

TAB 23

1 **ORDR**



CLERK OF THE COURT

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

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

19 Defendants.

Case No.: 09-A-595780-C
Dept. No.: II

Date: August 28, 2015
Time: 9:00 a.m.

**ORDER STRIKING ANSWER OF
DEFENDANT VALLEY HEALTH
SYSTEM LLC AS SANCTION FOR
DISCOVERY MISCONDUCT**

20 **I. SUMMARY OF ORDER**

21 This action involves Plaintiff Jane Doe's claims that she was sexually assaulted by
22 Nurse Farmer at Centennial Hills Hospital Medical Center on May 14, 2008. Plaintiff Jane
23 Doe asserted the following two substantive claims against defendant Valley Health System,
24 LLC d/b/a/ Centennial Hills Hospital Medical Center, and Universal Health Services, Inc.,
(collectively "Centennial" herein): negligent failure to maintain the premises in a safe
manner; and *respondent superior* liability for the sexual assault by Nurse Farmer. See
Amended Complaint, ¶¶ 11-17 (filed August 21, 2009).

25 The Amended Complaint established the relevance and materiality of the following
26 questions of fact: (a) as to the negligence claim: whether it was reasonably foreseeable to
27 Centennial, considering the totality of circumstances, that the premises were unsafe (See CD
28 Audio Recording of the Evidentiary Hearing at 10:27:06) (hereinafter "E.H. at

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

Hour:Minutes:Seconds”); and (b) as to the *respondeat superior* claim: whether the sexual assault by Nurse Farmer was reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of [his] employment. NRS 41.745(1)(c).¹ Thus, in a general sense, it was critical to both the negligence and *respondeat superior* claims for the Plaintiff to conduct discovery on the issue whether it was reasonably foreseeable to defendant Centennial Hills that Nurse Farmer would commit a sexual assault. Plaintiff Jane Doe seeks sanctions against defendant Centennial for impeding Plaintiff’s ability to acquire critical evidence on the “reasonable foreseeability” issues.

On April 29, 2015, Plaintiff Estate of Jane Doe (“Plaintiff”) moved this Court to impose sanctions against Defendant Valley Health System, LLC d.b.a. Centennial Hills Hospital Medical Center (“Centennial”) pursuant to NRCP 37. Plaintiff contended that Centennial failed to timely disclose that nurses Murray, Wolfe, and Sumera had knowledge of relevant facts bearing on the most critical issue in this case – whether it was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault against a patient. Plaintiff further contended that Centennial concealed from Plaintiff the existence of statements that nurses Murray and Wolfe gave to the Las Vegas Metropolitan Police Department (“LVMPD”). These statements are referenced herein as the “Police Statements.”

The Discovery Commissioner heard this matter on June 3, 2015, expressed her findings and recommendations orally at that time and executed the Discovery Commissioner’s Report and Recommendation (“DCRR”) on July 14, 2014. The Discovery Commissioner succinctly stated the issue and her findings as follows:

[W]hat is at issue is the failure to disclose witnesses, whether or not failure to disclose identifies of nurses who had information about Mr. Farmer prior to this case being filed is at a level to warrant Rule 37 sanctions and, whether the failures prejudiced Plaintiff. . . . The basis of the Motion involves three nurses,

¹ For purposes of resolving the motion for sanctions, it is not necessary for this Court to determine whether the Plaintiff has the burden of proving “reasonable foreseeability” to recover under NRS 41.745, or the defendant has the burden of proving that the intentional tort was not reasonably foreseeable as an affirmative defense to avoid liability. In either case, whoever has the burden, the pleadings and briefs in this action have very clearly established that “reasonable foreseeability” is a relevant and material issue of fact.

1 Christine Murray, Margaret Wolfe, and Renato Sumera. Ms.
2 Murray and Ms. Wolfe each gave statements to the LVMPD
3 around the time of the sexual assault that resulted in the arrest of
4 Mr. Farmer. Mr. Sumera met with Risk Management afterwards. .
5 . . None of the nurses were identified at the initial 16.1. The nurses
6 should have been identified as they were clearly likely to have
7 information discoverable under Rule 26(b). . . . While there is no
8 doubt but that Plaintiff was prejudiced by the delay, the Court is
9 more concerned with the issues of memories that fade. The delay
10 in this matter was not for a short time -- this was for 6 or more
11 years. Accordingly, the Court finds that the failure to identify
12 these three nurses has resulted in substantial prejudice sufficient to
13 warrant NRCP 37 sanctions.

14 (DCRR filed August 17, 2015).

15 This Court has read and considered all applicable legal briefs of the parties, the
16 Discovery Commissioner's Report and Recommendations, and Defendant Centennial's
17 objection thereto. The Court has also listened to the argument of counsel at the Evidentiary
18 Hearing conducted on August 28, 2015. The Court has considered the exhibits admitted
19 during the Evidentiary Hearing, and the testimony of witnesses provided at the Evidentiary
20 Hearing. The Court has also read and considered the deposition testimony that the parties
21 have asked this Court to consider.

22 This Court finds that the Discovery Commissioner's factual findings are supported by
23 substantial evidence, and that the Discovery Commissioner properly applied the law. The
24 Court sustains the sanctions imposed by the Discovery Commissioner, and imposes the further
25 sanctions as discussed below.

26 This Court further finds that, based on evidence that this Court considers to be clear
27 and convincing, Centennial intentionally and willfully (a) violated its discovery obligations
28 under NRCP 16.1 in failing to timely disclose that nurses Murray, Wolfe, and Sumera
possessed relevant and material evidence relating to the central issue in this case -- whether it
was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual
assault on a patient; and (b) violated its duty under NRCP 16.1 to timely disclose the Police
Statements which also contained relevant and material evidence relating to the same central
issue. The Court also finds that, based on evidence that this Court considers to be clear and
convincing, Centennial's misconduct caused extreme unfair prejudice to Plaintiff Jane Doe,

1 and that Centennial's misconduct substantially impaired Plaintiff's ability to discover relevant
2 evidence and prepare for trial with respect to the issue whether it was reasonably foreseeable
3 that Mr. Farmer would commit a criminal sexual assault on a patient.

4 **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**
5 **Answer in this action such that liability is hereby established on Plaintiff Jane Doe's**
6 **claims against Defendant Centennial for negligence and *respondeat superior*; but**
7 **Centennial shall still be entitled to defend on the question of the nature and quantum of**
8 **damages for which it is liable. The procedures to implement this sanction are discussed**
9 **below in the Conclusion section.**

10 The Court finds that this is the least-onerous sanction that it could impose upon
11 Centennial and still mitigate the extreme prejudice that Centennial has unfairly and wrongfully
12 inflicted upon Plaintiff. This sanction is narrowly tailored to address the exact harm caused by
13 Centennial -- the infliction upon Plaintiff of an inability to conduct proper discovery as to
14 "reasonable foreseeability" before memories had faded and evidence had either gone stale or
15 disappeared entirely.

16 **II. PROCEDURAL POSTURE OF CASE**

17 **A. NATURE OF THE CASE**

18 This is an action by Plaintiff Jane Doe against Valley Health System, LLC d/b/a/
19 Centennial Hills Hospital Medical center, Universal Health Services, Inc., American Nursing
20 Service, and Steven Farmer arising out of a criminal sexual assault perpetrated by Certified
21 Nursing Assistant (hereinafter "CNA") Farmer on a female patient at Centennial on May 14,
22 2008. Plaintiff filed her Amended Complaint in this matter on or about August 21, 2009.

23 **B. DISCOVERY AND TRIAL SETTING**

24 Discovery in this action was conducted from about November 6, 2009 through about
25 September 15, 2015 except for certain stay periods.

26 This action was stayed from January 21, 2011 until July 18, 2012, and again from
27 February 29, 2014 through July 4, 2014.

28 This action is set for jury trial commencing on January 4, 2016.

1 Calendar Call is set for December 16, 2015.

2 **C. DISCOVERY HEARING REGARDING SANCTIONS**

3 Plaintiff Jane Doe filed her Motion for NRCP 37 Sanctions against Centennial on
4 April 29, 2015.

5 This matter came before Discovery Commissioner Bonnie Bulla on June 3, 2015.
6 Plaintiff Jane Doe asked the Discovery Commissioner to strike Centennial's Answer as a
7 sanction for its discovery violations. Tr. of Proc. at p. 16, line 20 (June 3, 2015).

8 The Discovery Commissioner executed her Findings of Fact, Conclusions of Law and
9 Recommendations on July 14, 2014, explaining as follows:

10 The basis of the Motion involves three nurses, Christine Murray,
11 Margaret Wolfe, and Renato Sumera. Ms. Murray and Ms. Wolfe
12 each gave statements to the LVMPD around the time of the sexual
13 assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met
14 with Risk Management afterwards. Mr. Bemis confirmed that a
Quality Assurance meeting was held shortly after the incident but
15 did not know at the Hearing whether or not any of the individuals
16 appeared.

17 None of the nurses were identified at the initial 16.1 The nurses
18 should have been identified as they were clearly known to
19 Defendants. The nurses should have been identified per NRCP
20 16.1 as the nurses were certainly likely to have information
21 discoverable under Rule 26(b). The Court queried Mr. Bemis as to
22 why the nurses were not identified but Mr. Bemis could not answer
23 the question.

24 The witnesses were certainly important to the matter because they
25 provide evidence of "notice" regarding Mr. Farmer and his
26 proclivities.

27 While there is no doubt but that Plaintiff was prejudiced by the
28 delay in terms of filing motions, the Court is more concerned with
the issues of memories that fade. The delay in this matter was not
for a short period – this was for 6 or more years. Mr. Murdock
stated that nurse Sumera had a substantial memory lapse and Mr.
Bemis did not dispute this. Accordingly, the Court finds that the
failure to identify these three nurses has resulted in substantial
prejudice sufficient to warrant NRCP 37 sanctions.

29 The Discovery Commissioner recommended sanctions and a further evidentiary
30 hearing as follows:

31 The UHS Defendants are sanctioned in the amount of One
32 Thousand Dollars and No/100 (\$1000.00) per unidentified nurse
33 (3) for each year not identified (6) for a total of Eighteen Thousand

1 Dollars and No/100 (\$18,000.00). Half of that amount, or Nine
2 Thousand Dollars and No/100 (\$9,000.00), shall be paid to Barbara
3 Buckley's Legal Aid Center of Southern Nevada, and the other
half shall be paid to Plaintiff in attorney's fees and costs to offset
additional work done to figure out witnesses to proceed forward.

4 IT IS FURTHER RECOMMENDED THAT because of the time
length involved in UHS' failure to identify the nurses, and the
5 memory issues that arise as a result, additional sanctions are
warranted. However, the District Court should determine those via
6 an evidentiary hearing and this Court defers the evidentiary
hearing to the District Court. As such, an evidentiary hearing
7 before the District Court should be conducted to determine (1) if
case terminating sanctions are appropriate based on the conduct of
8 failing to disclose witnesses, (2) whether or not that was intention
to thwart the discovery process in this case, and hinder Plaintiff to
9 discovery the relevant facts, and (3) a failure to let the Court know
what was going on in the case and whether the USH Defendants
10 misled the Court.

11 The Discovery Commissioner was deeply concerned by the prejudice inflicted upon
12 Plaintiff by Defendants' failure to disclose the nurses and their Metro Statements,
13 commenting:

14 That's the prejudice . . . It's the fact that memories fade, and now
15 we have a situation where we can't go back in time . . . and find
out exactly what they knew, the details of their observations, which
16 we don't have and, of course, details help you with credibility, to
know what happened. So that's the prejudice, and it's significant."

17 Tr. of Proc., p. 9 (June 3, 2015).

18 The District Court approved and signed the DCRR on August 15, 2015, and filed the
19 DCRR on August 17, 2015, setting the Evidentiary Hearing for August 28, 2015.

20 **D. THE EVIDENTIARY HEARING**

21 The Evidentiary Hearing was conducted on August 28, 2015. Each side presented
22 opening statements. Plaintiff Jane Doe presented the following witnesses, who were subjected
23 to examination by both sides: John Bemis and Ken Webster (attorneys with Hall, Prangle,
24 Schooveld, LLC, counsel for Centennial). The following exhibits were admitted into
25 evidence: Plaintiff's exhibits 1, 1a-1n, 3-8, 10, 10a, and 11-19, 21-29, 30 (excerpt of
26 deposition of Carol Butler on June 19, 2015), 31 (excerpt of deposition of nurse Sumera on
27 May 15, 2015), 32 (excerpt of deposition of nurse Wolfe on May 5, 2015), 33 (excerpt of
28 deposition of Amy Blasing on July 28, 2015), and 34 (excerpt of deposition of Janet Callahan

1 on August 8, 2015; and Defendant Centennial's Exhs. A (Las Vegas Metropolitan Police
2 Department file supposedly received by Centennial's counsel on or about May 6, 2013); and B
3 (plaintiff's 15th Supplemental NRCP 16.1 Disclosure in the "RC" case). E.H. at 10:17-25.
4 Each side presented closing arguments. The entire Evidentiary Hearing took more than half a
5 day.

6 **III. UNDISPUTED FACTS**

7 **THE HIRING AND EMPLOYMENT OF MR. FARMER**

8 1. In May of 2008, Jane Doe was a patient at Centennial. For the purposes of the
9 undisputed facts that follow, the term "Centennial" shall refer to the hospital facility, as well
10 as the Defendant, as applicable.

11 2. In May of 2008, Centennial had a contractual agreement whereby American
12 Nursing Services ("ANS") would provide certain hospital staff, which included CNAs.

13 3. In May of 2008, Mr. Farmer was an agency CNA working at Centennial through
14 its agreement with ANS.

15 **FARMER'S ASSAULT AGAINST JANE DOE ON MAY 14, 2008**

16 4. On May 14, 2008, ANS sent Mr. Farmer to work at Centennial as a CNA.

17 5. On May 14, 2008, Centennial originally told Mr. Farmer to work in the
18 Emergency Room.

19 6. In May of 2008, Mr. Farmer wore an employee badge that had his name, ANS,
20 Centennial, and contract staff written on it.

21 7. At around 21:30 hours on May 14, 2008, while Farmer was working at
22 Centennial, Centennial staff re-directed Mr. Farmer from the Emergency Room to the sixth
23 floor to work.

24 8. On May 14, 2008, Jane Doe was on the sixth floor in Room 614 at Centennial.

25 9. On May 14, 2008, in the course and scope of his employment with ANS as a
26 CNA, and in the course and scope of working at Centennial, it was expected that Farmer
27 would enter patients' rooms on the sixth floor of Centennial as part of his tasks.

28 . . .

1 10. In addition, Mr. Farmer was expected to give bed baths, clean up stool, clean up
2 urine, and check monitor leads when requested to do so by a nurse or doctor.

3 11. On May 14, 2008, Mr. Farmer entered Jane Doe's room, Room 614 at Centennial.

4 12. On May 14, 2008, having contact with a patient in the patient's room on the sixth
5 floor of Centennial was in the course and scope of Farmer's employment with ANS and
6 Centennial as a CNA.

7 13. Mr. Farmer had contact with Jane Doe in her room on the sixth floor of
8 Centennial.

9 14. On May 14, 2008, Jane Doe awoke to find Mr. Farmer pinching and rubbing her
10 nipples telling her that he was fixing her EKG monitor leads.

11 15. Mr. Farmer lifted up Jane Doe's hospital gown.

12 16. Mr. Farmer sexually assaulted Jane Doe by digitally penetrating her anus and
13 vagina against her will.

14 17. Mr. Farmer sexually assaulted Jane Doe by pinching and rubbing her nipples
15 against her will.

16 **FARMER'S ASSAULT OF MS. CAGNINA ON MAY 15 & 16, 2008**

17 18. The first criminal investigation of Mr. Farmer began from an incident involving
18 the patient Roxanne Cagnina at Centennial. The matter involving Mr. Farmer's sexual assault
19 against Ms. Cagnina, including the Centennial investigation, and the Cagnina lawsuit, is
20 referenced herein as the "Cagnina Case."

21 19. Ms. Cagnina accused Mr. Farmer of sexually assaulting her while she was a
22 patient at Centennial on May 15 and 16, 2008 -- beginning the day after Mr. Farmer assaulted
23 Jane Doe.

24 20. Centennial hired the firm Hall, Prangle, Schooveld, LLC (hereinafter "HPS") to
25 represent Centennial in the Cagnina Case on or about May 22, 2008. E.H. 9:57:15.

26 21. The HPS attorneys conducted an investigation of Mr. Farmer's conduct with
27 respect to Ms. Cagnina, including an interview of nurse Wolfe (around mid-June 2008), nurse
28 Murray (around mid-July 2008), and nurse Sumera (around mid-August). E.H. at 9:57. The

1 HPS attorneys contended at the Evidentiary Hearing that they had no knowledge at the times
2 of these interviews that Mr. Farmer had assaulted Jane Doe.

3 22. The HPS attorneys had interviewed nurse Murray because she was the nurse
4 assigned to attend to Ms. Cagnina at the time of the assault by Mr. Farmer. She had relevant
5 and material information about the facts and circumstances surrounding Mr. Farmer's contact
6 with Ms. Cagnina at the time of this assault.

7 23. Ms. Cagnina filed a Complaint in Case No. A570756 against Centennial and Mr.
8 Farmer on September 2, 2008, alleging claims of sexual assault, negligence, intentional
9 infliction of emotional distress, negligent misrepresentation, and false imprisonment.

10 **THE NURSE STATEMENTS TO THE POLICE**

11 24. Nurse Margaret Wolfe gave a statement to the LVMPD on May 30, 2008.
12 Plaintiff's Exh. 14 to Evidentiary Hearing. Ms. Wolfe told LVMPD about a conversation she
13 had with nurse Ray Sumera who, before the assault on Jane Doe, expressed concern that
14 Farmer was overly attentive to female patients and anxious to connect them to heart monitor
15 leads, and that Mr. Sumera had asked Wolfe to keep an eye on Farmer. Wolfe Police
16 Statement at 8. E.H. at 10:36-37.

17 25. Nurse Christine Murray, a Registered nurse at Centennial, gave a recorded
18 statement to LVMPD on June 13, 2008 regarding Mr. Farmer. Plaintiff's Exh. 13 to
19 Evidentiary Hearing. Ms. Murray told LVMPD that (a) Mr. Farmer would always ask if he
20 could help with heart leads (where female breasts would be exposed and possibly touched) (b)
21 Mr. Farmer was very attentive to and more helpful to female patients over male patients, and
22 that (c) an incident occurred where Mr. Farmer was working as a "sitter" for an elderly
23 woman, and the elderly woman was heard yelling: "Get outta here! I don't want you by me!"
24 Murray Police Statement LVMPD00180-181. Murray Depo. at p. 60. E.H. at 10:35-37.

25 **CENTENNIAL'S INVESTIGATION OF MR. FARMER**

26 26. Upon learning of the Cagnina allegations, Centennial began an "internal
27 investigation" handled by the "risk and quality management" department. Butler Depo. at
28 p. 120, lines 20-12.

1 27. Ms. Cagnina had been a patient at Centennial who alleged that Mr. Farmer
2 sexually assaulted her on May 16, 2008. Exh. 4. Centennial Incident Report dated May 16,
3 2008.

4 28. On the very day of Mr. Farmer's assault of Ms. Cagnina, the management and
5 staff of Centennial held a meeting to discuss the allegations; the following persons from
6 Centennial attended this meeting: the Centennial CEO, the CFO, the COO, the Risk Manager,
7 and possibly others. Depo. of Pullarkat at pp. 35-36 (8/7/15) (Exh. 23). Depo. of Callihan at
8 pp. 15-20) (8/18/15) (Exh. 25).

9 29. After the Cagnina incident became public, Plaintiff Jane Doe reported Mr.
10 Farmer's sexual assault against her.

11 30. Nurse Margaret Wolfe gave a statement to Metro about Mr. Farmer on May 30,
12 2008. *See* Wolf Statement to Metro. In the Statement, nurse Wolfe disclosed that Mr. Farmer
13 was overly attentive to female patients. *Id.*

14 31. The Chief of Nursing, Carol Butler, learned about nurse Murray's Statement to
15 LVMPD, received a copy of the Statement, and discussed it with nurse Murray and others
16 shortly after the Farmer incidents. Murray Depo. at pp. 60-61.

17 32. Nurse Sumera met with Centennial staff and a Centennial lawyer about Mr.
18 Farmer sometime shortly after the sexual misconduct of Mr. Farmer was exposed. Sumera
19 Depo. at pp. 31-37.

20 33. The Centennial Head of the Emergency Room, Amy Blasing (a.k.a. Amy Bocek)
21 knew, before August 1, 2008, that nurse Wolfe had reported that nurse Sumera had expressed
22 concerns that Mr. Farmer was being "overly attentive" to female patients. Wolfe Depo. at
23 pp. 41-42; Butler Depo. at p. 114; Blasing Depo. at pp. 28-35, 40, 99-103. Ms. Blasing
24 testified that "We were made aware that Margaret [Wolfe] had expressed concerns." Blasing
25 Depo. at p. 33. Ms. Blasing also knew that nurse Wolfe has spoken with the police: "Q. In
26 fact, my understanding is that you became aware that a - - that Margaret had spoken with the
27 police about the situation. Is that right? A. That sounds familiar." Blasing Depo. at
28 pp. 33-34. Ms. Blasing further admitted: "[S]omehow it got back to us that Margaret [Wolfe]

1 had shared concerns with law enforcement ["between May and August"]. Blasing Depo. at
2 p. 38.

3 34. Ms. Blasing admitted in her deposition that she knew about Ms. Wolfe's concerns
4 from the Centennial internal investigation: "Margaret said that she expressed concerns that
5 Steven Farmer seemed to seek out duties with females and was overeager and that she felt
6 uncomfortable." Blasing Depo. at pp. 36-37.

7 35. Ms. Butler met with nurse Sumera and Amy Blasing shortly after the incident and
8 before August 2008 to discuss Mr. Farmer. Blasing Depo. at pp. 28-33.

9 36. Ms. Butler became aware of the Wolfe Statement sometime before August 1,
10 2008. Butler Depo. at pp. 113-115, 119 ("Q. By August 1 of 2008, you knew she had made a
11 statement? A. Sure."); Blasing Depo. at pp. 28-33.

12 37. It is undisputed that the Chief of Nursing of Centennial, Carol Butler, had read the
13 Murray Police Statement shortly after nurse Murray had given the Police Statement, and she
14 discussed the substance of the Police Statement with nurse Murray and others. Murray Depo.
15 at p. 61.

16 38. Centennial's counsel has admitted that he was "aware that some statements were
17 given by [your] nursing staff" "prior to 2009." Tr. of Proc., p. 11, lines 12-17 (June 3, 2015).

18 39. Centennial's counsel further confirmed at the Evidentiary Hearing that Centennial
19 became aware that nurses Murray and Wolfe had gone to the police and gave statements.
20 E.H. at 9:53.

21 **THE JANE DOE LAWSUIT, AND DISCOVERY THEREIN**

22 40. Plaintiff filed her lawsuit in this action on July 23, 2009. The matter involving
23 Mr. Farmer's sexual assault of Jane Doe, and the civil lawsuit resulting therefrom, are
24 referenced herein as the "Jane Doe Case."

25 41. Centennial hired the HPS firm to represent Centennial in the Jane Doe Case on or
26 about August 3, 2009. E.H. at 9:58:40. The HPS attorneys contended at the Evidentiary
27 Hearing that they did not re-interview nurses Murray, Wolfe, or Sumera about the Jane Doe
28 Case.

1 42. Plaintiff filed its Notice of Early Case Conference ("ECC") on October 5, 2009,
2 setting the time for the ECC on November 6, 2009. Counsel for the parties hereto, Plaintiff
3 Jane Doe and defendants Centennial, ANS, and Mr. Farmer, attended the ECC on
4 November 6, 2009.

5 43. Defendant Centennial filed its Initial list of Witnesses and Documents on
6 November 24, 2009. Centennial's initial NRCP 16.1 disclosure failed to identify nurse Wolfe,
7 nurse Murray, or nurse Sumera as persons with knowledge of relevant facts. Furthermore,
8 Centennial's initial NRCP 16.1 disclosure failed to disclose the existence of the Murray Police
9 Statement, or the Wolfe Police Statement.

10 44. The parties filed a Joint Case Conference Report ("JCCR") on December 9, 2009.
11 As evident by this JCCR, Centennial failed to produce or identify Police Statements of nurse
12 Murray or nurse Wolfe. Centennial also failed to identify nurses Murray, Wolfe, or Sumera as
13 persons with knowledge.

14 45. Defendant Farmer filed a Motion for Protective Order on March 3, 2010, which
15 the Discovery Commissioner granted on April 16, 2010. This Protective Order prohibited
16 disclosure of documents protected by the Protective Order issued in the Cagnina Case. *See*
17 Minutes 4-16-10; DCRR 9-15-9 (Cagnina Case).

18 46. This Protective Order in the Cagnina Case did not prohibit Centennial from
19 producing the Police Statements to Jane Doe; did not prohibit Centennial from disclosing the
20 existence of the Police Statements; and did not prohibit Centennial from identifying the nurses
21 who gave the statements. *See* DCRR in Case No. A570756 (9-15-09).

22 47. For more than five and one-half (5 1/2) years, from November 24, 2009, through
23 and including the date of the Evidentiary Hearing (August 28, 2015), Centennial never
24 disclosed in any NRCP 16.1 disclosure that nurses Murray or Wolfe had given Police
25 Statements regarding Mr. Farmer's conduct. For more than five and one-half (5 1/2) years,
26 through and including the date of the Evidentiary Hearing, Centennial never disclosed in any
27 NRCP 16.1 disclosure that nurses Wolfe or Sumera had knowledge of relevant facts in this
28 action. *See* Plaintiff's Exhs. 1, and 1a-1j to Evidentiary Hearing. As for nurse Murray,

1 Defendant Centennial made no mention of her in any NRCP 16.1 disclosure in 2009, 2010,
2 2011, 2012, 2013, or 2014. In a NRCP 16.1 disclosure on April 22, 2015, Centennial merely
3 noted that nurse Murray had mentioned “the alleged incident with the elderly patient to which
4 nurse Murray referred in her deposition testimony.” But Centennial still failed to designate
5 nurse Murray as a person with knowledge, and failed to give notice that nurse Murray had
6 expressed concern about Mr. Farmer being more willing to help female patients, and failed to
7 mention that nurse Murray had given a police Statement about Mr. Farmer.

8 48. Plaintiff Jane Doe had listed nurse Murray as a witness in January 2014; however,
9 Plaintiff had no way of knowing at that time the expected testimony of nurse Murray, or her
10 connection with the allegations against Mr. Farmer. (See State’s Eighth Supp. Wit. List;
11 Plaintiff’s NRCP 16.1 Witness List of January 29, 2014; Affidavit of Murdock submitted with
12 Plaintiff’s Evidentiary Hearing brief). Plaintiff had merely designated nurse Murray as a
13 witness because she had been designated as a witness Mr. Farmer’s criminal case.

14 **CENTENNIAL’S ATTORNEYS’ RECEIPT OF THE POLICE STATEMENTS**

15 49. Prior to the Evidentiary Hearing, Defendant Centennial’s attorneys admitted that
16 they received nurse Wolfe’s and nurse Murray’s Metro Statements on **May 6, 2013**. See
17 Centennial’s Objection to the DCRR at p. 5-7 (7/30/15). The paragraphs below summarize
18 Centennials’ various and changing positions on when it received the Statements.

19 **CENTENNIAL’S RECEIPT OF MURRAY POLICE STATEMENT**

20 50. At the Evidentiary Hearing, both sides presented evidence that proved that
21 Centennial’s counsel, Mr. Bemis, had asked the Deputy Public Defender (“DPD”)
22 representing Mr. Farmer in the criminal action, Amy Feliciano, to provide him with all of the
23 files pertaining to Mr. Farmer, including the Police Statements. Exh 10, 10a. at PD00055-58;
24 75-81. Ms. Feliciano specifically agreed to provide Mr. Bemis with the “voluntary statements
25 to the police.” Exh 10 at PD00079 (Ms. Feliciano’s emails dated January 22, 2013). The
26 correspondence between the DPD and Centennial’s counsel suggests that the DPD anticipated
27 providing the Police Statements to Centennial’s counsel the end of January 2013. Exhs. 10,
28 10a. Ms. Feliciano sent a letter to Mr. Bemis dated January 31, 2013, confirming that she

1 provided the “documents necessary for your review to assist with your consultation with us on
2 this case.” Exh. 11 at PDD15C0073.

3 Plaintiff Jane Doe submitted a FOIA request to the PD demanding a copy of all records
4 that she had given to Centennial’s counsel. In response thereto, Plaintiff received an Affidavit
5 from DPD Feliciano stating she was providing copies of all of the records that she believed
6 she had provided to Centennial’s counsel around January 30, 2013. This Affidavit from Ms.
7 Feliciano was accompanied by the Murray Police Statement. These facts all tend to prove that
8 Centennial’s attorney received the Murray Police Statement on or about January 30, 2013.

9 52. At the Evidentiary Hearing, Centennial’s counsel denied that it received the
10 Murray Police Statement by January 30, 2013.

11 53. Instead, Centennial’s counsel, in its Opening Statement, admitted that he received
12 the Murray Police Statement, and knew the “contents” of the Murray Police Statement, in
13 “May 2013.” (E.H. at 9:49-50). Centennial’s counsel also argued that it received the Murray
14 Police Statements in “May 2013” pursuant to a motion to compel in the “RC” case. E.H. at
15 9:56:01. Attorney Bemis testified that he knew there was a Murray Police Statement before
16 May 2013. E.H. at 11:02:10.

17 54. Attorney Bemis also testified that he had in his possession a CD audio recording
18 of the Murray Police Statement in February 2013 – although he says he never listened to it.
19 E.H. at 11:03-04. Attorney Bemis testified that his partner, Attorney Prangle, knew that Mr.
20 Bemis had received the Murray Statement in February 2013. *Id.*

21 55. Attorney Bemis re-confirmed that he had the audio file of the Murray Police
22 Statement in February 2013. E.H. at 11:11:40 and 11:13:45.

23 56. Based on the compelling evidence submitted at the Evidentiary Hearing, as well
24 as the pre-hearing admission of Centennial’s counsel, the Court concludes that Centennial’s
25 counsel **received the Murray Police Statement on or before May 6, 2013.**

26 **CENTENNIAL’S RECEIPT OF WOLFE POLICE STATEMENT**

27 57. At the sanction hearing before the Discovery Commissioner, the Discovery
28 Commissioner told Centennial’s counsel, John Bemis, that there was a “significant” non-

1 disclosure problem unless he could provide "some information" that he did not know about
2 the Wolfe Police Statement at the time of Centennial's initial NRCP 16.1 disclosures. Tr. of
3 Proc. at p. 13 (June 3, 2015). Mr. Bemis told the Discovery Commissioner that there was a
4 "possibility" that he had the Wolfe Police Statement "at the time" – meaning prior to the
5 initial NRCP 16.1 disclosure (11/24/09). *Id.* at p. 18.

6 58. In its Opening Statement, Centennial's counsel admitted that he received the
7 Wolfe Police Statement, and knew its "contents" in "May 2013." E.H. at 9:49-50)

8 59. Attorney Bemis testified under oath that he received the Wolfe Police Statement
9 in May 2013. E.H. at 10:33-34. Mr. Bemis testified: "Q. Okay. Now, the information you
10 got from those police files that alerted you to the relevance of Murray, Wolf[e] and Samera,
11 were the police – were the actual statements of Margaret Wolf[e] and Kristine Murray, which
12 you had seen for the first time when you got the police file in May 2013, right? A. Correct."
13 E.H. at 10:35

14 60. Mr. Bemis confirmed that he reviewed the Wolfe Police Statement promptly after
15 receiving it in May 2013. E.H. at 10:35. ("Q. So it wasn't long... and would be fair to say, It
16 wasn't long after receiving the police file that you reviewed it and actually saw the statements
17 of Wolf and Murray. Would that be a fair statement? A. That would be a fair statement.").
18 E.H. at 10:35.

19 61. Attorney Bemis further confirmed under oath that he first became aware of the
20 Wolfe Police Statement in May 2013 when he received files from the Las Vegas Metropolitan
21 Police Department. E.H. at 11:24:10.

22 62. Centennial's counsel admitted that the Discovery Commissioner ordered
23 Centennial to produce the entire Farmer criminal file, including both the Murray and Wolfe
24 Police Statements on or about October 27, 2014. E.H. at 11:27. Centennial's counsel
25 acknowledged that it made a production of the Farmer criminal file (that it had received from
26 Metro) on October 27, 2014. E.H. at 11:27; Exh 16. While examining attorney Bemis, Jane
27 Doe's counsel represented that the October 27, 2014 production DID NOT include the Wolfe
28 Police Statement. When asked "why not," Mr. Bemis suggested, and seemed to speculate, that

1 Centennial did not have it. E.H. at 11:39. His story at this point changed. Earlier in his
2 testimony Mr. Bemis had admitted that he had actually reviewed the Wolfe "in relatively short
3 order" after receiving it in May 2013 from Metro. But later, when confronted with Jane Doe's
4 evidence that Centennial failed to produce the Wolfe Police Statement to Jane Doe on October
5 2014, Mr. Bemis contradicted himself and testified under oath that he never really saw the
6 Wolfe Police Statement before October 2014.

7 63. On cross-examination, Attorney Bemis explained why his testimony changed. He
8 said that during a break in the Evidentiary Hearing, he examined the files that he received
9 from the Las Vegas Metropolitan Police Department (Exhibit "A"), and the Wolfe Police
10 Statement was not there. Attorney Bemis further explained that Jane Doe's Exhibit 29
11 (Centennial's 7th Supplemental NRCP 16.1 Disclosure to Jane Doe on October 27, 2014) is
12 supposed to be the exact same thing as Exhibit "A", and the Wolfe Statement is not there
13 either. According to Mr. Bemis, this all confirms that his earlier testimony that he received
14 the Wolfe Police statement from Metro in May 2013 was wrong. But none of this explains
15 why Mr. Bemis testified under oath that he had reviewed the Wolfe Police Statement in
16 "relatively short order" after getting in in May 2013, and then testifying under oath that he
17 never saw the Wolfe Police Statement before October 2014.

18 64. Finally, attorney Bemis testified that he received the Wolfe Police Statement
19 sometime before the deposition of Nurse Wolfe on May 5, 2015, but he did not know when he
20 had received it.

21 65. Here is a summary of the various positions of Centennial's counsel on when it
22 received the Wolfe Police Statement:

- 23 • "Possibly" before November 24, 2009.
- 24 • On May 6, 2013.
- 25 • Sometime in May, 2013.
- 26 • Maybe sometime after October 2014; or
- 27 • Sometime prior to May 5, 2015.

1 66. Having considered and weighed the evidence, **the Court is persuaded that**
2 **Centennial's counsel received the Wolfe Police Statement in or before May, 2013 –**
3 Attorney Bemis may have been confused on HOW he received the Wolfe Police Statement,
4 but he was clear in his early testimony on WHEN he received it – on or before May 6, 2013.
5 E.H. at 10:33-34; 11:24:10. Mr. Bemis contradicted himself on WHETHER he REVIEWED
6 the Wolfe Police Statement prior to October 2014 – but whether he reviewed it or not, that
7 does not change his testimony that he had the Wolfe Police Statement in his POSSESSION on
8 or before May 6, 2013.

9 67. It bears repeating here that it is undisputed that Centennial's management knew
10 about the existence of the Wolfe Police Statement and Murray Police Statement by August
11 2008. Centennial's knowledge is imputed to its attorneys. Thus the HPS attorneys had
12 constructive knowledge as early as August 2009 (before Centennial's initial NRCP 16.1
13 disclosure in the Jane Doe Case) about the Murray and Wolfe Police Statements.

14 **PLAINTIFF'S RECEIPT OF THE POLICE STATEMENTS, AND**
15 **SUBSEQUENT DEPOSITIONS**

16 68. Plaintiff received the Murray Police Statement for the first time in October 2014.
17 E.H. at 9:27:50; 11:34:15; 11:38:05; Exh. 29.

18 69. Plaintiff received the Wolfe Police Statement for the first time in January 2015.
19 E.H. at 9:27:58.

20 70. Plaintiff took the deposition of Christine Murray in this action on January 8, 2015.

21 71. Plaintiff took the deposition of Renato Sumera in this action on May 1, 2015.

22 72. Plaintiff took the deposition of Margaret Wolfe in this action on May 5, 2015.

23 73. Plaintiff took the deposition of Amy Blasing in this action on July 28, 2015.

24 74. Plaintiff took the deposition of Janet Callahan in this action on August 8, 2015.

25 **THE PROTECTIVE ORDER IN THE CAGNINA CASE**

26 75. On April 3, 2013 the Discovery Commissioner issued an oral Protective Order in
27 the Cagnina Case providing that "All discovery concerning the Criminal Action is subject to
28 the Protective Order previously entered on September 17, 2009, which remains in full force

1 and effect; all Las Vegas Metropolitan Police Department depositions and transcripts; and Mr.
2 Farmer's deposition and transcript must be kept under seal; and all documents relating to the
3 Criminal Action must be kept as confidential. The Discovery Commissioner's Report and
4 Recommendation relating thereto was entered as an Order of the Court on May 3, 2013. (See
5 Notice of Entry of Order) (Case No. A570756, May 6, 2013).

6 76. The Discovery Commissioner issued an oral recommendation lifting the
7 Protective Order on October 27, 2014. The written Discovery Commissioner recommendation
8 was issued on November 6, 2014, and the Order of the Court was entered and served on
9 November 14, 2014.

10 **CENTENNIALS'S REPEATED IMPROPER DENIALS OF EXISTENCE OF**
11 **ANY POTENTIAL EVIDENCE REGARDING FARMER**

12 77. On October 14, 2014, Centennial filed and served an opposition to Plaintiff's
13 Motion for Summary Judgment making the following statement: "[T]here were **absolutely no**
14 **known prior acts** by Mr. Farmer that could **potentially put Centennial on notice** that Mr.
15 Farmer would assault a patient." (Centennial Opposition to Motion For Summary Judgment at
16 p. 9) (emphasis added).

17 78. In a brief filed with the Nevada Supreme Court on April 29, 2015, Centennial
18 incorrectly represented that it had not withheld any relevant evidence. Petitioners Valley
19 Health System, LLC [] Petition for Writ of Mandamus and/or Writ of Prohibition, pp. 14-15
20 (April 29, 2015) (No. 67886). Centennial stated: "[T]here were no known prior acts or any
21 other circumstances that could have put Centennial on notice that Farmer would sexually
22 assault Ms. Doe." *Id.*

23 79. In its Objection to Discovery Commissioner's Report and Recommendation, filed
24 July 30, 2015, Centennial argued that "Defendants did not have knowledge that these persons
25 [nurses Wolfe, Sumera, and Murray] had information relevant to this Plaintiff's claims (or
26 knowledge of the substance of either nurse Wolfe's or nurse Murray's 2008 statements to the
27 LVMPD) until after they received a copy of Farmer's police file in May 2013). See
28 Centennial's Objection at pp 3-4 (filed July 30, 2015). This statement is false.

1 80. The undisputed facts, as summarized above, are that Centennial had knowledge,
2 before August 2008, that nurses Murray, Wolfe and Sumera had all expressed concerns or had
3 discussions regarding Mr. Farmer being overly attentive to female patients, that nurse Murray
4 had recounted the incident about the elderly lady who yelled at Mr. Farmer to "get out," and
5 that nurse Murray and nurse Wolfe had given Police Statements about Mr. Farmer. Any
6 reasonable person could reach the conclusion that this information is certainly relevant to the
7 issue of whether Centennial had notice of Mr. Farmer's dangerous propensities. Centennial's
8 statement that there were "absolutely no known prior acts" of Mr. Farmer to possibly put them
9 on notice is a statement that goes far beyond the bounds of zealous advocacy, and
10 demonstrates an intent to conceal relevant evidence.

11 **FALSE DISCOVERY RESPONSES BY CENTENNIAL**

12 81. In Centennial's Objection to the DCRR, at pp 6-7, Centennial's attorneys wrote:
13 "Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had
14 spoken with the police but they neither attended nor were privy to the substance of those
15 interviews/statements." This is false. As stated in the above statements of undisputed fact,
16 before August 2008, Centennial management had discussed the Police Statement given by
17 nurses Murray and Wolfe.

18 82. In Centennial's Objection to the DCCR, at p. 7, Centennial states: "Upon
19 obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that
20 nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's
21 claims. . . . The Hospital Defendants did not willfully withhold any information, much less
22 know that these witnesses had information relevant to the instant Plaintiff's claims until May
23 2013 at the earliest." These statements are false. As stated in the above statements of
24 undisputed facts, Centennial had conducted an internal investigation and absolutely learned
25 that nurses Wolfe, Murray, and Sumera ALL had information relevant to the issue of
26 Centennial's knowledge of Mr. Farmer's possibly dangerous proclivities. Perhaps the
27 attorneys for the Defendants did not know about the nurses, but their client definitely knew.

