - International Security Conference and Exposition on state-of-the-art security products, Anaheim, California.

1979 - Lecture regarding construction security, warehouse inventory control, search and seizure by Doug Nelson, former Assistant Chief, Phoenix Police Department and Director of Nuclear Security, Palo Verde Nuclear Generating Station.

1979 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1979 - Workshop seminar by Blue Grass Manufacturing regarding glass breakage detectors and sound discriminators.

1980 - Workshop regarding law enforcement general orders, and the application to the private sector, by P. Michael Napier, Attorney for the Phoenix Law Enforcement Association (PLEA).

1980 - Educational workshop for security guard training as required by the State of Arizona by retired officer James Smith, Department of Public Safety, formerly assigned to the state licensing department for security and investigation licensing.

1980 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1981 - Workshop regarding preparation of post orders, security surveys, parking structures and lighting, by Rodney Chapin, Assistant Director of Security, Arizona Public Service Company.

1981 - Educational workshop regarding radionics products for electronic security, by Radionics.

1981 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1981 - Educational workshop on interviewing techniques and use of polygraph, by M. John Morris, Certified Polygraphist.

1981 - Workshop seminar by Koyo and Panasonic regarding CCTV.

1981 - Workshop seminar by Card Key, regarding access control.

1982 - Lecture regarding nuclear and coal fired utility security practices by, G. Carl Agdognini, former Vice President of Nuclear Operations, Arizona Public Service.

1982 - Workshop regarding Radionics Central Station computer operation, by Radionics.

1982 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1983 - Educational workshop regarding multi-housing security, by Lieutenant Colonel Joseph E. Griffith, Retired United States Army.

1983 - Lectures regarding nuclear security standards, including tour of the Palo Verde Nuclear Generating Station Reactor and Operations Center. The lecture included: background requirements of employees, visitors and contractors of the industry, by G. Carl Agdognini, Vice President of Nuclear Operations, Arizona Public Service and Doug Nelson, Security Director for Palo Verde security and former Assistant Chief of Police for the Phoenix Police Department.

1983 - Educational seminar regarding nuclear security practices and standards, Albuquerque, New Mexico.

1983 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1984 - Lecture regarding security techniques of multi-story buildings and parking structures, by William T. Luse, former Director of Security, Arizona Public Service.

1984 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1986 - American Society for Industrial Security (ASIS), Annual Convention Exhibits and Security Workshops.

1988 - Educational workshop regarding community based policing, by Norman Harris, Officer, Louisville Police Department.

1991 - Bank Security, Audit, Robbery Procedures and ATM placement, by Paul F. Muscenti, President and Chairman, Firststar Metropolitan Bank and Trust, Phoenix, Arizona.

1995 - Update on electronic sensors to include dual tech sensors, radio-frequency transmitter, CCTV systems, and technology available regarding outdoor security systems, by Douglas A. Knall, President PMS Security Systems.

1995 - International Security Conference and Exposition of state-of-the-art security products and practices, Anaheim, California.

1996 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar.

1997 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar regarding Municipal Liability and Risk, Phoenix, Arizona.

1998 - Premises Liability Lecture, American Society for Industrial Security (ASIS), by Chris E. McGoey, CPP.

1998 - Educational seminar regarding executive protection, utility security and parking structures, by Jerry L. Grissom, CPP, retired Director of Security, Salt River Project.

1998 - Educational workshop regarding electronic countermeasures, by Timothy Johnson, Expert and former Office of Special Investigations (OSI) Agent, United States Air Force.

1998 - Workshop regarding Arizona Crime Free Multi-Housing Association, by Officer Tim Zehring, Mesa Police Department.

1998 - Lecture regarding executive protection practices of the United States Government, by Richard E. White, retired Phoenix Police Department, former special agent, Office of Special Investigations (OSI), United States Air Force.

January 1999 - Illuminating Engineers Society of North America (IESNA), Arizona Section Conference on Outdoor Lighting, by Melissa Klein, Clark Engineers.

1999 - Lecture regarding Arizona Crime Statistics, to include: analysis of grids, calls for service, population tract, and crime indexes, by Dale Norris, a retired Phoenix Police Officer, former Chief Negotiator for Phoenix Law Enforcement Association (PLEA), and currently a practicing Arizona lawyer specializing in public sector law enforcement.

1999 - Update regarding Bank Security, Audit, Robbery Procedures and ATM placement by Paul F. Muscenti, President and Chairman, Firststar Metropolitan Bank and Trust, Phoenix, Arizona.

1999 - 45<sup>th</sup> Annual American Society for Industry Security (ASIS), Seminar and exhibits regarding state-of-the-art security products and practices, Las Vegas, Nevada.

1999 - Lecture regarding Preventing Leasing Employee Assault and Sexual Endangerment (PLEASE) sponsored by the Arizona Multi-Housing Association.

2000 - "School Violence: A Threat Assessment Perspective" Workshop with topics including: Origins and Types of Violent Behavior, Specific Risk Factors of Students, Framework for Assessment of Risk Level, Referral and Assessment Protocol and Legal and Liability Issues, by Stephanie Orr, M.A., School Psychologist and Dean Pickett, J.D., Esquire, Phoenix, Arizona.

2000 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar regarding Municipal Liability; specifically, the 1983 Civil Rights Act, Anatomy of a Trial and Employment Law, Phoenix, Arizona.

2000 - International Conference of Shopping Centers Security Conference (ICSC), Las Vegas, Nevada.

February 2001 - American Society for Industrial Security (ASIS), Lecture on workplace violence, risk and threat assessment by Captain Jay Swart, Capital Police, State of Arizona.

2001 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar.

2002 - Familiarization and demonstration of portable network video CCTV system, digital transmission and storage by Tim Lee, Micro Technology Services.

2002 - Jones, Skelton & Hochuli, Annual Update of Arizona Law Seminar, specifically premises liability presented by Jeffrey T. Bergin, Esquire and Jefferson T. Collins, Esquire.

August 12, 2003 - Lorman Seminar, premises liability in Arizona regarding: 1) trip/slip and fall from the plaintiff's side; 2) trip/slip and the fall from the defense side; 3) premises

liability related to third-party criminal acts; 4) inadequate security claims; and, 5) falling objects and merchandise.

August 10, 2004 – Lorman Seminar, premises liability in Arizona regarding: 1) trip/slip and fall from the plaintiff's side; 2) trip/slip and fall from the defense side; 3) premises liability related to third-party criminal acts; 4) inadequate security claims; and, 5) falling objects and merchandise.

November 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>, 2004 – International Society of Crime Prevention Practitioners, three days training and testing to include:

#### **Section I: Introduction to Crime Prevention**

History – Concept to Crime Prevention

Three Lines of Defense

#### **Section II: Core Subjects**

Armed Robbery

Check Fraud

Child Safety

Credit Card Fraud

CPTED

Crimes against the Elderly

Domestic Violence

Identity Theft

Lighting for Security

Neighborhood Watch & Homeland Security

Public Speaking

Security Surveys

Sexual Assault

#### **Section III: Elective Subjects**

Auto Theft (Car Jackings)

Con Games (Mail and Telemarketing Fraud)

Construction Site

Crime Analysis

Gang Awareness

Internet Safety

Multi-Housing

Operation Identification

Personal Safety

Rural Crime Prevention

School Safety – Emergency Preparedness Plan

Shoplifting & Internal Theft

Volunteers

#### **Section IV: Resources**

Alarm Systems

Dealing with the Media  
 Locks  
 Managing Conflict (Safe Workplace)  
 Selling Crime Prevention  
 Sexual Assault (Interview)  
 Sexual Assault (Sub-types)

September 1, 2005 - Reviewed proposed draft of the NFPA 730 2006 ANSI standards for premises security, all chapters.

October 1, 2005 - Reviewed the NFPA 730 Guide for Premises Security 2006 edition, all chapters.

March 21, 2007 – Maricopa County Sheriff's Office Advisory Posse meeting to include a demonstration by SWAT team/K-9, jail response team, and lake patrol divers, general discussion of law enforcement practices, and in particular, immigration enforcement with Sheriff Joe Arpaio.

October 18, 2007 – Maricopa County Sheriff's Office Advisory Posse meeting - nominated and elected to the Advisory Posse Board of Directors, and appointed Chief of Operations for the years 2007 and 2008. The meeting included a general discussion with the sheriff, election of Board of Directors, status of the Advisory Posse memorial fund.

January – February 29, 2008 – Reviewed all material changes to various chapters of the ASIS Protection of Assets Manual regarding the private sector security industry.

March – April 2008 – Reviewed all ASIS standards and guidelines to include: 1) Business Continuity Guideline; 2) Chief Security Officer Standard; 3) Facilities Physical Security Measures Guideline; 4) Facilities Physical Security Management Standard; 5) General Security Risk Assessment Guideline; 6) Information Asset Protection Guideline; 7) Organizational Resilience: Security, Preparedness and Continuity, Management Systems – Requirements with Guidance for Use Standard; 8) Pre-employment Background Screening Guideline; 9) Private Security Officer Selection and Training Guideline; 10) Threat Advisory System Response Guideline; and, 11) Workplace Prevention and Response Guideline.

March 10, 2008 – Maricopa County Sheriff's Office Advisory Posse meeting. General discussions with Sheriff Joe Arpaio, in particular, immigration laws and enforcement, which was followed by a tactical shooting demonstration at the Scottsdale Gun Club.

August 5, 2008 – ASIS International Webinars, CPTED Outside the Box: Creative Combinations of Environmental and Physical Security that Reduce the Cost of Preventing Crime.

October 15, 2008 – Maricopa County Sheriff's Office Advisory Posse meeting. The board consulted with management representatives from the sheriff's office regarding a request and justification of funds for: 1) enhanced specialized physical training for the SWAT team; 2)

repairs for the shooting simulator; and, 3) replacement uniforms for the detail assigned to special events. All expenditures were approved. The board subsequently approved a memorial fund payout to a fallen Phoenix Police Officer.

January 1, 2008 – Reviewed the NFPA 730 Guide for Premises Security 2008 edition, all chapters.

April 8, 2009 – Maricopa County Sheriff's Office Advisory Posse meeting. General discussions and approval of board decisions and status of memorial fund.

October 20, 2009 – Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers, review memorial fund payout policy for injured or fallen officers, tactical demonstration by the sheriff's office special detention recovery team regarding techniques utilized in the apprehension of escaped inmates. General discussion with Sheriff Joe Arpaio.

October 13, 2010 – Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers and status of memorial fund. Discussion with Sheriff Arpaio regarding crime in Maricopa County, and demonstration by the airborne search and rescue posse members.

January 10, 2011 – Reviewed the NFPA 730 Guide for Premises Security 2011 edition, all chapters.

April 13, 2011 – Maricopa County Sheriff's Office Advisory Posse meeting, which included a tour of the Tent City incarceration facility.

July 10, 2011 – Seminar on premises security presented by the AAJ in New York, New York, regarding: 1) How to evaluate premises security cases; 2) Effective use of an expert in security cases; and, 3) Using a trial consultant in security cases by John Elliott Leighton, Esquire and Charlotte A. Morris, Jury Consultant.

September 28, 2011 - Maricopa County Sheriff's Office Advisory Posse meeting. Election of officers, review memorial fund and general discussion with Sheriff Joe Arpaio.

October 1, 2011 – Purchased and reviewed Litigating Premises Security Cases, Volumes 1 and 2 by John E. Leighton, Esquire.

June 1, 2012 – Review of revised Protection of Assets publications to include: 1) information security; 2) crisis management; 3) applications; 4) security officer operations; and, 5) investigations.

March 2013 – Maricopa County Sheriff's Office Advisory Meeting. Consultation with executive management regarding funding issues for families of fallen officers.

### ***Lecture Engagements***

Guest speaker of the American Society for Industrial Security (ASIS), Orlando, Florida.

**"Legal Aspects of Security Liability," 1986.**

**Guest speaker with Burns International and Phoenix Holdings, Inc. regarding: premises liability, corporate and residential security, response to dangerous or life threatening situations, and other related areas. 1985 through 1995.**

**Guest speaker of Legal Assistants of Metropolitan Phoenix (L.A.M.P), Phoenix, Arizona regarding: premises liability, negligent hiring, employment, supervision, and background investigations. 3-95.**

**Guest speaker at Westwood High School, Mesa, Arizona regarding false arrest and use of excessive force. 4-95.**

**Guest speaker as a premises liability expert for the law firm of Jones, Skelton & Hochuli, Annual Update of Arizona Law. My lecture focused on premises liability and security practices, Phoenix, Arizona. 5-96.**

**I provided a three-credit student business internship approved by the College of Georgetown, Georgetown, Kentucky, to include risk analysis and premises liability. 5-99.**

**Guest lecturer, National Association of Legal Investigators, mid-winter conference. My lecture focused on premises liability and investigation related to third-party criminal perpetrators. Other speakers included Janet Napolitano, former United States Attorney for Arizona, Grant Woods, former Arizona Attorney General, and William J. Flynn, Forensic Document Examiner. 1-01.**

**Lecturer for ILX International Resorts on premises liability related to third-party criminal acts. The lecture and consultation was presented to ILX resort managers at the annual 2003 management conference in Sedona, Arizona. ILX management representatives included: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites which are all located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Crags Lodge at the Golden Eagle Resort, Estes Park, Colorado; the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico – Sea of Cortez. 2-03.**

**Lorman faculty instructor on premises liability in Arizona, specifically, liability related to third-party criminal perpetrators. Continuing Legal Education (CLE) credits were presented to attendees. Other faculty instructors included: Sean P. Healy, Esquire, Mack T. Jones, Esquire, Sara J. Powell, Esquire and Benjamin C. Thomas Esquire. 8-03.**

**Lecturer for ILX International Resorts on premises liability related to third-party criminal acts. The lecture and consultation was presented to ILX resort managers at the annual 2004 management conference in Sedona, Arizona. ILX management representatives included: The Los Abrigados Resort, Los Abrigados Lodge, The Inn at Los Abrigados, and The Bell Rock Inn and Suites which are all located in Sedona, Arizona; Kohl's Ranch and Lodge located near Payson, Arizona; The Historic Crags Lodge at the Golden Eagle Resort, Estes Park, Colorado;**



the Varsity Clubs of America, South Bend, Indiana and Tucson, Arizona chapters; and an international resort in San Carlos, Mexico – Sea of Cortez. 2-04.

Lorman faculty instructor on premises liability in Arizona, specifically, liability related to third-party criminal perpetrators. Continuing Legal Education (CLE) credits were presented to attendees. Other faculty instructors included: Mack T. Jones, Esquire, Sara J. Powell, Esquire and Johnny J. Sorenson, Esquire. 8-10-04.

I consulted with Eagle's Eyre III Homeowners' Association and advised its members on basic and advanced crime prevention measures to include generally accepted Crime Prevention Through Environmental Design (CPTED) principles and practices to prevent burglaries. 10-8-07.

Lecturer at the American Association of Justice (AAJ) annual legal convention in New York, New York. The association is the world's largest trial bar for attorneys. My lecture included "Using an Expert in Security Cases: Why, When and How" and a discussion of the national industry standards of care. Attorneys were awarded continuing legal education credits for attendance. 7-10-11.

#### Media Interviews

2004, interview by the Fox Network, Phoenix, as an expert in transit stop security.

2004, interview by Channel 4, Tucson, as an expert in university multi-level parking garage security.

2005, interview by the Fox Network, Phoenix, as an expert in parking area security.

December 31, 2008, I was interviewed by the Baltimore Sun as an expert in bank security. The article was published under the caption "Bank Holdup Trend: Kidnapping Manager's Family".

January 6, 2009, I was interviewed by NBC affiliate, Channel 12, as an expert in courthouse security. The interview aired on January 6, 2009 during the 10:00 p.m. news as a feature story regarding the trial of Dale Hausner, the alleged Phoenix serial shooter and killer who was charged with 87 crimes, including 8 homicides, several drive-by shootings, attempted murder, and aggravated assault.

December 2009, interview by Fox 10 News, Phoenix to air on December 19, 2009 as an expert in shoplifting, the effect and annual cost to the retail industry, compliance with the merchant's statute, and security measures to deter, detect and/or prevent shoplifting by Sandra Kotzambasis.

August 23, 2012, interview by Michael Mayko, Reporter for the CT Post, a Hearst Publication, (Connecticut) regarding a threat to Producer Harvey Weinstein (and his relatives) who hosted a \$35,800.00 per plate fundraiser at his beachside residence for President Obama. I was interviewed regarding, "So did that, along with the money demand and the threat on Weinstein's relatives, persuade Secret Service to go beyond normal security arrangements?"

January 2013, interview by Barbara Villa of Arizona News Radio regarding workplace violence.

May 26, 2014, interview by Linda Williams of Fox 10 News. How to safely travel if at all to Nogales, Mexico after the U.S. Government issued a travel warning.

### ***Faculty Membership***

I am a faculty member of Lorman Education Services located in Eau Claire, Wisconsin. Lorman conducts Legal Education Seminars throughout the United States. I am recognized by Lorman as a premises liability expert regarding third-party criminal perpetrators. I present seminars to attorneys, risk managers, real estate insurance agents, and others on premises liability related to third-party criminal acts.

Attorneys may qualify for up to six hours of Continuing Legal Education (CLE) credits which may be counted towards their state bar requirements. This seminar has also been approved by the Arizona Department of Real Estate and the Arizona Department of Insurance for seven hours of continuing education.

### ***Special Clearances***

United States Secret Clearance - Department of Defense (Inactive)

Arizona State Department of Banking (Inactive)

Arizona Department of Liquor Licenses & Control (Inactive)

Maricopa County Sheriff's Office Background Investigation for a sworn posse member

### ***Licenses and Permits***

State of Arizona Concealed Weapons Permit Number 28929249 issued August 11, 1994 - sixteen hours of training, four hours re-certified training on August 11, 1998, eight hours re-certification on December 7, 2002. My Concealed Weapons Permit was reissued on September 15, 2006 and is current through September 15, 2016. The firm requires qualifying practice quarterly.

State of Arizona Private Investigator's license number 884026 originally issued February 20, 1974, license number 10051, which was the fifty-first license issued by the state. Current Arizona license number 1537164. Tatalovich & Associates Incorporated license number 1003690.

Former principal or qualifying party for security and/or investigation licenses where applicable to include:

- a. Arizona
- b. California
- c. Colorado

- d. New Mexico
- e. Oregon
- f. Texas
- g. Utah
- h. Washington State
- i. Wyoming

***Jurisdictions where I have Given Testimony as an Expert Witness in Premises Liability and/or Negligence-Related Issues of Private and/or Public Sector Security***

2<sup>nd</sup> Judicial District Court, State of Nevada, Washoe County

229<sup>th</sup> Judicial District Court, State of Texas, Jim Hogg County

Arizona Industrial Commission

Circuit Court of the First Circuit, State of Hawai'i

Circuit Court of the 8<sup>th</sup> Judicial Circuit, Alachua County, Florida

Circuit Court of the 9<sup>th</sup> Judicial Circuit, Orange County, Florida

Circuit Court of the 11<sup>th</sup> Judicial Circuit, Miami-Dade County, Florida, General Jurisdiction Division

Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida

Circuit Court of the 16<sup>th</sup> Judicial Circuit, Monroe County, Florida Civil Division

Circuit Court of the 18<sup>th</sup> Judicial Circuit, Brevard County, Florida

Circuit Court of Pulaski County, Arkansas, Third Division

Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis

Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division

Circuit Court of Jackson County, Missouri, at Kansas City

Court of Common Pleas Berks County, Pennsylvania

District Court of the Navajo Nation, Judicial District of Chinle

District Court, Clark County, Nevada

District Court of the Second Judicial District, County of Nez Perce, State of Idaho

First Judicial District Court, County of Santa Fe, State of New Mexico

Iowa District Court, Boone County, State of Iowa

Maricopa County Superior Court, Arizona

Pima County Superior Court, Arizona

Santa Cruz County Superior Court, Arizona

Superior Court, Judicial District of Norwalk/Stamford at Stamford, Connecticut

United States District Court, 9<sup>th</sup> Circuit, Arizona

United States District Court, Southern District of Florida

United States District Court for the Western District of Tennessee, Western Division

United States District Court for the Eastern District of Texas, Marshall Division

United States District Court, Western District of Kentucky at Paducah

United States District Court for the District of Maryland (Southern Division)

United States District Court for the Western District of Michigan

United States District Court for the Middle District of Tennessee at Nashville<sup>3</sup>

***Testimony at a Minimum for Ten Prior Years Pursuant to the Federal Rules of Civil Procedure and/or Other State Rules of Civil Procedure***

- 1) *Foxfire Apts. adv. Hair, La Resa*, 2<sup>nd</sup> Judicial District Court, County of Washoe, State of Nevada, November 21, 1995.
- 2) *Bartoletti vs. Albertson's Inc., a Delaware corporation authorized to transact business in Arizona; Reliant Protective Services, Inc., an Arizona corporation; and Does I through X, inclusive*, Maricopa County Superior Court, State of Arizona, July 10, 1998.
- 3) *Richard Earl Downing, a married man; Savello Vera Downing, his wife vs. Ornda Healthcorp of Phoenix, Inc., a California corporation*, Maricopa County Superior Court, State of Arizona, January 14, 1999.

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<sup>3</sup> The federal rules in this jurisdiction did not allow expert depositions; rather, written opinions were required and submitted. The defense did not file a Daubert challenge or any motions in limine, September 10, 2010.