28 ...

1 83. Plaintiff asked Defendant Centennial by Interrogatory no. 18 to disclose “when
2 you received LVMPD Statement of Margaret Wolfe.” On June 12, 2015, Defendant
3 Centennial objected and further stated: “Without waiving said Objection, this Answering
4 Defendant has only learned of the LVMPD Statement of Margaret Wolfe through counsel.”
5 Centennial’s Risk Analyst, Amanda Bell, signed a Verification swearing upon oath to the
6 accuracy of this response. However, Ms. Bell verified a false statement. As indicated above,
7 Centennial knew “of” the Wolfe Police Statement by August, 2009.

8 84. Plaintiff then asked Defendant Centennial by Interrogatory no. 19 to disclose
9 “when you first became aware that Margaret Wolfe had spoken with LVMPD regarding
10 Steven Farmer.” Ms. Bell repeated the same response under oath. Again, Ms. Bell verified a
11 false statement.

12 85. Plaintiff also asked, by Interrogatory no. 17, for Defendant Centennial to disclose
13 all “persons present at the meeting between Renato Sumera and Centennial Hills Hospital after
14 Farmer was arrested.” Defendant Centennial, through the sworn response of Ms. Bell,
15 responded: “Object. This Interrogatory is irrelevant. Counsel of record met with Mr. Sumera
16 following Mr. Farmer’s arrest. Former Centennial Hills Hospital Risk Manager, Janet
17 Callihan, and her staff provided introduction and left the meeting prior to any substantive
18 discussion.” Plaintiff was entitled to the requested information because the memories of
19 Sumera and the others had faded regarding persons involved in the internal investigation.
20 Centennial had an opportunity to help alleviate some of the prejudice they had inflicted upon
21 Plaintiff, but choose not to do so.

22 **FARMER’S CRIMINAL CONVICTION**

23 86. On May 30, 2014, Farmer was convicted in the Eighth Judicial District Court,
24 Clark County, Nevada, in Case Number 08C245739, as follows: Count 10 of **Sexual Assault**
25 (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital penetration, by
26 inserting his finger(s) into the anal opening of Jane Doe, against her will or under conditions
27 in which Farmer knew, or should have known, that Jane Doe was mentally or physically
28 incapable of resisting or understanding the nature of Farmer’s conduct; Count 11 of **Open or**

1 **Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or
2 rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s); Count 12 of **Sexual**
3 **Assault** (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital
4 penetration, by inserting his finger(s) into the genital opening of Jane Doe, against her will or
5 under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or
6 physically incapable of resisting or understanding the nature of Farmer's conduct; Count 13 of
7 **Open or Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching
8 and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s)
9 and/or finger(s). Count 14 of **Open or Gross Lewdness** (Gross Misdemeanor) in violation of
10 NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
11 Jane Doe with his hand(s) and/or finger(s); and Count 15 of **Indecent Exposure** (Gross
12 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane
13 Doe to look at her genital opening and/or anal opening and/or breast(s).

14 **IV. STANDARD FOR AWARD OF SANCTIONS**

15 Centennial had a duty under NRCP 16.1 to timely disclose a list of all persons known
16 to have relevant knowledge relating to the claims and defenses alleged in this action. The
17 initial NRCP 16.1 disclosure was due in November 2009. Centennial filed its initial
18 disclosure on November 24, 2009. By this deficient disclosure, Centennial failed to comply
19 with its NRCP 16.1 obligations.

20 Nevada law provides that the remedy for a party's disclosure obligations under
21 NRCP 16.1 include the sanctions listed in NRCP 37. Pursuant to NRCP 37, the Court has the
22 discretion to impose any of the following sanctions that may be warranted in appropriate
23 circumstances:

24 **(2) Sanctions—Party.** If a party or an officer, director, or
25 managing agent of a party or a person designated under Rule
26 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
27 order to provide or permit discovery, including an order made
28 under subdivision (a) of this rule or Rule 35, or if a party fails to
obey an order entered under Rules 16, 16.1, and 16.2, the court in
which the action is pending may make such orders in regard to the
failure as are just, and among others the following:

1 (A) An order that the matters regarding which the order was made
2 or any other designated facts shall be taken to be established for
the purposes of the action in accordance with the claim of the party
obtaining the order;

3 (B) An order refusing to allow the disobedient party to support or
4 oppose designated claims or defenses, or prohibiting that party
from introducing designated matters in evidence;

5 (C) An order striking out pleadings or parts thereof, or staying
6 further proceedings until the order is obeyed, or dismissing the
7 action or proceeding or any part thereof, or rendering a judgment
by default against the disobedient party;

8 (D) In lieu of any of the foregoing orders or in addition thereto, an
order treating as a contempt of court the failure to obey any orders
except an order to submit to a physical or mental examination;

9 (E) Where a party has failed to comply with an order under Rule
10 35(a) requiring that party to produce another for examination, such
11 orders as are listed in subparagraphs (A), (B), and (C) of this
subdivision, unless the party failing to comply shows that that
party is unable to produce such person for examination.

12 In lieu of any of the foregoing orders or in addition thereto, the
13 court shall require the party failing to obey the order or the
14 attorney advising that party or both to pay the reasonable
15 expenses, including attorney's fees, caused by the failure, unless
the court finds that the failure was substantially justified or that
other circumstances make an award of expenses unjust.

16
17 Before the Court can strike a defendant's answer as a sanction, the Court is required to
18 conduct an Evidentiary Hearing. Plaintiff Jane Doe asked the Court to strike Centennial's
19 Answer as a sanction for its discovery violations. This Court determined that there were
20 sufficient grounds to proceed with the Evidentiary Hearing.

21 The Nevada Supreme Court has provided guidance for the Court on the factors to
22 consider at an Evidentiary Hearing before striking an answer as a sanction:

23 The factors a court may properly consider include, but are not
24 limited to, the **degree of willfulness** of the offending party, the
25 extent to which the non-offending party would be **prejudiced by a**
26 **lesser sanction**, the **severity** of the sanction of dismissal relative to
27 the severity of the discovery abuse, whether any **evidence has**
28 **been irreparably lost**, the feasibility and fairness of alternative,
less severe sanctions, such as an order deeming facts relating to
improperly withheld or destroyed evidence to be admitted by the
offending party, the **policy** favoring adjudication on the merits,
whether sanctions unfairly operate to penalize a party for the
misconduct of his or her attorney, and the **need to deter** both the
parties and future litigants from similar abuses.

1 *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93 (Nev. 1990) (emphasis added).

2 “Nevada jurisprudence does not follow the federal model of requiring progressive
3 sanctions against a party for failing to comply with a discovery order.” *Bahena v. Goodyear*
4 *Tire & Rubber Co.*, 245 P.3d 1182, 1184 (Nev. 2010). However, if a party requests a case
5 concluding sanction, the Court must conduct an evidentiary hearing.

6 **V. ANALYSIS**

7 **A. CENTENNIAL CONCEALED EVIDENCE ABOUT THE NURSES**

8 Centennial’s failure to comply with NRCP 16.1 was not just a minor or technical non-
9 compliance. Centennial’s failure to comply with its NRCP 16.1 obligations was material,
10 substantial, and extremely prejudicial to Plaintiff Jane Doe. Centennial left out major
11 witnesses and major documents from its NRCP 16.1 disclosure. Moreover, Centennial’s
12 failure to comply with NRCP 16.1 was repetitive, and extended over a lengthy, multiple-year
13 time period.

14 **B. CENTENNIAL’S “PROTECTIVE ORDER” DEFENSE LACKS MERIT**

15 Centennial contends that it could not produce the Police Statements or disclose nurses
16 Murray, Wolfe, and Sumera, because Centennial was subject to a Protective Order in the
17 Cagnina Case. Centennial’s argument lacks merit for several reasons:

- 18 • The Protective Order did not prohibit Centennial from submitting to Plaintiff a
19 privilege log listing the Police Statements and identifying the privilege claimed.
20 Centennial understood the importance of preparing a privilege log for relevant
21 documents that it withheld. Centennial’s supplemental NRCP 16.1 disclosures
22 contained privilege logs, but Centennial elected not to include the Police
23 Statements in any of its privilege logs.
- 24 • The Protective Order did not prohibit Centennial from disclosing the existence of
25 the Murray Police Statement or the Wolfe Police Statement. Centennial could have
26 and should have disclosed the existence of the Police Statements in its initial
27 NRCP 16.1 disclosure, and its supplemental disclosures.

28 . . .

- 1 • As admitted by attorney Bemis (E.H. at 10:41), the Protective Order did not
2 prohibit Centennial from identifying the names of nurses Murray, Wolfe, and
3 Sumera, as persons with knowledge of relevant facts, nor did the Protective Order
4 prohibit Centennial from identifying the general knowledge that each of these
5 nurses possessed. **Attorney Bemis admitted that Centennial's failure to**
6 **disclose nurses Murray, Wolfe, and Sumera, was a violation of NRCP 16.1.**
7 **(E.H. at 10:42:20).**
8 • Centennial suggests it acted in good faith by seeking to lift the September 17, 2009
9 Protective Order. However, Centennial did not move to lift the Protective Order
10 until October 2014. Centennial had a duty to identify the Police Statements in its
11 initial NRCP 16.1 disclosure on November 24, 2009. If Centennial truly felt
12 limited in disclosing the mere existence of the Police Statements due to the
13 Protective Order, Centennial would have sought to lift the Protective Order in
14 November 2009, rather than waiting almost five (5) years, until October of 2014, to
15 do so.

16 **C. CENTENNIAL'S ARGUMENT - THAT THE NURSE EVIDENCE WAS**
17 **ONLY RELEVANT TO THE CAGNINA CASE - IS FRIVOLOUS**

18 Centennial argues, in various iterations, that it had a good faith believe the early
19 evidence it learned about Mr. Farmer only related to the Cagnina case. Centennial notes that
20 nurse Murray was the nurse assigned to Mr. Farmer on the day Ms. Cagnina reported Mr.
21 Farmer's sexual assault. This argument is logically flawed. Once Jane Doe filed her lawsuit
22 on July 23, 2009, a major issue in the Jane Doe case was whether Centennial had notice that
23 Mr. Farmer posed a risk of committing a sexual assault on a female patient at Centennial. If
24 Mr. Farmer was overly attentive to female patients at Centennial, and liked to assist in monitor
25 placements so he could lift their gowns and see and/or touch their breasts, then that
26 information was undeniably relevant to the Jane Doe Case.

27 The fact that Centennial failed to make the connection is Centennial's own fault. As
28 soon as Centennial discovered the information, they had a duty to disclose it. It is undisputed

1 that Centennial discovered the information by August 1, 2008 – long before Jane Doe filed her
2 lawsuit. Therefore, Centennial had a duty to disclose the nurses and the existence of their
3 police statements in the very first NRCP 16.1 production in 2008. This Court finds that there
4 is no valid excuse for Centennial's failure to timely disclose the nurses and existence of the
5 Police Statements.

6 **B. THE SANCTION FACTORS**

7 **1. Degree of Willfulness**

8 This Court finds that there is clear and convincing evidence that Centennial willfully
9 and intentionally concealed the relevance of nurses Murray, Wolfe, and Sumera, and the
10 existence of the Police Statements with an intent to harm and unfairly prejudice Plaintiff. This
11 inescapable conclusion is derived from the following evidence:

- 12 • Centennial had knowledge prior to August 2009 of the very relevant information
13 possessed by nurses Murray, Wolfe, and Sumera.
- 14 • Centennial's counsel in the Cagnina Case is the same counsel that began
15 representing Centennial in the Jane Doe Case by August 2009.
- 16 • Centennial failed to timely disclose nurses Murray, Wolfe, and Sumera in its initial
17 and supplemental NRCP 16.1 disclosures.
- 18 • Centennial failed to disclose the mere existence of the Police Statements in its
19 initial and supplemental NRCP 16.1 disclosures.
- 20 • Centennial changed its story several times about when it discovered the
21 significance of the information known by nurses Murray, Wolfe, and Sumera.
- 22 • Centennial changed its position several times about when it received the Wolfe
23 Police statement.
- 24 • Centennial provided false discovery responses to Jane Doe, and incorrectly
25 represented to this Court that it had not withheld any relevant evidence. Centennial
26 and its counsel told this Court in October of 2014, a minimum of eighteen (18)
27 months after admitting they had the criminal file with the names and statements,
28 that "In the instant situation, there were absolutely no known prior acts by Mr.

1 Farmer that could potentially put Centennial on notice that Mr. Farmer would
2 assault a patient.” CH. Opp. to MSJ at 9. Rule 3.3 of the Nevada Rules of
3 Professional Conduct states “(a) A lawyer shall not knowingly: (1) Make a false
4 statement of fact or law to a tribunal by the lawyer.” Centennial’s lawyers violated
5 this Rule.

- 6 • Centennial incorrectly represented to the Nevada Supreme Court that it had not
7 withheld any relevant evidence. Centennial stated: “there were no known prior
8 acts or any other circumstances that could have put Centennial on notice that
9 Farmer would sexually assault Ms. Doe.” Writ at 14-15. Again, Centennial’s
10 lawyers violated Rule 3.3.
- 11 • Centennial’s argument that it withheld the Police Statements due to the
12 September 17, 2009 Protective Order was a false, pre-textual excuse.
- 13 • Centennial unreasonably delayed in seeking to lift the Protective Order.
- 14 • Centennial unreasonably failed to identify the Police Statements in a Privilege log.
- 15 • Centennial understood that, through the passage of time, the memories of key
16 witnesses would fade.
- 17 • With the passage of time, the memories of key witnesses did, in fact, fade.
- 18 • Centennial’s argument - that it failed to appreciate the importance of the
19 information known by the nurses because the HPS firm interviewed the nurses
20 before it started working on the Jane Doe Case – is frivolous.
- 21 • Centennial provided false discovery responses under oath, designed to mislead this
22 Court.
- 23 • Centennial’s counsel admitted that it had a duty under NRCP 16.1 to review the
24 recorded statement of Murray as soon as it received it to ascertain whether the
25 Statement contained information relevant to the Jane Doe case. E.H. 11:15:35.
- 26 • Centennial admitted that it violated NRCP 16 in failing to timely disclose the
27 names of nurses Murray, Wolfe, and Sumera, and to disclose their general
28 knowledge. E.H. 10:38, and 10:42:20

2. The Prejudice To Jane Doe By a Lesser Sanction

The prejudice to Plaintiff, as discussed below, is that memories have faded over time. When Plaintiff finally discovered the importance of nurses Murray, Wolfe, and Sumera to this case, years had passed and, understandably, their memories had extensively faded. That evidence cannot be retrieved. A remedy must be fashioned to help overcome the prejudice that Plaintiff has suffered at Centennial's hands. The lost evidence related directly to the issue whether Centennial had notice that Mr. Farmer posed a risk of sexual assault to a female patient. The lost evidence likely would have assisted Jane Doe in proving that Centennial had such notice, that Centennial had a duty to protect Jane Doe from the danger posed by Mr. Farmer, that Centennial breached its duty to protect Jane Doe, and also that Centennial was liable to Jane Doe for Farmer's misconduct on a theory of respondeat superior. The evidence that Centennial concealed, and the probable fruits of such concealed evidence, would have assisted Jane Doe in establishing Centennial's liability, and in rebutting Centennial's defenses to liability.

Any lesser sanction would be wholly insufficient to mitigate the prejudice to Jane Doe caused by Centennial. A possible lesser sanction would be to impose an evidentiary presumption that it was reasonably foreseeable to Centennial that Mr. Farmer would sexually assault Jane Doe. But an evidentiary presumption would not bar Centennial from presenting evidence to try to rebut such presumption. Centennial would then be able to benefit from its conduct in hiding evidence. Moreover, an evidentiary presumption would create a huge logistical problem at trial. Further, any evidentiary presumption would apply against defendant Centennial, but not against ANS. This would undoubtedly confuse the jury.

A possible way to avoid such unnecessary confusion would be to bifurcate trial. If the Court were to bifurcate Jane Doe's claims against Centennial from Jane Doe's claims against ANS, however, this would impose undue burden and expense on Jane Doe to conduct essentially a second trial. It would be extremely unfair to impose a burden of a second trial on Plaintiff to mitigate the prejudice caused by Centennial.

...

1 This Court has already imposed a monetary sanction against Centennial. A stronger
2 monetary sanction would not redress the prejudice to Plaintiff.

3 Finally, disqualifying Centennial's counsel would not eliminate the prejudice to
4 Plaintiff.

5 **3. The Severity Of The Sanction Of Dismissal Relative To The Severity**
6 **Of The Discovery Abuse**

7 The discovery abuse was indeed extreme, and warrants a very severe sanction against
8 Defendant Centennial. Centennial utterly failed to honor its duty to disclose witnesses that it
9 knew were critical witnesses as early as august 2008 -- before this lawsuit was even filed.
10 Centennial also intentionally concealed the similarly critical police statements of nurses
11 Murray and Wolfe. Again, Centennial didn't miss its disclosure deadline by a mere few days
12 or even a few months; Centennial missed its deadline by more than five (5) years.

13 The sanction must be sufficiently severe. But the Court seeks not to impose a sanction
14 for the primary sake of punishment of Centennial. Rather the Court is primarily motivated to
15 impose a sanction that is no greater than necessary to undo the prejudice that Defendant
16 Centennial inflicted upon Jane Doe. Striking Centennial's Answer is appropriately severe in
17 light of Centennial's discovery abuses.

18 **4. Whether Evidence Has Been Irretrievably Lost**

19 Centennial's concealment of evidence has irreparably prejudiced Plaintiff Jane Doe,
20 because the evidence has been irretrievably lost. Centennial's delay in disclosing the nurses'
21 Police Statements has caused incurable and substantial prejudice to Plaintiff. The significant
22 passage of time has resulted in extensive fading of witness memories and loss of evidence of
23 the facts and circumstances discussed within the nurses' Police Statements, as follows:²

24 **NURSE MURRAY**

25 Nurse Murray suffered significant memory loss of relevant facts:

26 P.35-36 Nurse Murray recalled the incident where the lady yelled at Mr. Farmer
27 (who had been acting as sitter for her) to leave her alone, but she could not recall the room

28 ² The page numbers refer to the pages of each witness deposition transcript.

1 number, and she could not recall the attending nurse for that patient. If Plaintiff had been able
2 to obtain the room number, they could have tracked down this patient who had complained
3 about Mr. Farmer. Then Plaintiff could have learned the nature of the patient's undisputed
4 complaint against Mr. Farmer. Plaintiff could have discovered whether Mr. Farmer had
5 engaged in some sexual assault, and whether any other nurses attending to this lady had been
6 alerted to Mr. Farmer's improper conduct. All of this discovery was prevented because
7 Centennial concealed the existence of nurse Murray and the substance of her relevant
8 testimony.

9 P.43 Nurse Murray could not recall the specifics of what she told the police in
10 her statement without seeing the statement.

11 P.57 Nurse Murray could not recall the substance of her discussions with
12 Centennial staff about the complaint from the lady about Mr. Farmer.

13 P.58 Nurse Murray could not recall if she had a conversation with the nurse
14 about the "sitter" incident.

15 P.68 Nurse Murray recalled an incident when Mr. Farmer offered to place the
16 telemetry leads on a female patient, but she could not recall any specifics.

17 P.68 Nurse Murray could not recall if, during the time that she worked at
18 Centennial, CNAs were not allowed to apply telemetry leads without first being instructed to
19 do so by a nurse.

20 **RAY SUMERA**

21 Ray Sumera was a nurse working at Centennial on May 15, 2008, and is the person
22 whom nurse Wolfe reportedly heard say he was concerned about Mr. Farmer because he was
23 overly attentive to female patients. In his deposition, he indicated that his memory of this
24 conversation with nurse Wolfe had greatly faded:

25 P.75 Q: "Do you recall telling Ms. Wolfe that you were concerned about Mr.
26 Farmer because he was very anxious to connect and disconnect them from heart monitors,
27 which would require him to reach into their clothing?" A: "I don't remember any

28 . . .

1 conversation." Q: "Okay. You're not saying it didn't happen, you're saying you just don't
2 remember, right?" A: "I don't remember."

3 P.78 Q: "Do you recall Ms. Wolfe telling you about an incident where Mr.
4 Farmer had exposed a female patient's breasts where he was allegedly checking monitor
5 placements?" A: "I don't remember."

6 P.77 Q: "And you told Margaret that you had talked to him [Mr. Farmer],
7 right?" A: "For a follow-up, I probably did tell Margaret that I talked to him." Q: "You just
8 don't have any memory of it?" A: "I don't have any memory." Q: "But you have no reason to
9 disagree with what she says here [in the police report], is that correct?" A: "Correct."

10 P.127 Q: "Were you the charge nurse on May 15th? A: "I don't know whether I
11 was in charge or not - - on what specific day."

12 P.138 A: "It's possible it [the conversation with nurse Wolfe about Mr. Farmer
13 being "overly attentive to female patients"] did occur, but I don't remember the exact
14 conversation."

15 **AMY BLASING**

16 The Centennial Head of the Emergency Room, Amy Blasing, was extensively involved
17 in investigating the allegations of nurse Sumera, Wolfe, and Murray, and their
18 communications with each other. She expressed a great loss of memory when confronted with
19 relevant and material questions at her deposition on July 28, 2015:

20 P. 29:13-20 She could not remember who she included in her internal discussions
21 about Mr. Farmer other than Ray Sumera, Margaret Wolfe, Karen Goodhart, and Darby
22 Curless.

23 P.30:19-24 She could not remember if she took any notes of her internal meeting
24 regarding Mr. Farmer because "It was several years ago."

25 P.32-33 She recalled having discussions with Carol Butler about her meeting with
26 Margaret Wolfe, but could not recall specifics.

27 P.33-34 She could not recall the specifics of what nurse Wolf said she had told the
28 police.

1 P.35 She recalls that she spoke with nurse Wolfe and nurse Sumera about their
2 different recollections about their concerns with Mr. Farmer, but she could not recall the
3 specifics.

4 P.40:18-22 She could not recall the first time that she spoke with counsel for
5 Centennial about Mr. Farmer's sexual assault against Ms. Cagnina.

6 P.90:12-18 She could not recall whether she had any other discussions about Mr.
7 Farmer besides the very limited information given regarding staff discussions, because: "It
8 just was a long time ago."

9 **CAROL BUTLER**

10 The Centennial Director of Nursing, Carol Butler, also had a significant memory loss
11 by the time of her deposition, on June 19, 2015:

12 P.75 She could not recall whether she had spoken with Ray Sumera.

13 P. 75-76 She believes she spoke with nurse Wolfe, but she was not certain, and she
14 also could not recall whether she took notes of her meeting with nurse Wolfe.

15 P.76 She admitted that if she had been asked questions about the Farmer
16 investigation five (5) years ago, events "certainly would have been fresher in her mind:

17 "Q. . . . If I asked you five years ago, you might have a better answer; right? Your
18 memory? A. Certainly."

19 P.87:2-13 She recalls the Centennial investigation concerned allegations that Mr.
20 Farmer had an "inappropriate contact in the E.D. and then again on the sixth floor," but she
21 could not recall "what" inappropriate contact was discussed.

22 P.87:17-22 She could not recall if her meetings regarding the Farmer investigation
23 included separate meeting with Centennial staff, or with all staff all together.

24 P.114:4-7 She could not recall if she ever talked to nurse Wolfe about her Metro
25 Statement.

26 P.121:10-16 She could not recall whether she notified the Centennial Risk Manager
27 that Amy Blasing brought to her attention that a nurse had expressed concerns about Mr.
28 Farmer.

1 P.130 She could not recall any of the conversations that she had with nurse
2 Wolfe about the Farmer investigation.

3 P.130 She could not recall any of the conversations that she had with nurse
4 Sumera about the Farmer investigation.

5 P.130:21-23 She admitted that her memory about conversation with nurses Wolfe and
6 Sumera would have been better five years earlier.

7 **JANET CALLIHAN**

8 Janet Callihan was the Administrative Director for Quality Outcomes for Centennial
9 beginning the summer of 2007 through the time of the Farmer incident. Her memory had
10 faded as to significant events:

11 P.22-37 She could not recall if she had ever met with Christine Murray, even
12 thought, as she acknowledged, nurse Murray would have prepared an incident report, and it
13 was Ms. Callihan's duty to review such reports. Also she did not recognize the names of Ray
14 Sumera or Margaret Wolfe.

15 **MARGARET WOLFE**

16 Nurse Margaret Wolfe also had significant memory loss due to the passage of time:

17 P.15 She could not recall whether she spoke to anybody at Centennial about her
18 statement to the police.

19 P.20&51 She could not recall any specifics of her discussion with Ray Sumera
20 about Mr. Farmer

21 P.27-28 She recalls that "all the nurses" were talking about concerns they had with
22 Mr. Farmer; but she could not remember who because "it was so long ago."

23 P.40 She could not recall whether she had any conversation with anybody at
24 Centennial about Mr. Farmer after she was terminated as a nurse from Centennial.

25 **SUMMARY**

26 The passage of time has clearly undermined, frustrated, and eliminated Plaintiff Jane
27 Doe's opportunity to gather relevant information in this litigation, as follows:

28 . . .

- 1 • In a case where the most critical issue is whether Centennial had knowledge
- 2 that Mr. Farmer might pose a risk of harm to female patients, Centennial
- 3 concealed the fact that nurse Sumera reported concerns that Mr. Farmer might
- 4 be a danger to female patients.
- 5 • Centennial concealed the fact that nurse Sumera had reported his concerns to
- 6 nurse Wolfe.
- 7 • In July 2008, according to nurse Wolfe, nurse Sumera had expressed concern
- 8 that Mr. Farmer was overly attentive to female patients. However, seven (7)
- 9 years later, nurse Sumera's recollection had changed, as well as his tenor of
- 10 remarks about Mr. Farmer.
- 11 • Jane Doe can no longer find out from nurses Murray, Wolfe, or Sumera, which
- 12 of the other nurses, staff, and management at Centennial were suspicious of Mr.
- 13 Farmer's conduct prior to May 14, 2008.
- 14 • If Centennial had complied with its disclosure obligations, Jane Doe could have
- 15 deposed nurses Murray, Wolfe, and Sumera in 2009 -- when their memories
- 16 were much more fresh regarding the facts and circumstances surrounding the
- 17 2008 events.
- 18 • If Jane Doe had taken the depositions of nurses Murray, Wolfe and Sumera in
- 19 2009, that would have led to the prompt depositions of Amy Blasing and Carol
- 20 Butler in 2009 -- before their memories faded as to critical "notice" issues.
- 21 • Centennial concealed the fact that nurse Wolfe reported the Sumera disclosure
- 22 to Centennial management.
- 23 • Centennial concealed the fact that nurse Wolfe provided a Police Statement to
- 24 Metro about Mr. Farmer.
- 25 • Centennial concealed the fact that nurse Murray provided a Police Statement to
- 26 Metro about Mr. Farmer.
- 27 • Centennial concealed the fact that it conducted an internal investigation
- 28 involving nurses Murray, Wolfe, and Sumera prior to August, 2008.

- 1 • Centennial concealed the fact that nurse Murray had some information about
2 the “crazy old lady” who yelled at Mr. Farmer to get out of her room.
3 Centennial argues that nurse Murray concluded that Mr. Farmer had not done
4 anything wrong. Centennial suggests that, if it had disclosed this incident and
5 Jane Doe had taken depositions pertaining to this incident, it would not have
6 yielded anything important. There are two problems with this argument. First,
7 nurse Murray did not testify that Mr. Farmer did not do anything wrong.
8 Second, if nurse Murray had testified years closer to the incident, she might
9 have remembered facts that could have led to the identity of this “crazy old
10 lady.” Then Jane Doe could have discovered what Mr. Farmer did to her, when
11 he did these things to her, and who had notice of such misconduct of Mr.
12 Farmer.
- 13 • Centennial concealed the fact that nurse Wolfe expressed concern that Mr.
14 Farmer had on one occasion lifted the gown of a female patient exposing her
15 breasts.
- 16 • Since Centennial concealed these facts, Plaintiff Jane Doe had no knowledge to
17 conduct discovery about these facts. As time passed, memories faded. By the
18 time Plaintiff Jane Doe received the metro statements, the memories of the
19 nurses and other witnesses had already faded. Centennial had accomplished its
20 objective.

21 Defendant Centennial contends that Plaintiff Jane Doe was not prejudiced by
22 Centennial’s failure to disclose nurses Wolfe, Murray, and Sumera because Plaintiff already
23 knew that these nurses “may have information relevant to the instant case” as early as May 13,
24 2010. Defendants Objection to Discovery Commissioner Report and Recommendation, at
25 p. 4 (7/30/15). Defendant Centennial fails to appreciate the huge difference between
26 discovering that a person “may” know something, and discovering the “something” that such
27 person may actually know. Plaintiff Jane Doe discovered the former but not the later.

28 ...

1 Defendant Centennial concealed the information that Centennial knew about the
2 criticality of the knowledge of nurses Wolfe, Murray and Sumera to this litigation.

3 Centennial contends that it is too speculative to assume that Jane Doe would have
4 deposed the witnesses earlier than they did if they had received the Police Statements at the
5 start of the case. Centennial notes that, prior to October 2014, Jane Doe had only deposed one
6 (1) of the NRCP 16.1 witnesses designated by Centennial. The Court has not verified that
7 fact. However, there are four main flaws with Centennial's argument. First, Centennial
8 concealed the important information known by nurses Murray, Wolfe, and Sumera -- so it is
9 understandable that Jane Doe was not in any hurry to depose the unimportant witnesses.
10 Second, Centennial is the party that created the need to consider when Jane Doe might have
11 taken the depositions of the key witnesses; so Centennial should not be allowed to benefit
12 from a problem it created. Third, once Jane Doe did obtain the information that Centennial
13 concealed, Jane Doe's attorneys aggressively pursued discovery related to such information.
14 This aggressive action is strong evidence that Jane Doe would have taken prompt depositions
15 earlier in the case if Centennial had complied with its discovery obligations. Fourth, as
16 acknowledged by attorney Bemis, many of the witnesses designated in Centennial's early
17 NRCP 16.1 witness lists DID NOT relate to the critical issue of foreseeability -- so there was
18 no big need for depositions of such persons. E.H. 10:45.

19 **5. Consideration of less-severe sanctions**

20 As discussed above, the Court has considered the possible sanctions less severe than
21 striking Centennial's answer.

22 The Discovery Commissioner already recommended the imposition of a modest
23 monetary sanction, which this Court has approved. This monetary sanction does serve as a
24 punishment of Centennial (and encouragement not to repeat its transgressions), but does
25 nothing to reverse or mitigate the prejudice that Centennial has inflicted upon Jane Doe.

26 The Court could impose a "rebuttable" presumption that Centennial had notice of Mr.
27 Farmer's dangerous propensities; but that would still leave Jane Doe at a disadvantage.

28 . . .

1 Centennial has caused the destruction of the evidence that Jane Doe could have used to
2 negate Centennial's rebuttal evidence.

3 The Court could preclude Centennial from offering any evidence that it DID NOT
4 have notice of Mr. Farmer's dangerous proclivities. But again this is insufficient. The Court
5 has already held in this case that Plaintiff Jane Doe has an initial burden of proving that it was
6 reasonably foreseeable to Centennial that Mr. Farmer posed a danger to female patients.
7 Centennial has caused the destruction of evidence that Jane Doe may have needed to satisfy its
8 initial burden. Thus it would not be an adequate remedy to merely prevent Centennial from
9 rebutting Jane Doe's evidence.

10 The Court has considered other possible lesser sanctions, and concludes that the only
11 reasonable sanction that sufficiently mitigates the harm caused by Centennial is to strike
12 Centennial's Answer.

13 **6. The policy favoring adjudication on the merits**

14 Centennial is the party that elected to hide evidence to prevent Jane Doe from
15 adjudicating its claims on the merits. Striking Centennial's Answer is the only way to undo
16 the prejudice that Centennial created. Centennial is still entitled to defend itself with regard to
17 damages. In sum, the Court merely mitigates the prejudice that Centennial caused, and
18 permits the parties to proceed with the remainder of the lawsuit in a fair and even manner.

19 **7. Whether the sanction would unfairly punish centennial for its lawyers'**
20 **misconduct**

21 The misconduct in this case is clearly that of Centennial, to an equal or greater extent
22 that its lawyers. Centennial knew that Murray had given a police statement, but failed to
23 provide such statement to its lawyers in this case. Centennial knew that nurses Murray,
24 Wolfe, and Sumera were critical witnesses in this case, and yet allowed their attorneys to
25 submit no less than Eight (8) NRCP 16.1 disclosures that omitted any reference to these
26 witnesses. One need not be trained in the law to appreciate that one's list of persons with
27 knowledge ought to have included critical witnesses such as these. Additionally, Centennial
28 provided verifications of the false discovery responses discussed herein.

1 **8. The need to deter sanctionable conduct**

2 A party who engages in misconduct must suffer reasonable consequences. No party
3 should be allowed to conceal evidence, and then suffer merely a monetary sanction, while
4 being allowed to reap the tactical benefit of the loss of that evidence. Litigants should be
5 entitled to have their cases adjudicated on their merits.

6 Centennial failed to disclose relevant evidence that it knew it had a duty to disclose,
7 caused extensive time to pass, and caused memories to fade. Centennial actions and inactions
8 have prevented a critical issue in this case from being tried on its merits. Centennial has
9 impaired the adversarial, and therefore must suffer the consequences of a sanction. The
10 narrowly-tailored sanction in this case is designed to mitigate the prejudice to Jane Doe that
11 Centennial caused, and deter future misconduct by Centennial.

12 **VI. CONCLUSION**

13 The Court finds that Defendant Centennial intentionally, and willfully, and with the
14 intent to unfairly prejudice and harm Plaintiff Jane Doe, concealed evidence regarding nurses
15 Wolfe, Murray, and Sumera, and those acts of concealment unfairly, significantly, and
16 irreparably prejudiced Plaintiff. As discussed above, the concealment has caused a great delay
17 in Plaintiff Jane Doe's ability to pursue relevant discovery. This delay has resulted in the loss
18 of memories of critical information. Centennial's acts of concealment have effectively
19 irreparably destroyed evidence.

20 The Court has determined the least stringent, narrowly-tailored, remedy available to
21 reverse the harm that Centennial caused to Plaintiff. This remedy, which the Court hereby
22 imposes, is as follows:

23 **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**
24 **Answer in this action such that liability is hereby established on Plaintiff's Jane Doe's**
25 **claims against Defendant Centennial for (a) negligent failure to maintain the premises in**
26 **a safe manner, and (b) *respondeat superior* liability for the sexual assault by Nurse**
27 **Farmer; but Centennial still shall be entitled to defend on the question of the nature and**
28 **quantum of damages for which it is liable.**

1 To implement this sanction, the Court further orders as follows:

2 a. Plaintiff shall be permitted to explain to the jury that liability has been established
3 against Defendant Centennial, and to further explain to the jury what that means;

4 b. The Court shall submit a jury instruction to the jury regarding the establishment
5 of liability as to Defendant Centennial;

6 c. Defendant Centennial is precluded from introducing any evidence to show that it
7 is not liable for the harm to Jane Doe caused by Mr. Farmer. Specifically, but not limited
8 thereto, Defendant Centennial is precluded from introducing any evidence that it was not
9 reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault
10 against a patient at Centennial. Additionally, Centennial is precluded from arguing that it has
11 any defense to liability for damages caused by Mr. Farmer to Jane Doe, on either the pled
12 claims of negligence or *respondeat superior*; and

13 d. the Court will set a Status Check by separate Order to discuss the manner of
14 implementation of this Order to avoid any prejudice therefrom to defendant American Nursing
15 Service, Inc.

16 Furthermore, the monetary sanctions recommended by the Discovery Commissioner,
17 and imposed by Order of this Court on August 15, 2015, are hereby re-affirmed.

18 **IT IS SO ORDERED.**

19 DATED this 4th day of November, 2015.

20
21 
22 RICHARD F. SCOTTI
23 DISTRICT COURT JUDGE
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:


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Melody Howard
Judicial Executive Assistant

TAB 24



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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

**NOTICE OF ENTRY OF ORDER
STRIKING ANSWER OF DEFENDANT
VALLEY HEALTH SYSTEM LLC AS
SANCTION FOR DISCOVERY
MISCONDUCT**

TO: ALL DEFENDANTS HEREIN; and

TO: THEIR RESPECTIVE COUNSEL OF RECORD

///

///

///

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 4th day of November, 2015, the Court entered an Order Striking Answer of Defendant Valley Health System LLC as Sanction for Discovery Misconduct. A copy of said Order is attached hereto.

DATED this 5th day of November, 2015.

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.

/s/ Robert E. Murdock
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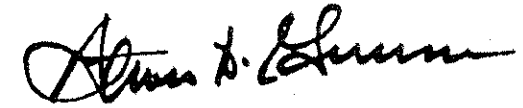
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3



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

10 VALLEY HEALTH SYSTEM, LLC, a Nevada
11 limited liability company, d/b/a CENTENNIAL
12 HILLS HOSPITAL MEDICAL CETER;
13 UNIVERSAL HEALTH SERVICES, INC., a
14 Delaware corporation; AMERICAN NURSING
15 SERVICE, INC., a Louisiana corporation;
16 STEVEN DALE FARMER, an individual;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

19 Defendants.

Case No.: 09-A-595780-C
Dept. No.: II

Date: August 28, 2015
Time: 9:00 a.m.

**ORDER STRIKING ANSWER OF
DEFENDANT VALLEY HEALTH
SYSTEM LLC AS SANCTION FOR
DISCOVERY MISCONDUCT**

16
17 **I. SUMMARY OF ORDER**

18 This action involves Plaintiff Jane Doe's claims that she was sexually assaulted by
19 Nurse Farmer at Centennial Hills Hospital Medical Center on May 14, 2008. Plaintiff Jane
20 Doe asserted the following two substantive claims against defendant Valley Health System,
21 LLC d/b/a/ Centennial Hills Hospital Medical Center, and Universal Health Services, Inc.,
22 (collectively "Centennial" herein): negligent failure to maintain the premises in a safe
23 manner; and *respondeat superior* liability for the sexual assault by Nurse Farmer. See
24 Amended Complaint, ¶¶ 11-17 (filed August 21, 2009).

25 The Amended Complaint established the relevance and materiality of the following
26 questions of fact: (a) as to the negligence claim: whether it was reasonably foreseeable to
27 Centennial, considering the totality of circumstances, that the premises were unsafe (See CD
28 Audio Recording of the Evidentiary Hearing at 10:27:06) (hereinafter "E.H. at

1 Hour:Minutes:Seconds"); and (b) as to the *respondeat superior* claim: whether the sexual
2 assault by Nurse Farmer was reasonably foreseeable under the facts and circumstances of the
3 case considering the nature and scope of [his] employment. NRS 41.745(1)(c).¹ Thus, in a
4 general sense, it was critical to both the negligence and *respondeat superior* claims for the
5 Plaintiff to conduct discovery on the issue whether it was reasonably foreseeable to defendant
6 Centennial Hills that Nurse Farmer would commit a sexual assault. Plaintiff Jane Doe seeks
7 sanctions against defendant Centennial for impeding Plaintiff's ability to acquire critical
8 evidence on the "reasonable foreseeability" issues.

9 On April 29, 2015, Plaintiff Estate of Jane Doe ("Plaintiff") moved this Court to
10 impose sanctions against Defendant Valley Health System, LLC d.b.a. Centennial Hills
11 Hospital Medical Center ("Centennial") pursuant to NRCP 37. Plaintiff contended that
12 Centennial failed to timely disclose that nurses Murray, Wolfe, and Sumera had knowledge of
13 relevant facts bearing on the most critical issue in this case – whether it was reasonably
14 foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault against a
15 patient. Plaintiff further contended that Centennial concealed from Plaintiff the existence of
16 statements that nurses Murray and Wolfe gave to the Las Vegas Metropolitan Police
17 Department ("LVMPD"). These statements are referenced herein as the "Police Statements."

18 The Discovery Commissioner heard this matter on June 3, 2015, expressed her
19 findings and recommendations orally at that time and executed the Discovery Commissioner's
20 Report and Recommendation ("DCRR") on July 14, 2014. The Discovery Commissioner
21 succinctly stated the issue and her findings as follows:

22 [W]hat is at issue is the failure to disclose witnesses, whether or
23 not failure to disclose identifies of nurses who had information
24 about Mr. Farmer prior to this case being filed is at a level to
warrant Rule 37 sanctions and, whether the failures prejudiced
Plaintiff. . . . The basis of the Motion involves three nurses,

25 ¹ For purposes of resolving the motion for sanctions, it is not necessary for this Court to
26 determine whether the Plaintiff has the burden of proving "reasonable foreseeability" to
27 recover under NRS 41.745, or the defendant has the burden of proving that the intentional tort
28 was not reasonably foreseeable as an affirmative defense to avoid liability. In either case,
whoever has the burden, the pleadings and briefs in this action have very clearly established
that "reasonable foreseeability" is a relevant and material issue of fact.