- 4) Burnett v. Executive Tower Condominiums, Maricopa County Superior Court, State of Arizona.
- 5) Dacalor v. Johnston, Maynard, Grant & Parker, Maricopa County Superior Court, State of Arizona.
- 6) Galvan v. Leeco Investment Company, Maricopa County Superior Court, State of Arizona.
- 7) Doyle v. Famous Sam's, Santa Cruz County Superior Court, State of Arizona.
- 8) McCullough v. Mid-America Apartment Communities, United States District Court for the Western District of Tennessee, Western Division, October 4, 2002.
- 9) Mohammed v. Bobby McGee's, Maricopa County Superior Court, State of Arizona, October 10, 2002.
- 10) Mitsch/Pazdernik v. Cameron Creek, Maricopa County Superior Court, State of Arizona, June 5, 2003 and a trial September 10, 2003.
- 11) Price v. CityPlace PV, Inc., et al., Maricopa County Superior Court, State of Arizona, June 19, 2003 and a trial September 30, 2003.
- 12) Robinson v. Boone Speedways, Inc., District Court for Boone County, Iowa, August 8, 2003.
- 13) Michalski v. We3, et al., Maricopa County Superior Court, State of Arizona, September 12, 2003, a mediation.
- 14) Stokes v. Circle K, Maricopa County Superior Court, State of Arizona, July 16, 2004.
- 15) Heintz v. State of Arizona, Pima County Superior Court, State of Arizona, July 19, 2004 and a trial October 14<sup>th</sup>, 15, and 19<sup>th</sup>, 2004.
- 16) Wargo v. Maricopa County, Industrial Commission of Arizona, July 23, 2004 and August 13, 2004.
- 17) Moore v. Oak Park Apartments, United States District Court for the Western District of Tennessee, Western Division, July 28, 2004.
- 18) Medina/Gonzales v. Ranch Rescue Texas, et al., District Court, 229<sup>th</sup> Judicial District, Jim Hogg County, Texas, September 13, 2004.
- 19) Lois Giesel v. UpChurch Management Company, Inc., et al., United States District Court, Southern District of Florida, U.S. Magistrate Brown, November 9, 2004.

- 20) Alaeric Tevon Birge, a minor, by mother and next friend, Pheniqueski S. Mickens v. Dollar General Corporation, Dolgencorp, Inc., Tommy Lee Turley, Jeremy Garrett, Corey Richmond, United States District Court for the Western District of Tennessee, September 8, 2005.
- 21) Tiana Marie Grafitti-Valenzuela, by and through her parent and legal guardian Marie Grafitti v. City of Phoenix, a political subdivision of the State of Arizona, Maricopa County Superior Court, State of Arizona, September 22, 2005.
- 22) Kron v. Apartment Investment and Management Co., et al., Maricopa County Superior Court, State of Arizona, October 5, 2005.
- 23) Anderson v. Schnuck Markets, United States District Court, Western District, Tennessee Western Division, December 8, 2005.
- 24) Filip Petrovic v. CBNC, Inc., et al., Maricopa County Superior Court, State of Arizona, December 16, 2005, arbitration.
- 25) Lever v. Pavilion Partners, L.L.C., et al., Maricopa County Superior Court, State of Arizona, February 24, 2006 and April 13, 2006.
- 26) Sheri Kay Dunlap, individually and as Administratrix of the Estate of Megan Leann Holden, deceased, and James Vincent Holden v. Wal-Mart Stores, Inc., and The Wackenhut Corporation, United States District Court for the Eastern District of Texas, Marshall Division, July 20, 2006.
- 27) The Estate of Crystal Ledesma by and through its Executrix, Maria L. Cogburn, Keoni Lee Ledesma-Beinto, by and through his Guardian ad Litem, Maria L. Cogburn, John Benito, and Michelle Piatt vs. Miguel Cano, a convicted felon, McDonald's Stanollie, McDonald's Restaurants of Nevada, Inc., McDonald's Corporation, Inc. a Delaware Corporation, Thomas M. and Linda Arlt, and Does I through XX, inclusive; and Roe Corporations, I through II, inclusive, District Court, Clark County, Nevada, August 25, 2006.
- 28) Teresa Day Chance v. AMLI/BMPT Breckenridge Partnership, AMLI Residential Properties, L.P., AMLI Residential Properties Trust & AMLI Management Company, in the United States District Court for the Eastern District of Texas, Marshall Division, September 14, 2006.
- 29) John Michael Son and Kathy Son the parents of Heather Suzanne Son, deceased, and as personal representatives of the Estate of Heather Suzanne Son vs. Realty Partners, Ltd., a Nevada Limited Partnership; Realty Partners Corporation, a Nevada Corporation; Property Management and Development Corporation, a Nevada corporation; Leo R. Frey and Jane Doe Frey, husband and wife; John Does I through X, inclusive, District Court, Clark County, Nevada, September 22, 2006.

- 30) Elaine Friedman, as next of kin for Robert Friedman, deceased v. Allright Corporation, a Delaware corporation, composed of Central Parking System of Memphis, Inc., a Tennessee Corporation, Central Parking of Tennessee, Inc., a Tennessee Corporation, Myron Zimmerman, Trustee for the Zimmerman Revocable Trust and Freeman Real Estate Company, Inc., a Tennessee Corporation, Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District of Memphis, October 18, 2006.
- 31) Katherine Gile Smith, a single woman v. Pillar Communities, L.L.C., an Arizona limited liability company; Pillar at Desert View, L.L.C., a Washington limited liability company; Does I through X; Black Corporations I-X, Maricopa County Superior Court, State of Arizona, December 5, 2006.
- 32) E. E. v. Tannex Development Corp. d/b/a Hilton Resort and Marina, a Florida for profit corporation and Mark Jason Holmes, individually, Circuit Court of the 16<sup>th</sup> Judicial Circuit, Monroe County, Florida Civil Division, May 25, 2007.
- 33) Todd and Janna Childress, Individually and as Administrator of the Estate of Michael Childress, deceased v. The Cafaro Company, an Ohio Corporation, and/or d/b/a Kentucky Oaks Mall, Co., an Ohio Corporation, and National Security Consultants, Inc., an Ohio Corporation, United States District Court for the Western District of Kentucky at Paducah, July 27, 2007.
- 34) Larry Richard Finley and Sue Ellen Finley v. Kroger Company and Union Realty Company, G.P. and Argenbright Security, Inc., in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, August 9, 2007, a deposition and December 10, 2007, a trial.
- 35) J.J. v. Hyatt Vacation Management Corp., d/b/a Hyatt Vacation Club, a Florida for profit corporation and Etta Elizabeth Bernhard, individual, d/b/a Majestic Security & Investigations and Mark Jason Holmes, individually, in the Circuit Court of the 16<sup>th</sup> Judicial Circuit, in and for Monroe County, Florida, August 23, 2007 and September 20, 2007.
- 36) Kelli L. Riding and Kent L. Riding v. McDonald's Corporation, McDonald's Restaurants of Tennessee, Inc., Broadmoor Investment Corp., and General Motors, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, January 7, 2008.
- 37) Simmons v. Wal-Mart, in the Circuit Court, Eighth Judicial Circuit in and for Alachua County, Florida, March 13, 2008.
- 38) Ronald Crampton v. CBC Financial Corporation, a Nevada Corporation d/b/a Moulin Rouge Hotel Apartments and Desert Breeze Apartments, Inc.; Barton Maybie, Does I through X and Roe Corporations I through XX, inclusive, District Court, Clark County, Nevada, March 17, 2008, a trial.

- 39) Tommie Smith v. Target Corporation, Wackenhut Services, Incorporated, and Dayton-Hudson Corporation, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, April 11, 2008.
- 40) The Estate of Lidia Giangrandi, by and through Lili Carissa Giangrandi, as Personal Representative of the Estate vs. 50 State Security Service, Inc., Loch Lomond Homeowners Association, Inc., Town of Miami Lakes and Miami-Dade County, Florida, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division, April 24, 2008.
- 41) Henry Lynn Vance by and through his Guardian, Wanda Susan Vance, and Wanda Susan Vance, individually vs. Eastview Terrace Limited Partnership; Monarch Properties, Inc. d/b/a Westmark Management Company; Cynthia Brown; Arthur Dean; Ron McCarty; GCL Assets, III, LLC; GCL Holdings, LLC; Eastview-2004, LLC; American Community Developers; and John Does 1 through 10, in the Circuit Court of Pulaski County, Arkansas, Third Division, July 10, 2008.
- 42) Simmons v. Wal-Mart, in the Circuit Court, Eighth Judicial Circuit, in and for Alachua County, Florida, August 6, 2008, a trial.
- 43) Henry Lynn Vance by and through his Guardian, Wanda Susan Vance, and Wanda Susan Vance, individually vs. Eastview Terrace Limited Partnership; Monarch Properties, Inc. d/b/a Westmark Management Company; Cynthia Brown; Arthur Dean; Ron McCarty; GCL Assets, III, LLC; GCL Holdings, LLC; Eastview-2004, LLC; American Community Developers; and John Does 1 through 10, in the Circuit Court of Pulaski County, Arkansas, Third Division, August 22, 2008.
- 44) Patricia Krause and Steven Krause, her husband vs. Wal-Mart Stores, Inc. a foreign corporation, Wal-Mart Stores East, Inc., a foreign limited partnership, and National Security and Intelligence Agency, LLC a Florida limited liability corporation, in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division, September 11, 2008.
- 45) Jayant Patel and Rahki Patel v. Kuber-Patel Properties, LLC, an Arizona Limited Liability Corporation, d/b/a Sleep Inn; Alpha Corporations 1-10; Beta Entities 1-10; John/Jane Does 1-10, Maricopa County Superior Court, State of Arizona, November 18, 2008.
- 46) Bruce Northrup and Roberta Saltzberg, a married couple vs. Accor North America, Inc., a foreign corporation; Glasjar Property, LLC, a foreign limited liability company; Michelle Rene Smith and John Doe Smith, a married couple, Maricopa County Superior Court, State of Arizona, January 28, 2009.
- 47) Paul D. Plass v. Danver's, LLC., in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, March 11, 2009.



- 48) Beate Thelen and Jeorg Knoppke, vs. Davis Brothers Incorporated a/k/a Davis Brothers of Georgia, Incorporated d/b/a Howard Johnson Inn International Drive, in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida, June 22, 2009.
- 49) Joseph Antonio, et al., vs. Security Services of America, LLC., et al., in the United States District Court for the District of Maryland (Southern Division), September 30, 2009.
- 50) Patrick Scott and Joy Scott, husband and wife vs. The Scottsdale Plaza Resort, L.L.C., an Arizona Limited Liability Company; and State of Arizona, Maricopa County Superior Court, State of Arizona, December 17, 2009.
- 51) Nicholas Skiadiotis and Angie Skiadiotis vs. MGM Mirage, a Delaware corporation; Bellagio, LLC, a Nevada limited liability company, doing business as Bellagio; Mario Deandre Howard, individually; Roe corporations I through X, inclusive; and Does I through X, inclusive, District Court, Clark County, Nevada, January 20, 2010.
- 52) Jane Doe, Girl Doe, and Boy Doe v. Stamford Marriott Hotel and Spa, HD Realty Associates, LLC, Meyer Jabara Hotels, and Marriott International, Inc., Superior Court, Judicial District of Norwalk/Stamford at Stamford, Connecticut, January 29, 2010.
- 53) Patricia Krause and Steven Krause, her husband vs. Wal-Mart Stores, Inc. a foreign corporation, Wal-Mart Stores East, Inc., a foreign limited partnership, and National Security and Intelligence Agency, LLC a Florida limited liability corporation, in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, General Jurisdiction Division, March 19, 2010, a trial.
- 54) Frank Gumina, III, and Ellise Gumina, his wife vs. Morgans Hotel Group Co., a Delaware Corporation, Morgans Hotel Group, LLC, a Delaware Limited Liability Company, Aquiles Rodriguez, Mario Alcantara, Luis Varga, Jhoan Durd and George Calhous, in the Circuit Court in and for the 11<sup>th</sup> Judicial Circuit, Dade County, Florida, April 16, 2010.
- 55) Lequitta Higgins v. American Management Services, LLC, d/b/a Pinnacle, American Management Services East, LLC, d/b/a Pinnacle, Village Square I, LLC, Cascade Affordable Housing, LLC, CAH/RED Capital Affordable Housing I, LP, Village Square II, LLC, CAH/RED Capital Affordable Housing II, LLC, CAH/RED Capital Affording Housing II, LP, Ambassador Worldwide Protection Agency, Inc. and Raymond Howard, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, June 23, 2010.
- 56) Shawn D. Williams and Lanora Richard v. Food 4 Less, LLC., Internal Security Protection Specialists, Inc., Joey Ahuna, Does I through X, and Rose I through X, inclusive, District Court, Clark County, Nevada, Mediation Hearing, July 28, 2010
- 57) Olga Jimenez v. RW Eastgate d/b/a Eastgate Apartments, an Arizona limited liability company; Doe Assailants; AMC Apartment Management Consultants, LLC, a Utah

- limited liability company; and Does I through X, inclusive, in the District Court, Clark County, Nevada, August 25, 2010.
- 58) Lancaster v. Imperial Guard Services and American Home Assurance, University Park, Inc., Ferrell Paving, Inc., and John Doe Property Owner, in the Circuit Court of Shelby County, Tennessee, for the Thirtieth Judicial District of Memphis, September 8, 2010.
  - 59) Francisco Garcia vs. Brentwood Oaks Apartments, L.P. and its successor in interest, Brentwood General Partnership, Sentinel Real Estate Corporation, Associated Security and Patrol, LLC, and John Does 1-3, in the United States District Court for the Middle District of Tennessee at Nashville. The federal rules in this jurisdiction did not allow expert depositions; rather, written opinions were required and submitted. The defense did not file a Daubert challenge or any motions in limine, September 10, 2010.
  - 60) Michael J. Bruce v. Katherine L. Woods, d/b/a Kactus Kate's and John Doe Woods, wife and husband; Donald Glenn Looney and Jane Doe Looney, husband and wife, Maricopa County Superior Court, State of Arizona, October 4, 2010.
  - 61) Garfield Johnson vs. Macy's Florida Stores, LLC d/b/a Macy's, and City of Boynton Beach, in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida, October 28, 2010.
  - 62) John Horrell and Marea Horrell, as Conservators of Olivia Horrell vs. CEC Entertainment, Inc., d/b/a Chuck E. Cheese, United States District Court for the Western District of Michigan, December 10, 2010.
  - 63) Deanna Ramirez, Surviving Mother of Daniel Ramirez vs. The Retreat, an Arizona Apartment Complex; Equity Residential Management Co., an Illinois Corporation; John Does I through V, inclusive; Jane Does I through V, inclusive; RED Partnerships I-X; Black Corporations I-X inclusive, Maricopa County Superior Court, State of Arizona, February 18, 2011 and March 15, 2011, both depositions.
  - 64) Jamison Hendricks and Jessica Haas vs. Domain on Highland, LLC d/b/a The Stratum on Highland, JPI Management and Security One, Inc., in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, March 10, 2011.
  - 65) Jesus Cano and Elena Cano, husband and wife, for themselves and all statutory beneficiaries of Luz Estela Navarro, deceased vs. Southgate Center Devco I, L.L.C., an Arizona Limited Liability Corporation; Southgate Center Devco II, L.L.C., an Arizona Limited Liability Corporation; Eisenberg Company, an Arizona corporation; K Mart Corporation, a foreign corporation; et al., Maricopa County Superior Court, State of Arizona, April 20, 2011.
  - 66) Ms. Vanessa Moore vs. Firetree, Ltd., and Mr. Ben T. Rice, In the Court of Common Pleas Berks County, Pennsylvania, a trial June 6, 2011.

- 67) Shawn D. Williams and Lanora Richard v. Food 4 Less, LLC, Internal Security Protection Specialists, Inc., Joey Ahuna, Does 1 through X, and Rose 1 through X, inclusive, District Court, Clark County, Nevada, a trial July 1, 2011
- 68) Stephanie Inouye vs. University Of Hawai'i, Michael Kaptik, John Does 1-10; Jane Does 1-10; Doe Corporations 1-10; Doe Partnerships 1-10; Doe Limited Partnerships 1-10; Doe Joint Ventures 1-10; Doe Limited Liability Companies 1-10; and Doe Government Entities 1-10, in the Circuit Court of the First Circuit, State of Hawai'i, July 29, 2011, a trial.
- 69) Kirby G. Ockwell, a single man and Clayton R. Ockwell, a minor vs. Edward N. Jackson a single man; Weber, Inc., an Idaho Corporation dba Alibi/Sports Edition/2 Doors Down; T&R Rental, LLC, an Idaho limited liability company; and John and Jane Does 1 through 50, in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, August 11, 2011.
- 70) The Estate of Lidia Giangrandi, by and through Lili Carissa Giangrandi, as Personal Representative of the Estate vs. 50 State Security Service, Inc., Loch Lomond Homeowners Association, Inc., Town of Miami Lakes and Miami-Dade County, Florida, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division, September 20, 2011, a trial.
- 71) Felicia Holland and Denise M. Holland v. Safeway, Inc., in the Superior Court of the State of Washington for Snohomish County, December 2, 2011.
- 72) Michael McQuade vs. New York Community Bank, a foreign for profit corporation, doing business in Florida as Am Trust Bank, Silverhut Associates, a Florida for profit corporation and MCAVA Real Estate, Inc., in the Circuit Court of the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida, December 13, 2011.
- 73) Robert Gonzales, an individual; Nicole L. Raudenbush, an individual vs. The Vons Companies, Inc. dba Vons Super Market, Michigan corporation; Las-Cal Corporation dba Taco Bell, a Nevada corporation; Royal Security, Inc. dba Brownstone Security, a California corporation; Brownstone Security, Inc., a California corporation; Janette D. Nelson, an individual; Nicole Nelson, an individual, Maryland Park Place, LLC, a Nevada limited liability company; Roe Property Management Company I; Roe Security Company I; Doe Security Guard I; Does 1 through X; and Rose 1 through X, inclusive, District Court, Clark County, Nevada, February 29, 2012.
- 74) Vanessa D. Boykin vs. Lakhani Commercial Corporation, et al., in the Circuit Court of Jackson County, Missouri, at Kansas City, April 5, 2012.
- 75) Troy Anderson and Paula Anderson, his wife vs. Hilton Hotels Corporation, a foreign corporation, doing business at Embassy Suites Orlando at International Drive and Jamaican Court, also doing business as Hilton Worldwide, Securamerica LLC, a foreign corporation, a/k/a Securamerica LLC, W2007 Equity Inns Realty, LLC, a foreign

- corporation, and Interstate Hotels Resorts, Inc., a Florida Corporation, in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, May 3, 2012 and August 17, 2012.
- 76) Kadeem Angus vs. Bow Tie Cinemas, LLC, et al., Superior Court, Judicial District of Stamford/Norwalk at Stamford, July 26, 2012.
  - 77) J.G., individually, and on behalf of Her Minor Daughter, T.G. vs. G4S Secure Solutions USA, Inc., f/k/a and/or d/b/a G4S Wackenhut, individually, and as Successor in Interest to, The Wackenhut Corporation, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, August 20, 2012.
  - 78) Wanda Wisniewski vs. Coast Casinos dba Suncoast, Doe Defendants 1 through 10, inclusive, District Court, Clark County, Nevada, September 6<sup>th</sup> and 7<sup>th</sup>, 2012, an arbitration.
  - 79) Trenton Barkhurst vs. Dambar & Steakhouse, L.L.C., an Arizona limited liability company; Fork in the Road, Inc., an Arizona corporation; The Kingsmen of Route 66, Inc., an Arizona corporation; Security Intelligence Service, P.L.C., an Arizona professional liability corporation d/b/a State Security Service; Billy Singleton, a single person; Benjamin James Fancher, a single person; Kenneth Tyrell Devore, a single person; John Does I-V; Jane Does VI-X; ABC Corporations XI-XV and XYZ Partnerships XVI-XXII, Maricopa County Superior Court, State of Arizona, September 19, 2012.
  - 80) Mark William Franklin, an individual vs. Jason John Clemett and Dawn M. Clemett, husband and wife; Daniel Blanchard and Jane Doe Blanchard, husband and wife; Jane and John Does I-X; Black and White Partnerships I-X; and ABC Corporations I-X, Maricopa County Superior Court, State of Arizona, November 29, 2012.
  - 81) Brian Coleman and Tina Coleman vs. Pro-Vigil, Inc., John Does 1-5, United States District Court for the Western District of Oklahoma, December 20, 2012.
  - 82) Tangela Dixon, as Personal Representative of the Estate of Nathaniel Jones, Jr., on behalf of the Estate and on behalf of the survivors, Tangela Dixon, individually, and Nathaniel Jones, Sr., individually vs. Big League Properties, LLC, a Florida limited liability company, Big League Management, LLC, a Florida limited liability company, and Big League Ventures, LLC, a Florida limited liability company, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, February 22, 2013
  - 83) Carlton Grant, Jr. vs. Dade Corners Plaza, Inc., in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, March 22, 2013.
  - 84) Julie Perez vs. Paul Maes; and Christus St. Vincent Regional Medical Center, First Judicial District Court, County of Santa Fe, State of New Mexico, March 28, 2013, a trial.

- 85) Albert Charles Hamper, a single adult male vs. Royale Lounge, Inc., an Arizona Corporation; John Does I-V; Jane Does I-V; Black Partnerships I-V; and White Corporations I-V, Maricopa County Superior Court, State of Arizona, April 4, 2013.
- 86) Andrew C. Hearne vs. Ernie of Kansas City, LLC, et al., in the Circuit Court of Jackson County at Kansas City, July 23, 2013.
- 87) Shabnam Amiri, an unmarried woman vs. State of Arizona; Black Corporations I-X; John Does I-X, Maricopa County Superior Court, State of Arizona, September 25, 2013.
- 88) Mahogany L. Johnson, individually and as Mother and Natural Guardian of Jacque'ze R. Johnson, Deceased Minor vs. Maruti Somerset Park, LLC d/b/a Somerset Park Apartments, Complex Security Services, Climax Security Services, Memphis Light, Gas & Water Division, Memphis Fire Department, a Division of the City of Memphis, and Sherwin Short, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, October 9, 2013.
- 89) Ted Theodoropoulos vs. MJW LLC, dba PHX Nightclub; John and Jane Does I-XX; ABC Limited Liability Business Entities I-X; XYZ Partnerships I-XX; Black and White Corporations I-XX, Maricopa County Superior Court, State of Arizona, November 25, 2013, a trial.
- 90) Mike Sherman vs. Hotel St. Francis, LLC, a New Mexico Limited Liability Company, and Heritage Hotel and Resorts, Inc., a New Mexico Corporation, First Judicial District Court, County of Santa Fe, State of New Mexico, April 25, 2014.
- 91) Frank Genna and Donna Genna vs. Captain's Cove Marina of Bridgeport, Inc., et al., Judicial District of Fairfield/Bridgeport at Bridgeport, State of Connecticut Superior Court, July 15, 2014.
- 92) Kimberly McCloud, as Personal Representative of the Estate of Kenneth McCloud, Jr. vs. Choice Hotels International, a foreign profit corporation, Leslie Lurken d/b/a Clarion Hotel, Josh Weber, Misty Beasley, Claden West, Roderick West, Claudia West and Jacksonville Aviation Authority, in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, September 11, 2014.