1 Christine Murray, Margaret Wolfe, and Renato Sumera. Ms.
2 Murray and Ms. Wolfe each gave statements to the LVMPD
3 around the time of the sexual assault that resulted in the arrest of
4 Mr. Farmer. Mr. Sumera met with Risk Management afterwards. .
5 . . None of the nurses were identified at the initial 16.1. The nurses
6 should have been identified as they were clearly likely to have
7 information discoverable under Rule 26(b). . . . While there is no
8 doubt but that Plaintiff was prejudiced by the delay, the Court is
9 more concerned with the issues of memories that fade. The delay
10 in this matter was not for a short time -- this was for 6 or more
11 years. Accordingly, the Court finds that the failure to identify
12 these three nurses has resulted in substantial prejudice sufficient to
13 warrant NRCP 37 sanctions.

14 (DCRR filed August 17, 2015).

15 This Court has read and considered all applicable legal briefs of the parties, the
16 Discovery Commissioner's Report and Recommendations, and Defendant Centennial's
17 objection thereto. The Court has also listened to the argument of counsel at the Evidentiary
18 Hearing conducted on August 28, 2015. The Court has considered the exhibits admitted
19 during the Evidentiary Hearing, and the testimony of witnesses provided at the Evidentiary
20 Hearing. The Court has also read and considered the deposition testimony that the parties
21 have asked this Court to consider.

22 This Court finds that the Discovery Commissioner's factual findings are supported by
23 substantial evidence, and that the Discovery Commissioner properly applied the law. The
24 Court sustains the sanctions imposed by the Discovery Commissioner, and imposes the further
25 sanctions as discussed below.

26 This Court further finds that, based on evidence that this Court considers to be clear
27 and convincing, Centennial intentionally and willfully (a) violated its discovery obligations
28 under NRCP 16.1 in failing to timely disclose that nurses Murray, Wolfe, and Sumera
possessed relevant and material evidence relating to the central issue in this case -- whether it
was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual
assault on a patient; and (b) violated its duty under NRCP 16.1 to timely disclose the Police
Statements which also contained relevant and material evidence relating to the same central
issue. The Court also finds that, based on evidence that this Court considers to be clear and
convincing, Centennial's misconduct caused extreme unfair prejudice to Plaintiff Jane Doe,

1 and that Centennial's misconduct substantially impaired Plaintiff's ability to discover relevant
2 evidence and prepare for trial with respect to the issue whether it was reasonably foreseeable
3 that Mr. Farmer would commit a criminal sexual assault on a patient.

4 **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**
5 **Answer in this action such that liability is hereby established on Plaintiff Jane Doe's**
6 **claims against Defendant Centennial for negligence and *respondeat superior*; but**
7 **Centennial shall still be entitled to defend on the question of the nature and quantum of**
8 **damages for which it is liable. The procedures to implement this sanction are discussed**
9 **below in the Conclusion section.**

10 The Court finds that this is the least-onerous sanction that it could impose upon
11 Centennial and still mitigate the extreme prejudice that Centennial has unfairly and wrongfully
12 inflicted upon Plaintiff. This sanction is narrowly tailored to address the exact harm caused by
13 Centennial -- the infliction upon Plaintiff of an inability to conduct proper discovery as to
14 "reasonable foreseeability" before memories had faded and evidence had either gone stale or
15 disappeared entirely.

16 **II. PROCEDURAL POSTURE OF CASE**

17 **A. NATURE OF THE CASE**

18 This is an action by Plaintiff Jane Doe against Valley Health System, LLC d/b/a/
19 Centennial Hills Hospital Medical center, Universal Health Services, Inc., American Nursing
20 Service, and Steven Farmer arising out of a criminal sexual assault perpetrated by Certified
21 Nursing Assistant (hereinafter "CNA") Farmer on a female patient at Centennial on May 14,
22 2008. Plaintiff filed her Amended Complaint in this matter on or about August 21, 2009.

23 **B. DISCOVERY AND TRIAL SETTING**

24 Discovery in this action was conducted from about November 6, 2009 through about
25 September 15, 2015 except for certain stay periods.

26 This action was stayed from January 21, 2011 until July 18, 2012, and again from
27 February 29, 2014 through July 4, 2014.

28 This action is set for jury trial commencing on January 4, 2016.

1 Calendar Call is set for December 16, 2015.

2 **C. DISCOVERY HEARING REGARDING SANCTIONS**

3 Plaintiff Jane Doe filed her Motion for NRCP 37 Sanctions against Centennial on
4 April 29, 2015.

5 This matter came before Discovery Commissioner Bonnie Bulla on June 3, 2015.
6 Plaintiff Jane Doe asked the Discovery Commissioner to strike Centennial's Answer as a
7 sanction for its discovery violations. Tr. of Proc. at p. 16, line 20 (June 3, 2015).

8 The Discovery Commissioner executed her Findings of Fact, Conclusions of Law and
9 Recommendations on July 14, 2014, explaining as follows:

10 The basis of the Motion involves three nurses, Christine Murray,
11 Margaret Wolfe, and Renato Sumera. Ms. Murray and Ms. Wolfe
12 each gave statements to the LVMPD around the time of the sexual
13 assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met
14 with Risk Management afterwards. Mr. Bemis confirmed that a
15 Quality Assurance meeting was held shortly after the incident but
16 did not know at the Hearing whether or not any of the individuals
17 appeared.

18 None of the nurses were identified at the initial 16.1 The nurses
19 should have been identified as they were clearly known to
20 Defendants. The nurses should have been identified per NRCP
21 16.1 as the nurses were certainly likely to have information
22 discoverable under Rule 26(b). The Court queried Mr. Bemis as to
23 why the nurses were not identified but Mr. Bemis could not answer
24 the question.

25 The witnesses were certainly important to the matter because they
26 provide evidence of "notice" regarding Mr. Farmer and his
27 proclivities.

28 While there is no doubt but that Plaintiff was prejudiced by the
delay in terms of filing motions, the Court is more concerned with
the issues of memories that fade. The delay in this matter was not
for a short period – this was for 6 or more years. Mr. Murdock
stated that nurse Sumera had a substantial memory lapse and Mr.
Bemis did not dispute this. Accordingly, the Court finds that the
failure to identify these three nurses has resulted in substantial
prejudice sufficient to warrant NRCP 37 sanctions.

The Discovery Commissioner recommended sanctions and a further evidentiary
hearing as follows:

The UHS Defendants are sanctioned in the amount of One
Thousand Dollars and No/100 (\$1000.00) per unidentified nurse
(3) for each year not identified (6) for a total of Eighteen Thousand

1 Dollars and No/100 (\$18,000.00). Half of that amount, or Nine
2 Thousand Dollars and No/100 (\$9,000.00), shall be paid to Barbara
3 Buckley's Legal Aid Center of Southern Nevada, and the other
half shall be paid to Plaintiff in attorney's fees and costs to offset
additional work done to figure out witnesses to proceed forward.

4 IT IS FURTHER RECOMMENDED THAT because of the time
length involved in UHS' failure to identify the nurses, and the
5 memory issues that arise as a result, additional sanctions are
warranted. However, the District Court should determine those via
6 an evidentiary hearing and this Court defers the evidentiary
hearing to the District Court. As such, an evidentiary hearing
7 before the District Court should be conducted to determine (1) if
case terminating sanctions are appropriate based on the conduct of
8 failing to disclose witnesses, (2) whether or not that was intention
to thwart the discovery process in this case, and hinder Plaintiff to
9 discovery the relevant facts, and (3) a failure to let the Court know
what was going on in the case and whether the USH Defendants
10 misled the Court.

11 The Discovery Commissioner was deeply concerned by the prejudice inflicted upon
12 Plaintiff by Defendants' failure to disclose the nurses and their Metro Statements,
13 commenting:

14 That's the prejudice . . . It's the fact that memories fade, and now
15 we have a situation where we can't go back in time . . . and find
out exactly what they knew, the details of their observations, which
16 we don't have and, of course, details help you with credibility, to
know what happened. So that's the prejudice, and it's significant."

17 Tr. of Proc., p. 9 (June 3, 2015).

18 The District Court approved and signed the DCRR on August 15, 2015, and filed the
19 DCRR on August 17, 2015, setting the Evidentiary Hearing for August 28, 2015.

20 **D. THE EVIDENTIARY HEARING**

21 The Evidentiary Hearing was conducted on August 28, 2015. Each side presented
22 opening statements. Plaintiff Jane Doe presented the following witnesses, who were subjected
23 to examination by both sides: John Bemis and Ken Webster (attorneys with Hall, Prangle,
24 Schooveld, LLC, counsel for Centennial). The following exhibits were admitted into
25 evidence: Plaintiff's exhibits 1, 1a-1n, 3-8, 10, 10a, and 11-19, 21-29, 30 (excerpt of
26 deposition of Carol Butler on June 19, 2015), 31 (excerpt of deposition of nurse Sumera on
27 May 15, 2015), 32 (excerpt of deposition of nurse Wolfe on May 5, 2015), 33 (excerpt of
28 deposition of Amy Blasing on July 28, 2015), and 34 (excerpt of deposition of Janet Callahan

1 on August 8, 2015; and Defendant Centennial's Exhs. A (Las Vegas Metropolitan Police
2 Department file supposedly received by Centennial's counsel on or about May 6, 2013); and B
3 (plaintiff's 15th Supplemental NRCP 16.1 Disclosure in the "RC" case). E.H. at 10:17-25.
4 Each side presented closing arguments. The entire Evidentiary Hearing took more than half a
5 day.

6 **III. UNDISPUTED FACTS**

7 **THE HIRING AND EMPLOYMENT OF MR. FARMER**

8 1. In May of 2008, Jane Doe was a patient at Centennial. For the purposes of the
9 undisputed facts that follow, the term "Centennial" shall refer to the hospital facility, as well
10 as the Defendant, as applicable.

11 2. In May of 2008, Centennial had a contractual agreement whereby American
12 Nursing Services ("ANS") would provide certain hospital staff, which included CNAs.

13 3. In May of 2008, Mr. Farmer was an agency CNA working at Centennial through
14 its agreement with ANS.

15 **FARMER'S ASSAULT AGAINST JANE DOE ON MAY 14, 2008**

16 4. On May 14, 2008, ANS sent Mr. Farmer to work at Centennial as a CNA.

17 5. On May 14, 2008, Centennial originally told Mr. Farmer to work in the
18 Emergency Room.

19 6. In May of 2008, Mr. Farmer wore an employee badge that had his name, ANS,
20 Centennial, and contract staff written on it.

21 7. At around 21:30 hours on May 14, 2008, while Farmer was working at
22 Centennial, Centennial staff re-directed Mr. Farmer from the Emergency Room to the sixth
23 floor to work.

24 8. On May 14, 2008, Jane Doe was on the sixth floor in Room 614 at Centennial.

25 9. On May 14, 2008, in the course and scope of his employment with ANS as a
26 CNA, and in the course and scope of working at Centennial, it was expected that Farmer
27 would enter patients' rooms on the sixth floor of Centennial as part of his tasks.

28 ...

1 10. In addition, Mr. Farmer was expected to give bed baths, clean up stool, clean up
2 urine, and check monitor leads when requested to do so by a nurse or doctor.

3 11. On May 14, 2008, Mr. Farmer entered Jane Doe's room, Room 614 at Centennial.

4 12. On May 14, 2008, having contact with a patient in the patient's room on the sixth
5 floor of Centennial was in the course and scope of Farmer's employment with ANS and
6 Centennial as a CNA.

7 13. Mr. Farmer had contact with Jane Doe in her room on the sixth floor of
8 Centennial.

9 14. On May 14, 2008, Jane Doe awoke to find Mr. Farmer pinching and rubbing her
10 nipples telling her that he was fixing her EKG monitor leads.

11 15. Mr. Farmer lifted up Jane Doe's hospital gown.

12 16. Mr. Farmer sexually assaulted Jane Doe by digitally penetrating her anus and
13 vagina against her will.

14 17. Mr. Farmer sexually assaulted Jane Doe by pinching and rubbing her nipples
15 against her will.

16 **FARMER'S ASSAULT OF MS. CAGNINA ON MAY 15 & 16, 2008**

17 18. The first criminal investigation of Mr. Farmer began from an incident involving
18 the patient Roxanne Cagnina at Centennial. The matter involving Mr. Farmer's sexual assault
19 against Ms. Cagnina, including the Centennial investigation, and the Cagnina lawsuit, is
20 referenced herein as the "Cagnina Case."

21 19. Ms. Cagnina accused Mr. Farmer of sexually assaulting her while she was a
22 patient at Centennial on May 15 and 16, 2008 -- beginning the day after Mr. Farmer assaulted
23 Jane Doe.

24 20. Centennial hired the firm Hall, Prangle, Schooveld, LLC (hereinafter "HPS") to
25 represent Centennial in the Cagnina Case on or about May 22, 2008. E.H. 9:57:15.

26 21. The HPS attorneys conducted an investigation of Mr. Farmer's conduct with
27 respect to Ms. Cagnina, including an interview of nurse Wolfe (around mid-June 2008), nurse
28 Murray (around mid-July 2008), and nurse Sumera (around mid-August). E.H. at 9:57. The

1 HPS attorneys contended at the Evidentiary Hearing that they had no knowledge at the times
2 of these interviews that Mr. Farmer had assaulted Jane Doe.

3 22. The HPS attorneys had interviewed nurse Murray because she was the nurse
4 assigned to attend to Ms. Cagnina at the time of the assault by Mr. Farmer. She had relevant
5 and material information about the facts and circumstances surrounding Mr. Farmer's contact
6 with Ms. Cagnina at the time of this assault.

7 23. Ms. Cagnina filed a Complaint in Case No. A570756 against Centennial and Mr.
8 Farmer on September 2, 2008, alleging claims of sexual assault, negligence, intentional
9 infliction of emotional distress, negligent misrepresentation, and false imprisonment.

10 **THE NURSE STATEMENTS TO THE POLICE**

11 24. Nurse Margaret Wolfe gave a statement to the LVMPD on May 30, 2008.
12 Plaintiff's Exh. 14 to Evidentiary Hearing. Ms. Wolfe told LVMPD about a conversation she
13 had with nurse Ray Sumera who, before the assault on Jane Doe, expressed concern that
14 Farmer was overly attentive to female patients and anxious to connect them to heart monitor
15 leads, and that Mr. Sumera had asked Wolfe to keep an eye on Farmer. Wolfe Police
16 Statement at 8. E.H. at 10:36-37.

17 25. Nurse Christine Murray, a Registered nurse at Centennial, gave a recorded
18 statement to LVMPD on June 13, 2008 regarding Mr. Farmer. Plaintiff's Exh. 13 to
19 Evidentiary Hearing. Ms. Murray told LVMPD that (a) Mr. Farmer would always ask if he
20 could help with heart leads (where female breasts would be exposed and possibly touched) (b)
21 Mr. Farmer was very attentive to and more helpful to female patients over male patients, and
22 that (c) an incident occurred where Mr. Farmer was working as a "sitter" for an elderly
23 woman, and the elderly woman was heard yelling: "Get outta here! I don't want you by me!"
24 Murray Police Statement LVMPD00180-181. Murray Depo. at p. 60. E.H. at 10:35-37.

25 **CENTENNIAL'S INVESTIGATION OF MR. FARMER**

26 26. Upon learning of the Cagnina allegations, Centennial began an "internal
27 investigation" handled by the "risk and quality management" department. Butler Depo. at
28 p. 120, lines 20-12.

1 27. Ms. Cagnina had been a patient at Centennial who alleged that Mr. Farmer
2 sexually assaulted her on May 16, 2008. Exh. 4. Centennial Incident Report dated May 16,
3 2008.

4 28. On the very day of Mr. Farmer's assault of Ms. Cagnina, the management and
5 staff of Centennial held a meeting to discuss the allegations; the following persons from
6 Centennial attended this meeting: the Centennial CEO, the CFO, the COO, the Risk Manager,
7 and possibly others. Depo. of Pullarkat at pp. 35-36 (8/7/15) (Exh. 23). Depo. of Callihan at
8 pp. 15-20) (8/18/15) (Exh. 25).

9 29. After the Cagnina incident became public, Plaintiff Jane Doe reported Mr.
10 Farmer's sexual assault against her.

11 30. Nurse Margaret Wolfe gave a statement to Metro about Mr. Farmer on May 30,
12 2008. *See* Wolf Statement to Metro. In the Statement, nurse Wolfe disclosed that Mr. Farmer
13 was overly attentive to female patients. *Id.*

14 31. The Chief of Nursing, Carol Butler, learned about nurse Murray's Statement to
15 LVMPD, received a copy of the Statement, and discussed it with nurse Murray and others
16 shortly after the Farmer incidents. Murray Depo. at pp. 60-61.

17 32. Nurse Sumera met with Centennial staff and a Centennial lawyer about Mr.
18 Farmer sometime shortly after the sexual misconduct of Mr. Farmer was exposed. Sumera
19 Depo. at pp. 31-37.

20 33. The Centennial Head of the Emergency Room, Amy Blasing (a.k.a. Amy Bochek)
21 knew, before August 1, 2008, that nurse Wolfe had reported that nurse Sumera had expressed
22 concerns that Mr. Farmer was being "overly attentive" to female patients. Wolfe Depo. at
23 pp. 41-42; Butler Depo. at p. 114; Blasing Depo. at pp. 28-35, 40, 99-103. Ms. Blasing
24 testified that "We were made aware that Margaret [Wolfe] had expressed concerns." Blasing
25 Depo. at p. 33. Ms. Blasing also knew that nurse Wolfe has spoken with the police: "Q. In
26 fact, my understanding is that you became aware that a - - that Margaret had spoken with the
27 police about the situation. Is that right? A. That sounds familiar." Blasing Depo. at
28 pp. 33-34. Ms. Blasing further admitted: "[S]omehow it got back to us that Margaret [Wolfe]

1 had shared concerns with law enforcement ["between May and August"]. Blasing Depo. at
2 p. 38.

3 34. Ms. Blasing admitted in her deposition that she knew about Ms. Wolfe's concerns
4 from the Centennial internal investigation: "Margaret said that she expressed concerns that
5 Steven Farmer seemed to seek out duties with females and was overeager and that she felt
6 uncomfortable." Blasing Depo. at pp. 36-37.

7 35. Ms. Butler met with nurse Sumera and Amy Blasing shortly after the incident and
8 before August 2008 to discuss Mr. Farmer. Blasing Depo. at pp. 28-33.

9 36. Ms. Butler became aware of the Wolfe Statement sometime before August 1,
10 2008. Butler Depo. at pp. 113-115, 119 ("Q. By August 1 of 2008, you knew she had made a
11 statement? A. Sure."); Blasing Depo. at pp. 28-33.

12 37. It is undisputed that the Chief of Nursing of Centennial, Carol Butler, had read the
13 Murray Police Statement shortly after nurse Murray had given the Police Statement, and she
14 discussed the substance of the Police Statement with nurse Murray and others. Murray Depo.
15 at p. 61.

16 38. Centennial's counsel has admitted that he was "aware that some statements were
17 given by [your] nursing staff" "prior to 2009." Tr. of Proc., p. 11, lines 12-17 (June 3, 2015).

18 39. Centennial's counsel further confirmed at the Evidentiary Hearing that Centennial
19 became aware that nurses Murray and Wolfe had gone to the police and gave statements.
20 E.H. at 9:53.

21 **THE JANE DOE LAWSUIT, AND DISCOVERY THEREIN**

22 40. Plaintiff filed her lawsuit in this action on July 23, 2009. The matter involving
23 Mr. Farmer's sexual assault of Jane Doe, and the civil lawsuit resulting therefrom, are
24 referenced herein as the "Jane Doe Case."

25 41. Centennial hired the HPS firm to represent Centennial in the Jane Doe Case on or
26 about August 3, 2009. E.H. at 9:58:40. The HPS attorneys contended at the Evidentiary
27 Hearing that they did not re-interview nurses Murray, Wolfe, or Sumera about the Jane Doe
28 Case.

1 42. Plaintiff filed its Notice of Early Case Conference ("ECC") on October 5, 2009,
2 setting the time for the ECC on November 6, 2009. Counsel for the parties hereto, Plaintiff
3 Jane Doe and defendants Centennial, ANS, and Mr. Farmer, attended the ECC on
4 November 6, 2009.

5 43. Defendant Centennial filed its Initial list of Witnesses and Documents on
6 November 24, 2009. Centennial's initial NRCP 16.1 disclosure failed to identify nurse Wolfe,
7 nurse Murray, or nurse Sumera as persons with knowledge of relevant facts. Furthermore,
8 Centennial's initial NRCP 16.1 disclosure failed to disclose the existence of the Murray Police
9 Statement, or the Wolfe Police Statement.

10 44. The parties filed a Joint Case Conference Report ("JCCR") on December 9, 2009.
11 As evident by this JCCR, Centennial failed to produce or identify Police Statements of nurse
12 Murray or nurse Wolfe. Centennial also failed to identify nurses Murray, Wolfe, or Sumera as
13 persons with knowledge.

14 45. Defendant Farmer filed a Motion for Protective Order on March 3, 2010, which
15 the Discovery Commissioner granted on April 16, 2010. This Protective Order prohibited
16 disclosure of documents protected by the Protective Order issued in the Cagnina Case. *See*
17 Minutes 4-16-10; DCRR 9-15-9 (Cagnina Case).

18 46. This Protective Order in the Cagnina Case did not prohibit Centennial from
19 producing the Police Statements to Jane Doe; did not prohibit Centennial from disclosing the
20 existence of the Police Statements; and did not prohibit Centennial from identifying the nurses
21 who gave the statements. *See* DCRR in Case No. A570756 (9-15-09).

22 47. For more than five and one-half (5 1/2) years, from November 24, 2009, through
23 and including the date of the Evidentiary Hearing (August 28, 2015), Centennial never
24 disclosed in any NRCP 16.1 disclosure that nurses Murray or Wolfe had given Police
25 Statements regarding Mr. Farmer's conduct. For more than five and one-half (5 1/2) years,
26 through and including the date of the Evidentiary Hearing, Centennial never disclosed in any
27 NRCP 16.1 disclosure that nurses Wolfe or Sumera had knowledge of relevant facts in this
28 action. *See* Plaintiff's Exhs. 1, and 1a-1j to Evidentiary Hearing. As for nurse Murray,

1 Defendant Centennial made no mention of her in any NRCP 16.1 disclosure in 2009, 2010,
2 2011, 2012, 2013, or 2014. In a NRCP 16.1 disclosure on April 22, 2015, Centennial merely
3 noted that nurse Murray had mentioned "the alleged incident with the elderly patient to which
4 nurse Murray referred in her deposition testimony." But Centennial still failed to designate
5 nurse Murray as a person with knowledge, and failed to give notice that nurse Murray had
6 expressed concern about Mr. Farmer being more willing to help female patients, and failed to
7 mention that nurse Murray had given a police Statement about Mr. Farmer.

8 48. Plaintiff Jane Doe had listed nurse Murray as a witness in January 2014; however,
9 Plaintiff had no way of knowing at that time the expected testimony of nurse Murray, or her
10 connection with the allegations against Mr. Farmer. (See State's Eighth Supp. Wit. List;
11 Plaintiff's NRCP 16.1 Witness List of January 29, 2014; Affidavit of Murdock submitted with
12 Plaintiff's Evidentiary Hearing brief). Plaintiff had merely designated nurse Murray as a
13 witness because she had been designated as a witness Mr. Farmer's criminal case.

14 **CENTENNIAL'S ATTORNEYS' RECEIPT OF THE POLICE STATEMENTS**

15 49. Prior to the Evidentiary Hearing, Defendant Centennial's attorneys admitted that
16 they received nurse Wolfe's and nurse Murray's Metro Statements on **May 6, 2013**. See
17 Centennial's Objection to the DCRR at p. 5-7 (7/30/15). The paragraphs below summarize
18 Centennials' various and changing positions on when it received the Statements.

19 **CENTENNIAL'S RECEIPT OF MURRAY POLICE STATEMENT**

20 50. At the Evidentiary Hearing, both sides presented evidence that proved that
21 Centennial's counsel, Mr. Bemis, had asked the Deputy Public Defender ("DPD")
22 representing Mr. Farmer in the criminal action, Amy Feliciano, to provide him with all of the
23 files pertaining to Mr. Farmer, including the Police Statements. Exh 10, 10a. at PD00055-58;
24 75-81. Ms. Feliciano specifically agreed to provide Mr. Bemis with the "voluntary statements
25 to the police." Exh 10 at PD00079 (Ms. Feliciano's emails dated January 22, 2013). The
26 correspondence between the DPD and Centennial's counsel suggests that the DPD anticipated
27 providing the Police Statements to Centennial's counsel the end of January 2013. Exhs. 10,
28 10a. Ms. Feliciano sent a letter to Mr. Bemis dated January 31, 2013, confirming that she

1 provided the "documents necessary for your review to assist with your consultation with us on
2 this case." Exh. 11 at PDD15C0073.

3 Plaintiff Jane Doe submitted a FOIA request to the PD demanding a copy of all records
4 that she had given to Centennial's counsel. In response thereto, Plaintiff received an Affidavit
5 from DPD Feliciano stating she was providing copies of all of the records that she believed
6 she had provided to Centennial's counsel around January 30, 2013. This Affidavit from Ms.
7 Feliciano was accompanied by the Murray Police Statement. These facts all tend to prove that
8 Centennial's attorney received the Murray Police Statement on or about January 30, 2013.

9 52. At the Evidentiary Hearing, Centennial's counsel denied that it received the
10 Murray Police Statement by January 30, 2013.

11 53. Instead, Centennial's counsel, in its Opening Statement, admitted that he received
12 the Murray Police Statement, and knew the "contents" of the Murray Police Statement, in
13 "May 2013." (E.H. at 9:49-50). Centennial's counsel also argued that it received the Murray
14 Police Statements in "May 2013" pursuant to a motion to compel in the "RC" case. E.H. at
15 9:56:01. Attorney Bemis testified that he knew there was a Murray Police Statement before
16 May 2013. E.H. at 11:02:10.

17 54. Attorney Bemis also testified that he had in his possession a CD audio recording
18 of the Murray Police Statement in February 2013 – although he says he never listened to it.
19 E.H. at 11:03-04. Attorney Bemis testified that his partner, Attorney Prangle, knew that Mr.
20 Bemis had received the Murray Statement in February 2013. *Id.*

21 55. Attorney Bemis re-confirmed that he had the audio file of the Murray Police
22 Statement in February 2013. E.H. at 11:11:40 and 11:13:45.

23 56. Based on the compelling evidence submitted at the Evidentiary Hearing, as well
24 as the pre-hearing admission of Centennial's counsel, the Court concludes that Centennial's
25 counsel received the Murray Police Statement on or before May 6, 2013.

26 **CENTENNIAL'S RECEIPT OF WOLFE POLICE STATEMENT**

27 57. At the sanction hearing before the Discovery Commissioner, the Discovery
28 Commissioner told Centennial's counsel, John Bemis, that there was a "significant" non-

1 disclosure problem unless he could provide "some information" that he did not know about
2 the Wolfe Police Statement at the time of Centennial's initial NRCP 16.1 disclosures. Tr. of
3 Proc. at p. 13 (June 3, 2015). Mr. Bemis told the Discovery Commissioner that there was a
4 "possibility" that he had the Wolfe Police Statement "at the time" – meaning prior to the
5 initial NRCP 16.1 disclosure (11/24/09). *Id.* at p. 18.

6 58. In its Opening Statement, Centennial's counsel admitted that he received the
7 Wolfe Police Statement, and knew its "contents" in "May 2013." E.H. at 9:49-50)

8 59. Attorney Bemis testified under oath that he received the Wolfe Police Statement
9 in May 2013. E.H. at 10:33-34. Mr. Bemis testified: "Q. Okay. Now, the information you
10 got from those police files that alerted you to the relevance of Murray, Wolf[e] and Samera,
11 were the police – were the actual statements of Margaret Wolf[e] and Kristine Murray, which
12 you had seen for the first time when you got the police file in May 2013, right? A. Correct."
13 E.H. at 10:35

14 60. Mr. Bemis confirmed that he reviewed the Wolfe Police Statement promptly after
15 receiving it in May 2013. E.H. at 10:35. ("Q. So it wasn't long... and would be fair to say, It
16 wasn't long after receiving the police file that you reviewed it and actually saw the statements
17 of Wolf and Murray. Would that be a fair statement? A. That would be a fair statement.").
18 E.H. at 10:35.

19 61. Attorney Bemis further confirmed under oath that he first became aware of the
20 Wolfe Police Statement in May 2013 when he received files from the Las Vegas Metropolitan
21 Police Department. E.H. at 11:24:10.

22 62. Centennial's counsel admitted that the Discovery Commissioner ordered
23 Centennial to produce the entire Farmer criminal file, including both the Murray and Wolfe
24 Police Statements on or about October 27, 2014. E.H. at 11:27. Centennial's counsel
25 acknowledged that it made a production of the Farmer criminal file (that it had received from
26 Metro) on October 27, 2014. E.H. at 11:27; Exh 16. While examining attorney Bemis, Jane
27 Doe's counsel represented that the October 27, 2014 production DID NOT include the Wolfe
28 Police Statement. When asked "why not," Mr. Bemis suggested, and seemed to speculate, that

1 Centennial did not have it. E.H. at 11:39. His story at this point changed. Earlier in his
2 testimony Mr. Bemis had admitted that he had actually reviewed the Wolfe "in relatively short
3 order" after receiving it in May 2013 from Metro. But later, when confronted with Jane Doe's
4 evidence that Centennial failed to produce the Wolfe Police Statement to Jane Doe on October
5 2014, Mr. Bemis contradicted himself and testified under oath that he never really saw the
6 Wolfe Police Statement before October 2014.

7 63. On cross-examination, Attorney Bemis explained why his testimony changed. He
8 said that during a break in the Evidentiary Hearing, he examined the files that he received
9 from the Las Vegas Metropolitan Police Department (Exhibit "A"), and the Wolfe Police
10 Statement was not there. Attorney Bemis further explained that Jane Doe's Exhibit 29
11 (Centennial's 7th Supplemental NRCP 16.1 Disclosure to Jane Doe on October 27, 2014) is
12 supposed to be the exact same thing as Exhibit "A", and the Wolfe Statement is not there
13 either. According to Mr. Bemis, this all confirms that his earlier testimony that he received
14 the Wolfe Police statement from Metro in May 2013 was wrong. But none of this explains
15 why Mr. Bemis testified under oath that he had reviewed the Wolfe Police Statement in
16 "relatively short order" after getting in in May 2013, and then testifying under oath that he
17 never saw the Wolfe Police Statement before October 2014.

18 64. Finally, attorney Bemis testified that he received the Wolfe Police Statement
19 sometime before the deposition of Nurse Wolfe on May 5, 2015, but he did not know when he
20 had received it.

21 65. Here is a summary of the various positions of Centennial's counsel on when it
22 received the Wolfe Police Statement:

- 23 • "Possibly" before November 24, 2009.
- 24 • On May 6, 2013.
- 25 • Sometime in May, 2013.
- 26 • Maybe sometime after October 2014; or
- 27 • Sometime prior to May 5, 2015.

28

1 66. Having considered and weighed the evidence, the Court is persuaded that
2 Centennial's counsel received the Wolfe Police Statement in or before May, 2013 –
3 Attorney Bemis may have been confused on HOW he received the Wolfe Police Statement,
4 but he was clear in his early testimony on WHEN he received it – on or before May 6, 2013.
5 E.H. at 10:33-34; 11:24:10. Mr. Bemis contradicted himself on WHETHER he REVIEWED
6 the Wolfe Police Statement prior to October 2014 – but whether he reviewed it or not, that
7 does not change his testimony that he had the Wolfe Police Statement in his POSSESSION on
8 or before May 6, 2013.

9 67. It bears repeating here that it is undisputed that Centennial's management knew
10 about the existence of the Wolfe Police Statement and Murray Police Statement by August
11 2008. Centennial's knowledge is imputed to its attorneys. Thus the HPS attorneys had
12 constructive knowledge as early as August 2009 (before Centennial's initial NRCP 16.1
13 disclosure in the Jane Doe Case) about the Murray and Wolfe Police Statements.

14 **PLAINTIFF'S RECEIPT OF THE POLICE STATEMENTS, AND**
15 **SUBSEQUENT DEPOSITIONS**

16 68. Plaintiff received the Murray Police Statement for the first time in October 2014.
17 E.H. at 9:27:50; 11:34:15; 11:38:05; Exh. 29.

18 69. Plaintiff received the Wolfe Police Statement for the first time in January 2015.
19 E.H. at 9:27:58.

20 70. Plaintiff took the deposition of Christine Murray in this action on January 8, 2015.

21 71. Plaintiff took the deposition of Renato Sumera in this action on May 1, 2015.

22 72. Plaintiff took the deposition of Margaret Wolfe in this action on May 5, 2015.

23 73. Plaintiff took the deposition of Amy Blasing in this action on July 28, 2015.

24 74. Plaintiff took the deposition of Janet Callahan in this action on August 8, 2015.

25 **THE PROTECTIVE ORDER IN THE CAGNINA CASE**

26 75. On April 3, 2013 the Discovery Commissioner issued an oral Protective Order in
27 the Cagnina Case providing that "All discovery concerning the Criminal Action is subject to
28 the Protective Order previously entered on September 17, 2009, which remains in full force

1 and effect; all Las Vegas Metropolitan Police Department depositions and transcripts; and Mr.
2 Farmer's deposition and transcript must be kept under seal; and all documents relating to the
3 Criminal Action must be kept as confidential. The Discovery Commissioner's Report and
4 Recommendation relating thereto was entered as an Order of the Court on May 3, 2013. (See
5 Notice of Entry of Order) (Case No. A570756, May 6, 2013).

6 76. The Discovery Commissioner issued an oral recommendation lifting the
7 Protective Order on October 27, 2014. The written Discovery Commissioner recommendation
8 was issued on November 6, 2014, and the Order of the Court was entered and served on
9 November 14, 2014.

10 **CENTENNIALS'S REPEATED IMPROPER DENIALS OF EXISTENCE OF**
11 **ANY POTENTIAL EVIDENCE REGARDING FARMER**

12 77. On October 14, 2014, Centennial filed and served an opposition to Plaintiff's
13 Motion for Summary Judgment making the following statement: "[T]here were **absolutely no**
14 **known prior acts** by Mr. Farmer that could **potentially put Centennial on notice** that Mr.
15 Farmer would assault a patient." (Centennial Opposition to Motion For Summary Judgment at
16 p. 9) (emphasis added).

17 78. In a brief filed with the Nevada Supreme Court on April 29, 2015, Centennial
18 incorrectly represented that it had not withheld any relevant evidence. Petitioners Valley
19 Health System, LLC [] Petition for Writ of Mandamus and/or Writ of Prohibition, pp. 14-15
20 (April 29, 2015) (No. 67886). Centennial stated: "[T]here were no known prior acts or any
21 other circumstances that could have put Centennial on notice that Farmer would sexually
22 assault Ms. Doe." *Id.*

23 79. In its Objection to Discovery Commissioner's Report and Recommendation, filed
24 July 30, 2015, Centennial argued that "Defendants did not have knowledge that these persons
25 [nurses Wolfe, Sumera, and Murray] had information relevant to this Plaintiff's claims (or
26 knowledge of the substance of either nurse Wolfe's or nurse Murray's 2008 statements to the
27 LVMPD) until after they received a copy of Farmer's police file in May 2013). See
28 Centennial's Objection at pp 3-4 (filed July 30, 2015). This statement is false.

1 80. The undisputed facts, as summarized above, are that Centennial had knowledge,
2 before August 2008, that nurses Murray, Wolfe and Sumera had all expressed concerns or had
3 discussions regarding Mr. Farmer being overly attentive to female patients, that nurse Murray
4 had recounted the incident about the elderly lady who yelled at Mr. Farmer to "get out," and
5 that nurse Murray and nurse Wolfe had given Police Statements about Mr. Farmer. Any
6 reasonable person could reach the conclusion that this information is certainly relevant to the
7 issue of whether Centennial had notice of Mr. Farmer's dangerous propensities. Centennial's
8 statement that there were "absolutely no known prior acts" of Mr. Farmer to possibly put them
9 on notice is a statement that goes far beyond the bounds of zealous advocacy, and
10 demonstrates an intent to conceal relevant evidence.

11 **FALSE DISCOVERY RESPONSES BY CENTENNIAL**

12 81. In Centennial's Objection to the DCRR, at pp 6-7, Centennial's attorneys wrote:
13 "Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had
14 spoken with the police but they neither attended nor were privy to the substance of those
15 interviews/statements." This is false. As stated in the above statements of undisputed fact,
16 before August 2008, Centennial management had discussed the Police Statement given by
17 nurses Murray and Wolfe.

18 82. In Centennial's Objection to the DCCR, at p. 7, Centennial states: "Upon
19 obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that
20 nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's
21 claims. . . . The Hospital Defendants did not willfully withhold any information, much less
22 know that these witnesses had information relevant to the instant Plaintiff's claims until May
23 2013 at the earliest." These statements are false. As stated in the above statements of
24 undisputed facts, Centennial had conducted an internal investigation and absolutely learned
25 that nurses Wolfe, Murray, and Sumera ALL had information relevant to the issue of
26 Centennial's knowledge of Mr. Farmer's possibly dangerous proclivities. Perhaps the
27 attorneys for the Defendants did not know about the nurses, but their client definitely knew.

28 ...

1 83. Plaintiff asked Defendant Centennial by Interrogatory no. 18 to disclose "when
2 you received LVMPD Statement of Margaret Wolfe." On June 12, 2015, Defendant
3 Centennial objected and further stated: "Without waiving said Objection, this Answering
4 Defendant has only learned of the LVMPD Statement of Margaret Wolfe through counsel."
5 Centennial's Risk Analyst, Amanda Bell, signed a Verification swearing upon oath to the
6 accuracy of this response. However, Ms. Bell verified a false statement. As indicated above,
7 Centennial knew "of" the Wolfe Police Statement by August, 2009.

8 84. Plaintiff then asked Defendant Centennial by Interrogatory no. 19 to disclose
9 "when you first became aware that Margaret Wolfe had spoken with LVMPD regarding
10 Steven Farmer." Ms. Bell repeated the same response under oath. Again, Ms. Bell verified a
11 false statement.

12 85. Plaintiff also asked, by Interrogatory no. 17, for Defendant Centennial to disclose
13 all "persons present at the meeting between Renato Sumera and Centennial Hills Hospital after
14 Farmer was arrested." Defendant Centennial, through the sworn response of Ms. Bell,
15 responded: "Object. This Interrogatory is irrelevant. Counsel of record met with Mr. Sumera
16 following Mr. Farmer's arrest. Former Centennial Hills Hospital Risk Manager, Janet
17 Callihan, and her staff provided introduction and left the meeting prior to any substantive
18 discussion." Plaintiff was entitled to the requested information because the memories of
19 Sumera and the others had faded regarding persons involved in the internal investigation.
20 Centennial had an opportunity to help alleviate some of the prejudice they had inflicted upon
21 Plaintiff, but choose not to do so.

22 **FARMER'S CRIMINAL CONVICTION**

23 86. On May 30, 2014, Farmer was convicted in the Eighth Judicial District Court,
24 Clark County, Nevada, in Case Number 08C245739, as follows: Count 10 of **Sexual Assault**
25 (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital penetration, by
26 inserting his finger(s) into the anal opening of Jane Doe, against her will or under conditions
27 in which Farmer knew, or should have known, that Jane Doe was mentally or physically
28 incapable of resisting or understanding the nature of Farmer's conduct; Count 11 of **Open or**

1 **Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or
2 rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s); Count 12 of **Sexual**
3 **Assault** (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital
4 penetration, by inserting his finger(s) into the genital opening of Jane Doe, against her will or
5 under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or
6 physically incapable of resisting or understanding the nature of Farmer's conduct; Count 13 of
7 **Open or Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching
8 and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s)
9 and/or finger(s). Count 14 of **Open or Gross Lewdness** (Gross Misdemeanor) in violation of
10 NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
11 Jane Doe with his hand(s) and/or finger(s); and Count 15 of **Indecent Exposure** (Gross
12 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane
13 Doe to look at her genital opening and/or anal opening and/or breast(s).

14 **IV. STANDARD FOR AWARD OF SANCTIONS**

15 Centennial had a duty under NRCP 16.1 to timely disclose a list of all persons known
16 to have relevant knowledge relating to the claims and defenses alleged in this action. The
17 initial NRCP 16.1 disclosure was due in November 2009. Centennial filed its initial
18 disclosure on November 24, 2009. By this deficient disclosure, Centennial failed to comply
19 with its NRCP 16.1 obligations.