***State of Tennessee, McClung Supreme Court Decision***

I was the substitute security expert engaged on the McClung Case that changed premises liability laws in the State of Tennessee, United States District Court for the Western District of Tennessee, Western Division, Roger L. McClung v. Delta Square Group, Inc., and Wal-Mart by Bruce S. Kramer, Esquire of Borod & Kramer, P.C. of Memphis, Tennessee. Mr. Kramer changed Tennessee law regarding premises liability related to third-party criminal acts, which is now commonly referred to in Tennessee as the McClung Law.

***Education, Designations and Certifications***

From the fall of 1966 through 1968, I attended Glendale Community College, Glendale, Arizona, Business Administration, and Police Science. I earned 68 college credits. My focus was police science and criminal investigation.

During 1979, I also attended Arizona State University, Center for Executive Development, regarding management principles and practices.

1969-1971 - Legal internships with two prominent Phoenix, Arizona law firms in civil and criminal litigation, specifically including premises liability.

March 10, 2000 - Certified Security Executive (CSE). Certified by the Security Management Institute, Charlotte, North Carolina.

October 20, 2005 - International Crime Prevention Specialist (ICPS) tested and designated by the internationally and nationally recognized International Society of Crime Prevention Practitioners, an offshoot of the International Crime Prevention Specialist (ICPS) designated by the International Society of Crime Prevention Practitioners (ISCPP).

1970 – 2013 Continuing education seminars, lecturers, webinars, and industry publications to include: security measures and devices, security tests, studies, industry authorities and publications regarding security, premises liability, standards of care, vulnerability and risk assessment to include the standards, guidelines, practices and recommendations of the private sector security industries. I have completed approximately 2,000 hours of continuing education during my 40-plus year career.

Revised: September 30, 2014

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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 08:44 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 3 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*

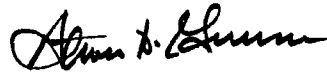
*Valley Health System, LLC, d/b/a Centennial Hills Hospital Medical Center and  
Universal Health Services, Inc.*

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

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| 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           |
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| 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 |
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| 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             |     |                 |
|    | (December 31, 2014)                        | IV  | WA0817 - WA0846 |



CLERK OF THE COURT

1 ERR

2 MICHAEL E. PRANGLE, ESQ.

3 Nevada Bar No. 8619

4 JOHN F. BEMIS, ESQ.

5 Nevada Bar No. 9509

6 HALL PRANGLE & SCHOONVELD, LLC

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8 Las Vegas, NV 89144

9 702-889-6400 – Office

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11 [efile@hpslaw.com](mailto:efile@hpslaw.com)

12 *Attorneys for Defendants*

13 *Centennial Hills Hospital and*

14 *Universal Health Services, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

15 MISTY PETERSON, AS SPECIAL  
16 ADMINISTRATOR OF THE ESTATE OF  
17 JANE DOE,

18 Plaintiff,

19 vs.

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

Defendants.

CASE NO. A595780  
DEPT NO. II

**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**

COMES NOW, Defendants, CENTENNIAL HILLS HOSPITAL and UNIVERSAL  
HEALTH SERVICES, INC., by and through their attorneys of record, the law firm of HALL,

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025


1 PRANGLE & SCHOONVELD LLC, and provides their Errata to their Opposition to Plaintiff's  
2 Motion for Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's  
3 Limited Opposition.

4 This Errata is made and based upon the pleadings on file, the Memorandum of Points and  
5 Authorities that follow, and any oral argument of counsel that may be heard at the time of  
6 hearing of this motion.  
7

8 DATED this 16<sup>th</sup> day of October, 2014.

9 HALL PRANGLE & SCHOONVELD, LLC

10  
11 By:

  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
JOHN F. BEMIS, ESQ.  
Nevada Bar No. 9509  
HALL PRANGLE & SCHOONVELD, LLC  
1160 North Town Center Drive, Suite 200  
Las Vegas, NV 89144  
*Attorneys for Defendants*  
*Centennial Hills Hospital and*  
*Universal Health Services, Inc.*

18 I.

19  
20 **ERRATA**

21 Defendants cited to the case *Vaughan v. Harrah's Las Vegas Inc.*, 2008 WL 6124455,  
22 three times in their Opposition to Plaintiff's Motion for Summary Judgment<sup>1</sup>. Defendants  
23 included a copy of the unpublished opinion as an exhibit to its Opposition. *See* Opposition,  
24 Exhibit C. Defendants failed to identify the case as an unpublished decision. To avoid any  
25 misrepresentation to the Court, Defendants seek to identify *Vaughan v. Harrah's Las Vegas Inc.*,  
26  
27  
28

<sup>1</sup> See Opposition 8:20, 9:14-19, and 11:10-11.

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1 2008 WL 6124455 as an unpublished opinion. The citation is not meant to be binding precedent.  
2 Rather, the citation is pursuant to SCR 123, as the case is relevant and instructional as to the  
3 construction of NRS 41.745.

4 DATED this 16<sup>th</sup> day of October, 2014.

5 HALL PRANGLE & SCHOONVELD, LLC

6  
7 By: 

8 MICHAEL E. PRANGLE, ESQ.

9 Nevada Bar No. 8619

10 JOHN F. BEMIS, ESQ.

11 Nevada Bar No. 9509

12 HALL PRANGLE & SCHOONVELD, LLC

13 1160 North Town Center Drive, Suite 200

14 Las Vegas, NV 89144

15 *Attorneys for Defendants*

16 *Centennial Hills Hospital and*

17 *Universal Health Services, Inc.*

18 ...

19 ...

20 ...

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 16<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing 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 via E-Service on Wiznet pursuant to mandatory NEFCR 4(b) to the following parties:

ROBERT E. MURDOCK, ESQ.  
521 South Third Street  
LAS VEGAS, NV 89101  
*Attorneys for Plaintiff*

S. BRENT VOGEL, ESQ.  
LEWIS BRISBOIS BISGAARD & SMITH  
6385 South Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

-and-

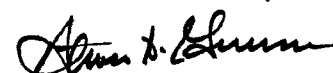
ROBERT C. MCBRIDE, ESQ.  
CARROLL, KELLY, TROTTER, FRANZEN,  
MCKENNA & PEABODY  
701 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074  
*Attorneys for Defendant  
Steven Dale Farmer*

JAMES P.C. SILVESTRI, ESQ.  
701 Bridger Ave., Suite 600  
Las Vegas, NV 89101  
*Attorneys for Defendant  
American Nursing Services, Inc.*

  
An employee of HALL PRANGLE & SCHOONVELD, LLC

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LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

4841-0623-6191, v. 1



CLERK OF THE COURT

Robert E. Murdock, Esq.  
Nevada Bar No. 4013  
MURDOCK & ASSOCIATES, CHTD.  
521 South Third Street  
Las Vegas, NV 89101  
702-685-6111

Eckley M. Keach, Esq.  
Nevada Bar No. 1154  
ECKLEY M. KEACH, CHTD.  
521 South Third Street  
Las Vegas, NV 89101  
702-685-6111  
Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ESTATE OF JANE DOE, by and through its  
Special Administrator, Misty Petersen,

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. 09-A-595780-C  
DEPT. NO. II

**REPLY TO DEFENDANTS'  
OPPOSITIONS TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT  
RE: LIABILITY**

**DATE: December 3, 2014  
TIME: 9:00 a.m.**

COMES NOW Plaintiff Estate of Jane Doe, by and through its Special Administrator,  
Misty Petersen, by and through its attorneys of record, Murdock & Associates, Chtd., and Eckley  
M. Keach, Chtd., and hereby submits its Reply to Defendants' Oppositions to Plaintiff's Motion  
for Summary Judgment Re: Liability as follows.

1 This Reply is made and based upon the attached Points and Authorities, the papers and  
2 pleadings on file herein, and any oral argument as may be had by this Court.

3 DATED this 21<sup>st</sup> day of November, 2014.

4 MURDOCK & ASSOCIATES, CHTD.  
5 ECKLEY M. KEACH, CHTD.

6  
7 /s/ Robert E. Murdock  
8 Robert E. Murdock Bar No. 4013  
9 Eckley M. Keach Bar No. 1154  
10 521 South Third Street  
11 Las Vegas, NV 89101  
12 Attorneys for Plaintiff

13  
14 **POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 The Motion for Partial Summary Judgment is limited in scope. The Motion is based upon  
17 NRS 41.133 and how such is applied. Once Mr. Farmer was convicted, two things occurred: (1)  
18 Mr. Farmer's civil liability is automatic, and (2) the facts used for the conviction have all been  
19 proven. The court must grant summary judgment on those issues. All of the defendants now must  
20 concede the fact that Jane Doe was sexually assaulted by Farmer and all of the details of those  
21 sexual assaults that he was convicted of are now established as a matter of law. That is what NRS  
22 41.133 mandates.

23 This has consequences. Any "affirmative defenses" or factual defenses related to those  
24 conceded facts must now be dismissed. Both American Nursing Services, Inc. (hereinafter,  
25 "ANS") and Centennial Hills Hospital Medical Center (hereinafter, "Centennial/UHS") seem to  
26 have missed that point. If the facts of the sexual assaults have been proven, there is no further  
27 relevance to, for example, when she told the police or why she may have waited to tell the police.  
28 The sexual assault has been established, and the only issues have to deal with damages.

Additionally, because of the conviction, NRS 41.130 mandates liability upon ANS and Centennial/UHS as the employers of Farmer.

Centennial/UHS and ANS argue that they are not liable based upon NRS 41.745.<sup>1</sup> They claim that Farmer's intentional acts preclude their liability. The issue, however, is that the Nevada Supreme Court disagrees with them. Unless this Court is going to overrule **Prell Hotel Corp. v. Antonacci**, 86 Nev. 390, 469 P.2d 399 (Nev. 1970), and **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005), this Court must grant summary judgment against both ANS and UHS, not for their own negligence<sup>2</sup>, but based upon NRS 41.133, 41.130, and 41.745.

There are no genuine issues of material fact regarding (1) whether the sexual assault occurred, (2) how the sexual assault occurred, (3) liability of Farmer for the sexual assault on Jane Doe, (4) employment of Farmer by both ANS and Centennial/UHS, (5) respondeat superior liability for ANS, (6) respondeat superior liability for Centennial/UHS, (7) absolute strict liability for the actions of Farmer as to Centennial/UHS, and (8) ratification of Farmer's actions by Centennial/UHS and ANS through the actions of their lawyers. The party who moves for summary judgment has the burden of showing the absence of genuine issues of material fact. **Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.**, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Plaintiff has met this burden.

## II. LEGAL ARGUMENT

### A. THE UNCONTESTED FACTS

**All parties agree that the following facts are uncontested:**

1. In May of 2008, Jane Doe was a patient at Centennial/UHS. ANS Admission Number 1 (1<sup>st</sup> Set). Centennial/UHS Admission Number 1 (5<sup>th</sup> Set).

///

///

<sup>1</sup> They actually both allege that they are either not liable or there is a question of fact.

<sup>2</sup> ANS has separately filed a Motion for Summary Judgment regarding their own negligence and Centennial/UHS has joined in same; however, this was withdrawn because of an agreement regarding documentation from ANS. Nevertheless, some of the issues that go to their own negligence, also apply to the issue of the foreseeability prong of respondeat superior. Hence, herein, Plaintiff discusses facts which apply to both. But, the instant Motion only has to do with NRS 41.130 liability. Issues related to the negligence of ANS and Centennial will be discussed in another Motion.



1           2.     In May of 2008, Centennial/UHS had a contractual agreement whereby ANS would  
2 provide certain hospital staff, which included Certified Nursing Assistants (hereinafter, "CNA").  
3 Simmons Deposition at 115. ANS00665-ANS00703 (Portions).

4           3.     In May of 2008, Defendant Steven Farmer was an agency CNA working at  
5 Centennial/UHS through ANS. Centennial/UHS Admission Number 2 (5<sup>th</sup> Set).

6           4.     In May of 2008, Farmer wore an employee badge that had his name, ANS, and  
7 Centennial/UHS written on it. Sparacino Person(s) Most Knowledgeable Deposition at 7-8.

8           5.     There was nothing on the badge to indicate to a patient that Farmer was not an  
9 employee of Centennial/UHS. *Id.* at 8.

10          6.     There was nothing about his clothing, job performance, duties, or anything he did  
11 that would indicate to a patient that Farmer was not an employee of Centennial/UHS. *Id.* at 8.

12          7.     At around 21:30 hours on May 14, 2008, Farmer was moved by Centennial/UHS  
13 from the Emergency Room to the Sixth Floor to work. Centennial/UHS Documents Staff00001;  
14 CHH00323; CHH Interrogatory Response No. 1 (7<sup>th</sup> Set).

15          8.     On May 14, 2008, Jane Doe was in Room 614 at Centennial/UHS. Centennial/UHS  
16 Chart.

17          9.     On May 14, 2008, in the course and scope of his employment with ANS as a CNA  
18 and in the course and scope of working at Centennial/UHS, it was expected as part of his tasks that  
19 Farmer would enter patients' rooms on the Sixth Floor of Centennial/UHS. In addition, Farmer  
20 was expected to give bed baths, cleanup stool, cleanup urine, and check monitor leads. CNA  
21 Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills Competency Checklist.  
22 Goodhart Deposition at 43-44.

23          10.    On May 14, 2008, Farmer entered Jane Doe's room, Room 614 at Centennial/UHS.  
24 Testimony of Jane Doe at 8-14.

1           11.    On May 14, 2008, having contact with a patient in the patient's room on the Sixth  
2 Floor of Centennial/UHS was in the course and scope of Farmer's employment with ANS as a  
3 CNA. CNA Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills  
4 Competency Checklist. Goodhart Deposition at 43-44.  
5

6           12.    Farmer had contact with Jane Doe in her room on the Sixth Floor of  
7 Centennial/UHS. Testimony of Jane Doe at 8-14.

8           13.    Jane Doe suffers from seizures where she is completely aware of what is going on  
9 outside of her but cannot talk and move for up to 24 hours after. Testimony of Jane Doe at 3-4.  
10

11           14.    Jane Doe woke up to find Steven Farmer pinching and rubbing her nipples. *Id.* at  
12 8-9.

13           15.    Farmer lifted up her hospital gown. *Id.* at 10-11.

14           16.    Farmer told her that she had some feces, and lifted up her leg. *Id.* at 12.  
15

16           17.    Cleaning feces of patients is part of the job duties of a CNA such as Farmer. CNA  
17 Skills Guidelines (Nevada State Board of Nursing); Centennial/UHS Skills Competency Checklist.  
18 Goodhart Deposition at 43-44.

19           18.    Jane Doe felt Farmer's thumb enter her anus. Testimony of Jane Doe at 13.

20           19.    This was painful to Jane Doe. *Id.*  
21

22           20.    Farmer then placed his finger inside her vagina to allegedly move her catheter. *Id.*  
23 at 14.

24           21.    As a result of these actions, Jane Doe felt pain, humiliation and embarrassment.  
25 She couldn't move or scream; she just had to lay there. *Id.*

26           22.    Steven Farmer digitally penetrated Jane Doe's anus, vagina, and pinched and  
27 rubbed her nipples against the will of Jane Doe and while Jane Doe was physically unable to  
28 resist. *Id.* at 8-14; Judgment of Conviction.

1           23. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
2 in Case Number 08C245739, in Count 10 of Sexual Assault (Felony – Category A) in violation of  
3 NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into the anal opening  
4 of Jane Doe, against her will or under conditions in which Farmer knew, or should have known,  
5 that Jane Doe was mentally or physically incapable of resisting or understanding the nature of  
6 Farmer's conduct. Judgment of Conviction.

8           24. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
9 in Case Number 08C245739, in Count 12 of Sexual Assault (Felony – Category A) in violation of  
10 NRS 200.364 & 200.366 for the digital penetration, by inserting his finger(s) into the genital  
11 opening of Jane Doe, against her will or under conditions in which Farmer knew, or should have  
12 known, that Jane Doe was mentally or physically incapable of resisting or understanding the  
13 nature of Farmer's conduct. Judgment of Conviction.

15           25. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
16 in Case Number 08C245739, in Count 11 of Open or Gross Lewdness (Gross Misdemeanor) in  
17 violation of NRS 201.210 for touching and/or rubbing the genital opening of Jane Doe with his  
18 hand(s) and/or finger(s). Judgment of Conviction.

20           26. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
21 in Case Number 08C245739, in Count 13 of Open or Gross Lewdness (Gross Misdemeanor) in  
22 violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or  
23 nipple(s) of Jane Doe with his hand(s) and/or finger(s). Judgment of Conviction.

25           27. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
26 in Case Number 08C245739, in Count 14 of Open or Gross Lewdness (Gross Misdemeanor) in  
27 violation of NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or  
28 nipple(s) of Jane Doe with his hand(s) and/or finger(s). Judgment of Conviction.

1           28. Farmer was convicted in the Eighth Judicial District Court, Clark County, Nevada,  
2 in Case Number 08C245739, in Count 15 of Indecent Exposure (Gross Misdemeanor) in violation  
3 of NRS 201.220 for deliberately lifting the hospital gown of Jane Doe to look at her genital  
4 opening and/or anal opening and/or breast(s). Judgment of Conviction.  
5

6 **B. STEVEN FARMER HAS NO DEFENSE**

7           Plaintiff takes this opportunity to remind Mr. Farmer's counsel of their Rule 11  
8 obligations. Farmer argues first that the Public Defender's Office is appealing his conviction. So  
9 what? Once a person is convicted, NRS 41.133 applies regardless of appeals. A conviction is all  
10 that is needed. The Nevada Supreme Court has made such clear:  
11

12           We conclude that the language of NRS 41.133 establishes a conclusive  
13 presumption of liability when an offender has been convicted of the crime that  
14 resulted in the injury to the victim.

15           **Cromer v. Wilson**, 225 P.3d 788, 790 (Nev. 2010). NRS 41.133 mandates that conviction of a  
16 crime resulting in injury to the victim is **conclusive evidence of civil liability for the injury**.

17           **Langon v. Matamoros**, 121 Nev. 142, 143, 111 P.3d 1077, 1077 (2005). The facts have been  
18 proved; there is nothing at issue.

19           Farmer was convicted. Liability is automatic per NRS 41.133. Even ANS and  
20 **Centennial/UHS concede same**. See ANS' Opposition at 3; Centennial/UHS Opposition at 4.  
21 Centennial/UHS also concedes that "The conviction can be introduced against all Defendants."  
22 **Id.**

23           Yes, comparative fault and damages are an issue at trial. Plaintiff *specifically* stated this in  
24 her Motion. But, the comparative fault defense must be "well grounded in fact or warranted by  
25 law." **Buck v. Greyhound Lines**, 105 Nev. 756, 764 (Nev. 1989). What facts have been alleged  
26 to show that the decedent, a bedridden patient in the hospital, did anything that would give rise to  
27 a claim that she negligently contributed to her own injury? No such facts have been alleged, and  
28

1 no such facts exist. Even the thought of that is disgusting.<sup>3</sup> Was she wearing the wrong clothing?  
2 Did she not scream (even if she could)? Did she not fight back? The law simply does not allow  
3 Farmer to even claim that Jane Doe was at fault. H. Woods, **Comparative Fault Section 7.1**, at  
4 165 (2<sup>nd</sup> Ed. 1987 & Supp. 1993) (Comparative negligence not applicable to reduce the damages  
5 to which the victim of an intentional tort is entitled).

6 **1. Comparative Fault Goes to Damages Only—Not Liability**

7 Most important to the comparative fault defense is that issues of comparative fault only go  
8 to **damages — not liability**. The present motion deals with imposition of liability based upon a  
9 jury's conviction. This motion does not deal with damages. The law in Nevada is crystal clear —  
10 comparative fault is a damage issue — not a liability issue.

11  
12 In **Cromer v. Wilson**, 126 Nev. 106, 225 P.3d 788, 790 (Nev. 2010), the Court addressed  
13 the effect of NRS 41.133 on the issues of comparative negligence and damages. The defendant  
14 was convicted of felony DUI and felony reckless driving in an accident that severely injured the  
15 plaintiff. The district court allowed the jury to decide the issue of liability instead of granting the  
16 plaintiff's Motion for Summary Judgment. The jury found the defendant liable. In determining  
17 liability, the jury was allowed to consider comparative negligence. It found the plaintiff 25% at  
18 fault, and the defendant 75% at fault. The jury returned a verdict in favor of the plaintiff and  
19 awarded \$4,530,785.50 in damages.  
20

21 On appeal, the Nevada Supreme Court held that NRS 41.133 establishes a conclusive  
22 presumption of liability when an offender has been convicted of the crime that resulted in the  
23 injury to the victim. Thus, the district court should have granted the plaintiff's Motion for  
24 Summary Judgment on the issue of liability, and the trial should have resolved only the issue of  
25  
26

27 <sup>3</sup> See **Dunlea v. Dappen**, 924 P.2d 196, fn 6 (Haw. 1996) (“We note, however, that some of the defenses asserted in  
28 Dappen's Answer, which was filed by his former counsel, were so offensive that comment is warranted. The answer asserted that, ‘[a]s to all counts,’ the claims were barred by contributory negligence, assumption of the risk, and comparative negligence. The inclusion of these defenses against a claim alleging incestuous rape of a minor are as frivolous as they are repugnant and thus would have warranted appropriate sanctions, sua sponte.”)

1 damages. However, the Court also held that NRS 41.133 does not abrogate the law regarding  
2 comparative negligence or damages. Therefore, while NRS 41.133 establishes a conclusive  
3 presumption of liability, a defendant may argue comparative negligence pursuant to NRS 41.141  
4 to reduce an award of damages at a trial **as to damages only**. Hence, comparative fault is an issue  
5 of damages, not liability.  
6

7 Farmer does not provide ANY factual basis for comparative fault of Jane Doe. Indeed,  
8 Farmer's argument has been that he did not sexually assault Jane Doe — he has never argued that  
9 "it was her fault" until now.<sup>4</sup> A motion to dismiss Farmer's comparative fault defense will be  
10 forthcoming. However, at this point — for this motion — the issue of comparative fault is not in  
11 play, has no value in the present discussion, provides no benefit to Defendants, and cannot be  
12 considered by this Court.