20 Nevada law provides that the remedy for a party's disclosure obligations under
21 NRCP 16.1 include the sanctions listed in NRCP 37. Pursuant to NRCP 37, the Court has the
22 discretion to impose any of the following sanctions that may be warranted in appropriate
23 circumstances:

24 (2) **Sanctions—Party.** If a party or an officer, director, or
25 managing agent of a party or a person designated under Rule
26 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
27 order to provide or permit discovery, including an order made
28 under subdivision (a) of this rule or Rule 35, or if a party fails to
obey an order entered under Rules 16, 16.1, and 16.2, the court in
which the action is pending may make such orders in regard to the
failure as are just, and among others the following:

1 (A) An order that the matters regarding which the order was made
2 or any other designated facts shall be taken to be established for
the purposes of the action in accordance with the claim of the party
obtaining the order;

3 (B) An order refusing to allow the disobedient party to support or
4 oppose designated claims or defenses, or prohibiting that party
from introducing designated matters in evidence;

5 (C) An order striking out pleadings or parts thereof, or staying
6 further proceedings until the order is obeyed, or dismissing the
action or proceeding or any part thereof, or rendering a judgment
by default against the disobedient party;

7 (D) In lieu of any of the foregoing orders or in addition thereto, an
8 order treating as a contempt of court the failure to obey any orders
except an order to submit to a physical or mental examination;

9 (E) Where a party has failed to comply with an order under Rule
10 35(a) requiring that party to produce another for examination, such
orders as are listed in subparagraphs (A), (B), and (C) of this
11 subdivision, unless the party failing to comply shows that that
party is unable to produce such person for examination.

12 In lieu of any of the foregoing orders or in addition thereto, the
13 court shall require the party failing to obey the order or the
attorney advising that party or both to pay the reasonable
14 expenses, including attorney's fees, caused by the failure, unless
the court finds that the failure was substantially justified or that
15 other circumstances make an award of expenses unjust.

16
17 Before the Court can strike a defendant's answer as a sanction, the Court is required to
18 conduct an Evidentiary Hearing. Plaintiff Jane Doe asked the Court to strike Centennial's
19 Answer as a sanction for its discovery violations. This Court determined that there were
20 sufficient grounds to proceed with the Evidentiary Hearing.

21 The Nevada Supreme Court has provided guidance for the Court on the factors to
22 consider at an Evidentiary Hearing before striking an answer as a sanction:

23 The factors a court may properly consider include, but are not
24 limited to, the **degree of willfulness** of the offending party, the
25 extent to which the non-offending party would be **prejudiced by a**
26 **lesser sanction**, the **severity** of the sanction of dismissal relative to
the severity of the discovery abuse, whether any **evidence has**
27 **been irreparably lost**, the feasibility and fairness of alternative,
28 **less severe sanctions**, such as an order deeming facts relating to
improperly withheld or destroyed evidence to be admitted by the
offending party, the **policy** favoring adjudication on the merits,
whether sanctions unfairly operate to penalize a party for the
misconduct of his or her attorney, and the **need to deter** both the
parties and future litigants from similar abuses.

1 *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93 (Nev. 1990) (emphasis added).

2 “Nevada jurisprudence does not follow the federal model of requiring progressive
3 sanctions against a party for failing to comply with a discovery order.” *Bahena v. Goodyear*
4 *Tire & Rubber Co.*, 245 P.3d 1182, 1184 (Nev. 2010). However, if a party requests a case
5 concluding sanction, the Court must conduct an evidentiary hearing.

6 **V. ANALYSIS**

7 **A. CENTENNIAL CONCEALED EVIDENCE ABOUT THE NURSES**

8 Centennial’s failure to comply with NRCP 16.1 was not just a minor or technical non-
9 compliance. Centennial’s failure to comply with its NRCP 16.1 obligations was material,
10 substantial, and extremely prejudicial to Plaintiff Jane Doe. Centennial left out major
11 witnesses and major documents from its NRCP 16.1 disclosure. Moreover, Centennial’s
12 failure to comply with NRCP 16.1 was repetitive, and extended over a lengthy, multiple-year
13 time period.

14 **B. CENTENNIAL’S “PROTECTIVE ORDER” DEFENSE LACKS MERIT**

15 Centennial contends that it could not produce the Police Statements or disclose nurses
16 Murray, Wolfe, and Sumera, because Centennial was subject to a Protective Order in the
17 Cagnina Case. Centennial’s argument lacks merit for several reasons:

- 18 • The Protective Order did not prohibit Centennial from submitting to Plaintiff a
19 privilege log listing the Police Statements and identifying the privilege claimed.
20 Centennial understood the importance of preparing a privilege log for relevant
21 documents that it withheld. Centennial’s supplemental NRCP 16.1 disclosures
22 contained privilege logs, but Centennial elected not to include the Police
23 Statements in any of its privilege logs.
- 24 • The Protective Order did not prohibit Centennial from disclosing the existence of
25 the Murray Police Statement or the Wolfe Police Statement. Centennial could have
26 and should have disclosed the existence of the Police Statements in its initial
27 NRCP 16.1 disclosure, and its supplemental disclosures.

28 . . .

- As admitted by attorney Bemis (E.H. at 10:41), the Protective Order did not prohibit Centennial from identifying the names of nurses Murray, Wolfe, and Sumera, as persons with knowledge of relevant facts, nor did the Protective Order prohibit Centennial from identifying the general knowledge that each of these nurses possessed. **Attorney Bemis admitted that Centennial's failure to disclose nurses Murray, Wolfe, and Sumera, was a violation of NRCP 16.1. (E.H. at 10:42:20).**
- Centennial suggests it acted in good faith by seeking to lift the September 17, 2009 Protective Order. However, Centennial did not move to lift the Protective Order until October 2014. Centennial had a duty to identify the Police Statements in its initial NRCP 16.1 disclosure on November 24, 2009. If Centennial truly felt limited in disclosing the mere existence of the Police Statements due to the Protective Order, Centennial would have sought to lift the Protective Order in November 2009, rather than waiting almost five (5) years, until October of 2014, to do so.

C. CENTENNIAL'S ARGUMENT - THAT THE NURSE EVIDENCE WAS ONLY RELEVANT TO THE CAGNINA CASE - IS FRIVOLOUS

Centennial argues, in various iterations, that it had a good faith believe the early evidence it learned about Mr. Farmer only related to the Cagnina case. Centennial notes that nurse Murray was the nurse assigned to Mr. Farmer on the day Ms. Cagnina reported Mr. Farmer's sexual assault. This argument is logically flawed. Once Jane Doe filed her lawsuit on July 23, 2009, a major issue in the Jane Doe case was whether Centennial had notice that Mr. Farmer posed a risk of committing a sexual assault on a female patient at Centennial. If Mr. Farmer was overly attentive to female patients at Centennial, and liked to assist in monitor placements so he could lift their gowns and see and/or touch their breasts, then that information was undeniably relevant to the Jane Doe Case.

The fact that Centennial failed to make the connection is Centennial's own fault. As soon as Centennial discovered the information, they had a duty to disclose it. It is undisputed

1 that Centennial discovered the information by August 1, 2008 – long before Jane Doe filed her
2 lawsuit. Therefore, Centennial had a duty to disclose the nurses and the existence of their
3 police statements in the very first NRCP 16.1 production in 2008. This Court finds that there
4 is no valid excuse for Centennial's failure to timely disclose the nurses and existence of the
5 Police Statements.

6 **B. THE SANCTION FACTORS**

7 **1. Degree of Willfulness**

8 This Court finds that there is clear and convincing evidence that Centennial willfully
9 and intentionally concealed the relevance of nurses Murray, Wolfe, and Sumera, and the
10 existence of the Police Statements with an intent to harm and unfairly prejudice Plaintiff. This
11 inescapable conclusion is derived from the following evidence:

- 12 • Centennial had knowledge prior to August 2009 of the very relevant information
13 possessed by nurses Murray, Wolfe, and Sumera.
- 14 • Centennial's counsel in the Cagnina Case is the same counsel that began
15 representing Centennial in the Jane Doe Case by August 2009.
- 16 • Centennial failed to timely disclose nurses Murray, Wolfe, and Sumera in its initial
17 and supplemental NRCP 16.1 disclosures.
- 18 • Centennial failed to disclose the mere existence of the Police Statements in its
19 initial and supplemental NRCP 16.1 disclosures.
- 20 • Centennial changed its story several times about when it discovered the
21 significance of the information known by nurses Murray, Wolfe, and Sumera.
- 22 • Centennial changed its position several times about when it received the Wolfe
23 Police statement.
- 24 • Centennial provided false discovery responses to Jane Doe, and incorrectly
25 represented to this Court that it had not withheld any relevant evidence. Centennial
26 and its counsel told this Court in October of 2014, a minimum of eighteen (18)
27 months after admitting they had the criminal file with the names and statements,
28 that "In the instant situation, there were absolutely no known prior acts by Mr.

1 Farmer that could potentially put Centennial on notice that Mr. Farmer would
2 assault a patient." CH. Opp. to MSJ at 9. Rule 3.3 of the Nevada Rules of
3 Professional Conduct states "(a) A lawyer shall not knowingly: (1) Make a false
4 statement of fact or law to a tribunal by the lawyer." Centennial's lawyers violated
5 this Rule.

- 6 • Centennial incorrectly represented to the Nevada Supreme Court that it had not
7 withheld any relevant evidence. Centennial stated: "there were no known prior
8 acts or any other circumstances that could have put Centennial on notice that
9 Farmer would sexually assault Ms. Doe." Writ at 14-15. Again, Centennial's
10 lawyers violated Rule 3.3.
- 11 • Centennial's argument that it withheld the Police Statements due to the
12 September 17, 2009 Protective Order was a false, pre-textual excuse.
- 13 • Centennial unreasonably delayed in seeking to lift the Protective Order.
- 14 • Centennial unreasonably failed to identify the Police Statements in a Privilege log.
- 15 • Centennial understood that, through the passage of time, the memories of key
16 witnesses would fade.
- 17 • With the passage of time, the memories of key witnesses did, in fact, fade.
- 18 • Centennial's argument - that it failed to appreciate the importance of the
19 information known by the nurses because the HPS firm interviewed the nurses
20 before it started working on the Jane Doe Case - is frivolous.
- 21 • Centennial provided false discovery responses under oath, designed to mislead this
22 Court.
- 23 • Centennial's counsel admitted that it had a duty under NRCP 16.1 to review the
24 recorded statement of Murray as soon as it received it to ascertain whether the
25 Statement contained information relevant to the Jane Doe case. E.H. 11:15:35.
- 26 • Centennial admitted that it violated NRCP 16 in failing to timely disclose the
27 names of nurses Murray, Wolfe, and Sumera, and to disclose their general
28 knowledge. E.H. 10:38, and 10:42:20

2. The Prejudice To Jane Doe By a Lesser Sanction

The prejudice to Plaintiff, as discussed below, is that memories have faded over time. When Plaintiff finally discovered the importance of nurses Murray, Wolfe, and Sumera to this case, years had passed and, understandably, their memories had extensively faded. That evidence cannot be retrieved. A remedy must be fashioned to help overcome the prejudice that Plaintiff has suffered at Centennial's hands. The lost evidence related directly to the issue whether Centennial had notice that Mr. Farmer posed a risk of sexual assault to a female patient. The lost evidence likely would have assisted Jane Doe in proving that Centennial had such notice, that Centennial had a duty to protect Jane Doe from the danger posed by Mr. Farmer, that Centennial breached its duty to protect Jane Doe, and also that Centennial was liable to Jane Doe for Farmer's misconduct on a theory of respondeat superior. The evidence that Centennial concealed, and the probable fruits of such concealed evidence, would have assisted Jane Doe in establishing Centennial's liability, and in rebutting Centennial's defenses to liability.

Any lesser sanction would be wholly insufficient to mitigate the prejudice to Jane Doe caused by Centennial. A possible lesser sanction would be to impose an evidentiary presumption that it was reasonably foreseeable to Centennial that Mr. Farmer would sexually assault Jane Doe. But an evidentiary presumption would not bar Centennial from presenting evidence to try to rebut such presumption. Centennial would then be able to benefit from its conduct in hiding evidence. Moreover, an evidentiary presumption would create a huge logistical problem at trial. Further, any evidentiary presumption would apply against defendant Centennial, but not against ANS. This would undoubtedly confuse the jury.

A possible way to avoid such unnecessary confusion would be to bifurcate trial. If the Court were to bifurcate Jane Doe's claims against Centennial from Jane Doe's claims against ANS, however, this would impose undue burden and expense on Jane Doe to conduct essentially a second trial. It would be extremely unfair to impose a burden of a second trial on Plaintiff to mitigate the prejudice caused by Centennial.

1 This Court has already imposed a monetary sanction against Centennial. A stronger
2 monetary sanction would not redress the prejudice to Plaintiff.

3 Finally, disqualifying Centennial's counsel would not eliminate the prejudice to
4 Plaintiff.

5 **3. The Severity Of The Sanction Of Dismissal Relative To The Severity**
6 **Of The Discovery Abuse**

7 The discovery abuse was indeed extreme, and warrants a very severe sanction against
8 Defendant Centennial. Centennial utterly failed to honor its duty to disclose witnesses that it
9 knew were critical witnesses as early as august 2008 -- before this lawsuit was even filed.
10 Centennial also intentionally concealed the similarly critical police statements of nurses
11 Murray and Wolfe. Again, Centennial didn't miss its disclosure deadline by a mere few days
12 or even a few months; Centennial missed its deadline by more than five (5) years.

13 The sanction must be sufficiently severe. But the Court seeks not to impose a sanction
14 for the primary sake of punishment of Centennial. Rather the Court is primarily motivated to
15 impose a sanction that is no greater than necessary to undo the prejudice that Defendant
16 Centennial inflicted upon Jane Doe. Striking Centennial's Answer is appropriately severe in
17 light of Centennial's discovery abuses.

18 **4. Whether Evidence Has Been Irretrievably Lost**

19 Centennial's concealment of evidence has irreparably prejudiced Plaintiff Jane Doe,
20 because the evidence has been irretrievably lost. Centennial's delay in disclosing the nurses'
21 Police Statements has caused incurable and substantial prejudice to Plaintiff. The significant
22 passage of time has resulted in extensive fading of witness memories and loss of evidence of
23 the facts and circumstances discussed within the nurses' Police Statements, as follows:²

24 **NURSE MURRAY**

25 Nurse Murray suffered significant memory loss of relevant facts:

26 P.35-36 Nurse Murray recalled the incident where the lady yelled at Mr. Farmer
27 (who had been acting as sitter for her) to leave her alone, but she could not recall the room

28 ² The page numbers refer to the pages of each witness deposition transcript.

1 number, and she could not recall the attending nurse for that patient. If Plaintiff had been able
2 to obtain the room number, they could have tracked down this patient who had complained
3 about Mr. Farmer. Then Plaintiff could have learned the nature of the patient's undisputed
4 complaint against Mr. Farmer. Plaintiff could have discovered whether Mr. Farmer had
5 engaged in some sexual assault, and whether any other nurses attending to this lady had been
6 alerted to Mr. Farmer's improper conduct. All of this discovery was prevented because
7 Centennial concealed the existence of nurse Murray and the substance of her relevant
8 testimony.

9 P.43 Nurse Murray could not recall the specifics of what she told the police in
10 her statement without seeing the statement.

11 P.57 Nurse Murray could not recall the substance of her discussions with
12 Centennial staff about the complaint from the lady about Mr. Farmer.

13 P.58 Nurse Murray could not recall if she had a conversation with the nurse
14 about the "sitter" incident.

15 P.68 Nurse Murray recalled an incident when Mr. Farmer offered to place the
16 telemetry leads on a female patient, but she could not recall any specifics.

17 P.68 Nurse Murray could not recall if, during the time that she worked at
18 Centennial, CNAs were not allowed to apply telemetry leads without first being instructed to
19 do so by a nurse.

20 **RAY SUMERA**

21 Ray Sumera was a nurse working at Centennial on May 15, 2008, and is the person
22 whom nurse Wolfe reportedly heard say he was concerned about Mr. Farmer because he was
23 overly attentive to female patients. In his deposition, he indicated that his memory of this
24 conversation with nurse Wolfe had greatly faded:

25 P.75 Q: "Do you recall telling Ms. Wolfe that you were concerned about Mr.
26 Farmer because he was very anxious to connect and disconnect them from heart monitors,
27 which would require him to reach into their clothing?" A: "I don't remember any
28 ...

1 conversation." Q: "Okay. You're not saying it didn't happen, you're saying you just don't
2 remember, right?" A: "I don't remember."

3 P.78 Q: "Do you recall Ms. Wolfe telling you about an incident where Mr.
4 Farmer had exposed a female patient's breasts where he was allegedly checking monitor
5 placements?" A: "I don't remember."

6 P.77 Q: "And you told Margaret that you had talked to him [Mr. Farmer],
7 right?" A: "For a follow-up, I probably did tell Margaret that I talked to him." Q: "You just
8 don't have any memory of it?" A: "I don't have any memory." Q: "But you have no reason to
9 disagree with what she says here [in the police report], is that correct?" A: "Correct."

10 P.127 Q: "Were you the charge nurse on May 15th? A: "I don't know whether I
11 was in charge or not - - on what specific day."

12 P.138 A: "It's possible it [the conversation with nurse Wolfe about Mr. Farmer
13 being "overly attentive to female patients"] did occur, but I don't remember the exact
14 conversation."

15 **AMY BLASING**

16 The Centennial Head of the Emergency Room, Amy Blasing, was extensively involved
17 in investigating the allegations of nurse Sumera, Wolfe, and Murray, and their
18 communications with each other. She expressed a great loss of memory when confronted with
19 relevant and material questions at her deposition on July 28, 2015:

20 P. 29:13-20 She could not remember who she included in her internal discussions
21 about Mr. Farmer other than Ray Sumera, Margaret Wolfe, Karen Goodhart, and Darby
22 Curless.

23 P.30:19-24 She could not remember if she took any notes of her internal meeting
24 regarding Mr. Farmer because "It was several years ago."

25 P.32-33 She recalled having discussions with Carol Butler about her meeting with
26 Margaret Wolfe, but could not recall specifics.

27 P.33-34 She could not recall the specifics of what nurse Wolf said she had told the
28 police.

1 P.35 She recalls that she spoke with nurse Wolfe and nurse Sumera about their
2 different recollections about their concerns with Mr. Farmer, but she could not recall the
3 specifics.

4 P.40:18-22 She could not recall the first time that she spoke with counsel for
5 Centennial about Mr. Farmer's sexual assault against Ms. Cagnina.

6 P.90:12-18 She could not recall whether she had any other discussions about Mr.
7 Farmer besides the very limited information given regarding staff discussions, because: "It
8 just was a long time ago."

9 **CAROL BUTLER**

10 The Centennial Director of Nursing, Carol Butler, also had a significant memory loss
11 by the time of her deposition, on June 19, 2015:

12 P.75 She could not recall whether she had spoken with Ray Sumera.

13 P. 75-76 She believes she spoke with nurse Wolfe, but she was not certain, and she
14 also could not recall whether she took notes of her meeting with nurse Wolfe.

15 P.76 She admitted that if she had been asked questions about the Farmer
16 investigation five (5) years ago, events "certainly would have been fresher in her mind:

17 "Q. . . . If I asked you five years ago, you might have a better answer; right? Your
18 memory? A. Certainly."

19 P.87:2-13 She recalls the Centennial investigation concerned allegations that Mr.
20 Farmer had an "inappropriate contact in the E.D. and then again on the sixth floor," but she
21 could not recall "what" inappropriate contact was discussed.

22 P.87:17-22 She could not recall if her meetings regarding the Farmer investigation
23 included separate meeting with Centennial staff, or with all staff all together.

24 P.114:4-7 She could not recall if she ever talked to nurse Wolfe about her Metro
25 Statement.

26 P.121:10-16 She could not recall whether she notified the Centennial Risk Manager
27 that Amy Blasing brought to her attention that a nurse had expressed concerns about Mr.
28 Farmer.

1 P.130 She could not recall any of the conversations that she had with nurse
2 Wolfe about the Farmer investigation.

3 P.130 She could not recall any of the conversations that she had with nurse
4 Sumera about the Farmer investigation.

5 P.130:21-23 She admitted that her memory about conversation with nurses Wolfe and
6 Sumera would have been better five years earlier.

7 **JANET CALLIHAN**

8 Janet Callihan was the Administrative Director for Quality Outcomes for Centennial
9 beginning the summer of 2007 through the time of the Farmer incident. Her memory had
10 faded as to significant events:

11 P.22-37 She could not recall if she had ever met with Christine Murray, even
12 thought, as she acknowledged, nurse Murray would have prepared an incident report, and it
13 was Ms. Callihan's duty to review such reports. Also she did not recognize the names of Ray
14 Sumera or Margaret Wolfe.

15 **MARGARET WOLFE**

16 Nurse Margaret Wolfe also had significant memory loss due to the passage of time:

17 P.15 She could not recall whether she spoke to anybody at Centennial about her
18 statement to the police.

19 P.20&51 She could not recall any specifics of her discussion with Ray Sumera
20 about Mr. Farmer

21 P.27-28 She recalls that "all the nurses" were talking about concerns they had with
22 Mr. Farmer; but she could not remember who because "it was so long ago."

23 P.40 She could not recall whether she had any conversation with anybody at
24 Centennial about Mr. Farmer after she was terminated as a nurse from Centennial.

25 **SUMMARY**

26 The passage of time has clearly undermined, frustrated, and eliminated Plaintiff Jane
27 Doe's opportunity to gather relevant information in this litigation, as follows:

28 . . .

- 1 • In a case where the most critical issue is whether Centennial had knowledge
- 2 that Mr. Farmer might pose a risk of harm to female patients, Centennial
- 3 concealed the fact that nurse Sumera reported concerns that Mr. Farmer might
- 4 be a danger to female patients.
- 5 • Centennial concealed the fact that nurse Sumera had reported his concerns to
- 6 nurse Wolfe.
- 7 • In July 2008, according to nurse Wolfe, nurse Sumera had expressed concern
- 8 that Mr. Farmer was overly attentive to female patients. However, seven (7)
- 9 years later, nurse Sumera's recollection had changed, as well as his tenor of
- 10 remarks about Mr. Farmer.
- 11 • Jane Doe can no longer find out from nurses Murray, Wolfe, or Sumera, which
- 12 of the other nurses, staff, and management at Centennial were suspicious of Mr.
- 13 Farmer's conduct prior to May 14, 2008.
- 14 • If Centennial had complied with its disclosure obligations, Jane Doe could have
- 15 deposed nurses Murray, Wolfe, and Sumera in 2009 -- when their memories
- 16 were much more fresh regarding the facts and circumstances surrounding the
- 17 2008 events.
- 18 • If Jane Doe had taken the depositions of nurses Murray, Wolfe and Sumera in
- 19 2009, that would have led to the prompt depositions of Amy Blasing and Carol
- 20 Butler in 2009 -- before their memories faded as to critical "notice" issues.
- 21 • Centennial concealed the fact that nurse Wolfe reported the Sumera disclosure
- 22 to Centennial management.
- 23 • Centennial concealed the fact that nurse Wolfe provided a Police Statement to
- 24 Metro about Mr. Farmer.
- 25 • Centennial concealed the fact that nurse Murray provided a Police Statement to
- 26 Metro about Mr. Farmer.
- 27 • Centennial concealed the fact that it conducted an internal investigation
- 28 involving nurses Murray, Wolfe, and Sumera prior to August, 2008.

- 1 • Centennial concealed the fact that nurse Murray had some information about
2 the “crazy old lady” who yelled at Mr. Farmer to get out of her room.
3 Centennial argues that nurse Murray concluded that Mr. Farmer had not done
4 anything wrong. Centennial suggests that, if it had disclosed this incident and
5 Jane Doe had taken depositions pertaining to this incident, it would not have
6 yielded anything important. There are two problems with this argument. First,
7 nurse Murray did not testify that Mr. Farmer did not do anything wrong.
8 Second, if nurse Murray had testified years closer to the incident, she might
9 have remembered facts that could have led to the identity of this “crazy old
10 lady.” Then Jane Doe could have discovered what Mr. Farmer did to her, when
11 he did these things to her, and who had notice of such misconduct of Mr.
12 Farmer.
- 13 • Centennial concealed the fact that nurse Wolfe expressed concern that Mr.
14 Farmer had on one occasion lifted the gown of a female patient exposing her
15 breasts.
- 16 • Since Centennial concealed these facts, Plaintiff Jane Doe had no knowledge to
17 conduct discovery about these facts. As time passed, memories faded. By the
18 time Plaintiff Jane Doe received the metro statements, the memories of the
19 nurses and other witnesses had already faded. Centennial had accomplished its
20 objective.

21 Defendant Centennial contends that Plaintiff Jane Doe was not prejudiced by
22 Centennial’s failure to disclose nurses Wolfe, Murray, and Sumera because Plaintiff already
23 knew that these nurses “may have information relevant to the instant case” as early as May 13,
24 2010. Defendants Objection to Discovery Commissioner Report and Recommendation, at
25 p. 4 (7/30/15). Defendant Centennial fails to appreciate the huge difference between
26 discovering that a person “may” know something, and discovering the “something” that such
27 person may actually know. Plaintiff Jane Doe discovered the former but not the later.

28 ...

1 Defendant Centennial concealed the information that Centennial knew about the
2 criticality of the knowledge of nurses Wolfe, Murray and Sumera to this litigation.

3 Centennial contends that it is too speculative to assume that Jane Doe would have
4 deposed the witnesses earlier than they did if they had received the Police Statements at the
5 start of the case. Centennial notes that, prior to October 2014, Jane Doe had only deposed one
6 (1) of the NRCP 16.1 witnesses designated by Centennial. The Court has not verified that
7 fact. However, there are four main flaws with Centennial's argument. First, Centennial
8 concealed the important information known by nurses Murray, Wolfe, and Sumera -- so it is
9 understandable that Jane Doe was not in any hurry to depose the unimportant witnesses.
10 Second, Centennial is the party that created the need to consider when Jane Doe might have
11 taken the depositions of the key witnesses; so Centennial should not be allowed to benefit
12 from a problem it created. Third, once Jane Doe did obtain the information that Centennial
13 concealed, Jane Doe's attorneys aggressively pursued discovery related to such information.
14 This aggressive action is strong evidence that Jane Doe would have taken prompt depositions
15 earlier in the case if Centennial had complied with its discovery obligations. Fourth, as
16 acknowledged by attorney Bemis, many of the witnesses designated in Centennial's early
17 NRCP 16.1 witness lists DID NOT relate to the critical issue of foreseeability -- so there was
18 no big need for depositions of such persons. E.H. 10:45.

19 **5. Consideration of less-severe sanctions**

20 As discussed above, the Court has considered the possible sanctions less severe than
21 striking Centennial's answer.

22 The Discovery Commissioner already recommended the imposition of a modest
23 monetary sanction, which this Court has approved. This monetary sanction does serve as a
24 punishment of Centennial (and encouragement not to repeat its transgressions), but does
25 nothing to reverse or mitigate the prejudice that Centennial has inflicted upon Jane Doe.

26 The Court could impose a "rebuttable" presumption that Centennial had notice of Mr.
27 Farmer's dangerous propensities; but that would still leave Jane Doe at a disadvantage.

28 . . .

1 Centennial has caused the destruction of the evidence that Jane Doe could have used to
2 negate Centennial's rebuttal evidence.

3 The Court could preclude Centennial from offering any evidence that it DID NOT
4 have notice of Mr. Farmer's dangerous proclivities. But again this is insufficient. The Court
5 has already held in this case that Plaintiff Jane Doe has an initial burden of proving that it was
6 reasonably foreseeable to Centennial that Mr. Farmer posed a danger to female patients.
7 Centennial has caused the destruction of evidence that Jane Doe may have needed to satisfy its
8 initial burden. Thus it would not be an adequate remedy to merely prevent Centennial from
9 rebutting Jane Doe's evidence.

10 The Court has considered other possible lesser sanctions, and concludes that the only
11 reasonable sanction that sufficiently mitigates the harm caused by Centennial is to strike
12 Centennial's Answer.

13 **6. The policy favoring adjudication on the merits**

14 Centennial is the party that elected to hide evidence to prevent Jane Doe from
15 adjudicating its claims on the merits. Striking Centennial's Answer is the only way to undo
16 the prejudice that Centennial created. Centennial is still entitled to defend itself with regard to
17 damages. In sum, the Court merely mitigates the prejudice that Centennial caused, and
18 permits the parties to proceed with the remainder of the lawsuit in a fair and even manner.

19 **7. Whether the sanction would unfairly punish centennial for its lawyers'**
20 **misconduct**

21 The misconduct in this case is clearly that of Centennial, to an equal or greater extent
22 that its lawyers. Centennial knew that Murray had given a police statement, but failed to
23 provide such statement to its lawyers in this case. Centennial knew that nurses Murray,
24 Wolfe, and Sumera were critical witnesses in this case, and yet allowed their attorneys to
25 submit no less than Eight (8) NRCP 16.1 disclosures that omitted any reference to these
26 witnesses. One need not be trained in the law to appreciate that one's list of persons with
27 knowledge ought to have included critical witnesses such as these. Additionally, Centennial
28 provided verifications of the false discovery responses discussed herein.

1 **8. The need to deter sanctionable conduct**

2 A party who engages in misconduct must suffer reasonable consequences. No party
3 should be allowed to conceal evidence, and then suffer merely a monetary sanction, while
4 being allowed to reap the tactical benefit of the loss of that evidence. Litigants should be
5 entitled to have their cases adjudicated on their merits.

6 Centennial failed to disclose relevant evidence that it knew it had a duty to disclose,
7 caused extensive time to pass, and caused memories to fade. Centennial actions and inactions
8 have prevented a critical issue in this case from being tried on its merits. Centennial has
9 impaired the adversarial, and therefore must suffer the consequences of a sanction. The
10 narrowly-tailored sanction in this case is designed to mitigate the prejudice to Jane Doe that
11 Centennial caused, and deter future misconduct by Centennial.

12 **VI. CONCLUSION**

13 The Court finds that Defendant Centennial intentionally, and willfully, and with the
14 intent to unfairly prejudice and harm Plaintiff Jane Doe, concealed evidence regarding nurses
15 Wolfe, Murray, and Sumera, and those acts of concealment unfairly, significantly, and
16 irreparably prejudiced Plaintiff. As discussed above, the concealment has caused a great delay
17 in Plaintiff Jane Doe's ability to pursue relevant discovery. This delay has resulted in the loss
18 of memories of critical information. Centennial's acts of concealment have effectively
19 irreparably destroyed evidence.

20 The Court has determined the least stringent, narrowly-tailored, remedy available to
21 reverse the harm that Centennial caused to Plaintiff. This remedy, which the Court hereby
22 imposes, is as follows:

23 **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**
24 **Answer in this action such that liability is hereby established on Plaintiff's Jane Doe's**
25 **claims against Defendant Centennial for (a) negligent failure to maintain the premises in**
26 **a safe manner, and (b) *respondeat superior* liability for the sexual assault by Nurse**
27 **Farmer; but Centennial still shall be entitled to defend on the question of the nature and**
28 **quantum of damages for which it is liable.**

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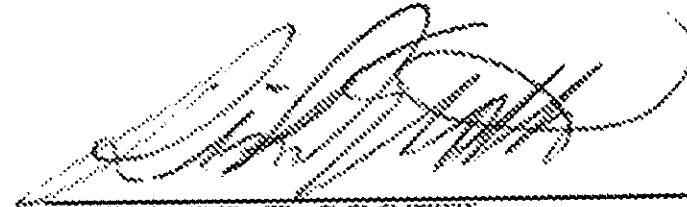
To implement this sanction, the Court further orders as follows:

- a. Plaintiff shall be permitted to explain to the jury that liability has been established against Defendant Centennial, and to further explain to the jury what that means;
- b. The Court shall submit a jury instruction to the jury regarding the establishment of liability as to Defendant Centennial;
- c. Defendant Centennial is precluded from introducing any evidence to show that it is not liable for the harm to Jane Doe caused by Mr. Farmer. Specifically, but not limited thereto, Defendant Centennial is precluded from introducing any evidence that it was not reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault against a patient at Centennial. Additionally, Centennial is precluded from arguing that it has any defense to liability for damages caused by Mr. Farmer to Jane Doe, on either the pled claims of negligence or *respondeat superior*; and
- d. the Court will set a Status Check by separate Order to discuss the manner of implementation of this Order to avoid any prejudice therefrom to defendant American Nursing Service, Inc.

Furthermore, the monetary sanctions recommended by the Discovery Commissioner, and imposed by Order of this Court on August 15, 2015, are hereby re-affirmed.

IT IS SO ORDERED.

DATED this 4th day of November, 2015.



RICHARD F. SCOTTI
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

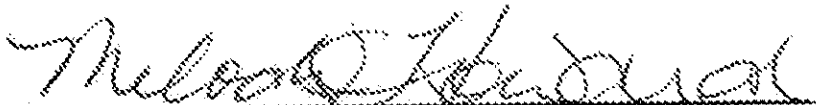
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CASE NO.

**IN THE
SUPREME COURT OF NEVADA**

**HALL PRANGLE & SCHOONVELD, LLC, MICHAEL PRANGLE,
ESQ., KENNETH M. WEBSTER, ESQ. AND JOHN F. BEMIS, ESQ.**

Petitioners,

vs.

**EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,**

Respondent,

-and-

**MISTY PETERSON, AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF JANE DOE,**

Real Party in Interest

District Court Case No.: A-09-595780-C

**PETITIONERS' APPENDIX TO
PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME VII of XVII**

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

VOLUME VII of XVII

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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TAB 22
PART TWO

1 because we couldn't produce that until the stay was
2 lifted in 2014.

3 And so should we whenever it was
4 that we got Wolfe statement disclosed the name?
5 Yes.

6 For purposes of what I'm here to
7 argue with you today, I'm prepared to accept that
8 that was May of 2013, even though I really don't
9 believe that was the day. I believe it was later.

10 So that then gets to the question of
11 prejudice. I mean, I think we all agree that based
12 on Commissioner Bulla's protective order we could
13 not have provided the statement to plaintiff.

14 So certainly Mr. Murdock or Mr.
15 Keach could have taken nurse Wolfe's deposition
16 then. Nurse Wolfe still had I think a decent memory
17 of what she said at that time.

18 It was really nurse Sumera who had
19 the memory problems when he was deposed in 2015. So
20 he was deposed earlier this year. So would nurse
21 Sumera's testimony -- memory have been better if he
22 was deposed sometime in 2013? I don't know. I
23 agree with Mr. Keach, it's speculation for me to
24 say.

25 But what I would say is that Mr.

1 Sumera -- or nurse Sumera did have a memory of what
2 he believed of Mr. Farmer. And I know he didn't
3 recall the, the -- telling nurse Wolfe the things
4 that nurse Wolfe attributed to him.

5 THE COURT: Uh-huh.

6 MR. PRANGLE: But what he did remember
7 was that I didn't believe that Mr. Farmer favored
8 female patients, and I didn't have the impression
9 that Mr. Farmer volunteered to place leads on female
10 patients. So he still had a memory of that. So
11 that was still there.

12 As to nurse Murray, let's not forget
13 that the sitter incident that nurse Murray talks
14 about, she came to the conclusion that Mr. Farmer
15 didn't do anything wrong.

16 So to me it's just wild speculation
17 to say that even if we had known about it that day
18 that others would have a memory that Farmer did
19 something wrong.

20 Nurse Murray came to the conclusion,
21 and she's the only one that has spoken to this
22 issue, is that Mr. Farmer didn't do anything wrong.
23 And I see no reason why we should second guess that
24 because she's the one.

25 But the reality is is that the way

1 the charting is done, it's just essentially
2 impossible unfortunately to identify whether and
3 where Mr. Farmer may have been a sitter. And I'll
4 be -- you know, we have the records. Even if --
5 even if we had done this search in 2008 or 9 or 10,
6 we still have the problem that the records don't
7 give us that information. So that's not a memory
8 lapse issue, that's just the way the record keeping
9 is done.

10 But the main point with Murray is
11 that she came to the conclusion that Mr. Farmer
12 didn't do anything wrong. And in the deposition
13 that she gave in the RC case, she says I never had a
14 problem with Mr. Farmer. And that was the state of
15 her knowledge at the time.

16 So I guess just to sum up, I really
17 acknowledge that we should have supplemented our ECC
18 earlier than we did. And I believe though with the
19 statements, whenever we got them, we did produce
20 them at the earlier allowable opportunity based on
21 the protective order. And that was at the end of
22 2014.

23 And I know now that the Wolfe
24 statement wasn't even in that. And I don't know
25 where we got it, but certainly from 2013 to the end

1 of 2014, it still would have been subject to the
2 protective order. So we couldn't have produced it
3 earlier, even if we had it.

4 So where's the prejudice? I think
5 as Your Honor has pointed out, really the smoking
6 gun nature of this is the potentially damaging
7 testimony about the foreseeability of nurse Wolfe.

8 Beyond this point of misleading the
9 court in terms of the statements of ours that
10 continue to this day, that there's no evidence that
11 Mr. Farmer had prior bad acts.

12 You know, it has been, it currently
13 is and it will be in the future, our position that
14 nobody witnessed Mr. Farmer do anything
15 inappropriate.

16 Even accepting nurse Wolfe's
17 testimony as, you know, in its worst light, in the
18 light most favorable to plaintiff, she acknowledges
19 point blank I had nothing concrete. She never saw
20 him do anything.

21 Nurse Murray says she never saw him
22 do anything. And if we consider her testimony in
23 the RC case, she had no problem with him at all.

24 As to Sumera and, you know, so
25 really the damaging part of nurse Wolfe's statement

1 is what she said or what she says Sumera told her.

2 So what did Sumera tell her? You
3 need to watch that guy because he favors female
4 patients and he likes to place leads.

5 Well, I will acknowledge that's
6 certainly kind of odd, but Sumera never saw him do
7 anything inappropriate.

8 In all the testimony, in all the
9 depositions that plaintiff has produced, there's not
10 a single person who has said I saw him
11 inappropriately touch someone. It's not there.

12 I, I acknowledge there's certainly
13 circumstantial evidence now, but it's my position as
14 an advocate for my client that there was nothing
15 sufficient that would have put us on notice of this
16 risk.

17 So did I inartfully or over state
18 that position in the briefs with the court?
19 Perhaps.

20 THE COURT: Well, you would acknowledge
21 it's one thing to argue your interpretation of
22 documents in exhibits that have -- in evidence that
23 have been produced and say looking at this group of
24 information, you know, nobody could possibly
25 conclude that, that Mr. Farmer was a danger to the

1 patients, but, but -- but then -- but it's quite a
2 different thing to say absolutely there's no
3 possible -- there's -- there's -- I'm trying to
4 remember the language here.

5 MR. PRANGLE: It's extreme.

6 THE COURT: Absolutely nobody could
7 conclude from anything that's out there that -- that
8 Mr. Farmer did anything wrong and base that on
9 documents that haven't been produced. It's almost
10 like you're representing to the court there's
11 nothing out there to look at.

12 MR. PRANGLE: And at that point --

13 THE COURT: Which is different than
14 saying to the court there's nothing out there to
15 look at is a lot different than being an advocate
16 and saying my view of these records is that my
17 client should win.

18 MR. PRANGLE: Okay. And if I --

19 THE COURT: How would -- do you recognize
20 the distinction?

21 MR. PRANGLE: No, I understand the
22 distinction. And I guess what I would advise the
23 court is I guess I always looked at it as we were
24 saying here's what the evidence is gonna show.

25 If I overstated that, it certainly

1 was not with an intent to mislead Your Honor. And
2 although statements that were made before Your Honor
3 were with full knowledge of the Wolfe and Murray
4 statements. So it wasn't as if I was trying to say
5 those things didn't exist.

6 All I would say is my point with
7 that, it wasn't like I was trying to say the Murray
8 and Wolfe statement don't exist and there's nothing
9 out there, ignore everything they're saying. That's
10 not what I was trying to get across.

11 My point was --

12 THE COURT: Wasn't one of those
13 statements made before the -- before the Murray
14 Metro statement had been disclosed?

15 MR. PRANGLE: I believe the -- I don't
16 think so. Well, actually, I don't know.

17 THE COURT: Well, let's double check
18 that.

19 MR. PRANGLE: I'm not sure. I'm not
20 sure.

21 THE COURT: Go ahead.

22 MR. PRANGLE: It has been, it is, and it
23 will be our position as advocates for our clients
24 there was nothing sufficiently out there with Mr.
25 Farmer at Centennial Hills Hospital that would have

1 put us on notice that he was a potential risk for
2 sexually assaulting a patient. And, you know, I'll
3 soften the phraseology, but that is, that is my
4 position.