13 Again, Farmer's counsel is coming dangerously close to a Rule 11 violation. It is one  
14 thing to represent one's client zealously — it is another thing to argue specious, vile  
15 misrepresentations.

16 All of this being said, Farmer has not provided any basis for a denial of the Motion.  
17 Accordingly, the Motion for Summary Judgment as to the sexual assault by Farmer must be  
18 granted.

19 **C. THE FACT OF THE SEXUAL ASSAULT HAS BEEN CONCLUSIVELY PROVEN**  
20 **AS TO ALL PARTIES**

21 It is clear that there are no genuine issues of material fact at issue here as against any of the  
22 parties regarding whether the sexual assault took place. **Farmer did sexually assault Jane Doe.**  
23 That fact is now proven conclusively. **Farmer did do the very things he was alleged to have**  
24 **done which resulted in the various convictions.** Those facts are now proven conclusively. This  
25 is important as this removes any "defenses" that either ANS or Centennial/UHS claimed that the  
26 sexual assaults did not occur. Centennial/UHS concedes this when it admits that "the conviction  
27  
28

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<sup>4</sup> The only defense to sexual assault is consent or the sexual assault did not occur. Since Farmer was convicted, the jury determined that there was no consent and that the sexual assault occurred.

1 can be introduced against all Defendants.” Centennial/UHS Opposition at 4. ANS, on the other  
2 hand, does not understand this.

3 ANS alleges that there are “contested facts” about alleged late notice to the police or about  
4 her medical issues and not screaming out.<sup>5</sup> But, these are no longer relevant since there is no  
5 question that the assault occurred. The reason is simple: one cannot have different facts  
6 established in a case. The facts are the facts. Now, that may be hard to swallow for ANS, but, if  
7 the Court were to allow different facts to be found, inconsistent verdicts would be a possibility.  
8 The law does not allow this.

9 The Nevada Supreme Court illustrates the issue. In **Desert Cab v. Marino**, 108 Nev. 32  
10 (Nev. 1992), the Court had before it a situation where Edwards, an employee of Desert Cab, was  
11 convicted of assault and battery. The District Court admitted the conviction per NRS 41.133. The  
12 Nevada Supreme Court upheld the District Court and found that though the conviction mandated  
13 liability as against Edwards, Desert Cab could still argue that the actions were not in the course  
14 and scope per NRS 41.130. **But, importantly, the facts of the assault and battery were still**  
15 **conclusively proved as to Desert Cab.**

16 In addition, how could there be a finding that Jane Doe was sexually assaulted in a  
17 criminal case where the standard is beyond a reasonable doubt, but in a civil case, Jane Doe could  
18 be found to not have been sexually assaulted? It cannot happen. Any issue related to the sexual  
19 assault and whether it occurred has been rendered moot by the conviction.

20 The language of NRS 41.133 also makes this clear: “If an offender has been convicted of  
21 the crime which resulted in the injury to the victim, the judgment of conviction is **conclusive**  
22 **evidence of all facts necessary to impose civil liability for the injury.**” The facts are proven via  
23 the statute. So, as to ALL defendants, the facts have now been established.

24 ///

25 ///

26 ///

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27  
28 <sup>5</sup> ANS makes the same tired argument that it has not been able to take the deposition of Jane Doe’s children. While  
this may have been relevant (as to whether the assault occurred) before the conviction, because of the conviction,  
there has now been a finding that the sexual assault occurred. Now, the deposition is concededly important as to  
damages — but as to liability? No.

1 **D. BOTH CENTENNIAL/UHS AND ANS WERE THE EMPLOYERS**

2 Centennial/UHS brings up the specter of "ostensible agency" with regard to Mr. Farmer.  
3 However, this is not an issue at this point.<sup>6</sup> It is clear that Farmer was an employee of ANS.  
4 Farmer was also clearly an employee of Centennial/UHS. "An employer 'includes every person  
5 having control or custody of any employment, place of employment or any employee.'" **Terry v.**  
6 **Sapphire/Sapphire Gentlemen's Club**, 2014 Nev. LEXIS 113 (Nev. 2014). Centennial/UHS  
7 concedes that *Farmer was working at Centennial/UHS*. Centennial/UHS concedes that they  
8 directed Farmer how and where to perform his tasks at Centennial/UHS. Centennial/UHS has  
9 produced no facts to establish that they did not control Farmer's work while he was at the hospital.  
10 He was a CNA, working on the hospital's patients, and completely controlled by Centennial/UHS,  
11 who could tell him to leave, work, take a break, see this patient or that patient, how to clean a  
12 patient, how to bathe a patient, and when to see a patient. Importantly in this case,  
13 Centennial/UHS also controlled which floor Farmer worked, as it did on the night of this sexual  
14 assault, when Centennial/UHS staff ordered Farmer to stop working in the ER (where  
15 Centennial/UHS had originally placed him that evening) and to go to the Sixth Floor and work  
16 there. This demonstrates beyond any doubt that Centennial/UHS controlled Farmer's employment,  
17 because it was his employer.

18 As this Court knows, also, an employee can certainly have two employers *especially with*  
19 *regard to respondeat superior liability*. This is because an employee can be simultaneously under  
20 the control of two employers making them both liable. **Rockwell v. Sun Harbor Budget Suites**,  
21 112 Nev. 1217, 1224, 925 P.2d 1175 (Nev. 1996) ("...we note that it is possible for an employee  
22 to be simultaneously under the control of two different employers. See **Gulf Oil Corp. v.**  
23 **Williams**, 642 S.W.2d 270, 272 (Tex. Ct. App. 1982) (concluding that it is possible for two  
24  
25

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26 <sup>6</sup> Centennial has admitted that a patient identifies an employee by their badge. Nichols Person(s) Most  
27 Knowledgeable Deposition at 16. Centennial has admitted that Mr. Farmer wore a badge that said ANS AND  
28 Centennial. See Sparacino Person(s) Most Knowledgeable Deposition at 7. Centennial has conceded that patients are  
not instructed one way or another about what a contract staff individual is. *Id.* at 8. Unless a patient asks, a patient is  
not going to know one way or another whether staff are employees or not because the badge states both. *Id.* Notably,  
Centennial has put forth no facts to oppose the issue of agency. Simply stating that there is an "issue" does not equate  
with a genuine issue of material fact.



1 entities to have joint control over an employee).”<sup>7</sup> In **Rockwell**, the security guard who  
2 murdered the resident (his girlfriend) was directly employed by a management company who  
3 provided the security staff to the apartment complex.

4 Thamar was hired by Bigelow Management (Bigelow) as a security guard and was  
5 provided to Sun Harbor in the same capacity. Elaine Olsen, the manager of Sun  
6 Harbor, claimed that because Bigelow hired and paid him, Thamar was a Bigelow  
employee.

7 **Rockwell**, 925 P.2<sup>nd</sup> at 1177. The court found held the apartment complex was an employer of the  
8 security guard for the purposes of respondeat superior liability holding:

9 Sun Harbor undertook to obtain security services, a personal and non-delegable  
10 duty, and it did not matter that the owners of Sun Harbor had an additional filter,  
11 i.e., Bigelow, between themselves and the actual security guard. Additionally, Sun  
12 Harbor arranged for and accepted the security services of Thamar, and therefore the  
relationship of master and servant (or employer-employee) existed between Sun  
Harbor and the security guards.

13 **Id.** at 1180.

14 There is no issue with having “co-employers” because “[g]enerally, a person may be the  
15 employee of two employers” as long as “the service to one does not involve abandonment of the  
16 service to the other.” **Zinn v. McKune**, 143 F.3d 1353, 1361 (10<sup>th</sup> Cir. 1998) (quoting  
17 Restatement (Second) of Agency § 226 (1958). As the respondent to a Motion for Summary  
18 Judgment, Centennial/UHS is required to rebut this issue and to present admissible evidence if it  
19 believed there was an issue of material fact regarding the employment status of Farmer. See  
20 **Clark v. JDI Loans, LLC (In re Cay Clubs)**, 319 P.3d 625, 635 (Nev. 2014). It presented  
21 absolutely nothing except for argument. Since the admissible evidence of facts makes clear that  
22 Centennial/UHS had control over Farmer, and moved him from one area of the hospital to another,  
23 there is no issue about his employment. For the purposes of determining respondeat superior  
24 liability, he was the employee of both ANS and Centennial/UHS.

25 ///

26 ///

27 ///

28 \_\_\_\_\_  
<sup>7</sup> Nevada’s worker’s compensation case law is replete with examples of co-employer cases. See, e.g., **GES, Inc. v. Corbitt**, 117 Nev. 265 (Nev. 2001); **Hays Home Delivery v. Empls Ins. Co.**, 117 Nev. 678 (Nev. 2001).

1 Accordingly, there is no issue in the case at bar. Farmer was the "employee" of both ANS  
2 and Centennial/UHS. They both had joint control over Farmer and are both responsible for his  
3 actions per NRS 41.130 and are both subject to the effects of his conviction per NRS 41.133.<sup>8</sup>

4 **E. THE INTENTIONAL ACTS OF FARMER WERE COMMITTED WITHIN THE**  
5 **COURSE, SCOPE, AND TASKS OF EMPLOYMENT, AND BOTH ANS AND**  
6 **CENTENNIAL/UHS ARE LIABLE**

7 Both ANS and Centennial/UHS argue that Farmer's intentional acts remove liability for  
8 them based upon **Wood v. Safeway, Inc.**, 121 P.3d 1026, 121 Nev. 724 (2005), and NRS 41.745.  
9 However, it is apparent that neither ANS nor Centennial/UHS think much of **Prell Hotel Corp. v.**  
10 **Antonacci**, 86 Nev. 390, 469 P.2d 399 (Nev. 1970), the leading Supreme Court case on the issue  
11 which is on all fours with the case at bar. Even our local Federal Court has ruled on the issue.  
12 Moreover, ANS and Centennial/UHS both misunderstand the foreseeability requirement of NRS  
13 41.745 and attempt to use the "negligence" foreseeability definition. They both misunderstood the  
14 Nevada Supreme Court's definition and description.

15 In Nevada, the general rule of vicarious employer liability is set forth in NRS 41.130,  
16 which provides:

17 *Except as otherwise provided in NRS 41.745, whenever any person shall suffer*  
18 *personal injury by wrongful act, neglect or default of another, the person causing*  
19 *the injury is liable to the person injured for damages; and where the person causing*  
20 *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.*

21 In **Prell**, this court held that an employer may be held vicariously liable for the intentional  
22 tort of an employee, even if unauthorized by the employer, if the tort occurs "within the scope of  
23 the task assigned to that employee." **Prell**, 86 at 391, 469 P.2d at 400. As explained by this court  
24 (citations omitted):

25 Early doctrine would not admit that a willful tort could be within the scope of  
26 employment. This inflexible, arbitrary view has gradually been eroded, and the  
27 concept of scope of employment enlarged. Of course, if the employee's tort is truly  
28 an independent venture of his own and not committed in the course of the very task  
assigned to him, the employer is not liable. **Where, however, the willful tort is**

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<sup>8</sup> Again, the latter is conceded by Centennial. Opposition at 4.

1 committed in the course of the very task assigned to the employee, liability  
2 may be extended to the employer.

3 **Prell**, 86 Nev. at 390-91, 469 P.2d at 400.

4 **Prell** affirmed a judgment, based on a jury verdict, holding a casino liable for an assault  
5 and battery committed by a blackjack dealer against an invited casino guest. As recounted by this  
6 Court in its opinion, the guest was playing "21" at the Aladdin Hotel & Casino, owned by  
7 Defendant **Prell Hotel Corp.** He was served several free drinks while so engaged. He lost his  
8 money, became angered and called the dealer a name. The dealer reacted by punching the guest in  
9 the eye, rendering him unconscious. Although the dealer's precise conduct (striking the guest)  
10 *clearly was not authorized by the hotel, of no benefit to the hotel, and certainly a venture of his*  
11 *own*, this court reasoned that the hotel was appropriately found liable under the circumstances  
12 because the employee's willful tort occurred within the scope of the very task assigned to him, that  
13 of dealing 21:

14 In the instant matter, the plaintiff was an invited guest of the hotel to whom the  
15 hotel served several free drinks, apparently to encourage his continued presence  
16 and participation in gaming. When the guest lost his money, became angered and  
17 called the dealer an opprobrious name, the dealer "dealt one card to each player all  
18 the way round, and then just like this he hit him, very spontaneously, no warning of  
19 any kind. He just hit him." **The dealer did not leave his position behind the 21**  
20 **table to accomplish the assault and battery. His willful tort occurred within**  
21 **the scope of the very task assigned to him, that of dealing '21.'** In these  
22 circumstances the employer is responsible.

23 **Prell**, 86 Nev. at 391, 469 P.2d at 400.

24 The obvious focus for litigants in respondeat superior cases based upon intentional acts is  
25 not whether the "wrongful act itself was authorized **but whether it was committed in the course**  
26 **of a series of acts of the agent which were authorized by the principal.**" **Ray v. Value**  
27 **Behavioral Health, Inc.**, 967 F. Supp. 417, 420 (D. Nev. 1997).

28 In **Doe by & Through Knackert v. Estes**, 926 F. Supp. 979 (D. Nev. 1996), Judge Reed  
had before him a case where a minor was sexually assaulted by a teacher. In discussing the  
various state law claims, Judge Reed held the following:

However, this court must, where possible, resolve questions of Nevada law by  
reference to decisions of this State's Supreme Court. That court's decision in **Prell**  
**Hotel Corp. v. Antonacci**, 86 Nev. 390, 469 P.2d 399 (Nev. 1970) appears to

1 settle the question whether an employer is liable under the doctrine of respondeat  
2 superior for a battery committed by an employee. . .

3 **This court fails to discern any principled legal distinction between a battery**  
4 **claim against a casino whose blackjack dealer slugs a patron and the same**  
5 **claim against a school district whose teacher fondles a student.** In both cases the  
6 plaintiff was on the defendant's premises for the purpose of enjoying the  
7 defendant's services. In neither case can it reasonably be argued that the employee's  
8 duties included acts of common law battery. The school district's motion for  
9 summary judgment on the battery claim must accordingly be denied.

10 *Id.*, at 926 F. Supp. at 989 (emphasis added).

11 The issue was reaffirmed by Judge Hicks in *Jane Doe A v. Green*, 298 F. Supp. 2d 1025  
12 (D. Nev. 2004). There, a coach at the Clark County School District had assaulted and battered a  
13 student. The Court agreed with Judge Reed's analysis of *Prell* by stating that there is no  
14 distinction between an employee who batters a patron in the course of employment and an  
15 employee who fondles a student in the course of employment:

16 Consequently, it is apparent that the School District is liable for intentional torts  
17 committed by its employees during their employment, even if it is clear that those  
18 acts were not authorized by the School District. In the instant case, Green was  
19 authorized by the School District to monitor and instruct the students attending the  
20 school during school hours, and to supervise and coach those students who  
21 participated in the school-sanctioned athletic activities. The authority vested in  
22 Green permitted him to direct and discipline students, to meet privately with  
23 students in his office, to pull students out of other classes, and to have other  
24 substantial contact with students at his discretion. Therefore, this Court concludes  
25 that the Defendant School District is subject to respondeat superior liability for the  
26 tortuous acts committed by Green at those times in which he was engaged - or  
27 should have been engaged - in his duties as an instructor and athletics coach of the  
28 school.

29 *Id.*, 298 F. Supp. 2d at 1042.<sup>9</sup>

30 ///

31 <sup>9</sup> Judge Reed also cited to the Nevada Supreme Court's withdrawn opinion in *Department of Human Resources,*  
32 *Div. of Mental Hygiene & Mental Retardation v. Jimenez*, 113 Nev. 356 (Nev. 1997). While not wishing to  
33 engage in a lengthy historical analysis, *Jimenez* was withdrawn immediately before the Legislature was going to  
34 reverse it. Ultimately, the Legislature decided that *Prell* was the right approach and passed NRS 41.745 to reestablish  
35 the *Prell* test for employer liability for intentional torts committed by employees" and adding the issue of  
36 foreseeability. The *Prell* test is to be the test used when reviewing intentional torts and respondeat superior. In  
37 addition, the Legislature added the foreseeability issue. So, as discussed herein, a reviewing Court would use the  
38 *Prell* test and would look at the issue of foreseeability, but in the context of respondeat superior, not negligence.  
39 And, that is what Wood actually says.

1 Defendants seemingly want this Court to overrule **Prell**, and the above federal court  
2 decisions, and make a general rule that sexual assaults cannot form the basis for respondeat  
3 superior liability based upon **Wood v. Safeway**. However, such is not the rule of **Wood**. This  
4 Court would actually have to overrule **Wood**, and all of its precursors, to agree with Defendants.  
5 Actually, the **Prell** test *was the test* used in **Wood v. Safeway**. **Wood** did not create any new test  
6 or elements. The holding in **Wood**, combined with **Prell**, mandates that this Court grant summary  
7 judgment.

8 **1. Foreseeability**

9 **Wood** involved Jane Doe who was working at Safeway. Mr. Emilio Ronquillo-Nino, who  
10 was employed by a company who provided janitorial service to Safeway, sexually assaulted her  
11 three times while she was at work. The analysis specifically discussed **Prell**, as well as NRS  
12 41.745 which embodies **Prell**. See Footnote 5 *supra*.

13 **Wood** stated that:

14 Before NRS 41.745 was enacted, this court had stated that an employee's  
15 intentional conduct relieves an employer of liability when "the employee's tort is  
16 truly an independent venture of his own and not committed in the course of the  
17 very task assigned to him." This court had also acknowledged that if "the  
18 willful tort is committed in the course of the very task assigned to the  
19 employee," then it is appropriate to extend liability to the employer. These two  
20 observations are essentially codified in NRS 41.745(1)(a) and (b).

21 **Wood**, 121 Nev. at 737-738.

22 Then, the Court added:

23 NRS 41.745 also requires an element of foreseeability, in effect raising the standard  
24 and making employers liable only when an employee's intentional conduct is  
25 reasonably foreseeable under the circumstances.

26 **Wood**, 121 Nev. at 739.

27 Explaining the issue of foreseeability, the Court found:

28 According to NRS 41.745(1), an employee's conduct "is reasonably foreseeable if a  
person of ordinary intelligence and prudence could have reasonably anticipated the  
conduct and the probability of injury." We have noted that whether an intentional  
act is reasonably foreseeable depends on whether one has "reasonable cause to  
anticipate such act and the probability of injury resulting therefrom."

*Id.* at 739-740.

1 The Court accepted the explanation of foreseeability in this context as not specific to the  
2 individual, as ANS and Centennial/UHS miss, but generally, and it is not the same "foreseeability"  
3 that is involved in a negligence context:

4 One way to determine whether a risk is inherent in, or created by, an enterprise is to  
5 ask whether the actual occurrence was a generally foreseeable consequence of the  
6 activity. However, "foreseeability" in this context must be distinguished from  
7 "foreseeability" as a test for negligence. In the latter sense "foreseeable" means a  
8 level of probability which would lead a prudent person to take effective precautions  
9 whereas "foreseeability" as a test for respondeat superior merely means that  
10 in the context of the particular enterprise an employee's conduct is not so  
11 unusual or startling that it would seem unfair to include the loss resulting  
12 from it among other costs of the employer's business. In other words, where the  
13 question is one of vicarious liability, the inquiry should be whether the risk was  
14 one "that may fairly be regarded as typical of or broadly incidental" to the  
15 enterprise undertaken by the employer.

16 Under the modern rationale for respondeat superior, the test for determining  
17 whether an employer is vicariously liable for the tortious conduct of his employee  
18 is closely related to the test applied in workers' compensation cases for determining  
19 whether an injury arose out of or in the course of employment.

20 **Wood**, 121 Nev. at 740 fn 53.<sup>10</sup>

21 ///

22 ///

23 ///

24 ///

25 <sup>10</sup> This is similar to the Supreme Court of Oregon's analysis in priest molestation cases. In *Fearing v. Bucher*, 977  
26 P.2d 1163, 1167 (Or. 1999), the Supreme Court of Oregon addressed the problems associated with applying the  
27 doctrine of respondeat superior to intentional torts. The petitioner in *Fearing* alleged that a priest, employed by the  
28 Archdiocese of Portland, had sexually molested him. The Court held:

29 [I]n the intentional tort context, it usually is inappropriate for the court to base its decision regarding  
30 the adequacy of the complaint on whether the complaint contains allegations that the intentional tort  
31 itself was committed in furtherance of any interest of the employer or was of the same kind of  
32 activities that the employee was hired to perform. Such circumstances rarely will occur and are not,  
33 in any event, necessary to vicarious liability. Rather, the focus properly is directed at whether  
34 the complaint contains sufficient allegations of [the defendant's] conduct that was within the  
35 scope of his employment that arguably resulted in the acts that caused the plaintiffs injury.

36 Instead of asking whether the intentional tort itself was within the scope of employment, the *Fearing* analysis  
37 inquires as to whether the tortfeasor's conduct leading up to the intentional tort was conduct that falls within  
38 the scope of employment. Here, Farmer was pinching nipples while he was "fixing leads." He was digitally  
penetrating her when he was "cleaning feces." He placed his finger in her vagina while "moving" her catheter. Since  
those activities claimed by Farmer were within the scope, the sexual assault was as well.

1 The Court then found that a janitor sexually assaulting an employee of the store at which  
2 he was cleaning was not "foreseeable" because it was not incidental to the task of cleaning a  
3 store.<sup>11</sup>

4 This is the **exact opposite** of what we have in the case at bar. Here, we have a CNA whose  
5 *very job* it is to bathe patients, to clean the patient from feces and urine, and, generally to have  
6 patient contact. This was conceded by an RN at Centennial/UHS:

7 Q. Can they [CNA's] touch a patient? Can they handle a patient, you know,  
8 physically touch a patient?

9 A. They can give a bed bath. They can clean up stool and urine. They can  
10 give a bed pan.

11 Deposition of Karen Goodhart, R.N., Centennial/UHS, at 43-44. This corresponds with the CNA  
12 Skills Guidelines from the State of Nevada (Centennial/UHS Exhibit A): perineal care (the genital  
13 and anal region), incontinent care, bathing, applying monitor leads, urine assist, bowel assist  
14 including digital stimulation.