5 And at the end of the day, I
6 believe, Your Honor, to the extent that a sanction
7 is warranted or Your Honor agrees with Commissioner
8 Bulla, the sanction should be on me. This is --
9 this is my case. As I've said, Bohanek and Butler
10 were gone by the time this case was even filed.
11 This is on me. And if there's a sanction, it should
12 be on me. It should not be on Centennial Hills
13 Hospital. They're relying on me to advocate for
14 them.

15 And this -- you know, when nurse --
16 or when Commissioner Bulla says we, Hall Prangle
17 Schoonveld, knew as early as 2008 that these
18 witnesses had this important information, that's why
19 we're gonna do a thousand dollars a year per witness
20 because of what I failed to do, this is on me.

21 And what I would say, and as
22 Commissioner Bulla invited the court to do, if we
23 can demonstrate that we didn't have this information
24 in 2008, but it was at a point later, invite the
25 court to reduce the sanctions. And that's exactly

1 what I'm asking you to do.

2 I believe the totality of the
3 evidence today is that the first point that we had
4 this information about the statements at the
5 earliest was 2013. February 2013. And we didn't
6 listen to the audio tape. But May of 2013 when we
7 had the Murray statement and whenever we got the
8 Wolfe statement, let's assume it was May of 2013, we
9 couldn't disclose it until November of 2014.

10 I don't believe that if you use 2013
11 as the benchmark for memories fading that we can
12 conclude that that five-year period of time that
13 justifiably we hadn't disclosed this, that we would
14 think anybody would have a better memory than they
15 had in 2015.

16 So I'm asking Your Honor to
17 reconsider the monetary sanction of Commissioner
18 Bulla. I'm asking Your Honor to reconsider her
19 sanction of the admissibility of the statements
20 without foundation as to -- and basically overruling
21 preemptively a hearsay objection and reducing the
22 sanction or eliminating the sanction because there's
23 no prejudice after 2013.

24 As to the case terminating sanction,
25 I don't believe anything comes close to that,

1 certainly as to Centennial Hills because the two
2 people that would serve as the basis for that were
3 not even employees when this lawsuit was filed. So
4 I don't know how you can hold Centennial Hills
5 responsible for the conduct of Bochenek and Butler
6 when they were no longer there and supposedly duty
7 bound to do something. They were no longer duty
8 bound to do anything. They didn't work for us.

9 And again, as I've said, I don't
10 believe they had the statements. So I don't believe
11 case terminating sanctions are appropriate as well.

12 Nor do I believe that a sanction of
13 finding foreseeability, again, because I don't
14 believe plaintiff has demonstrated sufficient
15 prejudice given that the points when the disclosures
16 should have been made is 2013, not 2008.

17 So for all those reasons, I would
18 ask Your Honor to reconsider or eliminate the
19 sanction imposed by Commissioner Bulla and not
20 entertain any additional sanctions as requested by
21 plaintiff's.

22 THE COURT: All right. Thank you, Mr.
23 Prangle. I appreciate that. Mr. Keach, you get the
24 last word.

25 MR. KEACH: I'll try not to be too

1 lengthy, Your Honor.

2 THE COURT: You pay proceed, Mr. Keach.

3 MR. KEACH: Thank you, Your Honor. Your
4 Honor, I'd ask the court to be mindful that the
5 lawyers representing the hospital are skilled,
6 competent counsel of a national firm with offices
7 all over the country. It's called Hall Prangle.
8 And one of those lawyer's, a main partner, is the
9 making the arguments today. And the reason I'm
10 asking the court to be mindful of that is this:
11 These guys are not the Keystone cops. These are
12 real lawyers. They're smart lawyers, they're good
13 lawyers, and they're real lawyers.

14 And I make that point, Your Honor,
15 because what Mr. Prangle just told us in no
16 uncertain terms, and thankfully we have a
17 transcript, he stated that he made the statement in
18 the opposition to motion for summary judgment to the
19 court about there was absolutely no information that
20 could potentially put the hospital on notice with
21 quote, full knowledge of Wolfe and Murray's
22 statements. That's a direct quote. That's what he
23 just told us.

24 Now, that's important, Your Honor.
25 Because while Mr. Bemis doesn't know when they --

1 they received Wolfe's statement --

2 THE COURT: Uh-huh.

3 MR. KEACH: -- Mr., Mr. Prangle does. He
4 may not know the exact date, but he knows one thing:
5 He knows when he made that statement in his
6 opposition to motion for summary judgment it was
7 quote, with full knowledge of the Wolfe and Murray
8 statements.

9 That motion, Your Honor -- that
10 opposition, Your Honor, is Exhibit 18. It was filed
11 October 14th, 2014.

12 THE COURT: Well, that's why I asked,
13 didn't you make that statement before the -- before
14 you had the -- didn't you make that argument before
15 you had the Wolfe statement and he said no, he
16 didn't think so.

17 MR. KEACH: No, he made the argument
18 before we had the Wolfe statement.

19 THE COURT: Right. Before you had the
20 Wolfe statement.

21 MR. KEACH: Right.

22 THE COURT: Before you had the Wolfe
23 statement.

24 MR. KEACH: He did. He made the argument
25 before we had the Wolfe statement.

1 THE COURT: Right.

2 MR. KEACH: But, Your Honor, he also made
3 the argument before the October 27th disclosure of
4 the police file, okay.

5 THE COURT: Well --

6 MR. KEACH: So on October 27th when
7 they're making a supplemental disclosure because the
8 court has now ordered -- Judge Bulla has now ordered
9 them to produce all of the files, there's no more
10 protective order, produce the files, and they
11 produce what they claim they have.

12 THE COURT: Uh-huh.

13 MR. KEACH: Guess what's missing again
14 just like I asked Mr. Bemis? Now, that's why I
15 started out, Your Honor, by -- by -- by indicating
16 who this firm is. These are not Keystone cops.
17 These are real lawyers.

18 Now, Mr. Prangle can stand up here
19 all day and say I screwed this up, I screwed that
20 up, I screwed up not giving you the May 13 -- the
21 February 13th stuff, we screwed up because we didn't
22 look at it, we screwed up because we didn't ask the
23 client certain information, we screwed up because we
24 thought it was Cagnina and not Doe, we screwed up
25 because we said we had it in May 2013, we screwed up

1 this, we screwed up that. They don't screw up like
2 that.

3 That's not -- that's not -- that's
4 not -- unfortunately, Your Honor, it's not
5 believable. Some of it may be. All of it, no. One
6 thing that's not because he was unequivocal, Your
7 Honor. He was absolutely unequivocal. Get the
8 transcript, read it, because he said it.

9 THE COURT: I'll double check. I know
10 what you're arguing.

11 MR. KEACH: He said it. He said he made
12 the statement with full knowledge of the Wolfe and
13 Murray statements, period. He said it.

14 THE COURT: I mean, that means he has the
15 Wolfe statement at -- by October 27th, 20 --

16 MR. KEACH: Prior to October 14th because
17 that's when the brief was filed and he didn't
18 disclose it.

19 Okay, Your Honor. Again, I get back
20 to the smoking gun because now when they're required
21 to disclose everything, they don't disclose Wolfe's
22 statement. More than that, Your Honor, they never
23 disclosed Wolfe's statement.

24 THE COURT: All right. Just, you know,
25 for the record, I am gonna go back and just double

1 check what was said so nobody takes anything out of
2 context.

3 MR. KEACH: Absolutely, Your Honor.

4 THE COURT: Go ahead.

5 MR. KEACH: That's the smoking gun again,
6 okay. Because when they're supposed to disclose
7 everything, they don't disclose Wolfe's statement.
8 To this date they haven't.

9 THE COURT: When did you get it?

10 MR. KEACH: When did we get it, Rob?
11 January?

12 MR. MURDOCK: January 2015.

13 MR. KEACH: January 2015, Your Honor.
14 And the point is that's not prejudice, okay. The
15 point about that is intent. Big difference.

16 The prejudice, Your Honor -- you
17 know, Mr. Prangle makes -- focuses his argument on
18 2013. And, and -- because the prejudice from 2013
19 to 2015 I concede is dramatically less than 2009.

20 Well, they don't get a pass, Your
21 Honor, because their managers, the head of the
22 nursing, left. They don't get a pass for that.

23 They were investigating this case in
24 2008. What they were investigating was whether
25 Farmer's conduct was reasonably foreseeable. And,

1 Your Honor, when you want to know about prejudice,
2 because you focused on that and it's properly the
3 subject of focus, Mr. Prangle did not mince words.
4 He made it clear that they will continue to their
5 dying breath argue that, that they didn't -- that
6 there was nothing to suggest that the evidence
7 doesn't suggest that Farmer had a predilection to
8 assault female patients.

9 Well, let's look at things in
10 context. First off, we'll never know what the
11 evidence is because we were precluded from getting
12 it. Yeah, I'll give him that. When you don't --
13 when we don't get a shot at it until 2015, it's a
14 heck of a lot harder for us to get the evidence of
15 the witnesses who knew. So he's right. He's right.

16 Other than what -- what nurse Wolfe
17 said she actually saw on Hannah which was after a
18 Doe, we don't have a witness that said that they saw
19 Farmer assaulting someone.

20 What we do have though is this: Ray
21 Sumera saying, hey, be on the lookout for this guy
22 because he's being, he's being a little too
23 attentive with female patients' breasts when he's,
24 he's doing leads.

25 And, and Your Honor, it's not just

1 him that said that because nurse Murray said the
2 same thing.

3 Now, we don't have them. We don't
4 have the statements until years later. But suppose
5 you had that back in 2009 when you've got
6 information that two people from two completely
7 different sources, one working in the ER and one
8 working on the upper floor, is expressing the same
9 concern. Hey, this guy's messing around with
10 women's breast on a pretext of, of doing leads. I
11 mean, that's what we have now.

12 What could we have had then when we
13 had an opportunity in 2009 to start asking all these
14 people, hey, do you remember what Farmer was doing
15 with -- with women? Because -- because we know that
16 Margaret Wolfe said a lot of people were talking
17 about it. All those people are gone.

18 So he's right, by concealing the
19 evidence, he is going to be able to argue, hey, this
20 isn't enough.

21 But had we had that, we'd have had a
22 heck of a lot more because we'd have had live
23 witnesses who remembered what happened, not people
24 we don't know and people who we do know who forget
25 everything.

1 And that's what Ray Sumera did. He
2 doesn't remember anything except oh, yeah, he was a
3 great guy. That's what he remembers. That just
4 doesn't fly with me.

5 Christine Murray. She didn't say
6 Farmer didn't do anything wrong. And I want the
7 court to please read her transcript because that's
8 not what she said.

9 Regardless of how many times Mr.
10 Prangle said Christine Murray made a determination
11 Farmer didn't do anything wrong, what she said was
12 she didn't give any credence to the lady's -- to
13 what the lady was saying.

14 Now the problem for us is of course
15 we don't get to talk -- she wasn't -- she wasn't --
16 Christine Murray wasn't her nurse. We don't get to
17 talk to a lady to find out what happened. We don't
18 get to talk to her nurse to find out what she found
19 out. We get to talk to Christine Murray who -- who
20 was -- who gave a statement, Your Honor, to the
21 police because she was on the floor. She was -- she
22 was working that night at Cagnina. And that's why
23 she gave a statement to police. And during the
24 course of that statement, this came out that what
25 she had seen. I don't think -- I'm not for a moment

1 do I think Christine Murray was the primary witness
2 in that case -- in that incident.

3 I think the lady and the lady's --
4 she -- the nurse assigned to her were much better
5 nurse witnesses than Christine Murray. Christine
6 Murray was a nurse on the floor who happened to hear
7 a woman screaming. We don't know -- we don't know
8 who was the actual nurse who was assigned to her
9 said or what the lady could have told us.

10 But we do know one thing: We'll
11 never find out because they hid it.

12 And they do not get a pass, Your
13 Honor because Butler, the head of emergency room
14 and -- excuse me. Butler the head of nursing and
15 Blasing the head of the emergency room quit a year
16 later after -- quit a year later. They knew.

17 And again, what I would invite the
18 court to do, look at the transcripts to see what
19 they said and what they knew. Because what
20 Christine Murray said was -- of course this is years
21 after the fact. And this is what she's telling us
22 still: The director of nursing -- but the director
23 of nursing called you down after she read the
24 statement; is that correct? Yes. She talked to all
25 of us. Okay. The director of nursing, Carol

1 Butler, called us down after she read her statement.
2 Yes. She talked to all of them. What do you mean
3 she talked to all of them? Well, she talked to all
4 the nurses who were involved in this.

5 THE COURT: This is the -- which depo are
6 you reading?

7 MR. KEACH: That's Christine Murray, Your
8 Honor. The actual portion we're talking about, I'm
9 reading from, we actually have --

10 THE COURT: What page is that on?

11 MR. KEACH: It's actually page five of
12 our brief I'm reading from, Your Honor.

13 THE COURT: Okay.

14 MR. KEACH: But it's page 61 of her depo.

15 THE COURT: All right, thank you.

16 MR. KEACH: And did you go through the
17 statement with her? She asked me what happened. I
18 told her what I knew. We didn't pick this up and go
19 through it line by line like we are now. What she
20 knew was -- I mean, she had read it.

21 Okay. Now, they say well, where'd
22 they get it from? I say I don't know. I don't have
23 to know.

24 THE COURT: Is knowledge of the director
25 of nursing imputed to the corporation?

1 MR. KEACH: Oh, my God. Yes, Your Honor.

2 THE COURT: Just want your view on it.

3 MR. KEACH: Absolutely. She's in charge
4 of nursing. Your Honor, she was a member of the
5 C-Suite which we've --

6 THE COURT: I don't know what that means.

7 MR. KEACH: Well, we talked about it in
8 the brief. It's the heads of the departments that
9 meet --

10 THE COURT: Oh, okay.

11 MR. KEACH: The pow wow. The CEO, the
12 CFO, the COO, the chief of nursing.

13 THE COURT: Yup.

14 MR. KEACH: The heads. The big dogs.

15 THE COURT: All right.

16 MR. KEACH: So she -- the -- the
17 undisputed, the undisputed testimony comes from
18 Christine Murray that Carol Butler had her statement
19 and read it.

20 They can argue til they're blue in
21 the face that they don't understand how it happened,
22 but without someone saying it's not true, it's true.
23 Because that's the un -- undisputed. Nobody
24 contradicts that.

25 Carol Butler concedes she knew about

1 the statement. She doesn't specifically remember
2 reading it, but she concedes she knew all about it.
3 That she does concede.

4 And Christine Murray finishes it up
5 and says, yeah, she knew about it, she read it.

6 Same with Amy, Amy Blasing. She
7 knew all about the statement with, with -- with
8 Wolfe. Did she give it to the police? And she
9 knew -- she knew eight, seven years later she
10 remembered some details, that there was some
11 discrepancy what Ray told, what Ray told Margaret
12 and what Margaret told Ray. Okay. So there's some
13 discrepancy in the details. It doesn't change the
14 fact that in 2008 the head of the ER knew about
15 Wolfe's involvement.

16 And so, Your Honor, when they want
17 to talk about 2013, I want to talk about 2009. When
18 we filed a suit, they had initial disclosure of
19 obligations that they didn't -- that they failed to
20 comply with.

21 And I appreciate Mr. Prangle
22 standing up here and taking the bullet for his
23 client, but his client's the one that stands there
24 at the end of the day. It's not him. And unless
25 he's gonna stand up here and says he knew everything

1 the client knew, because the client knew all of
2 this, then he can't take that bullet because the
3 bullet's not from 2013. That bullet was shot in
4 2009 when they failed to disclose the information.

5 THE COURT: All right. Thank you, sir.
6 Is that it? All right. Was there -- Mr. Prangle, I
7 know that the plaintiff gets the last word generally
8 because it was his burden.

9 Is there anything that unexpected
10 that you heard on reply that you feel you didn't
11 adequately have a chance to cover in your
12 opposition?

13 MR. PRANGLE: All I want to say is read
14 Blasing's deposition.

15 THE COURT: I'm gonna read it.

16 MR. PRANGLE: No, read it. And I think
17 that what Mr. Keach says is technically true but
18 misses the point. Read it. Read it and ask
19 yourself is what nurse Butler telling me and is what
20 nurse Blasing telling me that we knew through their
21 investigation that there was a problem with Mr.
22 Farmer?

23 The answer to that is no. The
24 answer that is no. What they were aware of is that
25 Wolfe gave a statement to the police.

1 THE COURT: Uh-huh.

2 MR. PRANGLE: I don't -- and I'll be
3 honest, I don't remember exactly what they said
4 about the knowledge of Murray giving a statement to
5 police. And even the portions that Mr. Keach read
6 from, they talk about a statement. I don't know how
7 clearly defined it is that's the statement you gave
8 to the police versus the incident report that we
9 have in the case. It's unclear.

10 What I can tell from how this case
11 unfolded is that the prosecution and the defense
12 were not giving us any statements. So why would
13 they give it to somebody from the hospital? It just
14 mystifies me. But in any event, that's what it is.

15 So the tone though with Bochenek and
16 Butler is based on all the discussions they had that
17 they come to the conclusion that yes, Farmer was a
18 problem child that we missed and that's the thrust.
19 And the answer to that is no. But then again, they
20 leave when the Doe complaint is filed, so.

21 THE COURT: I understand that. I just
22 wanted to make sure that there was nothing that you
23 heard that you felt a compelling need to respond to.

24 MR. PRANGLE: Nothing further, judge.

25 THE COURT: All right. And so you all

1 know the law requires an evidentiary hearing when
2 there's the request to -- for a terminating
3 sanction.

4 And is there any additional evidence
5 or argument that anybody feels that they need to
6 make in this matter?

7 MR. KEACH: Not at the time, Your Honor.

8 MR. PRANGLE: Yeah, we'll provide a copy
9 of Exhibit A.

10 THE COURT: Perfect.

11 MR. PRANGLE: And I know I alluded to
12 this, but we do have a copy and we just got this.

13 THE COURT: 15th supplement in the RC
14 case?

15 MR. PRANGLE: Correct.

16 THE COURT: I would like to see a copy of
17 that.

18 MR. PRANGLE: I believe you can take this
19 one.

20 THE COURT: I'll take that one. Thank
21 you.

22 MR. KEACH: We would object, Your Honor.

23 THE COURT: Well --

24 MR. KEACH: We've never seen it and it's
25 hearsay.

1 MR. PRANGLE: We're happy or -- we got
2 that from Kim, right?

3 MR. WEBSTER: We emailed it to her to
4 print. It's from our office.

5 MR. PRANGLE: Yeah. We can provide it to
6 counsel. We can email it to them today.

7 THE COURT: You would -- you would want
8 this to show that the attorneys in the RC case had
9 the same police file that you had which didn't have
10 the Wolfe statement?

11 MR. PRANGLE: That's correct, judge.

12 THE COURT: I've heard enough testimony
13 on that. I really don't need that. But thank you,
14 that's fine. I'll go ahead and give it back and
15 sustain the objection. And we don't need to
16 consider it. All right.

17 MR. KEACH: Thank you, Your Honor.

18 THE COURT: All right. So that closes
19 the evidentiary hearing, gentlemen. I appreciate
20 your time. I'm gonna take this matter under
21 advisement because you both have asked me to read
22 certain things. I want to make sure I read things
23 carefully and look back at some of the statements
24 made today.

25 Thank you very much for your cogent

1 and effective arguments. And -- and I'll try to
2 have a resolution on this within -- it's gonna take
3 me at least a week, gentlemen, to be honest with
4 you. It might take two weeks. There's a lot of
5 material in here. I have ongoing responsibilities.

6 I know you have a trial coming up
7 mid-October, right, or end of October.

8 MR. PRANGLE: In this case?

9 THE COURT: In this case.

10 MR. PRANGLE: Although your order
11 contemplates kicking it to January.

12 THE COURT: My order contemplated that?

13 MR. PRANGLE: Your Honor, we had a
14 date --

15 THE COURT: Well, why don't we all be
16 heard on that. You had a date certain. Why don't
17 you -- Mr. Prangle, you go first.

18 MR. PRANGLE: Here's my memory.

19 THE COURT: And I know we have two other
20 motions we have to deal with, but go ahead, Mr.
21 Prangle.

22 MR. PRANGLE: We had a date certain of
23 November 9 I believe. Several weeks ago we had an
24 order from Your Honor moving us to an October stack,
25 but your order indicated that we would not be forced

1 to go to trial before November 9. And if we can't
2 try the case in a week, the case should go to the
3 January stack.

4 THE COURT: Oh. And I think the date
5 that you had set for trial, actually it was set
6 before I took over a criminal docket.

7 MR. PRANGLE: That's right.

8 THE COURT: And, and it turns out that
9 the date set for trial is actually during my
10 criminal stack. And I have to be available for
11 criminal cases that might be assigned during that
12 time frame.

13 MR. PRANGLE: I believe we're all --

14 THE COURT: I apologize for that. I know
15 it wasn't -- it's a scheduling conflict that you
16 didn't create, and I know it's causing -- gonna
17 cause some confusion.

18 And I wish there was something I
19 could do to alleviate that and proceed to trial on
20 the date that you guys originally envisioned, but I
21 can't do it.

22 MR. PRANGLE: I understand.

23 THE COURT: And so what do you all want
24 to do? And let me hear from some of the other
25 parties here.

1 MS. BROOKHYSER: I'm just gonna -- Amanda
2 Brookhyser on behalf of ANS. I was just gonna echo
3 exactly what Mr. Prangle said about the dates. And
4 I think that I think all counsels in agreement that
5 we probably can't try this in a week. So it
6 probably is gonna have to be moved. I believe it
7 was January 4th that your order says.

8 THE COURT: Do I have -- when does my
9 criminal stack begin January?

10 THE CLERK: Your criminal or your civil?

11 THE COURT: I'm sorry. My civil.

12 THE CLERK: January 4th.

13 THE COURT: I think my criminal stack
14 goes until December 18th or right around there, and
15 then there's two weeks that are dark because no one
16 ever wants to try a case right before Christmas,
17 although if you wanted that two weeks, we could
18 maybe squeeze you in.

19 MS. BROOKHYSER: I would love to spend my
20 Christmas with Mr. Murdock and Mr. Keach.

21 MR. KEACH: Oh, that was nice.

22 THE COURT: So let me hear from everybody
23 on whether they would be available to start January
24 4th or at least we could have a calendar call and
25 then see when -- when we could put you in on that

1 stack.

2 Let me hear from the plaintiff
3 first.

4 MR. MURDOCK: We can certainly do January
5 4th. That's not a problem. The only issue that we
6 would have is, and I spoke with Mr. Bemis about
7 this, the five-year rule actually runs in this case
8 in February.

9 THE COURT: All right. Well, if we
10 started in January, you would be okay.

11 MR. MURDOCK: No problem. Yeah, no
12 problem. But in other words, I don't know how long
13 your stack is.

14 THE COURT: What's ANS's position?

15 MR. SILVESTRI: January is preferable.
16 I've got a wrongful death case in federal court.
17 It's going to trial in February, although we just
18 got a motion that one of the parties, their counsel
19 is moving to withdraw. So I don't know what the
20 judge is gonna do with that. We also have a
21 settlement conference on that case in October, but
22 January would be best probably.

23 THE COURT: All right. And Farmer's
24 position is that -- is what?

25 MS. HALL: Exactly. I was just looking.

1 We have a trial that starts January 11th, but I
2 think there's a good possibility that trial will get
3 moved. So I feel comfortable with January 4th if
4 everybody else is okay with that.

5 THE COURT: Great. And that if we set
6 it -- well, let's ask the clerk then. When could we
7 set calendar call if we were gonna be on that
8 January 4th stack.

9 THE CLERK: December 30th.

10 THE COURT: Do you guys want to be here
11 December 30th for calendar call?

12 MR. MURDOCK: Could we do calendar call
13 maybe a couple weeks earlier?

14 THE COURT: We could. We could go back a
15 week. December 23rd? No.

16 MS. BROOKHYSER: How about December 16th?

17 THE COURT: December 16th. Are you guys
18 okay with that?

19 MR. MURDOCK: Sure.

20 THE COURT: It might be a little bit --
21 as we go further back, it gets more difficult to
22 plan what positioning for that, that five-week civil
23 stack. But let's do that, let's plan on December
24 16th for calendar call.

25 Is that a Wednesday?

1 THE CLERK: I'm looking.

2 MS. HALL: It is, yes.

3 THE CLERK: December -- okay, yes.

4 THE COURT: So let's, let's say December
5 16 for calendar call.

6 What time do we normally do calendar
7 calls?

8 THE CLERK: 9 o'clock.

9 THE COURT: All right. 9 o'clock,
10 December 16. And then we're gonna have you on the
11 five week civil stack beginning January 4th, all
12 right.

13 Two weeks for trial, right?

14 MR. MURDOCK: (Positive nod of the head.)

15 MR. SILVESTRI: Plaintiff's told us they
16 were gonna take 10 days.

17 MR. MURDOCK: No, we're not taking 10
18 days.

19 THE COURT: Three weeks for trial total?

20 MR. MURDOCK: No. Realistically we can
21 pear this down.

22 MR. SILVESTRI: Well, I would hope.

23 THE COURT: It depends on what happens
24 with these motions.

25 MR. MURDOCK: It does. True, true.

1 MR. PRANGLE: I think two weeks is
2 reasonable.

3 MR. KEACH: It is.

4 THE COURT: Well, we'll have a lot better
5 idea of where we can fit you all on the stack on
6 December 16th, all right?

7 I just want everyone informed
8 December 16th for calendar call. Make sure you
9 comply with all the requirements for calendar call
10 by that date unless you can stipulate -- I mean,
11 normally you would have calendar call, I think the
12 joint set of jury instructions are due that date.
13 We can probably give you more time if you all
14 stipulate to that, right? And be ready to go
15 January 4th, but we'll know more on December 16th.
16 All right. So I repeated that enough.

17 What else?

18 THE CLERK: There are several things on
19 your civil stack. I'm wondering if that means the
20 pretrial conference which is normally set for
21 December 16th, you won't have a pretrial conference,
22 correct?

23 THE COURT: It's usually a little
24 different requirements. Do you guys want an earlier
25 date for that pretrial conference?

1 MR. SILVESTRI: What do you usually do at
2 your pretrial conferences, Your Honor? Because
3 often times we come and nothing happens.

4 THE COURT: I'm trying to remember.

5 MR. SILVESTRI: Not in this department,
6 but.

7 THE COURT: No. There's always
8 stragglng issues, discovery issues, dispositive
9 motion issues.

10 THE CLERK: Well, there was the other
11 thing I was gonna tell you.

12 THE COURT: Go ahead.

13 THE CLERK: There's -- for last date to
14 file pretrial motion's eight weeks prior to the
15 setting. So that would be November 9 would be a
16 date I would normally be giving out as well.

17 Or does your clerk do a trial
18 setting and that's part of the trial setting order?

19 THE COURT: I believe all the other dates
20 are already prescribed by the trial setting order
21 that my JEA sends out.

22 So I don't need -- you know what,
23 let's do this: Let's combine -- just take a look at
24 whatever the requirements for pretrial conference.
25 We're gonna have a joint pretrial conference,

1 calendar call on December 16th.

2 MR. KEACH: Thank you, Your Honor.

3 THE COURT: I don't want you guys to come
4 back here necessarily, all right?

5 MR. MURDOCK: All right.

6 THE COURT: So let's proceed with the
7 next motion. But why don't we take a break now, a
8 five minute, six-minute break, and then I want to
9 hear any argument that the parties have on ANS's
10 motion for summary judgment.

11 (Whereupon, a recess was had.)

12 THE COURT: All right. Jane Doe versus
13 Centennial Hills. This is the hearing on defendant
14 American Nursing Services motion for summary
15 judgment. It's a different stack.

16 Are we ready to proceed?

17 MR. SILVESTRI: Your Honor. We are
18 ready. There are two motions for summary judgment.

19 THE COURT: Right, right.

20 MR. SILVESTRI: And but they're all the
21 same issues. And if the court has no objection, I
22 don't care if Mr. Murdock wants to first or I go
23 first. We're gonna argue pretty much the whole
24 package I think.

25 THE COURT: All right. Well, then it

1 doesn't matter to me. Mr. Keach, we have your
2 motion for partial summary judgment.

3 Do you want to go first or -- you
4 want to go first?

5 MR. MURDOCK: Your Honor, yeah.

6 THE COURT: All right. All right. Why
7 don't we let them go first then since you offered.

8 MR. MURDOCK: That's fine.

9 THE COURT: Thank you.

10 MR. MURDOCK: That's fine.

11 MR. SILVESTRI: I think theirs was filed
12 first.

13 THE COURT: Theirs was filed first. All
14 right.

15 MR. MURDOCK: It was. Your Honor, the
16 motion for summary judgment we filed is based upon
17 41.745(1)(b). And it's very -- it's very limited.
18 The issue is -- or the question is very task
19 assigned. What was the very task assigned. Because
20 you've got to know that to be able to see what's
21 going on in the statute.

22 In terms of burden of proof, they
23 have the burden of proof because it's an affirmative
24 defense. So they need to come up with evidence as
25 to what was his task assigned.

1 THE COURT: Are you sure it's not enough
2 just to say what the task wasn't?

3 MR. MURDOCK: It's definitely not enough
4 to say what the task wasn't. And the reason is
5 first of all the statute doesn't say that. It says
6 what is the very task assigned, was not committed in
7 the course of the very task assigned.

8 Look, there's a lot of things that
9 weren't assigned. There's no doubt sexually
10 assaulting the plaintiff, that's not a task we're
11 talking about because it has to be while in the
12 course of the very task assigned. That's when the
13 intentional tort was committed.

14 Okay. So what we're talking about
15 is what is the very task assigned. What does ANS
16 assign him to do?

17 In this case, the only thing that we
18 have is they assigned him to be at Centennial Hills
19 Hospital. They could have assigned him a myriad of
20 different things. They didn't. They assigned one
21 thing: Be at Centennial Hills Hospital. He was.

22 So he was -- while in the course of
23 doing his very task assigned by ANS, that's when he
24 committed the sexual assault. And there's no other
25 evidence. Their brief hasn't provided any evidence

1 from ANS as to any other additional tasks. That's
2 it.

3 So in terms of the very task
4 assigned, the only evidence is that his task was to
5 be at Centennial Hills.

6 If his task was -- for example, if
7 the task was be at Centennial Hills but don't --
8 don't -- you're not allowed on the sixth floor, you
9 just have to be in the ER, okay, then when he
10 sexually assaulted our client on the sixth floor,
11 different story because the sexual assault wasn't
12 committed in the very task. They didn't do that.

13 THE COURT: So suppose the court were to
14 conclude that the different conditions, a, b and c
15 of NRS 41.745(1), that it's the burden of proof of
16 the plaintiff to establish --

17 MR. MURDOCK: Well --

18 THE COURT: -- establish the opposite of
19 these three things rather -- rather than those three
20 things being of an affirmative defense.

21 MR. MURDOCK: Well, if we would have to
22 prove --

23 THE COURT: Then -- then it would be your
24 burden to establish what was the very task assigned
25 to the employee.

1 MR. MURDOCK: Right.

2 THE COURT: And then how would you be
3 able to do that?

4 MR. MURDOCK: I can't. There's no way we
5 could do that. And that's why it has to be an
6 affirmative defense. Because -- and especially when
7 they use the language here, was not committed in the
8 course of the very task assigned. By using that
9 type of language, it has to be their burden because
10 they're the only ones who can tell us what the very
11 task assigned was.

12 If it was my burden, how am I
13 supposed to do that? And it goes with each of
14 these. That's -- that's why it has to be that way.

15 THE COURT: The, the way that it's
16 written suggests that, that it's the affirmative
17 defense of the defendants. But I know that there's
18 still some dispute on that and, and I need to look
19 at that again. It's, it's important for purposes of
20 this motion I believe.

21 So why don't you continue to argue.

22 MR. MURDOCK: So for purposes of this
23 motion --

24 THE COURT: Let's assume that the law is
25 as already indicated in the prior order of the

1 court.

2 MR. MURDOCK: Right, right. So if you
3 assume that, what's the very task assigned? We know
4 what's not assigned. Certainly not assigned to
5 sexual assault. But that's not the point. Because
6 again, it's while in the course. Was -- in terms of
7 the intentional course tort was not committed in the
8 course of the very task assigned. So they're two
9 separate things.

10 So what was the task assigned? ANS
11 doesn't want to answer the question. They don't
12 come out and say hey, we only assigned him to be
13 here. They don't do that. They just won't say it.

14 But the fact is all the evidence
15 shows ANS assigned him to be at Centennial. That's
16 it. They could have done other things, but they
17 didn't. And as a result of that, they can't prove
18 subsection b because it was in the course of the
19 very task assigned.

20 If you start spreading it out and
21 saying well, they get the benefit of all the nursing
22 things, in other words, they get the benefit of
23 Centennial perhaps saying something like well, he
24 was tasked with taking temperatures on the fifth
25 floor, something like that, okay, but you've got to

1 have some evidence to that. And there's no still no
2 evidence even of that.

3 The only evidence of Centennial's
4 very task assigned is that he was moved from the ER
5 to the sixth floor. Of course the sixth floor is
6 where Jane Doe was sexually assaulted.

7 So in terms of the very task
8 assigned, getting all these tasks that Centennial
9 might have done and might testify to doesn't help
10 them because Centennial doesn't testify to that
11 either. All Centennial's provided is yeah, he was
12 moved to the sixth floor. That's it.

13 So you know you're gonna see another
14 motion here shortly in terms of the very task
15 assigned as to Centennial. We're just waiting on a
16 PMK. That's all we're waiting for. But as soon as
17 we get that, you're gonna see another motion.
18 Because the fact is the very task assigned by ANS
19 was to be at Centennial Hills. The very task
20 assigned by Centennial Hills was to be on the sixth
21 floor.

22 If there were other tasks assigned,
23 great. But nobody's told us that. There's no
24 evidence, there's no affidavits of anything.
25 Nothing.

1 So while I understand Mr.
2 Silvestri's point that well, staffing companies,
3 this is what they do and this and that, yeah, okay.
4 Maybe that's true, maybe that is what they do. So
5 what?

6 The law is clear. The law says what
7 it says. Change the law. Go change the law. But
8 this court has to apply the law as written. That's
9 all it is. You may not want to do it, but it has to
10 do that. It cannot add in all these different
11 things.

12 He brings up these analogies about
13 Manpower and Manpower is gonna get hurt because of
14 this because they're a staffing company. And every
15 time they send someone out somewhere, they're gonna
16 be liable. Well, maybe, maybe not.

17 Because the question is what did you
18 assign him to do. What was the task assigned.

19 And if, for instance, if you tell a
20 security guard in the parking lot your job is to
21 stay in the parking lot, your job is not to go
22 anywhere else but the parking lot, okay, great.
23 When that security guard goes up and sexually
24 assaults someone on the sixth floor of the hospital,
25 it's not within the very task assigned. So you get

1 the benefit of this statute.

2 The problem is when you don't do
3 that, and you don't give a very task assigned, you
4 don't actually give a task assigned other than being
5 at the hospital, you've open yourself up.

6 It's unfortunate, but it's the law.
7 It just is what it is, and you have to enforce the
8 law as written.

9 THE COURT: So if they were to say the
10 very task assigned was to do everything other than
11 attaching and repositioning leads on a patient, then
12 they would be safe? Because the specific --

13 MR. MURDOCK: Yeah, absolutely they would
14 be safe.

15 THE COURT: Okay.

16 MR. MURDOCK: Absolutely they would be
17 safe.

18 THE COURT: Yeah.

19 MR. MURDOCK: They can do that.

20 THE COURT: Because he's --

21 MR. MURDOCK: But you have to --

22 THE COURT: -- Mr. Farmer went beyond the
23 task assigned in attaching and repositioning leads.
24 And that's --

25 MR. MURDOCK: If that was the task

1 assigned.

2 THE COURT: -- it was in the course and
3 scope of him doing that when he supposedly --

4 MR. MURDOCK: Right.

5 THE COURT: -- you know, reached under
6 the gal and molested --

7 MR. MURDOCK: If it was the very task
8 assigned.

9 THE COURT: All right.

10 MR. MURDOCK: If it wasn't the very task
11 assigned, different story. Let's say instead of
12 what you just said --

13 THE COURT: Uh-huh.

14 MR. MURDOCK: Let's say his -- the very
15 task assigned was to do the heart leads.

16 THE COURT: Uh-huh.

17 MR. MURDOCK: Okay. Was to check on
18 everybody's heart leads, that's what your task
19 assigned was. They wouldn't have a problem in this
20 case because it was in the course of the very task
21 assigned.

22 But here's the thing. All that is
23 speculation because the reality is the only task
24 assigned is one thing: Be at Centennial Hills. And
25 he -- he was doing that task. That's -- that's it.

1 If there's some other task that they assigned him,
2 okay, tell us what it is.

3 THE COURT: So as an employer, you -- you
4 open yourself up to pretty broad potential liability
5 when you don't have a specific task assigned.

6 MR. MURDOCK: That's true. You do. And,
7 and maybe the legislature needs to look at that, but
8 the legislature wrote this law and it is what it is,
9 and you've got to apply that.

10 And if they want to go back to the
11 legislature to change it, Manpower's got plenty of
12 lobbyists. They can go out there and change this
13 law.

14 But yes, they are opened to that.
15 If all you do is say you have to be at Centennial
16 Hills Hospital, yeah, you opened yourself up because
17 that's the very task assigned.

18 If you limit it in some way, which
19 you can in a myriad of different ways, they just
20 didn't, but you can. If you limit it, you're fine
21 with the statute.

22 For example, like I said before,
23 they could have just said, his task is only to be in
24 the ER, he is not to be anywhere else in the
25 hospital. They could have done that. And if that

1 happened, sixth floor, when he goes up there and he
2 sexually assaults Jane Doe, it's not with the course
3 of the very task assigned.

4 THE COURT: But if his task is to be at
5 the hospital and, and comply with the direction of
6 any charge nurse and don't go into rooms by yourself
7 and shut the door and, and don't add just leads
8 unless you've been specifically instructed to do
9 that and those sorts of things, and yet he takes it
10 upon himself to privately go in the room and shut
11 the door and adjust the leads, you would then
12 acknowledge he was acting outside of the task
13 assigned.

14 MR. MURDOCK: Not necessarily. Because
15 it depends what -- you've just said negative things.
16 You're not allowed to do this, you're not allowed to
17 do that. And that's fine if that really happened.
18 The problem is nobody said that. Nobody especially
19 in terms of ANS. ANS, nobody was saying don't do
20 this. And, in fact, even at, at Centennial Hills,
21 nobody was saying don't do this. And nobody was
22 saying what the task was. It's the very task
23 assigned.

24 THE COURT: Right.

25 MR. MURDOCK: It's different than course

1 and scope. It's, it's a separate element. You have
2 to remember, remember -- the Prell case is probably
3 the best example of this. The Prell v. Antonacci.

4 THE COURT: Right.

5 MR. MURDOCK: Because the guy is standing
6 behind the blackjack table.

7 THE COURT: And, and -- and he punches
8 the guy who was assaulting --

9 MR. MURDOCK: Correct.

10 THE COURT: The player was assaulting
11 him.

12 MR. MURDOCK: Right. That's the best
13 example of very task assigned because he's there,
14 he's dealing blackjack. The guy calls him a name,
15 he hits him. That's the very task assigned.

16 THE COURT: Okay.

17 MR. MURDOCK: All right. That's --
18 that's what the Nevada Supreme Court says.
19 That's -- he didn't leave his station. He was from
20 behind the table, he hit the guy.

21 So as a result of that, Prell, the
22 Nevada Supreme Court said --

23 THE COURT: And that -- that was before
24 41.745 was --

25 MR. MURDOCK: It was.

1 THE COURT: -- adopted, but it's the
2 same --

3 MR. MURDOCK: But it's the same thing.

4 THE COURT: -- it's the same concept.

5 MR. MURDOCK: Correct. Well, it's
6 actually the same exact language. The very task
7 assigned was taken -- Wood v. Safeway says that
8 41.745 was taken directly from Prell and uses that.

9 THE COURT: Okay.

10 MR. MURDOCK: And so the very task
11 assigned can be explained really well. If you're
12 doing what they told you to do and in the course of
13 that you intentionally hit someone or did commit
14 some intentional tort, you're liable. The
15 employer's liable.

16 And in this case, ANS told him to be
17 at Centennial Hills. They didn't add in all these
18 other things. They just said be at Centennial
19 Hills. He was. And that's when he committed
20 intentional tort. Therefore, while he was in the
21 course of the very task assigned, he sexually
22 assaulted Jane Doe. They don't get the benefit of
23 41.745(1)(b).

24 THE COURT: All right. Appreciate your
25 argument.

1 MR. MURDOCK: Thank you.

2 THE COURT: Thank you. All right. Let's
3 hear from ANS.

4 MR. SILVESTRI: Thank you, Your Honor.
5 Just if I can have just one moment, please.

6 THE COURT: No problem. Take your time.

7 MR. SILVESTRI: Your Honor, if plaintiff
8 has no objection and the court has no objection,
9 what I would like to do is to discuss our motion for
10 summary judgment, so we're not constantly going up
11 and down. And interspersed with that, I will direct
12 my comments specifically to the opposition to Mr.
13 Murdock's arguments as I go through my argument if
14 that's okay.

15 THE COURT: That sounds fine.

16 MR. MURDOCK: I have no problem.

17 MR. SILVESTRI: Thank you, Your Honor.
18 At the risk of boring the court and everybody in the
19 gallery, I do want to go over just a couple of
20 pertinent facts.

21 THE COURT: Please.

22 MR. SILVESTRI: First of all, maybe I
23 misunderstood plaintiff's argument that ANS refuses
24 to say what Mr. Farmer's task was from ANS.

25 In fact, in our opposition brief in

1 the first paragraph, we say that ANS assigned Mr.
2 Farmer to show up at Centennial Hills Hospital. So
3 we want to be clear about that.

4 We know that Mr. Farmer was at
5 Centennial Hills Hospital May 2008. We also knew
6 that he was employed by a staffing agency, my
7 client, American Nursing Service.

8 There are three events that are at
9 issue here. And not to belabor these events, but
10 there's the fondling of the breasts' issue, there is
11 the insertion of a finger or a thumb into Ms. Doe's
12 anus, and there is also an insertion of a finger
13 into Ms. Doe's vagina. Those are the three events
14 for which damages are being sought.

15 Your Honor, it is clear, and I think
16 plaintiff admits, there is no evidence of any
17 medical or employment reasons for Farmer to have
18 committed these three, what I'll call, horrific
19 acts. Anyone of us had a relative in the hospital,
20 we would not want or imagine that that could happen
21 in a hospital setting.

22 The only reasons -- this is a very
23 important point. The only reasons given for these
24 three acts occurring come from one witness, the
25 plaintiff. There's no other witness. And there's

1 no other testimony; A, that these acts happened, or
2 why they happened.

3 According to Ms. Doe, who is
4 deceased, Ms. Doe has testified and irrefutably, Mr.
5 Farmer said I'm adjusting the leads on your breasts,
6 they need adjusting. The only evidence: The
7 plaintiff says no, they didn't need adjusting, they
8 weren't detached, there was no medical or employment
9 reason for him to be touching me in that part of my
10 body. It's the only evidence. It's irrefutable.

11 So to suggest somehow, well, you
12 know, he was in there adjusting these things and his
13 hand wandered, can't say it.

14 THE COURT: Right.

15 MR. SILVESTRI: The second thing: Ms.
16 Doe says Mr. Farmer was cleaning me, I had -- he
17 said I had soiled myself, had a bowel movement in my
18 bed. What does the plaintiff say? She says no,
19 that never happened. Didn't change the bed pan, he
20 didn't change the sheets, he didn't clean me, didn't
21 even wipe me. Instead, he committed a sexual
22 assault upon me.

23 The third thing: Mr. Farmer
24 allegedly tells her well, I need to adjust your
25 catheter. I think everybody agrees that's outside

1 the scope of a CNA's job anyway. But what does the
2 plaintiff say, the only evidence irrefutable, no,
3 that didn't happen. He's touching me in a place
4 where the catheter isn't even placed. He stuck his
5 finger up my genital area, shouldn't have done that.

6 It's the only witness and it's the
7 only testimony that will come out in this trial on
8 the three events. There's no other testimony. None
9 of these things that Mr. Farmer allegedly said he
10 was doing needed to be done according to the
11 plaintiff. And they can't rebut that. Nobody can.
12 It's irrefutable. There's no other witness. And
13 she said it not once, but she said it in two
14 hearings where she was placed under oath.

15 So we know, and now we go further,
16 and this deal's partly with plaintiff's motion.
17 Plaintiff admits in their motion for summary
18 judgment that ANS didn't assign, and we -- I don't
19 want to belabor this point, but ANS didn't assign,
20 CH -- Centennial Hills Hospital didn't assign Mr.
21 Farmer to sexually assault the plaintiff. I
22 appreciate that admission.

23 But they also make three other key
24 admissions. And this goes to the heart of their
25 motion. ANS did not assign Mr. Farmer to attach,

1 detach or adjust electrical leads on the plaintiff.
2 They admit that ANS did not assign Mr. Farmer to
3 clean her. They also and finally admit that ANS did
4 not assign Mr. Farmer to adjust Ms. Doe's catheter.

5 So we know that by admissions Mr.
6 Farmer was assigned one thing by ANS, this is what
7 they argue in their motion, and that was to report
8 to Centennial Hills -- Centennial Hills Hospital.

9 Our motion proceeds on the theories
10 in this case rather relies, we all know, under NRS
11 41.745, that's the vicarious liability statute, and
12 then there's also a separate claim for negligence.
13 Independent negligence against American Nursing
14 Service.

15 I'm gonna argue both of those as
16 part of my motion as I'm standing up here now.
17 41.745, and we'll live with the court's order as it
18 currently stands, that this burden is ours. We
19 don't agree with it, and that's part of our motion
20 for reconsideration.

21 THE COURT: I understand.

22 MR. SILVESTRI: But for purposes of what
23 I'm arguing today, that is the order of the court
24 and we understand that.

25 So in order for NRS 41.745 for ANS

1 to not be liable, it's not liable if the task was
2 truly independent, if the act committed by Mr.
3 Farmer was not in the course of the very task
4 assigned to him, and if the act was not reasonably
5 foreseeable.

6 We know from the evidence that we
7 have in this case, and I don't see that there being
8 any, any evidence refuting this, certainly not
9 material or genuine evidence, that Farmer was not
10 the CNA assigned to Mrs. Doe.

11 The hospital records indicate that
12 on the day of the alleged -- well, not alleged
13 attacks. On the day of the attacks because we have
14 the criminal conviction, there's a different CNA
15 that was assigned to Mrs. Doe.

16 We also know from the plaintiff's
17 own testimony as I've just cited, Mr. Farmer's acts
18 were in fact independent and they were not related
19 to any medical care and certainly no type of
20 employable care as one would expect in a hospital
21 such as Centennial Hills or any other hospital here
22 in Southern Nevada.

23 In fact, I'm not aware of any
24 evidence. And witnesses have been asked, are there
25 other events of sexual assault going on at

1 Centennial Hills that we don't know about. There's
2 not a shred of evidence that this is an activity
3 that is part of the hospital setting for the culture
4 at Centennial Hills Hospital.

5 And there's absolutely no
6 conceivable medical purpose for the acts that Mr.
7 Farmer committed upon Ms. Doe.

8 The second issue is whether or not
9 this falls within the very task assigned. The only
10 thing I can say is that I think plaintiff's argument
11 doesn't make much sense with respect to how the
12 statute is written.

13 If plaintiff really wanted to make
14 the argument that all that was required to meet the
15 second or rebut the second accident, depending on
16 whose proof it is under 41.745, why didn't the
17 legislature say something very simple: That it was
18 committed within the employment of the employee.

19 Instead, the legislature went out of
20 its way. And it didn't just say committed in the
21 task, but it said the very task. That's odd
22 language. And it has to be considered we believe by
23 this court.

24 So it's not just your general
25 employment, but it has to be within the very task

1 assigned.

2 We have Mr. Farmer who is assigned
3 to a hospital. Now, to suggest that ANS would give
4 Mr. Farmer instructions of what he can or can't do
5 at Centennial Hills Hospital, again, makes no sense.

6 Centennial Hills Hospital decides
7 where it's going to place nurses, where it's gonna
8 place certified nursing assistants and what floor.
9 And once they get to that floor, as to the specific
10 or the very task that they get assigned on a
11 particular shift. That's what very task means.

12 In fact --

13 THE COURT: So are you suggesting your
14 liability would depend in part on what tasks
15 Centennial assigned to Mr. Farmer?

16 MR. SILVESTRI: I don't think our
17 liability would depend on that because their --
18 their liability might Mr. Farmer's been found to be
19 an employee. But if he shows up and --

20 THE COURT: But if you just show up and
21 then Centennial says your task is to --

22 MR. SILVESTRI: Right.

23 THE COURT: -- adjust leads and while
24 he's adjusting leads he's groping the patients, he
25 is, you know, arguably, you know, committing this

1 sexual assault during the very task assigned. And
2 the task that he was assigned is one that you
3 entrusted Centennial to assign to him.

4 MR. SILVESTRI: I don't think the statute
5 reads that way. That gets a little broad because we
6 don't know what Centennial Hills might assign him
7 to. Centennial Hills might assign him to do brain
8 surgery. We're certainly not relying upon that he's
9 gonna did brain surgery.

10 THE COURT: So under what circumstances
11 then would -- under your argument under what
12 circumstances would ANS ever be liable for the
13 conduct of, of a referred nurse?

14 MR. SILVESTRI: Driving to work and
15 decides to crash into somebody. I mean, there could
16 be a myriad of examples you can come up with.

17 But if you -- but once you've placed
18 that temporary worker into the control of somebody
19 else could be -- and I use the example in my brief
20 of Manpower. There's a number of temporary staffing
21 agencies up and down the strip and all throughout
22 Las Vegas. Once that employee's within the control
23 of some other employer, that liability does probably
24 have to lift from the temporary staffing agency.
25 They have no control over the situation.

1 41.745 is -- presumes that the
2 employer has -- the reason that they're -- the
3 legislature says we're gonna impose liability on you
4 for the intentional acts of your -- of your
5 employees, which at common law we didn't see, that
6 didn't happen. But they're -- the legislature's
7 determined and the Nevada Supreme Court prior to
8 that determined, you know what, there's certain
9 circumstances, certain situations where guess what,
10 your employee goes and commits an intentional act, a
11 criminal act, we're gonna impose liability. But
12 we're gonna make it very narrow. We're gonna make
13 it very narrow.

14 Plaintiff brings up Prell. It's an
15 interesting case. You know, the employer was right
16 there with the dealer. And in that case, the
17 employer was plying the customer with drinks.
18 That's in the case. The employer was a joint
19 participant. That's easy.

20 Let me give you another more current
21 example though. Nevada Supreme Court, Safeway
22 versus Wood.

23 THE COURT: Uh-huh.

24 MR. SILVESTRI: Mr. Ronquillo was a
25 temporary employee. He was an independent

1 contractor. He got sent over to Safeway. Safeway
2 told him what to do. Not, not the independent
3 contracting company. He just gets assigned.
4 Safeway contracts that work out.

5 The Nevada Supreme Court had an
6 opportunity in that case to say well, the very task
7 assigned to Mr. Ronquillo by, I think it was Action
8 Cleaning or Acton Cleaning, the other defendant in
9 that case, the very task assigned was for you to go
10 to the Safeway store and therefore you're
11 responsible for the rape, and multiple rapes, of the
12 young Safeway employee. Which by the way this case
13 is very tragic, I agree with you. The Safeway case
14 is also very tragic.

15 And the supreme court had to make a
16 tough decision. In that case the employee that got
17 raped was mentally impaired, she also became
18 pregnant as a result of those assaults, and the
19 court found no liability under 41.745 in that
20 situation.

21 THE COURT: And I -- I thought a couple
22 of those rapes in that case happened off premises
23 or --

24 MR. SILVESTRI: No, they were at the
25 store.

1 THE COURT: At the store but not -- I
2 mean not in the area where the janitor was supposed
3 to be cleaning.

4 MR. MURDOCK: Right, right.

5 MR. SILVESTRI: They were on the store
6 property.

7 THE COURT: Yeah. Okay. All right.

8 MR. SILVESTRI: They were definitely on
9 the store property.

10 THE COURT: I'll look. All right.

11 MR. SILVESTRI: And not only that, but
12 both employees to some extent had janitorial
13 responsibilities.

14 Now, Mr. Ronquillo definitely had
15 janitorial responsibilities and the unfortunate
16 young lady also had cleaning responsibilities.

17 THE COURT: All right.

18 MR. SILVESTRI: But -- but -- but to
19 accept plaintiff's argument in this case, the
20 argument is the very task was -- and it just doesn't
21 matter. The very task was ANS sent Mr. Farmer to
22 Centennial Hills Hospital. Well, in Safeway, that's
23 exactly what happened, too.

24 So why did the court go through a
25 fairly labored argument and find no liability when

1 all they had to do, according to plaintiff, was find
2 one thing. All they had to find was that the
3 independent contracting company, just like ANS, sent
4 an employee to go work for a different employer.
5 They didn't do that. And that's because NRS 41.745
6 by public policy is narrow.

7 Because as I said, in common law
8 intentional acts committed by a third party --
9 generally speaking, intentional acts committed by an
10 employee that are outside the scope of the
11 employment, employers weren't responsible for that.

12 Plaintiff's suggestion that well,
13 this case could have been different if ANS sent Mr.
14 Farmer over to Centennial Hills but told him exactly
15 either what to do or exactly what not to do. And
16 again, that makes absolutely no sense. They would
17 have no control over that and it wouldn't be of use
18 to Centennial Hills Hospital.

19 So the statute can't -- the statute
20 can't have been written to contemplate that
21 situation.

22 If in fact plaintiff's argument is
23 is accepted, it in essence makes the temporary
24 staffing agency strictly liable for anything that
25 employee does. That's what -- that's the effect of

1 it. Because all I told you to do was go there.
2 Once you're there, I am responsible for anything
3 that you do.

4 Well, that certainly wasn't the case
5 in Safeway, and it's certainly not the very task.
6 Because otherwise the legislature just puts in we're
7 responsible for all of your employment. No, the
8 legislature said no, we're gonna be responsible for
9 the very task assigned. Those are -- those are very
10 important words. And they're written that way to --
11 to limit the exposure under 41.745, not to expand
12 it.

13 But remember, it expanded it to some
14 extent because prior to that, you had to have a case
15 like Prell to find some liability on the employer.

16 Your Honor, in fact, in this case
17 the -- if -- if Mr. Farmer was assigned to check
18 electrical leads or if he wants to contend that he
19 was assigned to check -- by the way, his deposition,
20 they haven't taken his deposition so we don't know
21 what he's gonna say. We attempted to take his
22 deposition. He didn't answer. But that was during
23 the pendency of the criminal prosecution.

24 So the only evidence we have is that
25 Ms. Doe didn't need her electrical leads fixed, she

1 didn't need cleaning, and she didn't need her
2 catheter adjusted.

3 So the only thing that he's in there
4 doing, and there is -- we don't have a court or a
5 case that says this: As he's in there and he's
6 committing, and these are kind words, sexual
7 assault, he's raping her.

8 The Lisa M. case, which is a
9 California supreme court case, specifically says
10 this is so far out of what an employer might
11 contemplate an employee doing, even in a hospital
12 setting, we're not gonna impose this liability on
13 the -- on the employer.

14 I also want to point out with
15 respect to the very task assigned issue is the
16 California Appellate Court case that we cited to in
17 our brief, the Montague decision.

18 And in Montague, the court
19 essentially concluded that a temporary staffing
20 employee who goes to work at a -- I believe it was a
21 hospital, but in that case that temporary employee
22 hurt another employee of the hospital, put something
23 in their drink or did something bad to them.

24 The court said the mere fact of
25 aligning of employment between two people is not

1 going to be sufficient to impose liability on the
2 employer. That's not the task that was assigned.
3 The very task assigned.

4 So the case law strongly supports
5 our position in this matter. And as I said, all we
6 have to really do is look at Safeway because Safeway
7 is -- is almost on all fours with this case with
8 respect to that issue.

9 Final point is something being
10 reasonably foreseeable. Your Honor, in this case,
11 just as in Safeway, Mr. Farmer had no prior criminal
12 record. As best we can tell, everything that's been
13 produced, there's nothing to the contrary. He had
14 stellar employment reviews. That's what ANS knew.
15 And we have no findings or complaints of sexual
16 assault being made against Mr. Farmer. There is one
17 incident, and that's what plaintiff hinges its
18 foreseeability argument on against ANS. And that is
19 based on an unsubstantiated, and that's what it is,
20 allegation, made by a person that we don't know
21 regarding an alleged incident that occurred at the
22 Rawson-Neal Psychiatric Hospital in or around 2007
23 or January 2008.

24 It's doubtful whether this evidence
25 is even going to be admissible in this case. It

1 will be a subject of a motion in limine if we're
2 still in this case. But what we do know, even if we
3 accept it, the whole incident or the reporting of it
4 as being accurate. We know it turns out to be
5 innuendo, it turns out to be unsubstantiated
6 allegations.

7 We have a finding from Rawson-Neal
8 that a patient allegedly fixated on Mr. Farmer and
9 could not be believed. We don't know the patient's
10 name. There is no way to verify these so called
11 unwitnessed events. And there's no indication from
12 anybody, there's certainly no evidence shown that
13 ANS should have done anything more with respect to
14 that incident.

15 So for those reasons, we feel that
16 summary judgment should be granted under 41.745.

17 Very briefly, I'd just like to talk
18 about the direct negligence action filed by
19 plaintiff against American Nursing Service.

20 THE COURT: Okay.

21 MR. SILVESTRI: Your Honor, we first of
22 all feel under a theory of negligence there's no
23 duty owed by American Nursing Service in this case
24 to Ms. Doe.

25 And the basis for that is that in

1 order for duty be found there must be reasonable
2 foreseeability to ANS that Mr. Farmer would commit a
3 sexual assault. Where there's no foreseeability, as
4 a matter of law there can't be any duty. This is
5 different from this whole argument that you heard
6 this morning and this argument regarding Centennial
7 Hills Hospital because in that case there were
8 allegations made that Centennial Hills staff and/or
9 management knew something prior to the assault on
10 Ms. Doe.

11 And there's also evidence to
12 suggest, although I'm not making any finding on
13 that, but it seems Centennial Hills Hospital did
14 nothing about it so there was never a finding. I
15 mean, whether or not that's true or not, but that's
16 really what the argument is.

17 Our situation with respect to
18 Rawson-Neal was different. There was an
19 investigation conducted and there was a conclusion
20 made. And the conclusion was is that the
21 allegations were just that, unsubstantiated
22 allegations and innuendo.

23 And in fact, Mr. Farmer was allowed
24 to return to Rawson-Neal as a CNA if he was assigned
25 there.

1 So based on that, we contend there
2 was no foreseeability and therefore no duty for ANS
3 to do anything else with respect to Mrs. Doe.

4 The second point that we want to
5 make on the allegation of, of direct negligence
6 against American Nursing Service, and this again
7 goes along with this issue of foreseeability, but
8 under the Bauer (phonetic) decision, the Nevada
9 Supreme Court has ruled that intervening acts which
10 are superseding cut off liability of an act or who
11 might have placed the superseding actor in position
12 there as so long as that the superseding act or the
13 intervening act is unforeseeable.

14 We believe that if you go through,
15 and there are six points that the court asks us to
16 look at, but we believe that the only conclusion is
17 Mr. Farmer is in a hospital setting where people are
18 supposed to be healed. There's no indication that
19 he's going to sexually assault one person, let alone
20 several people, at least to ANS, and we believe that
21 his acts therefore are superseding. Thank you, Your
22 Honor.

23 THE COURT: Thank you, Mr. Silvestri.
24 Okay. So, yes.

25 MR. PRANGLE: Your Honor, you may recall

1 that we filed a joinder on two points.

2 THE COURT: Yes, you filed a joinder as
3 to the ANS motion. So please, you can be heard, and
4 then -- then we'll come back to plaintiff.

5 MR. PRANGLE: Right. And I thought Mr.
6 Silvestri did an outstanding job and I will accept
7 and adopt everything that he said.

8 The only thing I want to I guess
9 tailor it a little bit for Centennial Hills'
10 perspective.

11 THE COURT: Right.

12 MR. PRANGLE: And that is on the very
13 task assigned issue. Mr. Murdock in a lot of
14 depositions had been asking witnesses whether they
15 agree that it was within the job description of a
16 CNA to adjust EKG leads. And I think everyone has
17 agreed yes. And similarly is it within a job
18 description of a CNA to clean a patient who has
19 stooped or had an accident in their bed. And I
20 think everyone has agreed the answer to that is yes.

21 So at least in subject matter is the
22 issue with leads and the stooling, but everyone who
23 has been asked this in terms of adjusting a Foley
24 catheter, a catheter is something that a CNA cannot
25 do, that that is not something that's within the

1 task assigned to a CNA.

2 So as to the vaginal issue with Mr.
3 Farmer purporting to adjust the Foley catheter, that
4 by everyone's acknowledgment is beyond the scope of
5 the job or the task assigned to the CNA.

6 So with regard to the EKG, everyone
7 agrees that if there is a reason to, a CNA can
8 adjust the leads when told to do so.

9 In this case, as Mr. Silvestri
10 pointed out, the only evidence we have about the
11 leads comes from Ms. Doe who says number one, the
12 leads did not need adjusting. And more importantly,
13 they weren't on my breasts or nipples. So there was
14 no reason for Mr. Farmer within the task assigned to
15 him to lay hands on Ms. Doe's chest.

16 THE COURT: That's -- that's kind of
17 defining very task assigned quite literally.

18 MR. PRANGLE: Well, sure. What do we
19 put --

20 THE COURT: I mean, you have to --
21 obviously the task assigned, the legislature
22 intended the task assigned to be the act different
23 than this -- than the wrongful act.

24 MR. PRANGLE: Well, let's for example --

25 THE COURT: So it has to be -- the task

1 assigned has to be this broader than the specific
2 wrongful act that's being conducted.

3 MR. PRANGLE: And I don't disagree with
4 that. I guess my point is kind of considering the
5 Prell case. There's a situation where the very task
6 assigned to the dealer is to deal blackjack. And,
7 you know, there's issues with serving alcohol, but
8 he's actually doing the very thing that he was
9 supposed to be doing that day and there was this
10 altercation that resulted in him punching a patient
11 (sic).

12 Okay. So now let's analogize --

13 THE COURT: Well, he wasn't assigned the
14 task of punching someone in the face.

15 MR. PRANGLE: No. He was assigned to
16 deal cards.

17 THE COURT: Yeah.

18 MR. PRANGLE: So let's equate dealing
19 cards with adjusting leads.

20 THE COURT: Okay

21 MR. PRANGLE: Mr. Farmer was tasked with
22 adjusting leads but only if they needed to be
23 adjusted. So this is -- it wasn't as just go adjust
24 leads whenever you want to. It was number one, only
25 do it when there's a need to do it, but also when

1 you're told to do it.

2 And you may recall that was a big
3 issue with nurse Wolfe is that he's doing this
4 without being told. So was there a reason for him
5 to adjust the leads on Ms. Doe? Well, the answer to
6 that is no. We know that from her own testimony
7 where she said the leads did not become detached,
8 number one; and number two, the leads were not on my
9 breasts or nipples. And there's no evidence that
10 Mr. Farmer was told to do it.

11 So the very task is when necessary
12 adjust leads. There was no need for it here. So
13 that's that point.

14 Same issue with regard to the stool.
15 The very task assigned to him is that when a patient
16 has a bowel movement in bed, one of the jobs
17 unfortunately for CNAs is they have to clean it up,
18 but it presupposes that there was a need to do it.
19 We don't tell CNAs go ahead and wipe the bottoms of
20 patients who don't need it. So it's when it's
21 necessary.

22 When the patient -- this wasn't a
23 situation where Mrs. Doe did have a bowel movement
24 and as he's doing that he decides to place his thumb
25 in her anus. That's not what we have here. He had

1 no legitimate reason to lay hands on her whatsoever.
2 So as to that, it's not during the very task
3 assigned.

4 So how do we approach it? And the
5 Wood v. Safeway I think is a very telling case
6 because, and ask yourself, when the act occurred,
7 did the person doing that do -- kind of begin the
8 task out of some sense of duty to the employer like
9 he's dealing cards.

10 And as Wood versus Safeway, for the
11 reasons that Mr. Silvestri said in this type of
12 circumstances, a sexual assault is so beyond any of
13 that that it can't be.

14 THE COURT: Do you -- do you -- do you
15 all believe that this is an issue of law for the
16 court to decide in determining how narrowly or
17 broadly to interpret very task assigned as opposed
18 to letting that go to the jury and letting your
19 jurors decide that issue?

20 MR. PRANGLE: You know, that's an
21 excellent question. I guess what I would say in
22 response to that, I'm not certain. But let's --

23 THE COURT: Well, I'm not certain either.

24 MR. PRANGLE: But let's review the
25 evidence in the light most favorable to plaintiff.

1 Was there a reason for Mr. Farmer even to be in the
2 room?

3 As you heard Mr. Silvestri said, the
4 evidence we have so far is that Mr. Farmer wasn't
5 even assigned to that room. So there was no reason
6 for him to be in the room. So then let's assume it
7 was okay for him to be in the room. Was there a
8 reason for him to lay hands on Ms. Doe? Well, if
9 her leads had become detached and if he had been
10 told he could readjust them. Not on her breasts or
11 her nipples, but on her chest and abdomen. Same
12 thing.

13 THE COURT: Uh-huh.

14 MR. PRANGLE: With regard to the
15 stooling, if Mrs. Doe stooled herself, yeah, it
16 would be his job to clean her up. But that didn't
17 happen.

18 THE COURT: Uh-huh.

19 MR. PRANGLE: So there's no reason for
20 him to lay hands on her. And then thirdly with
21 regard to the Foley catheter, he's not allowed to
22 touch that anyway. So the -- the vaginal
23 penetration is just beyond.

24 So the question -- so was Mr. Farmer
25 when he's doing this horrible act doing so out of

1 some sense of duty to his job at Centennial Hills or
2 like in the -- is it the Kim case or the Lisa M.
3 case, which I'll talk about in a second and then sit
4 down, is it just so far beyond what is reasonably
5 expected for him to do.

6 And this is not a situation where
7 there's a, you know, an interaction with a patient,
8 sometimes, you know, fights happens, so it's
9 foreseeable that it would happen, or is it like the
10 Lisa M. case where it happened during an ultrasound.
11 And Your Honor may know it's with a wand and a
12 belly.

13 THE COURT: I know what it is.

14 MR. PRANGLE: So in the Lisa M. case, the
15 perpetrator in that case was doing his job, he was
16 doing an ultrasound. He was allowed to lay hands on
17 the victim by doing the ultrasound with the wand,
18 but he went so far beyond that by inserting the wand
19 vaginally and then digitally stimulating her that as
20 a matter of law.

21 THE COURT: Let me ask you: Are you --
22 are you suggesting that -- that an employer can
23 protect itself from respondeat superior liability by
24 drafting policies and procedures that -- that --
25 that in a detailed fashion specify the tasks that

1 are assigned to a particular employee, and in so
2 specifying those tasks say that your task is
3 absolutely not to go beyond these legal, legitimate
4 purposes and if you are ever to do -- if you are
5 ever to engage in any wrongful act that's beyond the
6 tasks assigned --

7 MR. PRANGLE: No.

8 THE COURT: -- then you're not allowed
9 to, you know, to grope or -- I mean, you know,
10 you're not to have any wrongful intent in any -- I
11 mean, if you have that specific policy, then you can
12 make the argument that any time they do something
13 wrong, they're going outside the very task assigned.

14 MR. PRANGLE: I agree, and I don't
15 believe that would be sufficient. So let me give
16 you an analogy.

17 THE COURT: Okay.

18 MR. PRANGLE: We've heard a lot of this
19 discussion that Mr. Farmer in February was a sitter.
20 So let's use a sitter example.

21 THE COURT: Okay.

22 MR. PRANGLE: Normally sitters are
23 psychiatric patients. Now, that's why they have
24 this one-to-one thing. So kind of like in the Prell
25 case we have a sitter who's in a room with a, you

1 know, I'll call them mentally challenged person.
2 Sometimes they're violent towards themselves,
3 sometimes they're violent towards others, sometimes
4 they want to be alone, sometimes they want to commit
5 suicide, but they're somewhat deranged people.

6 So we have somebody sitting in the
7 room watching them 24/7. And that's what Mr. Farmer
8 supposedly was doing in that nurse Murray example.
9 So in that circumstance where we put Mr. Farmer in
10 there -- and his job is just to sit.

11 THE COURT: Okay.

12 MR. PRANGLE: Okay. Is it reasonable
13 that under that circumstance like Prell there could
14 be an explosive interaction where the patient says
15 something and attacks Farmer, or Farmer says
16 something and then -- or the patient says something
17 and Farmer attacks him? Sure. That's like the
18 Prell situation where he was doing the very thing he
19 was supposed to be doing.

20 Here this is categorically different
21 because again, there was no reason for him to even
22 be inside that room; and then number two, even if he
23 could be in that room, there's no justifiable
24 explanation for him to lay hands on Ms. Doe.

25 So that's what makes it more the

1 Wood versus Safeway scenario versus the Prell
2 scenario.

3 And as the Lisa M. court said here
4 where the guy was legitimately placing hands on the
5 patient, he's there doing his job with the
6 ultrasound, but he then went so far beyond that to
7 basically take advantage of a naive person that as a
8 matter of law the California court said in no way
9 could plaintiff legitimately say that he did so out
10 of some sense of loyalty to the hospital. This was
11 for his own perverse purposes.

12 And that's exactly what we have here
13 because there is not a shred of evidence that Mr.
14 Farmer could legitimately have laid hands on Ms.
15 Doe. So thank you.

16 THE COURT: All right. I understand
17 that. Right, right. Thank you very much, Mr.
18 Prangle.

19 So let's hear from the plaintiff on
20 I guess this is reply to support of your motion and
21 opposition to ANS's motion.

22 MR. MURDOCK: Yes, Your Honor.

23 THE COURT: Great.

24 MR. MURDOCK: Okay. Let's start with
25 Lisa M. since we just finished with Lisa M.

1 THE COURT: Yes.

2 MR. MURDOCK: Okay. Lisa M involved an
3 ultrasound tech. Gal's laying on the table. He was
4 assigned to do one exam. He did that exam. She
5 goes back to her room. She comes back to the area,
6 he says, hey, how would you like to know the sex of
7 the baby. That wasn't his task assigned.

8 The thing is in Nevada, we look at
9 task assigned, the very task assigned. In
10 California, they don't look at the very task
11 assigned. They look at column next to the test
12 (phonetic). It's totally different.

13 And let's assume -- and I put this
14 in my brief. Let's assume that California did
15 accept the very task assigned task, okay. Well, it
16 would come out exactly the same because in that case
17 the assignment was to do the first exam. She stops,
18 she's walking out, he says hey, how would you like
19 to know the sex of the baby. That is not the task
20 assigned him. The very task assigned him was the
21 first exam. That's it. The second exam, that
22 wasn't the task assigned.

23 So in California, if we did the very
24 task assigned, they would have 41.745(1)(b) defense
25 because it wasn't within the very task assigned.

1 On the other hand, let's assume in
2 Lisa M., instead of her going back and coming in and
3 he says how would you like to know the sex of the
4 baby, well, let's assume he sexually assaulted her
5 during the first exam; the one that was assigned,
6 the one that was prescribed. At that point, it is
7 while in the course of the very task assigned.
8 That's what that is. It's something extraneous is
9 the fact that it's outside the task that's supposed
10 to be done. That's really it.

11 You know, in terms of him being in
12 the room, and Mr. Prangle says well, I don't know
13 what he was doing in the room in the first place
14 because he wasn't assigned to be in the room.
15 Really? Really?

16 Centennial has admitted -- and I put
17 this in my brief. Centennial has admitted in a
18 response to request for admission that CNAs are not
19 assigned rooms. It's valid responses to a question
20 that's set to number two. They admitted that. So
21 then they come in here today and say well, no, I
22 don't know what he was doing in that room. He
23 wasn't assigned there.

24 How do you do that? You've already
25 admitted that CNAs aren't assigned rooms. That's a

1 problem.

2 Then we say well, we don't, we
3 don't -- I want to get the exact language here. He
4 says, oh, that there was no reason to do the leads,
5 no reason to do the bowel movements. Really? Well,
6 okay. Sure Jane Doe says I didn't, I didn't need
7 them. Okay. But was that the very task assigned
8 anyway? Who cares? The questions is what is the
9 very task assigned.

10 Mr. Prangle didn't come in here and
11 say, oh, these were the tasks assigned. We assigned
12 him specifically to do these tasks that night. He
13 didn't say that. We don't know what he was assigned
14 that night. We know what CNAs are allowed to do,
15 yeah.

16 And Mr. Prangle was candid with this
17 court. He said, yeah, CNAs are allowed to check
18 leads on their own. By the way, that's what Amy
19 Blasing said, they're allowed to just walk around
20 checking leads on their own. They don't need
21 anybody to tell them this. They're also allowed to
22 clean up people on their own. They don't have to
23 wait for somebody to instruct them to do that. But
24 that's what they're allowed to do. That's the
25 difference of can and may. Sure. They can do that

1 because that's their scope of practice. So they're
2 allowed to do that. But that's different than what
3 are they tasked with, what was their very task that
4 night.

5 So you have to ask, okay,
6 Centennial, what was Mr. Farmer tasked with that
7 night. I didn't hear anything. You have to ask
8 ANS, what was Mr. Farmer tasked with that night. I
9 don't know.

10 We know what he wasn't tasked with.
11 He wasn't tasked with to -- apparently ANS didn't
12 assign him to do leads, didn't assign him to clean
13 her, didn't assign him to adjust a catheter. Great.

14 What'd you assign him to do? So we
15 know how to fit it in with 41.745(b). What did
16 you -- what did you tell him to do? They told him
17 to be at Centennial. Your Honor, employers --

18 THE COURT: If we eliminated all the
19 potential tasks that would require him to be in the
20 room, can't you reasonably conclude that there's no
21 task that -- that he was performing while the sexual
22 assault occurred?

23 MR. MURDOCK: No. Because I don't know
24 what he was tasked with. Yeah, you can say he
25 wasn't tasked with -- with this because she didn't

1 need heart -- heart lead changes. Well, no, that's
2 what Jane Doe is saying, she didn't need them.
3 That's not the hospital saying that and that's not
4 ANS saying that. Somebody has to tell you what are
5 the tasks assigned.

6 What did they tell him to do? Did
7 they tell him to go in the rooms? Did they tell him
8 to stay in the ER? Mr. Farmer, they could have said
9 hey, you're an ER CNA, you stay in that ER. They
10 could have done that. They didn't do that. It
11 happens all the time, ER nurses, you're tasked with
12 staying in the ER with being an ER nurse.

13 If you go up on the med surge floor
14 on the sixth floor and you intentionally hurt
15 somebody, that's outside the very task.

16 In this case, Mr. Farmer originally
17 on the night of May, I think it's 14th, okay, I
18 can't remember, but I think it's May 14th, was
19 tasked originally with being in the ER.

20 If he was in the ER and then he went
21 up to the sixth floor and sexually assaulted Jane
22 Doe, they get 41.745 because the very task assigned
23 was to be in the ER.

24 The problem is he only spent two
25 hours down in the ER, then Centennial moved him to

1 the sixth floor, and that's where he committed the
2 sexual assault on Jane Doe.

3 THE COURT: Well, what'd they tell him to
4 do on the sixth floor?

5 MR. MURDOCK: They don't know. They
6 don't know. There's no been testimony about that,
7 there's been no evidence about that. The only piece
8 of evidence is one document that says he was moved
9 to the sixth floor at 2130 hours. That's it.

10 Now, regarding Centennial, we're
11 waiting on a PMK. My understanding is from speaking
12 with Mr. Bemis that the person most knowledgeable,
13 they gave me the name yesterday, but will only
14 testify about generalities. They won't testify
15 about what was the very task assigned to him that
16 night.

17 So the reality is they don't know.
18 Well, the problem is if you don't know, you're stuck
19 with certain evidence. You know, I can't do
20 anything about that. You can't add things in and
21 say well, generally we task them to do this. No,
22 no. It doesn't say what was the general task
23 assigned under 41.745. It says what was the very
24 task assigned.

25 Very must mean something. I agree

1 with Mr. Prangle and Mr. Silvestri. Very means
2 something. What was the very task assigned. If you
3 can't answer the question, then you're stuck with
4 certain things. That's a function of evidence.

5 So in terms of ANS, when they say,
6 the only task was he was to be at Centennial, that's
7 right. That was the task. They could have
8 eliminated that task.

9 It applies -- 41.745 applies to all
10 employers in Nevada, not just staffing agencies.
11 Why are staffing agencies somehow exempt from that?
12 I didn't read that in the statute. It's not there.
13 You can change things. You can add things. But
14 they didn't do that.

15 So they're stuck in terms of
16 evidence. This is what we tasked them to do. We
17 tasked. The very task assignment is to be at
18 Centennial. If they could come up with some other
19 very task assigned and we assigned them to be at
20 Centennial and to the ER and that's it.

21 THE COURT: Do you believe that ANS's
22 exposure is based in part on the tasks assigned to
23 Mr. Farmer by Centennial?

24 MR. MURDOCK: No, no.

25 THE COURT: So if -- if ANS merely tasks

1 Mr. Farmer to be at the hospital and, and -- and
2 Centennial had said Mr. Farmer, you have to stay in
3 the ER room and then he wandered on the sixth floor
4 and committed the sexual assault, is ANS gonna be
5 liable?

6 MR. MURDOCK: Well, ANS is liable. It
7 depends what they task him to do. If ANS --

8 THE COURT: It depends on just what ANS
9 tasks him or Centennial?

10 MR. MURDOCK: Well, it's both.
11 Unfortunately in terms of this situation, you have
12 to look at them separately. But you have to look
13 at -- in other words, what you're doing, Your Honor,
14 is combining the two. Instead of combining the two,
15 take a look at them separately. What did ANS task
16 them to do.

17 THE COURT: Well, no, no, just you're
18 positing a situation where ANS who had less control
19 over the employee could be -- could be more liable
20 than -- than the entity has the greater control over
21 the employee.

22 MR. MURDOCK: No. Because, Your Honor,
23 I'm not saying there's lesser control or greater
24 control. Why is there lesser control? They have
25 every right to say you're only to stay in the ER.

1 They have every right to do that. They just didn't.
2 They had every right to say you're a security guard
3 and you stay in the parking lot. They have a right
4 to tell Centennial Hills hey, look, you're bringing
5 on an ER nurse, that ER nurse is an ER nurse only,
6 nothing else. That's it. But they didn't do that.
7 That's why you have to look at them separately.
8 What was the task assigned?

9 And that -- they don't get to
10 combine things. But even -- let's assume they did
11 combine things here in this case. Let's assume they
12 did, okay. What was the task assigned by
13 Centennial? The sixth floor. That's all we have.
14 There's nothing else. There's no other evidence.
15 The joinder didn't bring up any evidence. It was
16 one page. It's not like they said oh, yeah, let me
17 give you an affidavit, this was the task assigned,
18 he was assigned to be a sitter, he was assigned to
19 be this. No, no, no.

20 THE COURT: All right. I understand
21 your argument. Maybe we should -- it's getting
22 close to 5. So I want to make sure we wrap-up on
23 time.

24 MR. MURDOCK: I'm sorry, Your Honor.

25 THE COURT: It's all right.

1 MR. MURDOCK: In terms of the independent
2 venture issue, the independent venture issue, you
3 know, Your Honor, the reality is I don't know what
4 his venture was. I don't know what his reasons
5 were. Again, we took his deposition, he took the
6 Fifth.

7 You can make that assumption that at
8 the end of the day somebody's gonna make a finding.
9 Whether it's Your Honor or whether it's the jury,
10 that a -- the independent venture it was or was not.

11 But in terms of evidence for summary
12 judgment purposes, there is no evidence. There's
13 the argument, there's plenty of argument, but
14 there's no evidence that it was an independent
15 venture.

16 In terms of reasonable
17 foreseeability, Your Honor, I went through this in
18 detail. Excruciating details in my briefs as to
19 what was going on at Rawson-Neal and what not and
20 what ANS had.

21 Your Honor, ANS got notification
22 that Mr. Farmer had apparently kissed somebody or
23 one of the -- one of the patients and called her on
24 the phone a couple times, things like that. It's
25 what happened.

1 Okay. So what does ANS do? ANS
2 doesn't do anything. ANS didn't suspend him. ANS
3 didn't do one thing. Rawson-Neal did it.
4 Rawson-Neal put him on DNR, a do not return. It was
5 the do not return list. They were doing some sort
6 of investigation.

7 ANS, what'd they do? They talked to
8 Mr. Farmer. That's it. They got his side of the
9 story. Funny thing is they also had, during this
10 time, Ron Trinese Thirds (phonetic), she was another
11 nurse at Rawson-Neal, and Linda Alrington's
12 (phonetic) statement. They didn't call them. They
13 could have to find out what happened. Ron Trinese
14 and Linda Alrington overheard this stuff. They
15 overheard the phone calls. The patient told her
16 that -- that they were being kissed. That she was
17 being kissed. That's what happened.