15 In other words, unlike the janitor whose job it is to simply clean the store, the *very job*  
16 given to CNAs is patient contact, and patient contact with the patient's anus and vaginal area.  
17 Centennial/UHS has admitted that "in some of the training that the hospital staff does, there may  
18 be something in there concerning assaults on patients or staff themselves." Deposition of Douglas

19  
20  
21 <sup>11</sup> Nevada law regarding respondeat superior for intentional torts was basically foretold by Judge Friendly's well  
22 known analysis in *Ira S. Bushey & Sons, Inc. v. United States*, 398 F.2d 167 (2d Cir. 1968). There, a drunken sailor  
23 returned to his ship and intentionally opened valves that flooded a dry-dock, damaging both the ship and the dry-dock.  
24 Judge Friendly noted that even though the drunken sailor was not motivated by a purpose to serve his employer, nor  
25 was his job to open those valves, respondeat superior liability was proper. This liability rested on the fact that the  
26 "business enterprise cannot justly disclaim responsibility for accidents which may be fairly said to be  
27 characteristic of its activities" and that the sailor's conduct "was not so unforeseeable as to make it unfair to  
28 charge the government with responsibility." *Id.* at 171 (internal quotation marks omitted).

25 Judge Calabresi continued the discussion of foreseeability in *Taber v. Maine*, 67 F.3d 1029 (2d Cir. N.Y.  
26 1995), in a case involving a tort committed by yet another off-duty drunken sailor who first became intoxicated at a  
27 party on the base and then later in the evening crashed his vehicle into the plaintiff's car while driving back to the  
28 base. The Court emphasized that **all that happened was to be expected**, citing Judge Friendly's words that "[t]he  
proclivity of seamen to find solace by copious resort to the bottle . . . has been noted in opinions too numerous to  
warrant citation." Hence, this conventional wisdom made the sailor's actions "a completely foreseeable event, in  
the sense that it is a reasonably obvious risk of the general enterprise."

These cases represent Nevada law on intentional acts. Applied to Farmer's acts, his actions were foreseeable  
to both ANS and Centennial and because the actions occurred within the very task of a can and were an obvious risk  
of the enterprise, respondeat superior liability is proper.

1 Nichols, Person Most Knowledgeable of Valley Health System LLC, at 14. If there is training  
2 about patient sexual assaults, then such are necessarily foreseeable.

3 Would it be startling that a person, whose very job it is to touch the private parts of  
4 patients, would sexually assault that very patient by inserting fingers in those same private parts,  
5 not for cleaning, but for sexual arousal? Of course not. This is not the first time something like  
6 this has happened. It happens all the time in hospitals, nursing homes, anywhere there is this sort  
7 of contact between patients and staff at such facilities and whose job it is to touch private areas of  
8 patients.

9 Indeed, sexual assaults by clinical staff on patients is so prevalent that hospitals and  
10 medical staffing companies can insure themselves for such a loss. Here, ANS had that very  
11 insurance.<sup>12</sup> See Exhibit 1. Since sexual abuse is an insurable event, one must say that as a  
12 matter of law, it is foreseeable because insurance only covers foreseeable risks. This is the essence  
13 of why employers are subject to liability for acts which insurance covers. See, e.g., **United**  
14 **Student Aid Funds, Inc. v. Design Factory**, 2012 U.S. Dist. LEXIS 102020 (D. Nev. July 20,  
15 2012)(J. Dawson)(explaining that “In Nevada, an employer’s liability extends beyond the actual or  
16 possible control over the employees to include risks inherent in or created by the enterprise  
17 because the employer, rather than the innocent injured party, is best able to spread the risk through  
18 prices, rates or liability insurance. (citation omitted); see also, Guido Calabresi, **Some Thoughts**  
19 **on Risk Distribution and the Law of Torts**, 70 Yale L.J. 499, 543 (1961) (arguing that the  
20 master is the best insurer, both in the sense of being able to obtain insurance at the lower rates and  
21 in the sense of being most aware of the risk). A court must determine whether the action taken by  
22 the employee was a generally foreseeable consequence of his or her employment. (Citation  
23 omitted). The employee’s conduct is foreseeable if it is not so unusual or startling that it would  
24 seem unfair to include the loss resulting from it among the other costs of the employer’s business.  
25 **Id.**)<sup>13</sup> If an entity can cover an event with insurance, and has done so, there is no question about  
26  
27

28 <sup>12</sup> Indeed, Mr. Farmer has been represented by insurance company attorneys in this civil litigation.

<sup>13</sup> “SCR 123 prohibits citation to unpublished orders and opinions issued by the Nevada Supreme Court. This ban does not extend to federal district court dispositions, which may be cited for their persuasive, if nonbinding, precedential value.” **Schuck v. Signature Flight Support of Nev., Inc.**, 245 P.3d 542, 547 (Nev. 2010).



1 its foreseeability. Moreover, coverage establishes that the action is not "so unusual or startling"  
2 since there is coverage for said actions.

3 Attached hereto as Exhibit 2 is the Affidavit and Curriculum Vitae of Paul B. Hofmann,  
4 Dr. P.H., FACHE, an expert in hospital administration. He testifies that:

5 4. That while I have significant opinions regarding the conduct of both  
6 American Nursing Services and Centennial Hills Hospital/Universal Health  
7 Services, the principal issue is whether it is foreseeable in general that a certified  
8 nursing assistant could sexually assault a patient, particularly patients who are  
9 severely compromised, physically and/or emotionally.

10 5. That the answer to this question is – absolutely.

11 6. That it is well known in the health care field that sexual abuse by staff  
12 against patients does occur. Hospital departments of human resources and staffing  
13 agencies clearly have an undeniable professional and ethical obligation to employ  
14 personnel who would not engage in such activity, but the serious possibility for  
15 sexual abuse still exists. **Sexual assaults of patients by staff is a known  
16 foreseeable risk for which most insurance companies that insure hospitals and  
17 their staffing agencies offer coverage riders.** In this case, I have been made  
18 aware that ANS maintained such coverage.

19 7. That although there is a potential for sexual abuse in every organization,  
20 hospitals and other health care facilities must be especially vigilant to ensure that  
21 vulnerable patients like Jane Doe are not at risk because of the very nature of the  
22 tasks required of the clinical staff of a hospital which, for certified nursing  
23 assistants, includes bathing patients, cleaning feces and urine from patients, and  
24 other activities where patients have their bodies exposed.

25 8. That because the sexual assaults of patient is a known foreseeable risk, most  
26 hospitals and staffing agencies have appropriate policies to prevent sexual abuse of  
27 patients in place, but they are truly meaningless if they are not followed  
28 consistently. **When those policies are breached, a sexual assault is not startling  
or unusual because the very policy instituted to protect patients against the  
sexual assault has not been followed.** While it is certainly a horrific event, it is  
foreseeable that when policies are breached, patients can be irreversibly  
compromised. Hence, the reason for the policies in the first place. . . .

10 10. That with regard to the specific foreseeability concerning Steven Farmer's  
11 behavior, it is evident American Nursing Services was on notice of a prior issue of  
12 alleged abuse of a patient. An institution identified Mr. Farmer as "Do not return"  
13 due to both "Alleged violations as defined in Practice Acts of respective regulatory  
14 body" and "Abuse of client and/or patient or other caregivers" (per American  
15 Nursing Services' Incident Report signed on January 25, 2008 by Ms. Simons,  
16 Clinical Director of Clinical Operations), and an investigation was still underway

1 on February 12, 2008. Nonetheless, Mr. Farmer was assigned by American  
2 Nursing Services to Centennial Hills Hospital on February 18, 2008. This action  
3 directly contributed to placing Jane Doe at a preventable risk of harm.

4 11. That the Hospital was not told about the prior abuse by Mr. Farmer nor the  
5 related incomplete investigation, but the Hospital should not have relied  
6 exclusively on American Nursing Services for its background check. According to  
7 Ms. Johnson, who was then the Hospital's staffing coordinator, the organization  
8 requires receipt of references prior to allowing agency staff to work at the Hospital.  
9 However, in this instance, that policy was not followed. Ms. Johnson admitted the  
10 Hospital would not have allowed Mr. Farmer to work there if it had known of the  
11 prior abuse. Furthermore, Ms. Johnson could not explain why his references were  
12 not checked, and she confirmed Mr. Farmer should not have been working at the  
13 Hospital until references were provided. The reason for background checks is to  
14 confirm a candidate's qualifications, competence and personal behavior meet the  
15 organization's performance standards and expectations. Since sexual assaults by  
16 hospital staff is a known foreseeable risk, one of the reasons hospitals, such as  
17 Centennial Hills, conduct background checks is to insure that a person with a  
18 history of sexual assaults is not allowed to work in a situation that could place a  
19 patient at risk. The Hospital's failure to comply with its own policies directly  
20 contributed to placing Jane Doe at a preventable risk of harm.

21 Hofmann Affidavit at pages 1-3.

22 Based upon Dr. Hoffman's Affidavit, the foreseeability element of **Wood's respondeat**  
23 **superior analysis** is satisfied as to both ANS and Centennial/UHS. As to ANS, they were on  
24 actual notice of Farmer's proclivity for abuse. As to Centennial/UHS, by having the background  
25 checks and last employer check, dangerous propensities of employees were foreseeable.

26 Attached hereto as Exhibit 3 is the Affidavit and Curriculum Vitae of E. Dwayne  
27 Tatalovich, an expert in crime prevention. He testifies:

28 4. That I have been awaiting various documents from American Nursing  
Services regarding Steven Farmer and have been told that I may be receiving at  
least some of them shortly. I am similarly awaiting much of the LVMPD reports  
and other information. However, based upon what I have thus far, I can testify to  
the following.

5. That, unfortunately, the hospital industry is plagued with persons who  
commit crimes, including the crime of sexual assault on patients. That this comes  
about for many reasons, including the fact that patients are in compromised  
positions with staff, and exposing their most private parts and functions.

6. That Hospital Risk Management Journals, books and media reports discuss  
patient sexual abuse and the need for prevention of same.

1 7. That because the prevalence of such sexual abuse is significant, hospitals  
2 and medical staffing agencies routinely perform background and reference checks.

3 8. That, when a hospital or staffing agency fails to perform such checks,  
4 criminal behavior is often the result, and thus such is foreseeable.

5 9. That as a security analyst for various entities, including healthcare entities, I  
6 am frequently called upon to review security needs. One of the first areas that I  
7 review are employee policies and procedures. I am aware that most hospitals will  
8 have policies in place to investigate employees and their prior behavior. The issue  
9 is generally not writing the policy; the problem is that many healthcare entities fail  
10 to implement those very policies designed to look out for dangerous people.

11 10. **That patient sexual abuse by nursing assistants and clinical staff in**  
12 **hospitals is foreseeable, not shocking and not surprising.** I am aware that most  
13 healthcare entities will insure against this loss and ANS did in this instance.

14 Tatalovich Affidavit at pages 1-2.

15 In addition, Mr. Tatalovich testifies that Farmer's crimes were specifically foreseeable by  
16 ANS and Centennial/UHS and goes through his reasons. For ANS, they were specifically aware  
17 of the abuse allegations at Rawson Neal. For Centennial/UHS, they failed to follow their own  
18 policies in allowing Farmer to work, which policies were put in place specifically to guard against  
19 these type of predators working in a hospital. That is the essence of foreseeability in the context  
20 of Wood's respondeat superior analysis. Pointedly, Mr. Tatalovich discusses an event that  
21 occurred with Farmer, a couple months before the rapes that he was convicted of, that placed  
22 Centennial/UHS on specific notice of issues relating to Mr. Farmer:

23 I have reviewed the LVMPD statement of Christine Murray. Ms. Murray, a nurse  
24 at Centennial, testified that a couple months earlier to Farmer's assault on Jane  
25 Doe, an incident took place whereby Mr. Farmer was sitting with a patient with the  
26 door closed. She, and other Centennial staff, apparently heard yelling to the effect  
27 that the woman wanted him out of the room. Instead of completing an incident  
28 report or starting an investigation, Nurse Murray stated that because she was a  
"crazy old lady", she and Centennial staff did not put any credence into what she  
was saying. So, just like at Rawson Neal, instead of investigating properly, they  
just blamed the patient. Accordingly, based upon this incident, I believe that  
Centennial (through its Nurses, including but not limited to Ms. Murray) was well  
aware of Mr. Farmer's foreseeable criminal nature. But, instead of doing anything  
about it, they blamed a "crazy old lady." Hence, his criminal conduct later on  
should not be surprising or startling.

1 Id. at page 3.<sup>14</sup>

2 This is specific foreseeability. One cannot argue that one is not foreseeable by sticking  
3 one's head in the sand. Farmer's actions were foreseeable as a matter of law. Centennial/UHS was  
4 on notice of same.

5 **2. Farmer's Assault Was Committed In The Course Of The Very Task Assigned To**  
6 **Him**

7 For clarity, we need to go back to the first two elements, the so-called **Prell** elements. This  
8 Court will see that these are crystal clear. **Wood** rolled the (a) and (b) elements of NRS 41.745(1)  
9 basically into one statement for clarity. So, if the intentional conduct was done in the course of the  
10 very task assigned, sections (a) and (b) are satisfied.

11 The first prong is whether the intentional tort is "a truly independent venture of the  
12 employee." As the Court stated in **Wood**, 121 Nev. at 737, 738:

13 Before NRS 41.745 was enacted, this court had stated that an employee's  
14 intentional conduct relieves an employer of liability when "the employee's tort is  
15 truly an independent venture of his own and not committed in the course of the  
16 very task assigned to him." (Citing **Prell v. Antonacci**.) This court had also  
17 acknowledged that if "the willful tort is committed in the course of the very task  
18 assigned to the employee," then it is appropriate to extend liability to the employer.  
(Citing **Prell v Antonacci**.) These two observations are essentially codified in NRS  
41.745(1)(a) and (b).

19 Here, the Court makes clear that the law announced in **Prell** is the law in Nevada when it  
20 specifies that NRS 41.745(1)(a) and (b) are a codification of the holding in **Prell**.

21 In **Wood**, the Court also made clear that when the "willful tort is committed in the course  
22 of the very task assigned to the employee," the act, by definition, is not an independent venture.  
23 Rather, the employee, while serving his employer — meaning at least part of what he is doing is  
24 not "truly independent" — engages in misconduct, liability will lie.

25 **Wood** discussed three Nevada cases to illustrate the point. Citing **Prell**, the court stated:

26 ...this court held an employer vicariously liable when its employee, a blackjack  
27 dealer, hit a customer in the face while dealing. The altercation occurred when the

28 <sup>14</sup> According to Ms. Murray, the door was closed and the lights were off. The staff heard yelling from the room such  
that she wanted Farmer out of the room. She did no further investigation of these events. See Exhibit 4. While that  
may be negligent, and relevant to the issue of Centennial's own negligence, the incident alone provides the  
foreseeability prong of **Wood**'s respondeat superior analysis.

1 customer, who had apparently consumed a number of free drinks, became  
2 belligerent and insulted the dealer. The dealer proceeded to deal the next round of  
3 cards and then hit the customer without leaving his position behind the blackjack  
4 table. This court affirmed a judgment holding the casino liable because the  
altercation occurred within the scope of the very tasks assigned to the employee, in  
that particular case dealing blackjack.

5 Citing **J. C. Penney Co. v. Gravelle**, 62 Nev. 439, 155 P.2d 477 (1945), the Court stated:

6 ...this court held that the employer was not vicariously liable in **J. C. Penney Co. v.**  
7 **Gravelle**, when a store clerk assaulted a third-party bystander because the bystander  
8 attempted to prevent the clerk from catching a shoplifter whom the clerk had  
9 pursued outside of the store. The bystander followed the employee back to the  
store, and the two continued to argue, resulting in an ensuing altercation where the  
bystander was injured.

10 **Wood** distinguished **Prell** and **Gravelle**, stating:

11 This court held that the employer was not responsible because after the clerk had  
12 returned to the store and turned over the merchandise, his actions in assaulting the  
13 bystander no longer concerned his employment. This court reasoned that based on  
14 the circumstances, the assault was "an independent adventure" for the employee's  
15 own purposes and was not taken on the employer's behalf or arising from a sense of  
16 duty to the employer. The distinguishing fact in **Gravelle** is that the altercation  
occurred after the clerk returned to the store and returned the stolen merchandise to  
the manager.

17 It should be noted that **Gravelle** was decided in 1945. **Prell** was decided twenty-four years  
18 later in 1970. The court in **Prell** emphasized that the rules relating to whether vicarious liability  
19 should be imposed upon an employer for an employee's willful misconduct had previously been  
20 too strict and that the law was becoming more liberal in this regard. The court in **Prell** stated:

21 Early doctrine would not admit that a willful tort could be within the scope of  
22 employment. This inflexible, arbitrary view has gradually been eroded, and the  
concept of scope of employment enlarged.

23 This expansion of the rule by the court in **Prell** explains any discrepancy that one may read into  
24 these two cases.

25 **Wood** discussed a third Nevada case on this point, **Rockwell v. Sun Harbor Budget**  
26 **Suites**, 112 Nev. 1217 (Nev. 1996), that clearly follows the enlarged concept of scope  
27 employment announced in **Prell** as opposed to the more restrictive analysis in **Gravelle**. The Court  
28 in **Wood** made clear that if an off-duty security guard was required to remain in radio contact with

1 the employer, and respond to emergency calls, then the employer would be liable when he shot  
2 and his girlfriend eighteen times, killing her.

3 In **Rockwell**, Sun Harbor was managed by Bigelow Management, who hired Thamar as a  
4 security guard. Londa, her husband and son, lived at Sun Harbor. Londa met Thamar one day by  
5 the pool, and they began having a sexual affair. After several months, Londa attempted to end the  
6 affair. While off-duty, Thamar picked Londa up from her work; the two of them returned to  
7 Thamar's apartment at Sun Harbor, where Londa told Thamar the affair was over. Thamar got  
8 angry and killed her by shooting her eighteen times. Thamar then used his radio to call another  
9 Sun Harbor security guard and reported the murder.

10 With this factual background, **Wood** cited **Rockwell**, stating:

11 ...this court, citing **Prell** and **Gravelle**, reversed the district court's order granting  
12 summary judgment in favor of the employer when an off-duty security guard shot  
13 and killed a woman on the employer's premises. We reversed in that case because  
14 conflicting evidence raised a genuine issue of material fact concerning whether the  
15 off-duty guard was acting within the scope of his employment when the shooting  
16 occurred. Specifically, the evidence and affidavits produced by the parties  
17 conflicted over whether security guards were required to remain in radio contact  
18 with the employer and respond to emergency calls when they were off-duty.

19 **Wood** at 738.

20 By reversing the summary judgment because of conflicting facts, what the court in **Wood**  
21 clearly said was that if the facts as argued by Londa's family were found to be true by the jury —  
22 that is Thamer was required to remain in radio contact with the employer, and respond to  
23 emergency calls — then Sun Harbor would be vicariously liable — as a matter of law. Even  
24 though Thamer's motive was personal, because the "willful tort is committed in the course of the  
25 very task assigned to the employee," it is not "a truly independent venture of the employee."

26 By discussing these three cases our Court went to great lengths to make the point that the  
27 issue of whether the tort is "a truly independent venture of the employee" can only be decided in  
28 the context of whether it was done "in the course of the very task assigned to the employee." So  
while Farmer's motive in sexually assaulting the decedent was personal, it occurred while he was  
doing **exactly** what his employer had assigned him to do — treat and care for the decedent.

1 As has been stated, Mr. Farmer was a CNA. As such, he had the duty to clean patients,  
2 bathe patients, cleanup feces and urine, and provide bed pans. Performing these exact tasks is  
3 when Jane Doe was assaulted. Jane Doe testified that:

4 Q. Now, Ms. Doe, you indicated that the Defendant introduced himself as  
5 Steve; is that correct?

6 A. **He said: Hi, I'm Steve and I've been assigned to you tonight. So, I'll be**  
7 **looking in on you.**

8 .....

9 Q. Ms. Doe, you indicated that there were multiple instances. Can you  
10 describe one of those instances that you remember for the Court?

11 A. **On of – I woke up and I was aware that my nipples were being pinched,**  
12 **and I looked straight into his face because he was that close to me, and**  
13 **he said: Oh, one of the leads has come off on your heart monitor.** But  
14 the thing about my heart or the telemetry buttons that they put on, it makes  
15 a noise if one becomes detached so that telemetry is advised as well. That  
16 was one instance.

17 .....

18 Q. Okay. Now were there any other instances that you can tell the Court about  
19 besides when he pinched your nipples?

20 A. Yes. I woke up and he was walking around the left side of my bed and he  
21 pulled the sheets down off of me, and all I had on was my gown, and he  
22 lifted my gown up. You know how you go to billow something, you know,  
23 a sheet, but he kept it up high so that it was – if I was laying down it was up  
24 high like that.

25 Q. Now are you talking about the sheet or your gown?

26 A. The sheet. He's already pulled off of me my gown; he had lifted up high  
27 enough to see my entire body.

28 .....

Q. Did he tell you at that point why he was taking up the sheets or what he was  
doing? Did he say anything to you?

A. No, not at that point. **But he then walked around to my right, to the**  
**right side of my bed and he said: Oh, you have some feces, and he took**  
**my right leg and instead of rolling me to my side he took my right leg**

1 and brought it all the way up and -- he had nothing to clean me with.  
2 He had not gotten new pads to put under me or wipes or anything.  
3 And that's when I became aware of a very uncomfortable feeling and  
realization that he had his thumb in my anus.

4 Transcript of Proceedings: Preservation of Witness Testimony, dated January 20, 2012, at 6:18-24,  
5 8:2-8, 11:3-11, and 12:4-11.

6 Accordingly, the actions were done in exactly the type of tasks that were assigned to Mr.  
7 Farmer as a CNA at Centennial/UHS which were described by Nurse Goodhart, *supra*.

8 **3. California Law Differs From Nevada Law and is Not Persuasive**

9 Defendants seek support from California law to help them. But these arguments fail  
10 because California does not follow the standards enunciated in *Prell*, and reaffirmed in *Wood* that  
11 "the concept of scope of employment enlarged." Rather, California takes a much more restrictive  
12 approach, contrary to Nevada law. Consequently, California cases on respondeat superior liability  
13 for intentional torts do not aid this court.