18 So the question is -- the real
19 question is did they violate -- did they commit --
20 did they commit negligent intention. That's the
21 issue. That's the negligent intention. And we put
22 that in our brief, we went through it. And every
23 employer's got that duty. Are they fit for the job.
24 And they've got a duty to look at things to see
25 whether or not they're -- they are fit for the job.

1 Now, when ANS got notification of
2 all this, their manager in Las Vegas wrote a form.
3 We don't know exactly what she was told what
4 happened. We really don't. She doesn't remember
5 what happened. And apparently there's no documents.
6 However, she wrote on this incident report, abuse,
7 violation of Regulatory Practice Act. That's how
8 ANS termed it.

9 So the question is could a
10 reasonable jury -- juror determine that when
11 Michelle Simmons, the manager for ANS, marked this
12 off as abuse and neglect or abuse, violation of
13 Regulatory Practices Act, if they knew at that point
14 in time that he was not fit for the position, Your
15 Honor, I'll grant you Rawson-Neal talked to
16 everybody and they let him back.

17 Funny thing about that is though
18 when they let him back, there's a statement in the
19 document. And again, this is all in the brief.
20 There's a statement in the document that says --
21 that talks about Cindy. And Cindy doesn't -- didn't
22 remember a certain fact that Steven said. That was
23 a big problem. Because if you just looked at that,
24 it appeared as though Steven might have lied. And
25 they had this information. They just didn't do

1 anything with it. That's the problem, they didn't
2 do anything with it.

3 So is it reasonably foreseeable? A
4 jury needs to tell us that here, Your Honor. You
5 notice we didn't file a motion for summary judgment
6 saying that it is reasonably foreseeable as a matter
7 of law because it is not.

8 The question is, as was the last
9 time, could somebody -- could a reasonable juror
10 conclude that they breached their duty of negligent
11 retention.

12 In other words, they breached the
13 duty of doing a background, a proper investigation
14 to see if he was fit for his job. And all the
15 evidence is set forth in this, Your Honor.

16 THE COURT: I got it all.

17 MR. MURDOCK: I appreciate that.

18 THE COURT: Okay.

19 MR. MURDOCK: Very briefly. Superseding
20 cause, it's the exact analysis that we talked about
21 before, foreseeability. So there's no point in
22 going through everything again.

23 If there's a question foreseeability
24 in terms of, of the other reasonable foreseeability,
25 there's a question of superseding cause. That's a

1 jury question. That's not something you decide as a
2 matter of law, Your Honor.

3 The Bauer's case was completely
4 different. The Bauer's case was Metro. And when
5 they were called out, they beat up two people,
6 allegedly beat up, two people on the -- on the side
7 of the property. And the question was is that
8 reasonably foreseeable when Metro gets called out
9 and Metro says beat up these people? Maybe today
10 it's a different story, but back then the answer was
11 no, it's not reasonably foreseeable. This is not
12 Bauers. It's not even close to Bauers, Your Honor.

13 THE COURT: All right. I fully
14 investigated those issues and that legal theory in
15 another case that I was -- that's still before me
16 involving the -- whether the Aria is liable for the
17 shoot-out and the resulting taxi explosion that
18 happened off property. So I -- I -- I'm well
19 familiar with these issues.

20 MR. MURDOCK: The only thing I will tell
21 you about that, and just very briefly, because in
22 fact they brought up the Silver Nugget case.

23 THE COURT: Okay.

24 MR. MURDOCK: That's -- that's different
25 because they've got 651.0.5.

1 THE COURT: There are some different laws
2 here.

3 MR. MURDOCK: So I just want to bring
4 that up to your attention.

5 THE COURT: Thank you very much for
6 mentioning that.

7 MR. MURDOCK: Thank you.

8 THE COURT: All right. Well, let's go
9 back to Mr. Silvestri. And you get the reply and
10 then I'm gonna give Mr. Prangle the last word if he
11 wants it.

12 MR. SILVESTRI: I'm gonna be brief, Your
13 Honor. I'm gonna try and address a couple of
14 questions that you made. And I do --

15 THE COURT: Oh, thank you. Appreciate
16 it.

17 MR. SILVESTRI: And I have a couple of --
18 just address a couple of comments that plaintiff
19 made.

20 Your Honor, you asked a very good
21 question. Are we asking you to apply the law here?
22 Is this an issue of law or is it an issue of fact
23 that maybe the jury should decide?

24 Here's the answer: We are asking
25 you to apply the law under NRS 41.745. That's your

1 job is to interpret that law. In this particular
2 case though, the facts are not disputed because the
3 facts come from the plaintiff. Nobody's disputed
4 it. They can't. I can't dispute it because she's
5 now deceased and the only other person that was
6 there in that room on perhaps three occasions was
7 Mr. Farmer.

8 So the facts as they are today is
9 that this guy came in, fondled me, put his finger up
10 my rear and put his other finger up my front.

11 THE COURT: Uh-huh.

12 MR. SILVESTRI: The only facts that are
13 here today -- and -- and so that's all we've got.
14 There's not a well, you know, maybe his hand
15 wandered while he was adjusting the leads. The only
16 person that said well I'm in here adjusting your
17 leads was Mr. Farmer who said it to the plaintiff.
18 And the plaintiff said, doesn't need to happen, I
19 don't need my bed cleaned, I don't need my catheter
20 adjusted.

21 That's -- those are the facts.
22 Everybody's gonna live with that come trial if we
23 have go to trial on this case. Not gonna change.
24 Will not change.

25 So none of these things, adjusting

1 leads, cleaning the bed, adjusting the catheter ever
2 happened. That's the plaintiff's own words. And
3 they can't get around that. Never happened.

4 So we're asking you to apply the law
5 to undisputed facts. Did any of this happen within
6 the tasks, these tasks, very tasks assigned?

7 Page six, plaintiff's brief. ANS
8 didn't assign him to do anything at all at
9 Centennial. Centennial did.

10 Line 26 and 27, page six of
11 plaintiff's motion for partial summary judgment.
12 And it's for that phrase that we filed our
13 countermotion for summary judgment in opposing this.

14 The whole leads issue, the cleaning
15 up issue, the adjust, that's fiction. Those are
16 fictitious tasks. That's not what the statute says.
17 We aren't gonna pay for -- employer doesn't pay for
18 fictitious tasks.

19 Your Honor, NRS 41.745 is written
20 for because you asked good, astute questions, give
21 me some examples, how does that apply. Well,
22 remember, in common law intentional criminal acts
23 committed by somebody were not necessarily -- did
24 not make somebody else vicariously liable.

25 So in equity, we -- we get cases

1 like Prell, and we get statutes like 41.745. But
2 that doesn't mean we blow open the doors and create
3 strict liability for every -- every agency
4 employee -- or employer. Excuse me.

5 So for example, a bouncer. Well,
6 bouncers have to physically grab somebody and throw
7 them out on their ears sometimes. And sometimes
8 they get too rough in the heat of the moment.
9 They're not doing anything for the benefit of their
10 employer. Well, excuse me. They are doing
11 something for the benefit of their employer in that
12 situation.

13 In this case, there's just
14 absolutely not one shred of fact saying what Mr.
15 Farmer did to Mrs. Doe benefited Centennial Hills
16 Hospital, benefited American Nursing Service. It
17 just benefited one person and that was the grotesque
18 fantasies in all of Mr. Farmer. Nobody else and
19 nothing else.

20 With respect to the issue of
21 foreseeability, we know about the Rawson-Neal
22 allegations. Yeah, should the investigation have
23 been done differently? Well, plaintiff can argue
24 that, but they have no evidence to support that
25 that's what ANS should have done. But that's really

1 a red herring argument. Because the fact of matter
2 is this: The allegations were shown to be
3 unsubstantiated and they were just that, allegations
4 of a patient that had fixated on a nurse or on a
5 certified nursing assistant.

6 But even if you have you, look at
7 those -- you know, and by the way, it wasn't kissing
8 and telephone calls and bunch of other things. The
9 allegation was there was a kiss and there was a
10 phone call unwitnessed by anybody.

11 The issues though, does that
12 non-finding, because that's what Rawson-Neal said,
13 create foreseeability that Mr. Farmer was gonna go
14 sexually assault a patient?

15 We contend, Your Honor, that in
16 light of all of the facts in this case that we
17 presented to you that it does not create that
18 foreseeability.

19 We would ask that the court grant
20 summary judgment as to all claims with respect to
21 plaintiff's allegations against American Nursing
22 Service.

23 THE COURT: Thank you, Mr. Silvestri.
24 All right. Mr. Prangle.

25 MR. PRANGLE: I'll be one minute or less,

1 judge.

2 THE COURT: Thank you.

3 MR. PRANGLE: And I adopt what Mr.
4 Silvestri said, but on the very task assigned issue
5 with Centennial.

6 THE COURT: Sure.

7 MR. PRANGLE: I think everyone agrees
8 that no one remembers exactly what Mr. Farmer was
9 told to do that night. But everyone agrees what the
10 task of a CNA is to do. They agree that when
11 appropriate, it's acceptable for a CNA to adjust
12 leads. When appropriate, it's acceptable for a
13 nurse or CNA to clean the stool of a patient.

14 It's that when necessary element
15 that is missing here. As Mr. Silvestri has
16 highlighted two times, and I don't believe Mr.
17 Murdock has even challenged this at all, is that
18 Mrs. Doe said my leads did not need to be adjusted.
19 And by the way, they weren't on my breasts or
20 nipples. And secondly, I didn't stool myself so I
21 didn't need to be cleaned.

22 So the very task that he was
23 assigned with, if it's necessary you can do these
24 things. But here they weren't.

25 This is not a Prell situation where

1 somehow while he's legitimately adjusting leads
2 there's some heat of the moment thing that causes
3 him to grab her breasts, or as he's cleaning the
4 stool that his hand slips or something and he is --
5 that's not a -- we're not in a Prell situation.

6 We're in a Lisa M. situation where
7 if Mr. Murdock had clarified the facts, the
8 ultrasound was done, the patient leaves, comes back
9 and now he's again touching her inappropriately.
10 Just like Mr. Farmer here, there's no reason for him
11 to have touched her chest, there's no reason for
12 under any circumstances for him to have touched her
13 front. And given that there was no stool, there was
14 no reason for him to touch her back. This is a Lisa
15 M. situation, not a Prell situation.

16 THE COURT: All right. Thank you.
17 Counsel, very fine arguments today. You gave me a
18 lot to think about. I'm gonna take this under
19 advisement. And let me read some of the cases and
20 get a decision out as quickly as I can.

21 Thank you very much for taking the
22 time to address the court's questions and -- and
23 eliciting me on some of the issues.

24 Court is adjourned.

25 MR. SILVESTRI: Your Honor, thank you for

1 your time today.

2 MS. BROOKHYSER: Thank you, Your Honor.

3 THE COURT: Thank you.

4

5 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
6 PROCEEDINGS.

7 /s/ JoAnn Melendez

8 JO ANN MELENDEZ

9 CCR NO. 370

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CASE NO.

**IN THE
SUPREME COURT OF NEVADA**

**HALL PRANGLE & SCHOONVELD, LLC, MICHAEL PRANGLE,
ESQ., KENNETH M. WEBSTER, ESQ. AND JOHN F. BEMIS, ESQ.**

Petitioners,

vs.

**EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,**

Respondent,

-and-

**MISTY PETERSON, AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF JANE DOE,**

Real Party in Interest

District Court Case No.: A-09-595780-C

**PETITIONERS' APPENDIX TO
PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME VI of XVII**

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

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TAB 22
PART ONE

1 CASE NO. A-09-595780-C

2 DEPT. NO. II

3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 ESTATE OF JANE DOE,)

8 Plaintiff,)

9 vs.)

Reporter's Transcript
of
Evidentiary Hearing
and Motions

10)
11 STEVEN DALE FARMER;)

AMERICAN NURSING SERVICES,)

12 INC.; UNIVERSAL HEALTH)

SERVICES, INC.; VALLEY)

13 HEALTH SYSTEM, LLC,)

14 Defendant.)
15
16

17 BEFORE THE HONORABLE RICHARD F. SCOTTI,

18 DISTRICT COURT JUDGE

19 FRIDAY, AUGUST 28, 2015

20 9:00 A.M.

21
22
23
24 Reported by: JoAnn Melendez, CCR No. 370

1 APPEARANCES:

2 For the Plaintiff: Robert Murdock, Esq.
3 Eckley M. Keach, Esq.

4 For Universal Health
5 Services, Inc.,
6 Valley Health
7 System, LLC.: Michael E. Prangle, Esq.
Kenneth M. Webster, Esq.
John F. Bemis, Esq.

8 For American Nursing
9 Services: Amanda J. Brookhyser, Esq.
James Silvestri, Esq.

10 For Steven Dale
11 Farmer: Heather S. Hall, Esq.

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1 LAS VEGAS, CLARK COUNTY, NV, FRI, AUG. 28, 2015

2 9:00 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: You guys can all come
7 forward. We only have one matter set for today. So
8 this is the Estate of Jane Doe versus Valley Health
9 System. Case No. 09-A-595780 (sic).

10 Whoever's gonna be arguing, why
11 don't you guys go ahead and identify yourselves.

12 MR. MURDOCK: Yes, Your Honor. If we can
13 just wait a minute. Mr. Keach went to the restroom.

14 THE COURT: All right. No problem.
15 Let's just be at ease for a moment then.

16 MR. MURDOCK: Thank you.

17 MR. KEACH: Good morning, Your Honor.

18 THE COURT: Good morning. How are you
19 doing?

20 MR. KEACH: I'm doing good. How about
21 yourself?

22 THE COURT: I'm doing fine. All right.
23 So I just called the case.

24 Why don't you guys go ahead and all
25 identify yourselves for the record?

1 MR. KEACH: Marty Keach and Rob Murdock
2 for plaintiff, Your Honor.

3 MR. PRANGLE: Mike Prangle, Ken Webster
4 and John Beamis for VHS and UHS.

5 MS. HALL: Good morning, Your Honor.
6 Heather Hall on behalf of Steve Farmer.

7 MS. BROOKHYSER: Good morning, Your
8 Honor. Amanda Brookhyser on behalf of American
9 Nursing Services.

10 MR. SILVESTRI: And Jim Silvestri here on
11 behalf of American Nursing as well, Your Honor.

12 THE COURT: Very good. All right. So
13 please go ahead and be seated and be at ease. We
14 have a few things to talk about.

15 So it looks like the biggest thing
16 we have today is the evidentiary hearing. As you
17 know, I sent out some guidelines for how I wanted
18 the evidentiary hearing conducted. And that was an
19 attempt to make sure that we had streamlined this in
20 a way that was gonna allow us to get done in one
21 day.

22 I -- once I received the briefs from
23 everybody, it became apparent that perhaps you all
24 anticipated only a couple witnesses and more
25 argument and not a traditional evidentiary hearing.

1 And so I wanted to discuss with you all first if you
2 thought maybe we should change the procedure and
3 give you more time to argue rather than, you know,
4 the initial 10 minutes that I thought we would
5 allocate to each side, and then, then present
6 witnesses if we're not -- if this isn't gonna be a
7 witness intensive presentation, but more an effort
8 to give me a road map of the evidence and read depo
9 testimony, then perhaps we should change the
10 procedure.

11 So I wanted to check with the
12 parties first. Why don't you --

13 MR. KEACH: Thank you, Your Honor. Mr.
14 Prangle and Mr. Murdock have worked out part of the
15 problem, Your Honor. And then Mr. Prangle was kind
16 enough to agree that we would be allowed to use
17 deposition testimony instead of -- in lieu of live
18 witnesses.

19 And so we will be offering
20 deposition transcripts of several of the witnesses.
21 Our intention was merely to offer them and perhaps
22 highlight the portions that we -- they were relying
23 on, but we don't even have to do that because once
24 the transcripts are admitted, the court can
25 certainly read them for themselves.

1 In terms of witnesses, I believe we
2 will only be calling Mr. Bemis. My guess is it
3 would probably be an hour or so.

4 And in terms of the argument, in
5 light of the court's guidelines, I kind of
6 structured 10-minute arguments. But if the court
7 would give us a little leeway, maybe 15 or 20
8 minutes on the outside, that would be plenty. I
9 mean, I'm probably gonna be done in 10 or 15 minutes
10 no matter what the court's inclination.

11 THE COURT: So why don't we do this:
12 We'll be a little bit flexible. I can give each
13 side 15 minutes, 20 minutes give or take for your
14 argument.

15 And then since this is, this is
16 essentially -- procedurally this is the nature of a
17 plaintiff's motion to -- to strike the defendant's
18 answer, so I view the plaintiff as having the burden
19 of proof on the proceedings today.

20 And so you would then go first in
21 presenting -- after your argument and after counter
22 argument, you would then go first in presenting any
23 witnesses that you want to put on. And of course
24 the defendant has the opportunity to cross-examine
25 those witnesses.

1 And then obviously you can present
2 any documentary evidence that you want to present,
3 any deposition testimony you want to present.
4 Either you can read it and I can follow along or you
5 can just read it yourself or you can put someone on
6 the stand and put it on like you're putting on
7 testimony at trial. However you want to do it,
8 that's fine.

9 And then of course I'll allow the
10 defendant to either -- to counter or identify
11 deposition testimony.

12 So we'll be, we'll be flexible in
13 that regard. So then when you're done presenting
14 your evidence, then I'll let the defense put on
15 their evidence and then you get an opportunity for
16 rebuttal.

17 MR. KEACH: Thank you, Your Honor.

18 THE COURT: Kind of like a trial but a
19 little less formal.

20 MR. KEACH: Thank you.

21 THE COURT: All right. That's how I
22 envision this. So, so in terms of orders of matter,
23 we have the evidentiary hearing, I anticipate us
24 handling that first.

25 If we have time left today, I hope

1 we do, then I can entertain argument on -- there's
2 two pending motions for summary judgment.

3 Did you anticipate both arguing
4 those assuming we have time today?

5 MR. PRANGLE: I did.

6 THE COURT: You did. All right. So we
7 have ANS's motion for summary judgment, a joinder
8 there, and he then we also have the -- the
9 plaintiff's motion for partial summary judgment
10 against ANS.

11 All right. And were there other
12 matters that you believed needed to be argued today?

13 MR. PRANGLE: I don't believe so.

14 MR. KEACH: Just one, Your Honor. It was
15 my understanding the court was going to entertain
16 arguments on our Rule 60 motion regarding the --

17 THE COURT: You had a motion for
18 reconsideration of a prior order.

19 MR. KEACH: We got that order denying the
20 motion for reconsideration, but we also --

21 THE COURT: Oh, that's right.

22 MR. KEACH: -- a Rule 60 motion asking
23 the court to strike certain portions of the -- of
24 its order that dealt with matters we believe were
25 not properly before the court. Particularly 745 --

1 41.745(1)(a) and (b), which the court made findings
2 on which we did not believe were appropriate. We
3 thought that was on for today as well, Your Honor.

4 THE COURT: I -- you know what, I haven't
5 briefed that issue, but if both parties are ready to
6 argue it, I could listen to your arguments and then
7 decide. But for some reason, I, I haven't
8 considered that one which is fine.

9 MR. PRANGLE: And I confess I didn't
10 realize that was still left out there. So I'm
11 not --

12 MR. KEACH: That's fine, Your Honor. At
13 the court's pleasure. We can argue or we can reset
14 it.

15 THE COURT: Obviously if there was an
16 issue that wasn't properly presented to me and then
17 I ruled on it, I need to take a look at that so.

18 MR. KEACH: Well, Your Honor, just so
19 it's clear, we filed two separate motions. One was
20 a motion for reconsideration, which the court
21 entered its order recently, essentially denying that
22 motion and clarifying certain points.

23 The other was what we caption as
24 Rule 60 motion that, that asked the court to, to
25 strike two of its findings in that, in that --

1 THE COURT: So I have the order. Do you
2 have it in front of you? Which findings did you
3 want stricken? Could you tell me specifically?

4 MR. KEACH: Yes, I can, Your Honor.

5 THE COURT: I don't really want to argue
6 it now. I just want to know what your position is.

7 MR. KEACH: No problem, Your Honor. The
8 court made a finding that there were genuine issues
9 of material fact on whether the sexual assault by
10 Farmer was truly independent venture and whether the
11 sexual assault by Farmer was not committed in the
12 course of various tasks assigned to him as an
13 employee.

14 THE COURT: Oh, well, as to that issue
15 there, you already have -- you have a separate
16 motion for summary judgment. I see that. And so I
17 guess I'm gonna revisit that when I look at that --
18 the summary judgment motion on whether the acts
19 were --

20 MR. KEACH: The problem, the problem, the
21 problem as I see it, Your Honor.

22 THE COURT: Yes, sir.

23 MR. KEACH: And, again, I appreciate Mr.
24 Prangle's not prepared to argue, and I don't want --
25 and the reason -- I'm only -- the only arguments I'm

1 making now are arguments in favor of our opportunity
2 to argue at a later date the issue.

3 The problems I see, Your Honor, is
4 the court in denying our motion for summary judgment
5 on, on foreseeability which was what our motion for
6 summary judgment was limited to.

7 THE COURT: I see, I see -- I see your
8 point. But go ahead, yeah.

9 MR. KEACH: And the court also made a
10 finding that there were genuine issues of material
11 facts. Those issues, Your Honor, were not raised or
12 briefed by us. And that wasn't the focus of our
13 motion and --

14 THE COURT: Your point is well taken.
15 Let me think about that a little bit further because
16 really this was about foreseeability and notice.

17 And, and, and -- and I see that in
18 my conclusions here, I state that there are
19 questions of fact regarding, you know, whether the
20 actions of Mr. Farmer are truly independent and
21 whether they're in the course and scope.

22 So let me -- let me revisit that.
23 Let's don't try to resolve that today, but I
24 generally do understand your point. I appreciate
25 your bringing that to the court's attention.

1 MR. KEACH: Thank you, Your Honor.

2 THE COURT: All right. So let me mention
3 a few other things. There were some representations
4 made in the briefs that I wanted -- there were
5 discussions in the briefs about representations made
6 by defense counsel in court documents to the supreme
7 court and the district court. Both sides mentioned
8 that.

9 Centennial mentioned the court's
10 finding that a reasonable jury could consider -- or
11 could conclude that Farmer's sexual assaults were
12 not reasonably foreseeable. All right. Centennial
13 mentioned that.

14 In the court's order on July 7th,
15 2015, I denied summary judgment. I didn't believe
16 it was proper to rule as a matter of law that Mr.
17 Farmer's assaults were reasonably foreseeable or
18 that as a matter of law Centennial had actual or
19 constructive notice that Mr. Farmer might engage in
20 sexual assault.

21 That's -- that's really the point of
22 that order is I didn't rule as -- I didn't want to
23 rule as a matter of law. I wanted to leave it up to
24 a jury. And so yes, a reasonable juror I believe
25 could find that it was not foreseeable. However,

1 just as probable, if not more probable, a reasonable
2 juror could find that it was foreseeable and a
3 reasonable juror could find that Centennial had
4 actual or constructive notice.

5 Now, Centennial argues -- find their
6 brief, that they did nothing wrong in stating in
7 prior court papers that there was no evidence that
8 could potentially put Centennial on, on notice. And
9 they make those arguments on page 10 of its brief.
10 Centennial also cites to my order to support that
11 view. I don't believe that that's a logical
12 conclusion from my order.

13 Because while I believe it's
14 possible a reasonable juror could find no
15 foreseeability and it's possible a reasonable juror
16 could find that there was no actual or constructive
17 notice by Centennial, there is very strong evidence,
18 the court believed, from which the juror could
19 conclude that there was foreseeability and there was
20 actual or constructive notice.

21 And so if you look then at what the
22 plaintiff's reference in their evidentiary hearing
23 brief on page 10 -- I'm sorry. Give me a second.

24 On page eight they cite a statement
25 from Centennial in its opposition to motion for

1 summary judgment, quote, in the instant situation,
2 there were absolutely no known prior acts by Mr.
3 Farmer that could potentially put Centennial on
4 notice that Mr. Farmer would assault a patient.

5 I'm troubled by that statement
6 because I think that there is substantial evidence
7 from which a reasonable juror could conclude that
8 there were facts sufficient to put Centennial on
9 constructive or actual notice or at least have the
10 reason -- have reasonable foreseeability that Mr.
11 Farmer could harm a patient.

12 I believe that the Metro statements
13 by the nurses referenced evidence that could
14 potentially have put Centennial on notice. In fact,
15 I think it's very strong evidence. Not quite enough
16 strong enough to support taking this issue out of
17 the jury's hands.

18 So I just don't want there to be any
19 mistake here that the court does believe that these
20 Metro statements, together with the evidence
21 referenced in the statements, it's critical
22 evidence, it's relevant and it's material.

23 And so I think part of the focus of
24 this evidentiary hearing has to be when did both
25 parties become aware of those statements. If the

1 defendant was aware of those statements much earlier
2 than the plaintiff, did it appreciate the importance
3 of those statements and why did it not produce those
4 statements to the plaintiff. And if they didn't
5 timely produce those statements to the plaintiff,
6 how is the plaintiff prejudiced, thereby plaintiff
7 argues that this was destruction of memory. I
8 understand that argument and so I need to hear more
9 about that.

10 Next, next issue is kind of not just
11 focused on the statement but the disclosure of the
12 existence of the relevant nurse witnesses. The
13 existence of their connection to the case, Murray,
14 Wolfe and Sumera. There seems to be a little bit of
15 a divergence of the views of the parties in the
16 brief.

17 The plaintiff contends on, on page
18 six of their brief, if you look on page 17, I think
19 they're suggesting that it wasn't until January 29
20 of 2014 when they knew that Wolfe and Murray at
21 least were, were important witnesses in the case.
22 And I'm not sure when they actually discovered the
23 importance of Sumera's testimony.

24 MR. KEACH: Your Honor.

25 THE COURT: Yeah.

1 MR. KEACH: If it wasn't clear in the
2 brief, it was January 2015 before plaintiff's became
3 aware of Wolfe and Sumera's significance relative to
4 the statement that Wolfe made.

5 THE COURT: Understand. Explain that
6 more when you get a chance.

7 MR. KEACH: I will. But I didn't want
8 the court to --

9 THE COURT: Okay. So I see your point
10 there.

11 MR. KEACH: And as far as Murray goes,
12 we found out about --

13 THE COURT: Importance relative to the --

14 MR. KEACH: -- Murray's statement in the
15 late summer of 2014 when, when we got her statement
16 pursuant to employer request.

17 And in fact, Your Honor, the court
18 may recall, we used Murray's statement in September
19 or so 2014 to form the basis for our motion for
20 summary judgment -- partial summary judgment that
21 the court granted and actually was finalized by this
22 court after, after taking the bench.

23 THE COURT: Okay. Thank you for
24 clarifying that. I appreciate that.

25 And so -- and then when you look at

1 the defendant's brief on page four, they argue that
2 the plaintiff's knew, at least to the existence of
3 Murray and Wolfe in March of 2010, and, and -- and
4 of Sumera as early as May of 2010.

5 And of course just knowing that a
6 witness has been disclosed in another proceeding
7 doesn't necessarily mean that you understand the
8 significance of those witnesses.

9 So, so I need to understand from
10 both parties how -- when did the plaintiff -- when
11 should the plaintiff have appreciated the
12 significance of witnesses Murray, Wolfe and Sumera,
13 all right.

14 Because once they would have known
15 that they were significant witnesses, then that
16 would have triggered a duty to do -- to do
17 reasonable discovery, which would have included
18 earlier depositions, which would have led to
19 discovery of the statements even if the statements
20 had not been disclosed.

21 So those are some of the issues I'm
22 thinking about and I want you guys to please
23 address.

24 So with that being said, are there
25 any other procedural matters that we need to deal

1 with before we begin?

2 MR. PRANGLE: I don't think so.

3 THE COURT: All right. There is the
4 defendant's motion for reconsideration on the
5 issue -- is that your motion on, on reconsideration
6 on the issue of whether the -- let me think. On, on
7 who has the burden of proof --

8 MR. PRANGLE: That's --

9 THE COURT: -- as to, as to
10 foreseeability, independent nature and course and
11 scope of, of employment?

12 MR. PRANGLE: I believe --

13 MR. SILVESTRI: -- nursing.

14 THE COURT: Oh, that's ANS's motion. All
15 right.

16 MR. SILVESTRI: I don't believe that's on
17 for today.

18 THE COURT: I don't think that's on for
19 today. I just wanted to make sure that everyone
20 understood that's off.

21 MS. BROOKHYSER: Yeah, I think your
22 latest order, Your Honor, said that you were going
23 to determine that in a chamber's calendar I think
24 September 9th or 10th or something.

25 THE COURT: Oh, no, I wanted to prepare a

1 briefing on that.

2 MS. BROOKHYSER: Correct.

3 THE COURT: And of course that motion was
4 initially decided by Judge Vega. And I reviewed it
5 of course and I had agreed with -- initially with
6 her interpretation of the law, but I wanted to
7 consider it further.

8 MR. SILVESTRI: Fair enough.

9 THE COURT: All right.

10 MR. SILVESTRI: Thank you.

11 THE COURT: That's all I'm gonna say on
12 that. All right. That being said, why don't we
13 begin with our evidentiary hearing and go ahead and
14 plaintiff can begin.

15 For the record, just identify
16 yourselves and state what -- how you intend to
17 proceed today.

18 MR. KEACH: Thank you, Your Honor. Marty
19 Keach and Rob Murdock for the plaintiff. Your
20 Honor, I would like to present a brief opening
21 statement.

22 And then we -- I'm not sure whether
23 defense will -- is going to present an opening
24 statement, but if they do or not after that, we'd
25 like to present Mr. Bemis as our first witness and

1 proceed from there.

2 THE COURT: Thank you, Mr. Keach. You
3 may proceed.

4 MR. KEACH: Thank you, Your Honor. Your
5 Honor, the court has raised an issue that as to when
6 plaintiff's should have, should have recognized the
7 significance of Wolfe, Murray and Sumera.

8 And, of course, the plaintiff's
9 position is we were not able to recognize the
10 significance of them until we actually got the
11 statements.

12 And to bolster that, Your Honor,
13 what you will hear today is that according to
14 defendant's, the hospital, they too have taken the
15 position that until they read the statement of
16 Margaret Wolfe and Christine Murray, they didn't
17 understand or appreciate that they were relevant
18 witnesses in our case, that they had something to
19 offer. And I think the --

20 THE COURT: Is this -- this is being
21 transcribed? I just wanted to make sure.

22 MR. PRANGLE: (Positive nod of the head.)

23 THE COURT: I didn't hear typing. You're
24 so quiet over there. All right, continue. I didn't
25 mean to interrupt you.

1 MR. KEACH: That's fine, Your Honor. So
2 when the court queries well, when did plaintiff
3 recognize the significance, the mere -- what
4 plaintiff had done and what the evidence will show
5 is plaintiff was tracking the criminal case.

6 When the DA's office supplemented
7 and added witnesses, Mr. Murdock added that
8 supplemental witness list to our witness list,
9 having no idea other than what was in the witness
10 list that they're gonna testify and generally what
11 the DA said was about nursing treatment and care and
12 things like that, there was anything more than that.

13 And again, what the court will hear
14 today from Mr. Bemis is that yes, not only did the
15 plaintiff not realize it, we didn't realize the
16 significance of Wolfe, Sumera and Murray until we
17 saw those statements.

18 And what the evidence will next
19 show, Your Honor, is that it wasn't until late fall
20 2014 before plaintiff received the Murray statement,
21 and in January 2015 before plaintiff received the
22 Wolfe statement.

23 Now, Your Honor, foreseeability is
24 an issue in this case. And in a negligence claim
25 against the hospital, foreseeability may be

1 determined from all of the circumstances present.
2 The totality of the circumstances. On respondeat's
3 superior claim, foreseeability is determined by
4 whether a person of ordinary intelligence and
5 prudence could have reasonably anticipated the
6 conduct and probability of injury.

7 Now, any witnesses who have
8 information that is relevant to these issues must be
9 disclosed under 16.1. That requirement's mandatory.
10 It's also fundamental to justice.

11 Concealment of information of
12 witnesses by one party can never be allowed. The
13 judicial system fails if the court allows one party
14 to conceal information relative to essential
15 elements of a case. And that's happened here. The
16 hospital intentionally concealed relevant material
17 evidence that goes directly to the issue of
18 foreseeability; Christine Murray, Margaret Wolfe and
19 Ray Sumera.

20 We will show today that violations
21 of Rule 16.1 disclosures by both the hospital and
22 the lawyers. We will show the hospital knew
23 about -- we will show the hospital knew about
24 Christine Murray's statement to the police and had
25 read it some time prior to August 1st, 2008.

1 Chief of Nursing Carol Butler admits
2 that, that prior to August 1, 2008, she was aware
3 that -- of the statement and the contents of
4 Christine Murray. She also admits she knew about
5 Wolfe's statement to Metro at some point in time
6 prior to August 1st, 2008.

7 Amy Blasing, head of the emergency
8 room, admits she too knew of Sumera and Wolfe's
9 allegations about Farmer, and that Wolfe and Sumera
10 apparently disagreed over some of the details of
11 what happened.

12 But both Chief of Nursing Carol
13 Butler and head of the emergency room, Amy Blasing,
14 had met with all three; Murray, Sumera and Wolfe,
15 and knew they had relevant information regarding
16 what the hospital staff knew about Farmer's conduct
17 with female patients. And they knew all of this
18 since August of 2008, Your Honor. Yet the hospital
19 never, never disclosed this to plaintiff.

20 As for the lawyers, Paul Prangle
21 were involved in representing the hospital in the
22 civil side related to Farmer's misconduct from the
23 very beginning. They met with hospital staff and
24 management regarding Farmer's misconduct early on.
25 They were in frequent contact with Farmer's public

1 defender and was sharing information. Apparently to
2 provide Farmer over 30 depositions as well as
3 written discovery responses. They met personally
4 with the public defender on January 21st, 2013. It
5 was February 2013 that Mr. Bemis received a copy of
6 Murray's reported statement to Metro. In their
7 brief, they have conceded this was relevant and
8 should have been disclosed and it was not.

9 In May 2013, a protective order was
10 entered and they received the entire police file,
11 including Wolfe's statement.

12 THE COURT: What was that date?

13 MR. KEACH: May 2013. I think it was May
14 6th, but the exact date, it was May 2013. And after
15 receiving the police file, they admit that Murray,
16 Wolfe and Sumera had relevant information to this
17 case. They admit that in their brief, Your Honor.
18 They admit that in their brief that in May 2013 when
19 they read those statements, they recognized that
20 this was relevant information properly disclosable.
21 They concede that. That's May 2013.

22 Now, still they didn't identify them
23 as witnesses and provided and stripped of their
24 testimony. And their excuse is well, there was a
25 protective order. But the protective order

1 doesn't -- didn't preclude the identification of the
2 witnesses, Your Honor, nor description of their
3 testimony that something such as they will testify
4 regarding Farmer's conduct with other female
5 patients.

6 What it -- what the protective order
7 prevented was disclosure of any documents or any
8 confidential information.

9 These witnesses weren't
10 confidential. They're witnesses. And their
11 identities aren't confidential. And the general
12 nature of their testimony is not confidential.
13 And --

14 THE COURT: This --

15 MR. KEACH: Yes, Your Honor.

16 THE COURT: This time won't be used
17 against you. So you say that you didn't preclude
18 them from identifying the three nurses as witnesses
19 who would testify to certain things. They would
20 have -- the defendant's would have an obligation to
21 disclose these witnesses even if they didn't intend
22 to call them.

23 MR. KEACH: Of course they do, Your
24 Honor. Under 16.1, of course they do.

25 THE COURT: Correct. But just going back

1 again, do you have reason to believe that defense
2 counsel ever met and discussed the case with the
3 chief of nursing? You said hospital staff.

4 Do you -- is there a direct
5 connection with the chief of nursing and do you
6 think that will be relevant in your mind for me to
7 see if that connection is established?

8 MR. KEACH: It, it -- it would be
9 important, Your Honor, if the court -- you know, we
10 are moving forward on, on two separate basis for
11 sanctions.

12 One is that the hospital had a duty
13 to disclose relevant information pursuant to 16.1.
14 They are the party, they knew what they had to --
15 they had the information. And whether or not -- and
16 of course we don't know what conversations they had
17 because, because that's privileged. And so to that
18 extent, we don't have that information.

19 Of course we attempted to take Mr.
20 Bemis's deposition in the case when some of these
21 issues arose.

22 THE COURT: I saw that. The judge
23 wouldn't allow it.

24 MR. KEACH: And the discovery
25 commissioner precluded it because the court said,

1 well, we can find it another way.

2 Well, the only point I'm getting at,
3 Your Honor, is this: As to the hospital, their
4 knowledge of the relevant information by, by high
5 level management was certainly 2008.

6 THE COURT: I get, I get your view
7 that -- I get your view there, but you're also, you
8 know, critically attacking the defense counsel.

9 MR. KEACH: We don't have any
10 information, Your Honor, unless Mr. Bemis tells us
11 something today, that the lawyers knew about Wolfe's
12 statement prior to May 2013.

13 That's what they have told us, we
14 accept that as being true because we have no reason
15 to question them on that. We feel like they made --
16 they fell down once they learned that information in
17 2013, but we don't have any information to suggest
18 that Mr. Bemis knew about Wolfe, Murray statements
19 prior to 2013.

20 But at least with regard to Murray,
21 that statement was, was learned --

22 THE COURT: All right.

23 MR. KEACH: -- in February.

24 THE COURT: I appreciate you being candid
25 about that. You can continue.

1 MR. KEACH: Thank you, Your Honor. So
2 when, when -- in May 2013 when they acknowledged
3 that this was relevant information that they had,
4 they didn't disclose it. And they willfully denied
5 plaintiff this information. And they made a
6 conscious decision not to do it.

7 Now, there's good reason why they
8 did that. Because it goes to the heart of the case.
9 Because if the hospital knew about Farmer, they're
10 liable. They're liable for negligence and they're
11 liable on respondeat superior and they can't get out
12 of that.

13 And these witnesses and their
14 statements, as the court indicated in its
15 preliminary remarks, they go a long way towards
16 proving Farmer -- what hospital the knew about
17 Farmer.

18 But of course, Your Honor, as the
19 court referenced earlier in the ultimate defiance of
20 all rules of conduct, the lawyers advised the court
21 in October 2014, in opposition to plaintiff's motion
22 for summary judgment on liability, that there were
23 absolutely no known prior acts by Mr. Farmer that
24 could potentially put Centennial on notice that Mr.
25 Farmer would assault a patient.

1 Now that statement went to the heart
2 of the motion, Your Honor, because we were talking
3 about liability. Because if the hospital was on
4 notice, they were liable. And the lawyers, knowing
5 that there was information admitted, conceding in
6 their brief that they knew it over a year and a half
7 earlier, they didn't tell the court that, that
8 Murray and Wolfe gave recorded statements to the
9 police regarding prior conduct to Farmer.

10 Rather, armed with a protective
11 order keeping this information, at least Wolfe from
12 plaintiff, lawyers flagrantly flaunted the truth
13 with one clear purpose: To prevent plaintiff from
14 winning. And we will show that it was flagrant,
15 Your Honor. And they repeated this
16 misrepresentation in May 2015 in their writ
17 petition.

18 Now, we didn't get an opportunity to
19 respond to the writ, to advise the court because at
20 least in May 2015, we were aware of Wolfe's
21 statement.

22 We recognized the falsity of the
23 state -- of the representation made by the lawyers
24 to the supreme court because the court denied the
25 writ petition prior to inviting a response.

1 But these are the facts we'll show
2 today, Your Honor.

3 In their argument, we identified
4 Wolfe and Murray in our 16.1 disclosure when we
5 listed the DA witnesses, witness list it doesn't
6 provide in discovery. They had information we did
7 not. They had a duty to disclose that information.

8 Hospital management, Your Honor,
9 chief of nursing, head of the emergency room, which
10 may, Your Honor, I respectfully suggest, is like a
11 lot stronger than when we came in here for motion
12 for liability and the court denied -- on all
13 foreseeability the court denied it when we had a
14 nurse Margaret Wolfe making the allegations.

15 Now we have hospital management at
16 the highest levels, the chief of nursing, the head
17 of the emergency room, admitting they knew about
18 this. And they didn't disclose it.

19 And the fact that they make -- the
20 defense makes a point that Sumera was mentioned in
21 depositions in the Cagnina case, but that doesn't
22 satisfy their burden under 16.1. It doesn't provide
23 any information to the plaintiffs as to the
24 relevance of Sumera's knowledge of prior misconduct
25 or allegations against Farmer.

1 In fact, again, they concede until
2 you get Wolfe's and Murray's statements, nobody
3 would have known. Until you know that information,
4 nobody would have recognized the significance of
5 Murray, Sumera and Wolfe. That was information they
6 kept from us, that information that Wolfe described
7 in her statement; information the hospital knew as
8 early as August 2008 and that the lawyers knew for
9 certain by May 2013; information that the plaintiff
10 got for the first time in January 2015. And then
11 not even from the hospital, they still haven't
12 disclosed it.