14 In *Lisa M. v. Henry Mayo Newhall Memorial Hospital*, 12 Cal.4<sup>th</sup> 291, 907 P.2d 358  
15 (1995), the court had before it an ultrasound technician who sexually assaulted a patient. The  
16 Court found that this was not in the "course and scope" because it was not foreseeable. The case  
17 does not provide support for Defendants.

18 First, the case is from 1995. Once this case was published, if they weren't before,  
19 Defendants were on notice that sexual assaults on patients do occur. That equals foreseeability in  
20 general.<sup>15</sup>

21 Most important, however, are the factual and legal distinctions. Factually, the technician  
22 had completed his exam when the sexual assault occurred:

23 Tripoli first conducted the prescribed examinations. Plaintiff pulled up her shirt and  
24 pushed her shorts down to expose the area to be examined. The obstetrical or  
25 "general pelvic" examination requires passing an ultrasound-generating wand  
26 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

27 <sup>15</sup> As cases appeared more and more often, it has become clearer that hospital and medical staffing employee sexual  
28 abuse of patients is an unfortunate but not startling event within the context of the environment. So, one could argue  
that in California in 1995, perhaps the issue was not so elucidated. But, as time has moved on, and the cases more  
prevalent and publicized, employee/patient sexual abuse is foreseeable. Indeed, when healthcare companies can  
procure insurance for the very act, it is axiomatic that such is foreseeable.



1 air. The exact placement and movement of the wand varies with the patient's body  
2 type, and on some patients the best images are obtained by passing the wand as  
3 much as an inch below the pubic hairline. Tripoli found it necessary to do so in  
4 plaintiff's case. In performing the upper right quadrant examination (to see the  
5 liver), Tripoli had to lift plaintiff's right breast, which he did through a towel with  
6 the back of his hand.

7 **After conducting the ordered examinations,** Tripoli left the room for about 10  
8 minutes to develop the photographic results. On his return, Tripoli asked plaintiff if  
9 she wanted to know the sex of the baby, and she said she did. He told her, falsely,  
10 that to determine the sex he would need to scan "much further down," and it would  
11 be uncomfortable. This is when the assault occurred.

12 **Lisa M. at 295.**

13 This is unlike what happened in the case at bar. Here, the sexual assault occurred while  
14 Farmer was fixing the heart monitor leads and cleaning Jane Doe from feces and urine. It was  
15 during these tasks that he digitally penetrated her and fondled her. This assault occurred  
16 immediately incidental to his official tasks as described by Centennial/UHS Nurse Goodhart,  
17 *supra*.

18 Next, the California Court raised the specter of "policy" considerations of insurance  
19 coverage and was concerned about respondeat superior liability and insurance. The Court said it  
20 did not know if health care providers could reasonably obtain coverage for sexual assaults:

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

29 **Lisa M. at 305.** In other words, the Court did not want to mandate liability where there could be  
30 no insurance coverage. That problem no longer exists.

31 Here, as discussed *supra*, ANS had this insurance coverage. See Exhibit 1. Having  
32 insurance coverage establishes two things — insurability and foreseeability. Hence, the economic  
33 issues that concerned the Court are not present herein. The policy reasons implicated by the  
34 California Court simply are not present herein.

1 Finally, there are significant legal differences in the case law. **Lisa M.** is contrary to what  
2 our Court in **Wood** has explained regarding **Rockwell**. In **Wood**, the janitor raped the clerk. In  
3 **Rockwell**, the employer was liable for the off duty security guard who killed his mistress if he was  
4 on call and was required to maintain radio contact. **Lisa M.**'s holding would overrule **Rockwell**.  
5 Had Nevada wanted to follow the California courts, and **Lisa M.** in particular, in determining  
6 respondeat superior liability, our court could have done so when deciding **Wood**, which was  
7 decided ten years after the **Lisa M.** decision. Instead, the Nevada Supreme Court merely used its  
8 own precedent of **Prell** and **Rockwell**, and the Legislature's addition of foreseeability, and came  
9 to its decision. In Nevada, the hospital will be liable for the CNA who is touching the patient in  
10 her private areas and then goes further and assaults her.

11 Pointedly, **Wood**'s analysis also relies upon the workers compensation analysis for course  
12 and scope questions because, in order to be covered under the worker's compensation system in  
13 Nevada (the NIIA), the employee's conduct must be in the course and scope. Regarding same,  
14 **Wood** held: "If the nature of the work or the workplace contributes to or increases the risk of  
15 injury more than that of the general public, the injury is covered by the NIIA." **Wood**, 121 Nev. at  
16 736, 121 P.3d at 1034. Under Nevada law, in a worker's compensation analysis, Farmer would be  
17 found to be acting in the course and scope of his employment when he was performing his duties  
18 at the hospital. Staff/patient genital and private area contact was part of his work. This clearly  
19 increased the risk much more than that of the general public, and certainly, much greater than a  
20 janitor with a store clerk; respondeat superior liability must be had.

21 Finally, even **Lisa M.** recognizes that sexual assaults are not all "per se unforeseeable."  
22 **Lisa M.** at 300. As long as the assault is "fairly attributable to work related events or conditions,"  
23 even California would grant respondeat superior. As demonstrated by the Affidavits of both Dr.  
24 Hofmann and Mr. Tatalovich, as well as the facts which make clear that Mr. Farmer's actions  
25 were fairly attributable to cleaning feces, moving monitor leads, and fixing a catheter, even under  
26 the restrictions of California law, not present in Nevada, respondeat superior liability would be  
27 had.

28 To be sure, as **Lisa M** concedes, sexual assaults may form the basis for respondeat superior  
liability as such analysis is fact specific. For example, in **Samuels v. Southern Baptist Hosp.**,

1 594 So. 2d 571 (La. App. 4<sup>th</sup> Cir. 1992), a nursing assistant raped a patient. The Court found the  
2 hospital liable per respondeat superior because taking care of a patient's well-being was part of  
3 employee's duties and rape was reasonably incidental to the performance of these duties, even  
4 though the act was unauthorized. Mr. Farmer's duties included taking care Jane Doe's well-being  
5 and needs. Hence, his sexual assault was incidental to the performance of those duties. See, also,  
6 **Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd.**, 329 N.W.2d 306, 311 (Minn.  
7 1983) (noting testimony that sexual relations between a patient and a therapist was a well-known  
8 hazard and "thus, to a degree, foreseeable and a risk of employment").

9 **4. Defendants Improperly Rely Upon Unpublished Opinions**

10 In what can only be described as desperation for their points and authorities, both  
11 Defendants feel the need to violate Court Rules by citing unpublished orders. This Court should  
12 not tolerate these intentional acts.

13 In an incredibly willful and brazen violation of Nevada Supreme Court Rules,  
14 Centennial/UHS cites to an unpublished Nevada order for support, then files an "errata" (after it  
15 was caught by Plaintiff's counsel) advising that it made a "mistake" in doing so but refusing to  
16 withdraw the citation and argument.<sup>16</sup> This Court should reprimand Centennial/UHS and sanction  
17 counsel for their intentional violation of SCR 123.<sup>17</sup>

18 Nevertheless, because Centennial/UHS relies on it, Plaintiff will discuss the case. In  
19 **Vaughan v. Harrah's Las Vegas, Inc.**, 2008 Nev. Unpub. LEXIS 3 (Nev. 2008), Sharon  
20 Afflerback, a casino porter, apparently assaulted and battered Kathleen Vaughn. Unfortunately,  
21 because it is an unpublished order, there are no facts laid out in the Order. So, neither Plaintiff,  
22 nor this Court, knows what the facts were regarding course and scope. While, certainly, the Court  
23 determined that Ms. Afflerback wasn't in the course and scope of her casino porter job when the  
24

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25 <sup>16</sup> See Exhibit 5.

26 <sup>17</sup> SCR 123 states: "Citation to unpublished opinions and orders. An unpublished opinion or order of the Nevada  
27 Supreme Court shall not be regarded as precedent and shall not be cited as legal authority except when the opinion or  
28 order is (1) relevant under the doctrines of law of the case, res judicata or collateral estoppel; (2) relevant to a criminal  
or disciplinary proceeding because it affects the same defendant or respondent in another such proceeding; or (3)  
relevant to an analysis of whether recommended discipline is consistent with previous discipline orders appearing in  
the state bar publication." None of these reasons for citing an unpublished order is present or even close. Hence, the  
conduct of Centennial is intentional in violating the Rules. Mr. Murdock specifically demanded that counsel retract  
the cite completely. Centennial refused, implicitly acknowledging their intentional violation of Court rules.

1 assault took place, there are no facts stated which would tell the reader why. However, what the  
2 Court did do is rely upon **Wood**, just as Plaintiff has herein for its analysis.

3 Similarly, ANS violated California Rule of Court 977<sup>18</sup> when it cited **Robert D. v.**  
4 **Paradise Valley Hosp.**, 2004 Cal. App. Unpub. LEXIS 4285 (Cal. App. 4<sup>th</sup> Dist. Apr. 28, 2004)  
5 an appellate court decision which merely followed **Lisa M.** without any analysis. Robert sued  
6 Paradise Valley as a result of a nurse's fondling of him, and performing fellatio upon him during a  
7 sponge bath. However, there was a legal issue in that Robert did not allege sufficient facts to  
8 support certain conclusions. As the Order is unpublished, the Order does not make clear what is  
9 missing. But, clearly, the Court's phrasing of the central issue of the case, "Here, we analyze  
10 whether a hospital can, as a matter of law, be vicariously liable for a sexual assault committed by a  
11 nurse on a patient during the course of a sponge bath, without facts supporting conclusions of  
12 consent, authorization, or a desire to serve the employer's interest" makes clear that something was  
13 missing. *Id.* Regardless, the Court cited **Lisa M.** and found that the allegations were not "fairly  
14 attributable to work-related events or conditions."

15 As has been stated, Nevada law is quite different. The analysis under Nevada law would  
16 be whether the assault was done in the task given to the employee. Under Nevada law, **Robert D.**  
17 would be decided completely different.

18 ///

19 ///

20  
21 <sup>18</sup> Rule 977 of the California Rules of Court provides, in pertinent part:

22 [Unpublished opinions] An opinion of a Court of Appeal or an appellate department of the superior  
23 court that is not certified for publication or ordered published shall not be cited or relied on by a  
court or a party in any other action or proceeding except as provided in subdivision (b).

24 [Exceptions] Such an opinion may be cited or relied upon:

25 when the opinion is relevant under the doctrines of law of the case, res judicata, or  
26 collateral estoppel; or

27 when the opinion is relevant to a criminal or disciplinary action or proceeding because it  
28 states reasons for a decision affecting the same defendant or respondent in another such  
action or proceeding.

Just like with Centennial, the exceptions to the Rule do not apply.

1 Both ANS and Centennial/UHS make the same mistake and argue that Plaintiff will use  
2 the foreseeability related to Farmer's history of abuse of patients to establish same.<sup>19</sup> While  
3 Plaintiff could, specific foreseeability of an individual is not the issue. The Nevada Supreme  
4 Court made this quite clear when it stated that, "where the question is one of vicarious liability, the  
5 inquiry should be whether the risk was one 'that may fairly be regarded as typical of or broadly  
6 incidental' to the enterprise undertaken by the employer." **Wood**, 121 Nev. at 740 fn 53. This is a  
7 general inquiry...not a specific one. Moreover, this Court should not confuse the vicarious  
8 liability of ANS and Centennial/UHS with their direct liability in this matter. The issue at hand is  
9 foreseeability for the **Wood** respondeat superior analysis—not foreseeability related to negligence.

10 That being said, if this Court is concerned about this, as to both ANS and Centennial/UHS,  
11 Farmer's conduct was specifically foreseeable. Dr. Hofmann and Mr. Tatalovich have both  
12 testified that Farmer's conduct was specifically foreseeable to both ANS and Centennial/UHS. In  
13 addition, uncontested facts make this clearer.

14 **F. ANS WAS AWARE OF ABUSE ALLEGATIONS AGAINST FARMER**

15 In or around late December of 2007, an issue arose as to Mr. Farmer at his job at Rawson  
16 Neal Psychiatric Hospital, where he was sent by ANS.

17 On January 7, 2008, an ANS Nurse Performance Evaluation from Rawson Neal stated that  
18 Farmer had "called a female client [another word for Patient], on the clients' phone—on two  
19 occasions. The pt [patient], EM, was familiar with Mr. Farmer's living situation (renting a room  
20 in a house). This agency does not support fraternizing with clients." See Exhibit 6.

21 On January 28, 2008, Rontraniece Theard, a nurse, wrote an Incident Report regarding  
22 Farmer: "The patient stated, 'My boyfriend works here, his name is Steve, he's a Tech.' The  
23 patient also said, 'he calls me on the phone and said we are going to live together.' She told me  
24 that he kissed her. I told Anita on swing shift what the patient told me and Anita said, 'Marion the  
25 Nurse III is aware of it.' It was said that Marion stated that he [Steve] could never work on G3B  
26 again." See Exhibit 7.

27  
28 <sup>19</sup> The specific foreseeability that both ANS and Centennial had regarding Farmer could also be the basis for liability  
against both Defendants that is not vicarious in nature. Though the facts related to the sexual assault have been  
conclusively determined, issues related to Defendants own negligent acts (as opposed to vicarious acts) are not at  
issue herein. However, they are also uncontested.

1 Linda Elrington, an LPN at Rawson Neal, stated: "Pt who was on full view and under my  
2 responsibility got off the phone and came dancing to the table. Pt said 'That was my boyfriend  
3 Steve, the bearded Tech that work here.' Unit Tech Rontraniece and I looked at each other and  
4 asked 'Are you sure that was Steve that works here?' Pt said 'Yes we are moving in together' and  
5 for me to tell the social worker but not to mention his name. She look at Rontraniece and said  
6 'Remember I told you that we kiss yesterday.'" See Exhibit 8.

7 **ANS had all of the statements, including Theard's and Elrington's, in its possession.**  
8 Deposition of Michele Simmons, R.N., at 164-165.

9 Steven Farmer was placed on "Do Not Return" status from Rawson Neal due to allegations  
10 of an "improper relationship" with a patient. ANS classified this "improper relationship" as  
11 "abuse." See Exhibit 9. Michele Simmons, the Director of Clinical Operations at ANS, on ANS  
12 forms, described Mr. Farmer's conduct at Rawson Neal as "Abuse" and "Alleged violations as  
13 defined in Practice Acts of respective regulatory body." Deposition of Michele Simmons, R.N., at  
14 69-71; ANS00305. **Regardless, she did not report the abuse to an appropriate agency (i.e.,  
15 Metro or other agencies) and decided not to report the violations to the Nursing Board. Id.<sup>20</sup>**

16 Instead, ANS sent Mr. Farmer to Centennial/UHS, and, did so without telling  
17 Centennial/UHS about the issues with Mr. Farmer. ANS never disclosed to Centennial/UHS that  
18 Rawson was DNR'ed (do not return) at his former place for "Abuse." Deposition of Michele  
19 Simmons, R.N., at 158.

20 Accordingly, ANS was well aware that Farmer posed a risk to patients. ANS had **actual**  
21 **notice**—not just constructive notice—and did nothing but allow him to continue his abuse on  
22 patients—but now at Centennial/UHS.

23 ///

24 ///

25 ///

26 ///

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28 <sup>20</sup> This was an absolute violation of the Nursing Practices Act Section 632.472. It also violated ANS's own rules which stated that "Any aberrant or illegal behavior will be reported by the Compliance Office or the Human Resource Department to the appropriate professional board or law enforcement agency." See ANS0055-ANS00551.

1 **G. CENTENNIAL/UHS REQUIRED REFERENCES FROM THE LAST PRIOR JOB.**  
2 **DESPITE NOT RECEIVING THEM, CENTENNIAL/UHS LET FARMER WORK**  
3 **WITH ITS PATIENTS.**

4 Obviously, Centennial/UHS has admitted that if they had known about those issues, he  
5 would not have been working there. See Response to Request for Admission Set 5. The director  
6 of Human Resources at Centennial/UHS has testified similarly:

7 Q. Okay. And so similar to the questions I was asking you, based on the dates  
8 here of January 25th, 2008, it looks like this incident was reported possibly  
9 a little less than a month before he started working at Centennial Hills  
10 Hospital. Is this the type of information Centennial Hills Hospital would  
11 have wanted?

12 A. Yes.

13 Q. And had you had this information, would Centennial Hills Hospital have  
14 made any different decision about taking on Mr. Farmer?

15 A. Had I personally seen this information, I would have wanted to get  
16 additional information about that incident before making a decision to bring  
17 him on.

18 Q. At least until that time occurred that you received that additional  
19 information that satisfied your concerns, would you have taken on Mr.  
20 Farmer?

21 A. We would not have.

22 Deposition of Lisa Doty at P. 78, line 10, to page 79, line 3.

23 That, however, does not let Centennial/UHS off the hook.

24 Crystal Johnson started working at Centennial/UHS before it opened on December 17,  
25 2007. Deposition of Crystal Johnson at 8. Ms. Johnson's job classification at Centennial/UHS  
26 was "Staffing Coordinator." *Id.* at 11. Her duties included, "We find out the needs on each floor,  
27 each department, and we call the agencies and let them know how many nurses we need, CNAs,  
28 and we try to fill the floors. We also gather applications, background checks, put orientation  
packets together." *Id.* at 13-14. When using agency CNAs, Centennial/UHS would rely on the  
agencies to perform background checks. *Id.* at 14-15. In addition to misdemeanors and felonies,  
the background check was also for past job performance. *Id.* at 16.

1 Centennial/UHS would send over a sheet to the agency with all of the items that it would  
2 need, including references. *Id.* at 15-16. While Centennial/UHS could not ask if the individual  
3 was allowed back at the last place of employment, Centennial/UHS instead asked if they had a  
4 good reference from the prior work place. *Id.* at 16-17. **The specific reference Centennial/UHS**  
5 **wanted was from the prior job.** *Id.* at 17.

6 Centennial/UHS had a format (Document CHH00326) showing what was needed for  
7 working at Centennial/UHS for Steven Farmer. *Id.* at 18. The document states that  
8 Centennial/UHS had the "application" but did not have the "references." *Id.* at 19, 23. Ms.  
9 Johnson's habit would be that if the references were ever provided that she would check them off.  
10 *Id.* at 20. The "references" item was never checked off. *Id.* at 20.

11 The "references" that Centennial/UHS was asking for were work related, **at least one of**  
12 **which was from the last position placed at ANS.** *Id.* at 20. Of course, the last position was  
13 Rawson Neal, where Farmer was placed on "Do Not Return" for an improper patient relationship  
14 which was termed "abuse" by ANS. They never received this last reference nor did they insist  
15 upon having it before letting Farmer work at the hospital.

16 Without the references provided, Ms. Johnson testified that they "**should not have**"  
17 allowed the person to work at Centennial/UHS. *Id.* at 21. Ms. Johnson did not receive the  
18 references and specifically wrote the word "need" with regard to the references. *Id.* at 21. Ms.  
19 Johnson does not know how Steven Farmer was working at Centennial/UHS without the  
20 required references. *Id.* at 25-26. Ms. Johnson testified that Mr. Farmer should not have  
21 been working at Centennial/UHS until they had the references. *Id.* at 26. Centennial/UHS  
22 never received them.

23 **H. THE HOSPITAL CAUGHT FARMER 2 MONTHS EARLIER, BUT BLAMED AS**  
24 **"OLD CRAZY LADY" INSTEAD OF FARMER**

25 Additionally, a Centennial/UHS patient had caught Mr. Farmer weeks before this  
26 incident...but Centennial/UHS decided to blame a "crazy old lady" instead of investigating.  
27 While this certainly is part of their own negligence, **it also shows that Farmer's conduct was**  
28 **foreseeable and not surprising.**



1 Christine Murray, a nurse at Centennial/UHS, gave a statement to the LVMPD.<sup>21</sup> In or  
2 around February or March of 2008, Mr. Farmer was working as a "sitter" in an older patient's  
3 room. Ms. Murray stated that this means that a doctor ordered someone to be in the room with her  
4 at all times. Nevertheless, Mr. Farmer was alone with her and had the door shut with all of the  
5 lights out. Centennial/UHS staff heard yelling from the room to the effect that she did not want  
6 him near her. Instead of investigating what occurred, Ms. Murray and the Centennial/UHS staff  
7 basically blamed the incident on a "crazy old lady."

8 The point is, whether this Court uses the Nevada Supreme Court's interpretation of  
9 foreseeability which is general, or Defendants, which is specific, Farmer's actions were  
10 foreseeable.

11 **I. DEFENDANTS HAVE FAILED TO PROVIDE ADMISSIBLE EVIDENCE TO**  
12 **RAISE GENUINE ISSUES OF MATERIAL FACT**

13 Though Plaintiff has produced significant admissible evidence regarding course and scope.  
14 Defendants have produced **no evidence** whatsoever regarding same (admissible or not). Plaintiff  
15 submits that, as a matter of law, there are no genuine issues of material fact and summary  
16 judgment is proper that Farmer was in the course and scope of his employment at ANS and  
17 Centennial/UHS allegedly cleaning Jane Doe from feces, fixing her catheter, and fixing her leads,  
18 when he sexually assaulted her.

19 Nevertheless, Plaintiff understands that generally the issue of whether an employee is  
20 acting within the scope of employment when the employee committed a tortious act is generally a  
21 question of fact. **Evans v. Southwest Gas**, 108 Nev. 1002, 1005, 842 P.2d 719, 721 (1992),  
22 overruled on other grounds by **GES, Inc. v. Corbitt**, 117 Nev. 265, 21 P.3d 11 (2001); see, e.g.,  
23 **Rockwell**, 22 Nev. at 1217, 925 P.2d at 1181 (1996) (genuine issue of material fact whether off-  
24 duty security guard was still actively guarding the premises when he shot a woman precluded  
25 summary judgment in favor of employer based on course and scope of employment argument).  
26 However, when undisputed evidence exists, such as in this case, demonstrating the employee's  
27 status at the time of the tortious conduct, the trial court should consider the issue as a matter of

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<sup>21</sup> This statement was just provided to Plaintiff's counsel. Defendants knew about this for years but neglected to supplement the NRCP 16.1 Disclosure in this matter. Nevertheless, the Statement is attached hereto as Exhibit 4.

1 law. **Evans v. Southwest Gas**, 108 Nev. at 1005, 842 P.2d at 721. Plaintiff submits that this is the  
2 case here. It is clear that Farmer was in the course and scope of his employment with ANS and  
3 Centennial/UHS when he sexually assaulted Plaintiff. Defendants have failed to present any  
4 admissible evidence to raise a genuine issue of material fact.

5       Regardless of how the Court rules on the issues of course and scope and respondeat  
6 superior though, Plaintiff is entitled to an Order from this Court granting summary judgment on  
7 the issue of the sexual assault and its component parts. The conviction alone is absolute evidence  
8 that the sexual assault occurred and all of the facts of those sexual assaults have been decided as to  
9 all parties, as a matter of law.

10 **J.     BECAUSE THE HOSPITAL OWES A NON-DELEGABLE DUTY TO JANE DOE,**  
11 **THE CONVICTION OF FARMER MANDATES STRICT LIABILITY AGAINST**  
12 **THE HOSPITAL.**

13       Respondeat superior is not the only reason Centennial/UHS is strictly liable. The  
14 uncontested facts establish that Jane Doe was a patient at Centennial/UHS. As such,  
15 Centennial/UHS owed her a non-delegable duty to protect her *regardless* of whether the actions of  
16 Farmer were within the scope of employment. Hence, Centennial/UHS is strictly liable for the  
17 actions of Farmer regardless of respondeat superior.

18       § 214 Failure of Principal to Perform Non-Delegable Duty

19       A master or other principal who is under a duty to provide protection for or to have  
20 care used to protect others or their property and who confides the performance of  
21 such duty to a servant or other person is subject to liability to such others for harm  
caused to them by the failure of such agent to perform the duty.

22       Restatement (Second) of Agency, § 214.

23       The illustrations make this clear. “5. The chambermaid at a hotel steals the clothes of a  
24 traveler stopping at the hotel. The hotel keeper is subject to liability although he reasonably  
25 believed the chamber-maid to be honest.” *Id.* The reason the hotel is automatically liable is that  
26 the hotel had a non-delegable duty to protect the belongings of the traveler. So, when the  
27 chambermaid steals the clothes, the hotel cannot “blame” the chambermaid despite there being no  
28 reason to suspect her as a thief.

1 This Court well knows that:

2 [A] nondelegable duty imposes upon the principal not merely an obligation to  
3 exercise care in his own activities, but to answer for the well-being of those  
4 persons to whom the duty runs."

5 **Alcantara v. Wal-Mart Stores, Inc.**, 321 P.3d 912, 916 (Nev. 2014). "Even the use of utmost  
6 care in hiring and delegating the duty to an independent contractor, such as a security  
7 company, will not discharge the duty. *Id.*

8 A hospital certainly has a duty to provide for the protection of its patients. There is a  
9 special relationship between a hospital and its patients such that the duty to protect from criminal  
10 attacks from third parties:

11 However, courts have imposed liability where a "special relationship" exists  
12 between the parties, including landowner-invitee, businessman-patron, employer-  
13 employee, school district-pupil, **hospital-patient**, and carrier-passenger. *Id.* at 482-  
14 83. The rationale behind the imposition of liability is that: Since the ability of one  
15 of the parties to provide for his own protection has been limited in some way by his  
16 submission to the control of the other, a duty should be imposed upon the one  
possessing control (and thus the power to act) to take reasonable precautions to  
protect the other one from assaults by third parties which, at least, could reasonably  
have been anticipated.

17 **Scialabba v. Brandise Constr. Co.**, 112 Nev. 965, 968-969 (Nev. 1996). "[A] non-delegable  
18 duty imposes upon the principal not merely an obligation to exercise care in his own activities, but  
19 to answer for the well-being of those persons to whom the duty runs." **Alcantara v. Wal-Mart**  
20 **Stores, Inc.**, 321 P.3d 912, 916 (Nev. 2014). The Nevada Supreme Court has explained that "a  
21 non-delegable duty is a strict liability concept." **Renown Health, Inc. v. Vanderford**, 235 P.3d  
22 614, 617 (Nev. 2010).<sup>22</sup>

23 In **Stropes v. Heritage House Childrens Center, Inc.**, 547 N.E.2d 244 (Ind. 1989), the  
24 Court had before it David, a child of 14 years of age who was mentally challenged and was placed  
25 at a center to live. A nurse's aide there, whose job it was to bathe and clean the child, was  
26 convicted of sexual assault of the boy. The Court found that the home had a non-delegable duty to

27 <sup>22</sup> **Renown** held that a hospital did not have a "non-delegable duty" to provide "competent" medical care. *Id.* at 616.  
28 That is certainly not the issue in this case. Here, the non-delegable duty is the protection of patients. "Competent"  
medical care is in the eye of the beholder. The protection of patients is objective—Jane Doe was sexually assaulted  
by an employee and thus there is absolute liability. This has to do with the issue of control and the fact that Jane Doe  
gave up total control of her safety to Centennial.

1 protect the boy from such assaults based upon the fact that control was given away to the home to  
2 protect the boy. The Court analogized the contract it had between it and the boy as a "contract of  
3 passage" which,

4 ...contemplated that the entire responsibility for David's comfort, safety and  
5 maintenance would be on Heritage and that the performance of these tasks would  
6 be delegated to its employees. Given the degree of David's lack of autonomy and  
7 his dependence on Heritage for care and the degree of Heritage's control over  
8 David and the circumstances in which he found himself, we find that Heritage  
9 assumed a non-delegable duty to provide protection and care so as to fall within the  
10 common carrier exception.

11 *Id.* at 254.

12 The Court explained:

13 Under respondeat superior, employer liability is coextensive with the powers and  
14 advantages engendered by the employment relationship. Because liability is  
15 predicated conceptually on the employer's ability to command or control his  
16 employee's acts, an employer can be held responsible only for those acts of his  
17 employee which are committed within the scope of their employment relationship.  
18 **Under the common carrier exception to respondeat superior, however, the  
19 range of employee activities deemed to be under the employer's dominion is  
20 irrelevant. Liability is predicated on the passenger's surrender and the  
21 carrier's assumption of the responsibility for the passenger's safety, the ability  
22 to control his environment, and his personal autonomy in terms of protecting  
23 himself from harm; therefore, the employer can be held responsible for any  
24 violation by its employee of the carrier's non-delegable duty to protect the  
25 passenger, regardless of whether the act is within the scope of employment.**

26 ***Stropes v. Heritage House Childrens Center, Inc.*, 547 N.E.2d 244, 253 (Ind. 1989).**

27 The Common Carrier "exception" is Section 214 of the Restatement (Second) of Agency,  
28 discussed above, which Nevada has implicitly accepted. See ***Alcantara v. Wal-Mart Stores,***  
***Inc.*, 321 P.3d 912, 916 (Nev. 2014) (citing United States Supreme Court case accepting Section**  
**214).**<sup>23</sup>

The point of the common carrier exception is that the passenger has given up control of her  
surroundings. The Captain is piloting the ship. The bus driver is driving the bus. In each of these

<sup>23</sup> Plaintiff is not stating that a hospital is a common carrier. It is simply an analogy regarding the issue of control. However, this Court knows that Nevada has accepted an elevator as being a "common carrier" and all of the attendant duties with same. See *Smith v. Odd Fellows Bldg. Ass'n*, 46 Nev. 48 (Nev. 1922). Had Jane Doe's sexual assault occurred in an elevator (as did another one of his victim's at Centennial), then the issue would be clearer. Regardless, the issue is one of control, not location. Geography should not be the issue. Jane Doe gave up control to the hospital. She is no different than a passenger on a boat or on an elevator.

1 scenarios, liability has been non-delegable and strict when, for example, a crewman sexually  
2 assaults a passenger on a cruise ship (**Doe v. Celebrity Cruises, Inc.**, 394 F.3d 891 (11<sup>th</sup> Cir.  
3 2004), or a crewman on a train sexually assaults a passenger (**Gilstrap v. Amtrak**, 998 F.2d 559  
4 (8<sup>th</sup> Cir. 1993). See, also, **Morton v. De Oliveira**, 984 F.2d 289, 292 (9<sup>th</sup> Cir. Cal.  
5 1993)(passenger on cruise ship raped by crew man, strict liability based upon Section 214 holding  
6 "a carrier is liable to its passengers for assaults by employees prompted by purely personal  
7 motives.")

8         Again, it is the rationale for Section 214 that this Court should apply to hospitals as Indiana  
9 did to an institution. Our court in **Scialabba** made it clear that the reasoning of the Indiana court  
10 is consistent with Nevada law as it applies to hospital/patients relationships. The patient gives up  
11 control to the hospital. Everything is done for the patient. Even the private cleansing of one's  
12 anus from feces is done by those who the hospital hire. Some patients are on pain mediation or  
13 other medication such that they have no idea of their surroundings and may even be unconscious.  
14 The patient cannot lock the door. The patient cannot stop someone from coming in the room.  
15 Even a cruise ship has locks on doors, and passengers can decide who they allow in their room. A  
16 hospital is completely open to provide care for patients, but the patient has no control, whatsoever,  
17 for their own protection.

18         A hospital should be strictly liable for the intentional torts of staff. A hospital owes an  
19 absolute duty of protection to their patients. A cruise ship or an Amtrak train, should not make a  
20 person feel safer than patients in hospitals. Think of what could happen not just to a woman like  
21 Jane Doe; think about infants, persons in comas, the most vulnerable persons in society. The  
22 rationale for Section 214 justly applies in the hospital setting. The hospital can insure itself and  
23 take numerous steps to protect patients who simply cannot take any steps to protect themselves in  
24 this situation.

25         The case at bar is ripe for strict absolute liability against the hospital for this attack by its  
26 own employee.

27         Jane Doe was a patient at the hospital.

28         Jane Doe gave up all of her control with regard to her person to the hospital.

1 She could not lock the door to her room. Deposition of Deposition of Douglas Nichols,  
2 Person Most Knowledgeable of Valley Health System LLC, at 14.

3 There was no eyepiece on the door. *Id.* at 15.

4 There was no window on the door. *Id.*

5 During the relevant time period, Jane Doe was given intravenous Ativan (for seizures) and  
6 Prozac.<sup>24</sup>

7 The hospital (supposedly) looked at background and references from prior employment.  
8 Deposition of Crystal Johnson at 16.

9 Centennial/UHS has conceded that Jane Doe could not have taken care of safety for her  
10 own person herself because there was no lock on the door. Nichols Person(s) Most  
11 Knowledgeable Deposition at 15.

12 Jane Doe surrendered all of her responsibility for her own safety to the hospital. The  
13 hospital decided who it was going to allow to wash her, bathe her, and clean her feces and urine.  
14 The hospital decided what persons it was going to allow on its premises to work for it. Jane Doe  
15 had no control whatsoever. She gave it all to the hospital. Once that control is given up, the  
16 hospital acts just like a common carrier...and its duty of protection, being non-delegable, once  
17 there is a conviction of Farmer, was breached as a matter of law.

18 As a result, the hospital's non-delegable duty was breached based upon the conviction of  
19 Steven Farmer and Centennial/UHS is liable therefor.

20 **K. THE HOSPITAL AND ANS RATIFIED THE ACTS OF FARMER AND CANNOT**  
21 **NOW ARGUE THAT FARMER WAS NOT IN THE COURSE AND SCOPE**

22 One would think that if the hospital and/or ANS truly believed that Farmer was not acting  
23 in the course and scope of his employment, that the hospital and ANS would have cooperated with  
24 the police and district attorney's office to convict Farmer. They would not have been aiding and  
25 abetting Mr. Farmer in his criminal defense if he was not their employee—acting within the course  
26 and scope of his employment. But, they did. Yes, that is right. Both ANS and Centennial/UHS  
27 provided assistance to Farmer before and during his criminal trial. As unbelievable as that sounds,  
28 they did. Now, that is their right and their choice. But, their choice comes with a corresponding

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<sup>24</sup> See Exhibit 10. The side effects of Ativan include sedation, dizziness and weakness.

1 problem — they cannot argue that he was not in the course and scope of his employment when the  
2 sexual assault occurred. If Farmer was truly not in the course and scope, then his employers would  
3 not have aided in his defense.

4 Centennial/UHS attorneys provided Mr. Farmer's trial clothing.<sup>25</sup>

5 Both Centennial/UHS and ANS shared information back and forth regarding the victims  
6 and defenses with Farmer's Public Defender. See Exhibit 11: Emails. Centennial/UHS and ANS  
7 provided Farmer's criminal defense lawyers whatever assistance they needed to aid his defense.  
8 Most important, Mr. Farmer's criminal defense lawyers consulted with lawyers for ANS and  
9 Centennial/UHS:

10 Dear Messrs. McBride, Bemis, and Vogel and Ms. Hall:

11 We appreciate your consulting with us on the above-named case [State of Nevada  
12 v. Steve Dale Farmer]. Enclosed, per our January 21, 2013 meeting, please find the  
13 documents necessary for your review to assist with us on this case...

14 Letter from Amy Feliciano, Public Defender, dated January 31, 2013, Exhibit 12.

15 So, in other words, through their counsel, ANS and Centennial/UHS were actively aiding  
16 and assisting the defense of Mr. Farmer. This is the essence of ratification. They were helping  
17 Mr. Farmer in his defense of a charge of sexual assault against Jane Doe (along with six other  
18 women). Why would employers who argue that he was not in the course and scope help the same  
19 rapist? They can't have it both ways and they should have thought about the consequences of  
20 their ratification before they actively aided and abetted.

21 Neither ANS nor Centennial/UHS repudiated the acts — instead, they both aided Farmer's  
22 defense. A principal "is bound by [its] agent's previously unauthorized act if [it] ratifies the act by  
23 accepting its benefits with full knowledge of the relevant facts, or, if upon learning of the act, [it]  
24 fails to properly disavow it." *Kilby v. Pickurel*, 240 Va. 271, 396 S.E.2d 666, 668-69 (Va. 1990).  
25 Here, both ANS and Centennial/UHS attempted to help Farmer prove that he did not do the  
26 criminal acts of which he was charged. ANS never even fired Farmer! This clearly demonstrates  
27 they did not disavow the acts — **they ratified them.**

28 ///

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<sup>25</sup> See Affidavit of Mr. Murdock.

1 This is not the type of "help" where they just stood by and paid for a criminal defense  
2 attorney. Here, they actively attempted to help Farmer by providing information back and forth,  
3 by consulting with criminal defense counsel, and even providing clothing for the criminal  
4 defendant's trial. The aiding and abetting is what sets this apart. The actions are nothing but  
5 ratification.

### 6 III. CONCLUSION

7 Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
9 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
10 of law." Plaintiff seeks summary judgment on several issues related to Farmer's conviction of  
11 sexually assaulting Plaintiff under NRS 41.133.

12 First, there are no facts in dispute that Farmer was convicted of Sexually Assaulting  
13 Plaintiff and committing Open and Gross Lewdness and Indecent Exposure upon her by:

- 14 a. Digitally penetrating, by inserting his finger(s) into the anal opening of Jane Doe,  
15 Count 10;
- 16 b. Digitally penetrating, by inserting his finger(s) into the genital opening of Jane Doe,  
17 Count 12;
- 18 c. Touching and/or rubbing the genital opening of Jane Doe with his hand(s) and/or  
19 finger(s), Count 11;
- 20 d. Touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe  
21 with his hand(s) and/or finger(s), Count 13 and 14;
- 22 e. Deliberately lifting the hospital gown of Jane Doe to look at her genital opening and/or  
23 anal opening and/or breast(s), Count 15.

24 Accordingly, summary judgment must be granted finding all facts related to these convictions  
25 necessary to impose civil liability for Plaintiff's injuries have been conclusively established as a  
26 matter of law, as to all related claims alleged in the Amended Complaint, as to all Defendants.

27 Second, based upon this finding, summary judgment on the issue of liability must be  
28 granted as to Farmer, and all affirmative defenses related to liability must be dismissed.



1 Third, as to ANS and Centennial/UHS, Plaintiff is entitled to summary judgment on the  
2 issue of vicarious liability, and all affirmative defenses related to vicarious liability must be  
3 dismissed if at the time of the sexual assaults:

4 1. Farmer, the person causing the injury, was employed by ANS and/or Centennial/UHS,  
5 who were corporation(s) responsible for the conduct of Farmer, the person causing the  
6 injury, and,

7 2. (a) This conduct was not a truly independent venture of Farmer;

8 (b) The sexual assaults were committed in the course of the very task assigned to the  
9 employee; and

10 (c) The sexual assaults were reasonably foreseeable under the facts and circumstances  
11 of the case considering the nature and scope of Farmer's employment.

12 Regardless of whether this Court finds there are no genuine issues of material fact as to ANS  
13 and/or Centennial/UHS under numbers 1 and 2 above, Plaintiff is entitled to a finding of summary  
14 judgment that ANS and Centennial are liable if number 1 and 2 are found by a preponderance of  
15 the evidence.

16 Fourth, Plaintiff is entitled to summary judgment that Farmer was employed by ANS, who  
17 was responsible for his conduct at the time of the sexual assaults on Plaintiff. No genuine issue of  
18 material fact has been raised to refute this issue, and summary judgment must be granted.

19 Fifth, Plaintiff is entitled to summary judgment that Farmer was employed by  
20 Centennial/UHS, who was responsible for his conduct at the time of the sexual assaults on  
21 Plaintiff. The undisputed facts, as set forth in detail hereinabove, make clear that Centennial/UHS  
22 identified Farmer as working for them on the badge he was assigned to wear, and that they solely  
23 controlled the method and manner of his work at the hospital. The law is clear that, based upon the  
24 facts in this case, summary judgment must be granted on the issue that Farmer was employed by  
25 Centennial/UHS, who was responsible for his conduct at the time of the sexual assaults on  
26 Plaintiff.

27 Sixth, Plaintiff is entitled to summary judgment on the issue of foreseeability as to ANS in  
28 that sexual assaults were reasonably foreseeable under the facts and circumstances of the case  
considering the nature and scope of Farmer's employment. Though foreseeability is usually a

1 question of fact, here there are no facts in dispute on this issue. This Court is not being asked to  
2 weigh evidence or credibility of witnesses on this point. The undisputed facts demonstrate two  
3 things. It is well known that hospital staff have committed sexual assaults on patients; in fact,  
4 insurance companies provide insurance coverage because this is such well known risk. ANS had  
5 such coverage. Additionally in this case, ANS knew of Farmer's propensity to engage in  
6 inappropriate contact with patients based upon his prior conduct. In this case, there are no genuine  
7 issues as to any material fact and that the moving party is entitled to a judgment as a matter of law  
8 on the issue of foreseeability as to ANS.

9       Seventh, Plaintiff is entitled to summary judgment on the issue of foreseeability as to  
10 Centennial/UHS in that sexual assaults were reasonably foreseeable under the facts and  
11 circumstances of the case considering the nature and scope of Farmer's employment. Though  
12 foreseeability is usually a question of fact, here there are no facts in dispute on this issue. Again.  
13 This Court is not being asked to weigh evidence or credibility of witnesses on this point. The  
14 undisputed facts demonstrate two things. It is well known that hospital staff have committed  
15 sexual assaults on patients; in fact, insurance companies provide insurance coverage because this  
16 is such well known risk. Additionally in this case, Centennial/UHS knew of Farmer's propensity  
17 to engage in inappropriate contact with patients based upon his prior conduct that was summarily  
18 dismissed as being a "crazy old lady." Finally, Centennial/UHS had in place a screening process to  
19 prevent a sexual deviant from being employed in a position where a patient could be assaulted;  
20 they just did not follow their own procedures. While that may be an issue as to Centennial's own  
21 negligence, it also demonstrates foreseeability. In this case there are no genuine issues as to any  
22 material fact and that the moving party is entitled to a judgment as a matter of law on the issue of  
23 foreseeability as to Centennial/UHS.

24       Eighth, Plaintiff is entitled to summary judgment as to ANS and Centennial/UHS on the  
25 issue that the sexual assaults were committed in the course of the very task assigned to the Farmer  
26 and were not a truly independent venture. The facts on this point are not in dispute. As part of his  
27 assigned duties on the night of the sexual assaults, Farmer was assigned to care for patients on the  
28 sixth floor of the hospital — undisputed. Plaintiff was on the sixth floor — undisputed. Some of a  
CNA's tasks, such as Farmer, was to change bed pans, clean up a patient who had urinated or

1 defecate upon herself, check monitor leads attached to a patient's chest — undisputed. The  
2 undisputed testimony provided by Plaintiff was that she was sexually assaulted and fondled as  
3 Farmer was explaining to her he was doing each of these tasks — undisputed. It is also undisputed  
4 that ANS and Centennial/UHS provided substantial assistance to Farmer during his criminal trial,  
5 thereby waiving their right to contest whether Farmer was in the course and scope. This Court is  
6 not being asked to weigh evidence, or credibility of witnesses on this point. Defendants have not  
7 raised any genuine issue as to any of these material facts. The only question for this Court is  
8 whether on these facts, the law in Nevada would find the sexual assaults were committed in the  
9 course of the very task assigned to the Farmer and were not a truly independent venture. As  
10 detailed above, under **Prell, Safeway and Rockwell**, our court is clear — these sexual assaults  
11 were not truly independent ventures because they were committed in the course of the very task  
12 assigned to the Farmer. While California law would differ on this point, Nevada courts would  
13 categorically find these sexual assaults give rise to liability. Accordingly, the Court should grant  
14 summary judgment in favor of Plaintiff and against ANS and Centennial/UHS on the issue that the  
15 sexual assaults were committed in the course of the very task assigned to the Farmer and were not  
16 a truly independent venture.

17 Ninth, Plaintiff is entitled to summary judgment as to Centennial/UHS because it owed a  
18 non-delegable duty to Plaintiff and Farmer's convictions mandate liability against them. The facts  
19 are undisputed that, as a patient in the hospital, Plaintiff had given the hospital control over her  
20 safety and well-being, all decisions concerning the hospital employees providing for her care, and  
21 total control over her environment. As such, the law requires the hospital to be held strictly liable  
22 for the acts of its employees.

23 Tenth, Plaintiff is entitled to summary judgment on the issue of liability against ANS and  
24 Centennial/UHS, and all affirmative defenses related to liability must be dismissed because ANS  
25 and Centennial/UHS have ratified Farmer's acts and have waived their right to argue that he was  
26 not an employee or that the sexual assaults were not committed in the course of the very task  
27 assigned to the Farmer and were a truly independent venture. It is undisputed that ANS and  
28 Centennial/UHS provided substantial assistance to Farmer during his criminal trial, thereby  
waiving their right to contest whether Farmer was an employee acting within the course and scope

of his employment. The law is clear – employers who provide this type of assistance to aid Farmer, instead of disavowing his heinous conduct, binds ANS and Centennial/UHS to the previously unauthorized acts.

Wherefore, based upon all of the foregoing, it is respectfully requested this Honorable Court grant to Plaintiff summary judgment on each and every of the foregoing issues.

Respectfully submitted,

MURDOCK & ASSOCIATES, CHTD.  
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock  
Robert E. Murdock Bar No. 4013  
Eckley M. Keach Bar No. 1154  
521 South Third Street  
Las Vegas, NV 89101  
Attorneys for Plaintiff

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**ROBERT E. MURDOCK**, being first duly sworn deposes and says:

2. I have personal knowledge of the facts set forth herein and am capable and willing to testify to same if called upon to do so.

3. Attached hereto as Exhibit 1 is a true and correct copy of ANS' insurance policy showing ANS had coverage for sexual assaults.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit and Curriculum Vitae of Paul B. Hoffman, Dr. P.H., FACHE.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit and Curriculum Vitae of E. Dwayne Tatalovich, an expert in crime prevention.

6. Attached hereto as Exhibit 4 is a true and correct copy of Christine Murray's statement to the LVMPD.

7. Attached hereto as Exhibit 5 is a true and correct copy of the Bemis/Murdock correspondence.

8. Attached hereto as Exhibit 6 is a true and correct copy of an ANS Nurse Performance Evaluation from Rawson Neal regarding Steven Farmer, dated January 7, 2008.

9. Attached hereto as Exhibit 7 is a true and correct copy of a January 28, 2008 Incident Report written by Rontraniece Theard.

10. Attached hereto as Exhibit 8 is a true and correct copy of a Statement by Linda Elrington, LPN at Rawson Neal.

11. Attached hereto as Exhibit 9 is a true and correct copy of ANS' Incident Report completed by Michele Simmons, R.M. on January 25, 2008 (ANS00305).

12. Attached hereto as Exhibit 10 is a true and correct copy of Jane Doe's pharmaceutical records evidencing intravenous administration of Ativan.

1 13. Attached hereto as Exhibit 11 is a true and correct copy of the emails between  
2 Centennial/UHS, ANS, and Farmer's criminal defense lawyer.

3 14. Attached hereto as Exhibit 12 is a true and correct copy of a letter from Amy  
4 Feliciano, Public Defender, dated January 31, 2013.

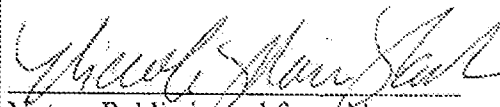
5 15. Attached hereto as Exhibit 13 are the relevant pages from the Deposition  
6 Transcripts of Michele Simmons, R.N.; Salvatore Sparacino; Karen Goodhart, R.N.; Douglas  
7 Nichols; Lisa Doty; and Crystal Johnson.

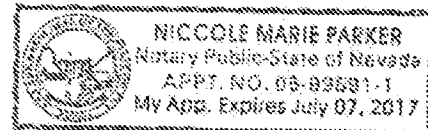
8 16. Upon information and belief, the clothes worn by Steven Farmer at his criminal  
9 trial were all provided by the law firm of Hall, Prangle, Centennial/UHS's counsel.

10 FURTHER YOUR AFFIANT SAYETH NAUGHT.

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ROBERT E. MURDOCK

Subscribed and sworn to before  
me this 21<sup>st</sup> day of November, 2014.

  
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Notary Public in and for said  
County and State



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Pyatt Silvestri  
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Las Vegas, NV 89101

Kim Irene Mandelbaum, Esq. (via courtesy copy Wiznet)  
Mandelbaum, Ellerton & Kelly  
2012 Hamilton Lane  
Las Vegas, NV 89106

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# **EXHIBIT 1**



| BRANCH | B/A | PRODUCER NUMBER |
|--------|-----|-----------------|
| 23     |     | 0004441         |

| DATE OF ISSUE | PRIOR CERTIFICATE NUMBER |
|---------------|--------------------------|
| 10/16/2007    | NEW                      |

## HEALTHCARE PROFESSIONAL LIABILITY CLAIMS-MADE POLICY

**NOTICE: THIS IS A CLAIMS-MADE POLICY, PLEASE READ THE POLICY CAREFULLY.**

|      |                                                                                                                                                                                                                                                            |                                   |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| Item | DECLARATIONS                                                                                                                                                                                                                                               | POLICY NUMBER <b>ASC- 1002072</b> |
| 1.   | <b>Named Insured</b> American Nursing Services, Inc. (see UME-8086)                                                                                                                                                                                        |                                   |
| 2.   | <b>MAILING ADDRESS</b> 3012 E. 26th st.<br>Metairie, LA 70002                                                                                                                                                                                              |                                   |
| 3.   | Policy Period: 12:01 A.M. Standard Time From: 10/01/2007 To: 10/01/2008<br>At Location of Mailing Address shown above                                                                                                                                      |                                   |
| 4.   | Prior Acts Date: 02/03/2002                                                                                                                                                                                                                                |                                   |
| 5.   | <b>COVERAGE</b>                                                                                                                                                                                                                                            | <b>LIMITS OF LIABILITY</b>        |
|      | Professional Liability                                                                                                                                                                                                                                     | \$ 1,000,000 each Incident        |
|      |                                                                                                                                                                                                                                                            | \$ 3,000,000 Aggregate            |
| 6.   | Deductible (if applicable)                                                                                                                                                                                                                                 | \$ 25,000 each Incident           |
| 7.   | The Named Insured is: <input type="checkbox"/> Sole Proprietor (including Independent Contractors) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation<br><input type="checkbox"/> Other:                                 |                                   |
| 8.   | Business or Occupation of the Named Insured: Temporary Staffing                                                                                                                                                                                            |                                   |
| 9.   | This policy is made and accepted subject to the printed conditions in this policy together with the provisions, stipulations and agreements contained in the following form(s) or endorsement(s):<br><br>See Forms Endorsement XSE-1001 (01/96)(Ed.01/98). |                                   |
|      | <b>INTERSTATE FIRE &amp; CASUALTY COMPANY</b><br>33 WEST MONROE STREET, CHICAGO, ILLINOIS 60603                                                                                                                                                            |                                   |
|      | REPRESENTATIVE: Agent or Broker: • CRC Insurance Services, Inc.<br>Office Address: • 10901 West Teller Dr. Ste. 205<br>Town and State: • Littleton CO 80127                                                                                                |                                   |

POLICY NUMBER: ASC 1002072

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SEXUAL MISCONDUCT / PHYSICAL ABUSE  
LIMITED COVERAGE ENDORSEMENT**

In consideration of the premium charged, exclusion M of Section VIII. EXCLUSIONS, is deleted in its entirety and replaced with the following:

- M. to any claims made or Suits brought against any Insured alleging in whole or in part Sexual Misconduct or Physical Abuse committed by any client, patient or any other person whose care has been entrusted to the Insured.

The policy is further amended as follows:

The Company will pay on behalf of the Insured under the COVERAGE section of the policy, all sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company during the Policy Period as a result of an Incident alleging sexual misconduct or physical abuse that occurs during the Policy Period including assertions of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual misconduct and/or physical abuse, failure to prevent assault and battery, or failure to discharge the employee, and that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

Limits of liability for this coverage are indicated below. Claims Expenses are included within this limit of liability and are not in addition thereto. Damages and Claims Expenses paid under the coverage provided by this endorsement shall reduce the applicable limits of liability indicated in the policy declarations.

**LIMITS OF LIABILITY**

|    |           |                             |
|----|-----------|-----------------------------|
| \$ | 1,000,000 | each Incident or Occurrence |
| \$ | 1,000,000 | in the aggregate            |

The DEFINITIONS Section of the policy is amended by the addition of the following:

"Sexual Misconduct" means sexual assault, abuse or molestation, or licentious, immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

"Physical Abuse" means physical assault, abuse, molestation or intentional neglect arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.


Multiple episodes of Sexual Misconduct or Physical Abuse to one person shall be deemed to be one Incident and shall be subject to the coverage and limits in effect at the time of the first Incident even if some of such Incidents take place after expiration of this policy.

The obligation to defend shall extend until a final judgment or adjudication shall establish that such behavior caused in whole or in part, the injury claimed. The Company shall not be required to appeal a judgment or final adjudication adverse to the Insured.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**



**Fireman's Fund<sup>®</sup>**  
Insurance Company

A company of Allianz 

September 16, 2009

**CERTIFIED MAIL – NO. 7000 1670 0011 9024 1357**  
**RETURN RECEIPT REQUESTED**

Thomas J. Eppling  
Staines & Eppling  
3500 North Causeway Boulevard, Suite 820  
Metairie, LA 70002

Re: Insured: American Nursing Services, Inc.  
Claimants: Roxanne Cagnina and Jane Doe  
Claim Nos.: 00508498351 and 00509640986  
Issuing Company: Interstate Fire and Casualty Insurance  
Company  
Your File No.: 0565-002

Dear Mr. Eppling:

As you know, I am the claim representative who has been assigned to handle the action brought by Roxanne Cagnina and the action Jane Doe vs. Centennial Hills Hospital Medical Center Auxiliary; Valley Health System LLC; Universal Health Services Foundation; American Nursing Services, Inc.; and Steven Dale Farmer; Clark County Case No. A-09-595780-C ("the Doe action"). In that capacity I am writing in response to your correspondence dated August 5, 2009, in which you demanded, on behalf of your client, American Nursing Services ("ANS"), that Interstate Fire and Casualty Insurance Company ("IFCC") settle Ms. Cagnina's claim for an amount up to the remaining \$1,000,000.00 limit of the policy. In addition, this letter will provide the insured with IFCC's position concerning the litigation brought by Jane Doe.

At the outset, I note that IFCC does not agree with the assessment that "it is clear that the potential value of this claim far exceeds the \$1,000,000 policy limits." IFCC is monitoring this litigation and will continue to communicate with defense counsel and the insured regarding its evaluation. However, in light of the lawsuit that was recently filed by Ms. Doe and the information provided by ANS regarding other potential claimants it is important for your client to be aware that only the policy in effect for the 2007 – 2008 policy period will provide defense and indemnity for all of the claims allegedly arising out of Mr. Farmer's sexual misconduct. Accordingly, if IFCC exhausts the remaining limit of liability under that policy to resolve Ms. Cagnina's claim there will be no coverage afforded to the insured by IFCC for the Doe claim or any other claims that may be brought by Mr. Farmer's alleged victims.

Fireman's Fund  
Insurance Companies

33 West Monroe Street  
12<sup>th</sup> Floor Suite 1200  
Chicago, IL 60603

Toll free (800) 628-8574 ext. 457463  
Direct: (312) 456-7463  
E-Fax: (800) 301-2688  
E-mail: [caguda@ifcc.com](mailto:caguda@ifcc.com)

ANS000754

Thomas J. Eppling  
September 16, 2009  
00508498351-00509640986  
Page 2 of 8

Interstate Fire and Casualty Company

It is my understanding that all communications, including reservations of rights, relating to insurance coverage for this matter should be directed to you and pursuant to Ms. Spellman's request, all communications relating to the underlying litigation should be directed to Ms. Spellman with a carbon copy to you. If this understanding is not correct, please advise me.

Both the Cagnina action and the recently filed Doe action arise out of sexual assaults allegedly committed by Steven Dale Farmer, a nursing assistant provided to Centennial Hills Hospital by ANS. The action, brought by Roxanne Cagnina, was reported to IFCC under policy number ASC-1002072 that was in effect for the period October 1, 2007 – October 1, 2008. The coverage applied on a "claims made" basis and was subject to a retroactive date of February 3, 2002. In July of 2008, while policy number ASC-1002072 was still in effect, IFCC was advised by ANS of additional potential claimants including Jane Doe who is believed to be Marcia Peterson. The action brought by Jane Doe arises out of a sexual assault that is also alleged to have occurred "in or around" May of 2008. According to the recently filed Complaint Ms. Doe was recovering from seizures, when Mr. Farmer entered her hospital room and assaulted her. The Causes of Action asserted in the Doe Complaint are not separately denominated. However, it appears that Ms. Doe is seeking to recover damages for Premises Liability (First Cause of Action); Negligence (Second Cause of Action); and Sexual Assault (Third Cause of Action). The Complaint seeks both compensatory and punitive damages based on the Defendants' alleged "willful, malicious and oppressive conduct".

As noted above, IFCC issued a Healthcare Professional Liability Claims-Made Policy, number ASC-1002072, to American Nursing Services, Inc. for the policy period October 1, 2007 – October 1, 2008. IFCC also issued a Healthcare Professional Liability Claims-Made Policy, number ASC-1002072-01, to ANS that was in effect for the policy period October 1, 2008 – October 1, 2009. During both policy periods the coverage was provided through form number 1-PL-4002(03/04) as modified by the Sexual Misconduct/Physical Abuse Limited Coverage Endorsement, form DME-0002(11/95).

The Sexual Misconduct/Physical Abuse Limited Coverage Endorsement limits IFCC's liability for all claims arising out of sexual or physical abuse to \$1,000,000. This limit of liability applies to both defense and indemnity.

The Insuring Agreement that applied to the professional liability insuring agreement during both years provided:

The Company agrees with the Named Insured, in consideration of the payment of the premium, and in reliance upon the statements in the Declarations and in the application, and subject to the limit of liability, exclusions, conditions and other terms of this policy, as follows:

#### I. COVERAGE

The Company will pay on behalf of the Insured those sums which the Insured shall become legally obligated to pay as Damages for

ANS000755

Claims first made against the Insured and reported to the Company during the Policy Period, as a result of Bodily Injury, Property Damage or Personal Injury caused by an Incident, provided always that such Incident happens:

- A. on or after the policy effective date shown on the Declarations; or
- B. at any time prior to the policy effective date shown on the Declarations if:
  - 1. such Incident happens on or subsequent to the "prior acts date" on the Declarations, and
  - 2. no Insured knew or could have reasonably foreseen that such Incident might be expected to be the basis of a Claim or Suit on the effective date of this policy.

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages to which this insurance applies and the Company shall have the right and duty to defend any Suit against the Insured seeking Damages on account of such Bodily Injury, Property Damage or Personal Injury, even if any of the allegations of the Suit are groundless, false or fraudulent, but the Company shall not be obligated to pay any Claim or Claims Expenses or judgments or continue to defend any Suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

The Company shall have the right and duty to defend any suit against the Named Insured seeking Damages to which this insurance applies even if any of the allegations of the suit are groundless, false or fraudulent. The Company, with the consent of the Insured, shall select and assign defense counsel, as per endorsement, provided that such counsel agree to comply with the Company's litigation management guidelines and agree to accept the Company's hourly fee payment. The Named Insured may engage additional counsel, solely at their expense, to associate in their defense of any Claim covered hereunder. Claims Expenses incurred by the Company shall be paid in addition to the applicable limit of liability. The Company shall also have the right to investigate any Claim or Suit and/or negotiate the settlement thereof, as it deems expedient and does not need the consent or approval of the Insured to settle. The Insured shall not assume any

obligations, incur any costs, charges, or expenses or enter into any settlement without the company's written consent.

...

The term "incident is defined by endorsement as follows:

**"Incident"** means any act or omission in the furnishing of professional health care services to a patient or client including the furnishing of food, beverages, medications, or appliances in connection with such services and the postmortem handling of human bodies.

The policy defined the term "bodily injury" as follows:

**"Bodily Injury"** means bodily injury, sickness or disease, mental anguish, psychological injury or emotional distress sustained by any person, including death at any time resulting therefrom;

The policy incorporated a Home Health Care Agency Endorsement that re-defined the term "incident" as follows:

II. Section IX, **DEFINITIONS**, is amended by the deletion of "Incident" in its entirety and its replacement with:

**"Incident"** means any act or omission in the furnishing of professional health care services to a patient or client including the furnishing of food, beverages, medications, or appliances in connection with such services and the postmortem handling of human bodies.

Sexual assault cannot be considered an act or omission in the furnishing of professional healthcare services.

The policy incorporated a Punitive Damages Amendatory Endorsement that provided:

**"Damages"** means compensatory judgments, settlement or awards, including punitive or exemplary Damages, fines or penalties, the return of fees or other consideration paid to the Insured, or the portion of any award or judgment caused by the multiplication of actual Damages under federal or state law. If a Suit is brought against the Insured with respect to a Claim for alleged acts or omissions falling within the scope of coverage afforded by this insurance seeking both compensatory and punitive or exemplary Damages, then the Company will afford a defense

to such action, without liability however, for payment of such punitive or exemplary damages;

Punitive damages are not insurable as a matter of public policy in Nevada.  
Professional liability insurance issued by IFCC during both years incorporated the following exclusion:

This insurance shall not apply:

...

M. to any Claims made or Suits brought against any Insured alleging, in whole or in part:

1. physical assault, abuse, molestation, or habitual neglect, or licentious, immoral, amoral or other behavior that was committed, or alleged to have been committed, by the Insured or by any person for whom the Insured is legally responsible, and/or
2. sexual assault, abuse, or molestation, or licentious, immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto, that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

This exclusion applies regardless of the legal theory or basis upon which the Insured is alleged to be legally liable or responsible, in whole or in part, for any Damages arising out of sexual and/or physical abuse, including but not limited to assertions, of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual abuse and/or physical abuse, failure to prevent assault and battery or failure to discharge the employee;

Coverage is provided for the Cagnina and Doe claims through the Sexual Misconduct/Physical Abuse Limited Coverage Endorsement, which incorporated the following insuring agreement:

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The Company will pay on behalf of the Insured under the COVERAGE section of the policy, all sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company during the Policy Period as a result of an Incident alleging sexual misconduct or physical abuse that occurs during the Policy Period including assertions of improper or negligent hiring, employment or supervision, failure to protect or warn the other party, failure to prevent the sexual misconduct and/or physical abuse, failure to prevent assault and battery, or failure to discharge the employee, and that was committed, or alleged to have been committed by the Insured or by any person for whom the Insured is legally responsible.

Limits of liability for this coverage are indicated below. Claims Expenses are included within this limit of liability and are not in addition thereto. Damages and Claims Expenses paid under the coverage provided by this endorsement shall reduce the applicable limits of liability indicated in the policy declarations.

#### LIMITS OF LIABILITY

\$ 1,000,000 each Incident or Occurrence

\$ 1,000,000 in the aggregate

The DEFINITIONS Section of the policy is amended by the addition of the following:

"Sexual Misconduct" means sexual assault, abuse or molestation, or licentious immoral, amoral or other behavior which was threatened, intended to, lead to or culminated in, any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

"Physical Abuse" means physical assault, abuse, molestation or intentional neglect arising out of the professional treatment and care of any client, patient or any other person whose care has been entrusted to the Insured.

Multiple episodes of Sexual Misconduct or Physical Abuse to one person shall be deemed to be one Incident and shall be subject to the coverage

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and limits in effect at the time of the first Incident even if some of such Incidents take place after expiration of this policy.

The obligation to defend shall extend until a final judgment or adjudication shall establish that such behavior caused in whole or in part, the injury claimed. The Company shall not be required to appeal a judgment or final adjudication adverse to the Insured.

(Emphasis added.)

To fall within the coverage afforded under this endorsement the following requirements must be met:

- The "insured" must be legally obligated to pay "damages";
- The "claim" must be first made and reported to the Company during the policy period;
- The "damages" must result from an "incident" alleging sexual misconduct or physical abuse; and
- The sexual misconduct or physical abuse must occur during the policy period.

Damages awarded to Ms. Doe as a result of the sexual misconduct that allegedly occurred in May of 2008 could not be covered under policy number ASC-1002072-01 that was in effect for the policy period October 1, 2008 – October 1, 2009 because the assault did not occur during that policy period as required by the insuring agreement. During both the 2007 – 2008 and 2008 – 2009 periods the policy incorporated the following provision that describes when a claim would be deemed to have been "first made".

#### **WHEN A CLAIM IS TO BE CONSIDERED AS FIRST MADE**

(Incident Redefined Endorsement)

A Claim shall be considered as being first made at the earlier of the following times:

- A. When the Company first receives written notice from the Insured that a Claim has been made; or
- B. When the company first receives written notice from the Insured of specific circumstances involved in [sic] a particular person or entity, which may result in a Claim.

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All Claims arising out of the same or related Incident shall be considered as having been made at the time the first such Claim is made, and shall be subject to the same limit of liability and only a single deductible, if any, shall apply.

There is a typographical error in the endorsement. Paragraph B. should read: "When the Company first receives written notice from the Insured of specific circumstances involving a particular person which may result in a claim."

In light of the reports that IFCC received from ANS in July of 2008 concerning the other alleged victims of sexual assault it will treat Ms. Doe's claim as if it had been first made and reported during the 2007 - 2008 policy period.

The IFCC policies incorporated the following exclusion:  
This insurance shall not apply:

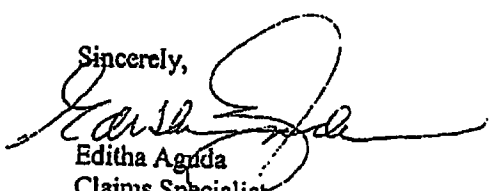
...  
D. to any dishonest, fraudulent, criminal or malicious acts or omissions of any Insured;

IFCC reserves the right to rely on Exclusion D to deny coverage to the extent it is determined that the injury complained of was the result of the dishonest, fraudulent, criminal or malicious acts or omissions of any insured.

For the reasons set out above, IFCC will be providing ANS with a defense in the Cagnina action and the Doe action under the Sexual Misconduct/Physical Abuse endorsement to policy number ASC-1002072. IFCC's liability for all claim expenses and damages resulting from these claims is \$1,000,000.

Please advise me of any information you have that you believe may affect the determination concerning the coverage available under the policy. IFCC's position is based upon the facts that have been made available to us to date. IFCC expressly reserves the right to modify its determination concerning the potential for coverage.

Sincerely,



Editha Aguda  
Claims Specialist

Medical Professional Liability  
Interstate Fire and Casualty Company,  
One of the Firemans Fund's Insurance Companies

cc: Johnette Spellman, HR Director American Nursing Services

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