13 THE COURT: So let's get to prejudice.

14 MR. KEACH: Many of the witnesses, Your
15 Honor, who we -- who sit -- keep in mind, we find
16 out about Wolfe in 2000 -- in January 2015.

17 And so we deposed Wolfe and Ray
18 Sumera and Christine Murray, and all these people,
19 and Amy Blasing and Carol Butler. And replete in
20 those depositions, Your Honor, is I don't remember,
21 I don't remember this, I don't remember that.

22 Ray Sumera essentially contradicts
23 himself when he says -- Margaret Wolfe says that Ray
24 Sumera said something. And she said that in her
25 statement. She confirmed that in her deposition.

1 Ray Sumera in his deposition did not deny that he
2 said those things to Margaret Wolfe, but his current
3 recollection upon which this court relied in, in --
4 as raising an issue of fact in denying our motion
5 was that well, he wasn't that bad of a guy in
6 essence. I mean, something to that effect.

7 Well, that really -- I mean, he says
8 it, and I appreciate the court has to view the facts
9 in the light most favorable to the nonmoving party,
10 and so if he says it, you have to accept it, you
11 aren't allowed to judge the credibility of a witness
12 on a motion for summary judgment, but it flies in
13 the face of the statements that Margaret Wolfe
14 made -- said that Ray Sumera told her, that hey, we
15 got to be worried about this guy, keep an eye on
16 him, he's, he's in there, he's in there grabbing
17 monitor leads on female patients so keep an eye on
18 him.

19 Now, he doesn't deny he says those
20 things, but that whole tenor of what he testified to
21 is different. Meaning in 2015 is completely
22 different from what the tenor of Margaret Wolfe's
23 statement was. And of course Ray Sumera kept saying
24 I don't remember, I don't remember, I don't
25 remember.

1 Well, it's important had we known
2 this stuff back in 2009 when we first filed a
3 lawsuit a year after it happened, we can ask Ray
4 Sumera, hey, what happened last year. And six years
5 earlier gives us a heck of a lot better opportunity
6 to get -- to get recollections.

7 Same, same with Margaret Wolfe and
8 same with other witnesses. Because Margaret Wolfe
9 testified, Your Honor, that as the court may recall,
10 that there were -- of everybody in the hospital --
11 essentially everybody in the hospital was talking
12 about it. Or words to that effect. Many other
13 people, many other staff members were talking about
14 it.

15 But when pressed at her deposition
16 seven years after the fact, six years after we filed
17 a lawsuit, she can't really remember anybody other
18 than somebody named Kim who she thinks might have
19 said something.

20 But her statement was a lot of
21 people were talking about it. Well, those lot of
22 people, Your Honor, a year after the incident, we've
23 got to have an opportunity to ask Margaret Wolfe,
24 Ms. Wolfe, who else was talking about it, what was
25 going on. And those witnesses are lost because

1 nobody knows who they are and we'll never have them
2 again.

3 And Christine Murray. Christine
4 Murray talks about the old lady who, who -- who
5 was -- who was yelling don't -- get away from me,
6 get out of my room. Now, she dismissed her as a
7 quote, crazy old lady, but -- and here we are six
8 years later after we get that information, or seven
9 years later after we get that information, and we
10 are unable to identify who that patient is.

11 A year after this happens, when we
12 file our lawsuit in 2009, if we get -- if we're
13 informed that Christine Murray saw Farmer in a
14 situation where he was in a dark room, in a room
15 with a door closed and the lights turned off, we
16 would, we would at least have had an opportunity
17 then to perhaps get the name of that identity of
18 that witness and we can bring her in here and ask
19 her what happened. But of course that --

20 THE COURT: Well, explain that to me.
21 How -- why would it have been more likely. Let's
22 assume that Murray said in the deposition, had you
23 asked me this question two or three years earlier, I
24 still wouldn't have known who that alleged crazy old
25 lady was.

1 So had you known a couple years
2 earlier, how would you have been able to --

3 MR. KEACH: Seven years.

4 THE COURT: -- unflank this lady?

5 MR. KEACH: First off, she could have,
6 she could have given us detailed information about
7 age, physical characteristics, things like that.
8 Perhaps she could have told us things about -- about
9 her condition or her doctor or her room number or
10 things like that. Things that, things that she knew
11 at the time.

12 THE COURT: Did you ask -- sorry to
13 interrupt, but I need to try to work through this.
14 Did you ask Ms. Murray in her deposition did she
15 know this information at one point in time and has
16 now forgotten it because of the passage of time?

17 MR. KEACH: Not --

18 THE COURT: Go ahead.

19 MR. KEACH: -- not specifically those
20 questions, but she conceded in her deposition she
21 doesn't remember a lot of things.

22 And we have attempted to identify
23 that witness as best we can from the hospital and
24 we've been unable to identify that witness. And
25 that witness is lost forever.

1 And had we had more information from
2 Murray at this -- at that -- a year after the fact
3 when it was fresh in her recollection, we may have
4 had an opportunity to identify the witness and find
5 out exactly what happened.

6 THE COURT: Okay.

7 MR. KEACH: In large part, Your Honor,
8 there are -- we're dealing with witnesses six
9 years -- seven years after the incident and six
10 years after we filed a lawsuit.

11 The -- the court can look at the
12 file and see that, that plaintiff's have been
13 extremely diligent in conducting discovery in this
14 case and have only been thwarted by protective
15 orders and staging and what not. But given the
16 opportunity to conduct discovery, we've been
17 diligent. And the record will show that.

18 And had we had Christine Murray
19 telling us in 2009 that she, she -- another woman
20 was, was making allegations, we'd have been all over
21 that.

22 And had we, had we known in 2009
23 what Margaret Wolfe and Ray Sumera said, we'd have
24 been deposing them right out the shoot. They're the
25 key witnesses in the case, Your Honor, as it turns

1 out. Of course we're going after them.

2 Your Honor, the other thing is the
3 entire discovery of what people in the hospital knew
4 has been thwarted by the six-year delay in
5 disclosing Wolfe's testimony. We don't know who or
6 what -- who knew what because we don't even know who
7 the who's are.

8 Margaret Wolfe could have provided
9 us that because of her -- if we'd have had that
10 information then because she says everybody was
11 talking about it or a lot of people in the hospital
12 were talking about it and a lot of people were
13 complaining about him and other people were keeping
14 an eye on him.

15 That's important stuff, Your Honor,
16 because those are the witnesses that go to the heart
17 of the issue.

18 Your Honor, six years ago when we
19 filed the lawsuit, we could have deposed Butler and
20 Blasing and asked them what did Murray -- what did
21 Murray, Wolfe and Sumera tell you when you met with
22 them. Because both of them say they don't recall.

23 And when the defense is using Ray
24 Sumera's current testimony seven years after the
25 event, six years after we recognize the significance

1 of his, of his testimony, and he says yeah, I
2 thought he was a nice guy, that -- which flies in
3 the face of the statements that Margaret Wolfe made,
4 we would have had an opportunity to confront him at
5 the point and confront these other witnesses at that
6 point in time; Blasing, Butler, Murray, and other
7 people who we don't know, and gotten to the bottom
8 of that.

9 All of that goes to foreseeability.
10 All of that has been denied plaintiff and that is
11 the focus of our motion, Your Honor.

12 THE COURT: All right. Thank you very
13 much, Mr. Keach. And you went over the time, but I
14 had -- that was because of me. So thank you for
15 addressing all of my questions.

16 Mr. Prangle, are you gonna present
17 the argument?

18 MR. PRANGLE: Yes, sir.

19 THE COURT: Okay, Great. You may proceed
20 on behalf of the defendant.

21 MR. PRANGLE: May it please the court.

22 THE COURT: Yes.

23 MR. PRANGLE: In listening to Mr. Keach's
24 opening statement, and I'm glad that we have
25 agreement on what I believe is one key point, is

1 that before we had the statements of Wolfe and
2 Murray, no one could foresee that they had important
3 information about the Doe case. I could not agree
4 more with any statement at all.

5 The reality, however, is is that --
6 and I'm also appreciative of Mr. Keach not accusing
7 me or John or Ken or anyone else at my firm of
8 intentional misconduct. I appreciate that.

9 The reality is, is that --

10 THE COURT: Well, at least not before May
11 of 2013.

12 MR. PRANGLE: No, no. Fair enough.

13 THE COURT: Okay.

14 MR. PRANGLE: And I'll address that.

15 THE COURT: Okay.

16 MR. PRANGLE: But it wasn't until May of
17 2013 that the statements became known to us. We had
18 no idea about -- well, we had no idea the content
19 before then.

20 So but to put this into context of
21 why we're here today, we just didn't know that
22 information. We didn't know that nurse Murray was
23 going to testify about the sitter incident. She
24 gave a deposition, and I'm gonna call the other case
25 the RC case, the initials of the plaintiff. Nurse

1 Murray gave a deposition in the RC case. The sitter
2 incident never came up. We just had no knowledge of
3 that until we got the statement.

4 As to nurse Wolfe, her -- the
5 content of her statement that I believe is most
6 significant is that she says that Ray Sumera came to
7 her weeks before the Doe incident saying you really
8 need to watch this guy from that testimony that the
9 court's very aware of. Also that Mr. Farmer favored
10 female patients and Farmer liked to volunteer to
11 place leads. That's the important information in
12 those statements.

13 The first time that we learned of
14 that knowledge was in the RC case. Not the Doe
15 case, but in the RC case in May of 2013.

16 But to put this into context, back
17 on June 3rd, Discovery Commissioner Bulla entered
18 the sanction order to which we objected and
19 recommended to Your Honor to have this evidentiary
20 hearing.

21 Key to her finding and key to her
22 sanction was that we, the attorneys, had the
23 knowledge that these witnesses were relevant, i.e.,
24 had the information about the statements as early as
25 2008 and failed to disclose it.

1 So she recommended to this court to
2 have this hearing to determine whether case
3 terminating sanctions were called for; whether we,
4 the attorneys, intended to thwart the discovery
5 process; and three, whether we failed to let the
6 court know what was going on and whether we misled
7 the court.

8 But she also invited the court to
9 reduce her sanction if the court were to find that
10 we didn't know until much later, i.e., 2013, of
11 these statements.

12 And I'm happy to hear Mr. Keach
13 acknowledges that he has no reason to dispute when I
14 say or if John were to say the first time we had
15 that information was in 2013, not 2008.

16 But I think to understand this, it
17 gets convoluted because there are two cases going
18 on. And I think to at least justify what I did and
19 even at things in retrospect, that I'll acknowledge
20 I should have done things differently in 2013. And
21 I'll talk about that. But it's important to
22 understand the chronology, to put this into context.

23 Main point being is that it wasn't
24 until May 6th, 2013 that we learned of the content
25 of those statements.

1 All right. As the court knows --

2 THE COURT: So you acknowledge that you
3 knew the statements existed prior to May 2013, but
4 you had -- I'm assuming from the way your, your --
5 the precise language you're using, you never
6 actually read the statements and no one in your
7 office read the statements before May of 2013?

8 MR. PRANGLE: That's correct. And here's
9 I think why I'm trying to be very precise is that
10 all the knowledge we have in our investigation is
11 subject to privilege. I'm very mindful --

12 THE COURT: Understood.

13 MR. PRANGLE: -- of not violating the
14 privilege. I will tell you we were aware, and Amy
15 Bochenek Blasing and Carol Butler acknowledge, that
16 they were aware that Wolfe and Murray went to the
17 police and gave statements. That's all we knew.

18 It wasn't -- and, you know, and I
19 acknowledge there's testimony, I think it was from
20 nurse Murray where nurse Murray said that it was
21 either Bochenek or Butler who actually had her
22 statement that she had given to the police. I
23 don't --

24 THE COURT: Wouldn't, wouldn't you have
25 been very curious to see what was in those

1 statements?

2 MR. PRANGLE: Of course. But, judge,
3 here's the point. I --

4 THE COURT: Okay.

5 MR. PRANGLE: -- I don't believe that can
6 be possibly true because the public defender or the
7 prosecutor were not giving us anything. We asked
8 for their file. They wouldn't give it to us. It
9 wasn't until we were able to do a motion to compel
10 that they would give us anything.

11 Once we got the file, there's no
12 indication in the file that these statements have
13 already been produced to somebody at the hospital.

14 So I respect -- I believe nurse
15 Wolfe is wrong. What nurse Bochenek said, and what
16 nurse Butler said, yes, we met with nurse Wolfe and
17 the others. And I'll talk about the context of that
18 in a second. They were aware of this issue.

19 And you may recall there's a patient
20 by the name of Hannah that was after the Doe
21 plaintiff. It was after the Doe plaintiff. And we
22 were aware of that, but that was the first thing
23 that we were aware of.

24 So I don't believe that Bochenek and
25 Butler had the actual statements because they were

1 never given out.

2 THE COURT: Well, they were discussed
3 shortly after the statements were made with the
4 chief of, of nursing.

5 MR. PRANGLE: That's Butler.

6 THE COURT: Butler. And wouldn't she --
7 she?

8 MR. PRANGLE: She, correct.

9 THE COURT: Wouldn't she have -- I can't
10 believe and I'm not -- I can't speculate either, but
11 I'm just curious why wouldn't somebody from the
12 hospital have requested copies of those statements
13 for the personnel files or as part of an ongoing
14 investigation or just to see because it was relevant
15 to the issues that were being considered or
16 investigated at the time?

17 MR. PRANGLE: I don't believe anyone
18 asked those questions at their depositions.

19 THE COURT: Okay.

20 MR. PRANGLE: What I can tell you is that
21 within the files of the hospital, the employee files
22 of these people, it's not there.

23 THE COURT: So you're saying that from
24 what you know, your personal knowledge, there's no
25 evidence to your knowledge that those Metro

1 statements were ever provided to the hospital or any
2 hospital official prior to -- prior to the criminal
3 files being released pursuant to an official request
4 for production?

5 MR. PRANGLE: Motion to compel.

6 THE COURT: Or motion to compel, yeah.

7 MR. PRANGLE: In the RC case.

8 THE COURT: Okay. And that was, that
9 was --

10 MR. PRANGLE: May --

11 THE COURT: May of 2013.

12 MR. PRANGLE: Correct.

13 THE COURT: I understand your position.

14 MR. PRANGLE: Okay.

15 THE COURT: Thank you. Keep going.

16 MR. PRANGLE: And also on that point
17 while I'm on it, this lawsuit was filed I believe of
18 August of 2009. It was summer of 2009.

19 THE COURT: Right.

20 MR. PRANGLE: Both Bochenek and Butler
21 were gone from Centennial Hills when this lawsuit
22 was filed. They are no longer employees.

23 But taking a step back, this
24 chronology, we know now, given that Mr. Farmer was
25 convicted, that the assault on Ms. Doe occurred on

1 May 14th, 2008. There was no report made to
2 Centennial Hills by Ms. Doe that the assault
3 occurred. We had no knowledge of it whatsoever.

4 Two days later, Mr. Farmer also
5 assaulted a patient by the name of RC. RC is the
6 person who advised the hospital this guy
7 inappropriately touched me. The hospital
8 immediately placed Mr. Farmer on a do-not-return
9 list, called the police. Mr. Farmer was arrested
10 that afternoon.

11 My firm was retained six days later
12 on May 22nd, 2008 specifically to investigate the RC
13 case. As of that time, we were unaware that Ms. Doe
14 was going to be making an allegation. Our focus was
15 solely on RC.

16 We then undertook to do an
17 investigation of the RC case. We met with, among
18 others, nurse Murray, nurse Wolfe and nurse Sumera
19 because they were involved with the RC case. That's
20 why we met with them.

21 At the time -- and we met with nurse
22 Wolfe I believe it was mid-June of 2008. We met
23 with nurse Murray in mid-July in of 2008, and we met
24 with nurse Sumera in mid-August 2008.

25 At the time that these meetings

1 occurred, we still had no knowledge of the claim by
2 Doe. And again, our investigation was solely
3 focused on RC.

4 We were not retained regarding the
5 Doe case until August 3rd of 2009 which I think was
6 about a week or so after the complaint had been
7 filed.

8 After being retained in the Doe
9 case, we again did an investigation. We attempted
10 to identify those people who might have relevant
11 information. We did not meet with nurse Murray,
12 nurse Wolfe or nurse Sumera because we had no reason
13 to believe that they had anything to do with Doe.
14 So we didn't meet with them again.

15 Now, as part of the criminal case,
16 Your Honor may recall that the criminal cases were
17 consolidated. And I believe there were a total of
18 five victims that were all consolidated together
19 that included RC and Doe.

20 So when the State's attorney is
21 producing their witness lists, they -- he doesn't
22 say, and this is for the Doe case, this is for the
23 RC case. He just says here are the people we intend
24 to call.

25 And I believe it was in either the

1 fall or winter of 2009, getting into 2010, that the
2 State's attorney disclosed the list of witnesses
3 that included nurse Wolfe and nurse Murray.

4 I confess I don't have the specific
5 memory of what my reaction to that was, but my
6 understanding at that time was that this was only
7 related to the RC case, not the Doe case. So I
8 placed no significance to that on them. I knew they
9 were part of that case. We had disclosed them in
10 our ECCs. We weren't trying to hide them.

11 And as a result of that, and Mr.
12 Keach touched on this, on March 27th of 2010,
13 plaintiff filed their fifth supplement to their ECC
14 in which they identify as people they believe have
15 relevant information for the Doe case as being
16 nurses Wolfe and nurses Murray.

17 Two months later on May 13th of
18 2010, plaintiff filed their sixth supplement to the
19 ECC where they disclosed a number of depositions
20 that had been taken in the RC case.

21 I have no idea what degree
22 plaintiff's counsel were in contact with the
23 plaintiff's counsel in the RC case, but it was clear
24 that they were obtaining materials from the RC case.

25 And in May of 2010, plaintiff

1 discloses the depositions of -- I think it was
2 Bochenek, and I forget which one, but in those
3 depositions, they testify as to Ray Sumera's
4 possible involvement with Mr. Farmer in connection
5 with the RC matter.

6 So as of May of 2010, and I think
7 Mr. Keach even acknowledges, they were aware at
8 least of the name. And I believe his point was we
9 didn't understand the significance of it. We didn't
10 either.

11 But in any event, as of March of --

12 THE COURT: Well, but let's be clear.
13 When you say "we," you're referring to your law
14 firm, you're not referring to Centennial.

15 MR. PRANGLE: Well, and I would include
16 them in that. And I would -- Amy Bochenek and Carol
17 Butler, admittedly they had some lapses of memory,
18 but both were consistent. And Bochenek was the
19 director of emergency services in the emergency
20 department at the time. Carol Butler was the chief
21 nursing officer.

22 THE COURT: Uh-huh.

23 MR. PRANGLE: After the RC event happens,
24 they do an investigation themselves. One of the
25 things that they were concerned about is was there

1 something in this guy's background that we missed.
2 So they interviewed many of the staff. And even
3 though they didn't remember the dates they met with
4 people, who specifically they met with, they were
5 clear about one point is that there was nothing
6 about Farmer's background that anybody told them
7 consistent with what we see in Wolfe's statement and
8 even Murray's statement.

9 So Mr. Keach is right that they say
10 I don't remember a lot, but they were clear on that
11 point.

12 In our initial supplement to the
13 ECC, and I don't have the date that we filed, we
14 disclosed 14 individuals who we believed had
15 relevant information in the case.

16 To today, plaintiff's counsel -- and
17 this goes to the prejudice issue a little bit,
18 judge, is that to today, plaintiff's counsels
19 deposed only one of those 14 people. And that was
20 nurse Janesse (phonetic) who was deposed earlier
21 this year.

22 So I guess the point being is that
23 here we gave plaintiff 14 names of people who might
24 have relevant information. And for, you know, their
25 own reasons, they chose not to depose any of them.

1 I agree with Mr. Keach wholeheartedly that they have
2 been dogged in doing discovery in this case, but
3 it's been focused on other areas. It hasn't been
4 focused on the 14 people we identified.

5 So the idea of being that if we had
6 had Wolfe, Sumera and Murray and had 17 people
7 instead of 14, you know, I think it's somewhat
8 speculative to say that they would have deposed them
9 automatically.

10 What gives them value --

11 THE COURT: Well --

12 MR. PRANGLE: What gives them --

13 THE COURT: -- if you had identified in
14 your disclosure and said these two nurses gave
15 statements to Metro about Mr. Farmer's conduct, I'm
16 sure they would have followed up on that.

17 I mean, it's different than a
18 witness that you designate this security guard was
19 on duty at the time that this alert came in.

20 MR. PRANGLE: And I certainly don't want
21 to argue with the court, but let's not forget
22 intent. The reason they met with Metro was because
23 of RC. It wasn't because of Doe. So you may be
24 right, you might not be right in terms of the
25 depositions.

1 There were many people who were
2 deposed in the RC case that have not been deposed in
3 this case.

4 THE COURT: Okay. All right. I -- I
5 understand your position.

6 MR. PRANGLE: In any event, moving
7 forward to May 6th of 2013, in the RC case, a joint
8 motion was done by all the parties, including
9 plaintiff, to compel the production of the police
10 file. That motion was granted. And I believe it
11 was either May 6th or May 8th that we actually get
12 physical possession of the file that includes now
13 the statements of Wolfe and Murray.

14 I confess to Your Honor I have no
15 specific memory of when I first read those
16 statements. I will acknowledge constructive receipt
17 of them on May 6th, 2013.

18 THE COURT: Understood.

19 MR. PRANGLE: But because of the
20 sensitive nature of it in the ongoing criminal case,
21 there was a protective order that precluded us from
22 disclosing the statements. We couldn't in the Doe
23 case say here are the statements we got in the RC
24 case. We couldn't do that until the stay was
25 lifted.

1 So I'll be honest with you, I don't
2 really have a specific memory of why. I didn't ask
3 that the ECC be supplemented in the Doe case based
4 on what we found in the RC case. I'll be honest. I
5 just never connected those dots. And I certainly
6 don't want to cast or shift responsibility. This is
7 my responsibility.

8 But in the, in the RC case, in
9 addition to us, counsel for Farmer got the same
10 materials, counsel for ANS got the same materials.
11 And like us in the Doe case, they did not supplement
12 their ECCs.

13 I acknowledge to you in hindsight
14 this is very relevant information that is relevant
15 to the Doe case. I'm not trying to escape that.

16 Prospectively at the time when we
17 got these documents in the RC case, it simply didn't
18 occur to me that I would need to do a supplement in
19 the Doe case. I accept responsibility for that.

20 And I'm telling Your Honor, telling
21 counsel I should have ensured that a supplement had
22 been done at that time. I did not.

23 But let's not forget that the reason
24 that Commissioner Bulla entered the sanction she did
25 is because she said, you had this information in

1 2008. And that's why she entered the sanction she
2 did. And she invited Your Honor, if it can be
3 shown, that we didn't know about it until later, for
4 Your Honor to reduce the sanction.

5 So we have now May of 2013
6 information that admittedly I should have disclosed
7 the names. And I could have done some
8 characterizations of subject matter consistent with
9 16.1. I could not, however, give the statements.

10 So even -- even if the depositions
11 were taken at that time, and Mr. Murdock does a
12 fantastic job by taking depositions, so he may have
13 uncovered this anyway, but it's not as if I can say
14 to Mr. Murdock, you know, he notices nurse Murray's
15 deposition, here's nurse Murray's statement. I
16 couldn't do that.

17 THE COURT: You could disclose the
18 existence though, you don't dispute that, without
19 stating what was in the statements.

20 MR. PRANGLE: I'll be honest, I
21 haven't --

22 THE COURT: And that's the whole purpose
23 of privileged logs, right?

24 MR. PRANGLE: I confess I don't recall
25 the precise language of the protective order, but I

1 guess the point being is even if I were able to
2 identify that in the RC matter, these two nurses
3 gave statements to Metro that -- you know, I'll be
4 honest, judge, I don't recall the wording of the --

5 THE COURT: I looked at it, you know. I
6 think it was yesterday. Well, I'll look at it
7 again, but one of you did provide it and it was
8 pretty vague. Seemed to me just saying don't
9 produce the statement.

10 MR. PRANGLE: Okay.

11 THE COURT: Without a court order.

12 MR. PRANGLE: Okay. But I guess my point
13 being is that -- and again, I'm not trying to say
14 that I shouldn't have done this. And really the
15 best answer that I can give you is that this was
16 something that was going on in the RC case.

17 I just didn't draw the connection to
18 the Doe case because again, I didn't -- well, I just
19 didn't draw the connection to the Doe case.

20 THE COURT: All right. I understand.

21 MR. PRANGLE: So then we go forward. And
22 then I think it was either in October or November of
23 2014 in the Doe case another joint motion to compel
24 was done to basically lift a protective order. And
25 I believe the DCRR that granted that motion was

1 November 6th. Around November 6th. The hearing
2 itself had happened I think five or 10 days earlier.

3 And in the hearing, Commissioner
4 Bulla ordered that the records be produced. We
5 produced them right away. We didn't even wait until
6 the DCRR was filed before we produced the materials.

7 So the statements -- and I know Mr.
8 Keach said that they didn't think they got Wolfe's
9 statement until January of 2015. I believe it was
10 actually late October or early November 2014. Not
11 that that, three months makes that big a difference,
12 but that's when they had these statements.

13 When we got nurse Murray's statement
14 in May of 2013 where she describes the event with
15 the sitter, that is the first time that we had any
16 knowledge of that testimony.

17 When we received nurse Wolfe's
18 statement wherein she discusses what nurse Sumera
19 said to her about Mr. Farmer and having to watch
20 him, when she says that Mr. Farmer favored female
21 patients, when she -- and this is actually what she
22 attributes to Ray Sumera. And that Ray Sumera
23 believes that he volunteers too much or too readily
24 to place leads, that's the first time that we
25 learned that information.

1 As I've said, I acknowledge that
2 when we received that information in May of 2013 I
3 should have done a disclosure and I didn't.

4 But at no point prior to that do I
5 believe we had any sufficient evidence to justify
6 such a disclosure.

7 And as I've said with Bochenek and
8 Butler, I really do not believe that they had the
9 statements at the time. There's no evidence at all
10 in the police records that any of the statements
11 were produced. I think actually the closest we have
12 is I think there's something that in 2013 they were
13 produced to John.

14 So they were noting when they were
15 giving them out. We just didn't get it. So I don't
16 know how Butler or Bohanek would have had it.

17 Our failure to disclose the
18 statement or the identity was not motivated by any
19 desire on my part to hide something. I mean,
20 playing it forward, how would I ever think that I
21 would be able to dodge this bullet forever. It's
22 silly, the idea. We knew at some point when the
23 criminal matter was concluded that this stuff would
24 be out there.

25 We disclosed Murray, Wolfe and

1 Sumera in the RC case. We weren't trying to hide
2 them. We just didn't know that this information was
3 out there.

4 And let me address one of the things
5 Your Honor raised.

6 THE COURT: Well, could the argument be
7 made that you were seeking to delay ultimate
8 disclosure knowing that there would be a day in
9 reckoning where you'd have to disclose but seeking
10 to delay it, so that memories would fade through the
11 passage of time?

12 MR. PRANGLE: I suppose any argument
13 could be made, but I'll be honest, I'm not that
14 crafty. I really am not. Your Honor doesn't know
15 me, but as an officer of the court, I'm not that
16 sneaky.

17 THE COURT: Okay.

18 MR. PRANGLE: What I would tell you --
19 but then why would we have disclosed them in the RC
20 case? You know, so -- you know, and I believe it
21 was only nurse Murray who was actually deposed in
22 the RC case. And again, this subject just never
23 came out. And actually in her deposition in the RC
24 case, nurse Murray said that she never had any
25 problems with Mr. Farmer. So I understand that it's

1 not either consistent necessarily or inconsistent
2 with what's in her statement, but it just never came
3 out.

4 So switching to the, I guess the
5 issue of prejudice, is that in addition to the 14
6 witnesses that we disclosed in 2009 in our first
7 supplement to the ECC, that plaintiff didn't depose
8 any of those people until they deposed only one of
9 them in 2015, I think it's somewhat speculative to
10 say that had we added these three names they would
11 have been deposed.

12 I think I've been clear that I
13 acknowledge I should have supplemented a list in
14 2013, but that's the first point that we had reason
15 to believe they had relevant information.

16 So the point that they could
17 reasonably have been disclosed, such as their
18 depositions should have been taken in this case, I
19 believe is 2013, not 2009.

20 And, you know, we know memories
21 fade. And Mr. Murdock knows memories fade. So when
22 we disclosed the 14, you know, why didn't he depose.
23 And I'm not at all critical of Mr. Murdock, but he
24 chose to do very diligent discovery in other
25 theatres and he has been very dogged in that, I will

1 concede to that, but he never chose to depose any of
2 those 14 that we said may have relevant information.

3 Again, I'm not faulting him, but I
4 think it's somewhat speculative to say that if we
5 would have had these three names on there, even if
6 we had reason to believe they should have been
7 disclosed, that he would have taken the depositions.

8 It's not until 2013 that we get the
9 information as to their significance. But again,
10 because of the protective order, it's really not
11 until again 2014 that the statements themselves can
12 be produced to plaintiff.

13 And I know the depositions occurred
14 I think in the spring of this year. So really the
15 delay is from November of 2014 to March of 2015 or
16 whenever it is that the depositions occurred.

17 So I don't believe there's any
18 meaningful prejudice here to plaintiff based on the
19 information we had and when we can produce it based
20 on the protective orders.

21 So for all these reasons, Your
22 Honor, I believe that is the severity of the
23 sanction entered by Commissioner Bulla at her
24 invitation to you that if we can show that it wasn't
25 until later that we had reason to know this, then

1 Your Honor can reduce the sanction.

2 I would ask Your Honor to vacate the
3 sanction or at the very least reduce the sanction.
4 And as it relates to the question of case
5 terminating sanctions, obviously I don't believe it
6 rises to that level. So I would ask Your Honor to
7 decline to do that.

8 THE COURT: Thank you very much, Mr.
9 Prangle. Appreciate your argument.

10 All right. Rather than -- if this
11 were a regular noticed hearing, not in the context
12 of an evidentiary hearing, I would give the
13 plaintiff an opportunity to respond, but.

14 MR. KEACH: Oh, that's okay.

15 THE COURT: But I think we're gonna move
16 now into the natural presentation of evidence
17 section. And after that, then again, we'll have
18 plaintiff and defendant and the plaintiff giving
19 closing arguments.

20 All right. So, Mr. Keach, you may
21 proceed.

22 MR. KEACH: Your Honor, if I might have
23 the court's indulgence for just a moment.

24 THE COURT: You may. Do you want to take
25 a short break?

1 MR. KEACH: Well, I just want to hand out
2 our, our evidence books, so that the court and
3 counsel will have copies of those.

4 THE COURT: Very good. Thank you.

5 MR. KEACH: As we move forward. The
6 court. And we'll have one for the clerk. We have
7 one for both the court and clerk.

8 THE COURT: Perfect. Is this my set?

9 MR. KEACH: It is, Your Honor.

10 MR. KEACH: And, Your Honor, as a
11 preliminary matter, I'd like to go through our, our
12 evidence book item by item and move for admission of
13 certain things that -- and determine whether or not
14 we'll need testimony or whether they'll be admitted.

15 Starting with Exhibits 1 through 1N,
16 which are Centennial Hills and UHS's 16.1
17 disclosures, we move for admission of those, Your
18 Honor.

19 MR. PRANGLE: No objection for their
20 admission for this hearing.

21 THE COURT: All right. 1 and 1A through
22 1N --

23 MR. KEACH: Correct, Your Honor.

24 THE COURT: -- will be admitted for the
25 limited purpose of this evidentiary hearing.

1 MR. KEACH: Exhibit 3 is the May
2 deposition of Ray Sumera. We would move for its
3 admission, Your Honor.

4 MR. PRANGLE: No objection for this
5 hearing.

6 THE COURT: Exhibit 3 shall be admitted
7 for this hearing.

8 MR. KEACH: Exhibit 4 is the incident
9 report of May 2008. We move for its admission, Your
10 Honor.

11 MR. PRANGLE: No objection for this
12 hearing.

13 THE COURT: 4 shall be admitted for the
14 hearing.

15 MR. KEACH: Exhibit 5 are the Complaint
16 and Amended Complaint filed in the RC case, Your
17 Honor. We'd move for their admission.

18 MR. PRANGLE: This is from the RC case?

19 MR. KEACH: They are.

20 MR. PRANGLE: Okay. No objection for
21 this hearing.

22 THE COURT: Exhibit 5 admitted for this
23 hearing.

24 MR. KEACH: No. 6 is Christine Murray's
25 deposition from 2010. No. 7 is Amy Bochenek's

1 deposition from 2010. Those were in the RC case.

2 We move for their admission, Your
3 Honor.

4 MR. PRANGLE: Again, no objection for
5 this hearing.

6 THE COURT: So 6 and 7 shall be admitted
7 for purposes of the hearing.

8 MR. KEACH: Ms. Bochenek is also --

9 THE COURT: And just to clarify, I'm
10 certain that -- that the statements in those
11 depositions are admitted for the purposes of
12 determining whether there was notice, not for
13 purposes of the truth of the matter asserted in
14 those depositions for purposes of this hearing?

15 MR. PRANGLE: I guess my concern, I just
16 want to make sure that it's clear --

17 THE COURT: I just want to clarify.

18 MR. PRANGLE: This is, this is not for
19 purposes of this trial later down the road.

20 MR. KEACH: These depositions are only --

21 THE COURT: Well, they only come in --

22 MR. KEACH: -- solely for -- for the
23 issues that are before the court today.

24 THE COURT: Perfect.

25 MR. KEACH: That's it.

1 MR. PRANGLE: That's fine.

2 MR. KEACH: That's it.

3 THE COURT: I just wanted to clarify
4 that. Go ahead. 6 and 7 are admitted.

5 MR. KEACH: Exhibit 8, Your Honor, is Ms.
6 Blasing/Bochenek's deposition in 2015. We move for
7 its admission.

8 MR. PRANGLE: No objection.

9 THE COURT: 8 is admitted.

10 MR. KEACH: No. 10, Your Honor, those
11 series of emails from the public defenders office,
12 we would move for their admission.

13 MR. PRANGLE: Same -- as to all the
14 exhibits, I have no objections for purposes of this
15 hearing.

16 THE COURT: All right. Well, then why
17 don't you identify all the exhibits that you intend
18 to admit and over -- and defendant is not objecting.
19 So identify those for the record.

20 MR. KEACH: Thank you, Your Honor.

21 THE COURT: Just by number.

22 MR. KEACH: Exhibit --

23 THE COURT: And do you plan to admit all,
24 you know, 10 through 17 of binder one?

25 MR. KEACH: Well, 10 through 17, yes,

1 Your Honor.

2 THE COURT: All right. And there's no
3 objection from defense counsel. So 10 through 17
4 are admitted for the limited purpose of this
5 hearing.

6 THE CLERK: I'm sorry. Did we already
7 address 9?

8 THE COURT: He skipped 9 intentionally I
9 believe.

10 MR. KEACH: I did, Your Honor.

11 THE CLERK: Okay.

12 THE COURT: And just as well -- just like
13 No. 2 he skipped.

14 MR. KEACH: Correct, Your Honor.

15 THE COURT: All right. So let's go to
16 binder two.

17 MR. KEACH: Your Honor, we move for the
18 admissions of Exhibit 18, 19, 21, 22, 23, 24, 25,
19 26, 27, and 28.

20 MR. PRANGLE: Same.

21 THE COURT: All right. Those shall be
22 admitted as designated 18, 19, 21, 22 through 28.

23 MR. PRANGLE: I believe you skipped 26.

24 THE COURT: Oh, I thought -- I had down
25 he said 26.

1 MR. PRANGLE: Oh, I apologize.

2 MR. KEACH: I wouldn't skip that.

3 THE COURT: All right.

4 MR. KEACH: I don't think I'm gonna skip
5 Margaret Wolfe's deposition. I'm sorry about that.

6 MR. PRANGLE: Wishful thinking.

7 MR. KEACH: Probably.

8 THE COURT: Very good. Can I ask, you
9 had various documents attached to your evidentiary
10 hearing brief.

11 Have you -- have all the documents
12 that you've moved into evidence, are those included?

13 MR. KEACH: Your Honor, I don't know if
14 the court had an opportunity to review the exhibits
15 to our, our brief, but a number of them were
16 excerpts from the deposition transcripts. That's
17 what the bulk of those were.

18 And the reason we provided those
19 excerpts is because in essence, although the court
20 has -- has been -- has admitted the entire
21 depositions, those experts -- those excerpts go to
22 the specific points that we were -- were addressing
23 in those depositions.

24 THE COURT: Yeah, these are those
25 exhibits included in what we just identified as

1 being admitted?

2 MR. KEACH: According to Mr. Murdock,
3 every one of them is. Since I haven't gone through
4 and checked myself, I'm gonna rely on his
5 representation.

6 THE COURT: And then Exhibit 12 was a
7 Metro statement that you introduced that -- that's
8 in your binders.

9 MR. MURDOCK: It should be.

10 THE COURT: Just double check.

11 MR. KEACH: I'm sorry, Your Honor?

12 MR. MURDOCK: The LVMPD statement of
13 Margaret Wolfe.

14 MR. KEACH: That is --

15 THE COURT: I'm sorry. It's a
16 transcript.

17 MR. MURDOCK: Right.

18 THE COURT: Yeah. It's the Wolfe
19 transcript. It's the Wolfe transcript.

20 THE CLERK: I have a question, Your
21 Honor.

22 THE COURT: What's that?

23 THE CLERK: This is in my folder. It's
24 the -- has everybody got the same thing? It was in
25 my binder.

1 MR. KEACH: Your Honor --

2 THE COURT: Go ahead.

3 MR. KEACH: Your Honor, Margaret Wolfe's
4 transcribed statement, although it's No. 12, I think
5 in our brief it's No. 14 in our binder.

6 THE COURT: Perfect. One other question,
7 my court clerk indicated she had a -- some documents
8 in the pocket part of her binder.

9 Why don't you approach and see was
10 everyone supposed to get that.

11 MR. PRANGLE: I did.

12 THE COURT: And it looks like it's in the
13 packet part of my binder, too. What exhibit is
14 that?

15 MR. KEACH: It is, Your Honor. It's not
16 an exhibit, but I would move to mark it next in
17 order only for this reason: What it is is if you
18 look at the public defender emails, Exhibit --
19 Exhibit 10, you'll notice that they're about an inch
20 thick. And what happens, as with most emails, is
21 the same email gets repeated over and over and over
22 again as a reply. We have attempted, and towards
23 anyone admit it, that's fine, we have attempted to
24 just go through and just list in chronological order
25 all of the emails without having them repeated again

1 and again.

2 THE COURT: So this is a subset of 10?

3 MR. KEACH: It is, Your Honor.

4 THE COURT: We'll call this 10-A.

5 MR. KEACH: Thank you, Your Honor.

6 THE COURT: All right. So the --

7 MR. KEACH: And we will move for its
8 admission.

9 THE COURT: The collection of emails that
10 are in the pocket part, I'm assuming there's no
11 objection, right, counsel?

12 MR. PRANGLE: Correct.

13 THE COURT: All right. It will be
14 admitted as 10-A.

15 MR. KEACH: Thank you, Your Honor.

16 THE COURT: All right. You may proceed.

17 MR. KEACH: Your Honor, we would call Mr.
18 Bemis.

19 THE COURT: All right. Mr. Bemis,
20 approach the witness box and the clerk will swear
21 you in.

22 THE CLERK: Nobody gave me back my
23 packet.

24 THE COURT: Oh, there you go. You can --
25 one second.

1 MR. KEACH: Oh, I got hers.

2 THE CLERK: Yeah. Okay, sorry.

3 (Whereupon, John Bemis was duly sworn to
4 tell the truth, the whole truth, and
5 nothing but the truth.)

6 THE CLERK: Thank you. Please be seated.
7 State your full name, spelling first and last name
8 for the record, please.

9 THE WITNESS: Sorry. This was tangled
10 with the microphone.

11 THE COURT: Take your time.

12 THE WITNESS: First name John, J-o-h-n.
13 Last name Bemis, B-e-m-i-s.

14 DIRECT EXAMINATION

15 BY MR. KEACH:

16 Q. Thank you, Mr. Bemis. Mr. Bemis, you're
17 an attorney here in Las Vegas?

18 A. I am.

19 Q. And you work for the law firm Hall
20 Prangle?

21 A. I do.

22 Q. And you've been working on this case?

23 A. I have since 2009 sometime.

24 Q. Okay. You're aware that plaintiff has a
25 claim against the hospital for negligence and

1 respondeat superior, right?

2 A. I'm aware of that.

3 Q. And both of those claims involve issues
4 of foreseeability, right?

5 A. They do.

6 Q. On the negligence claim, foreseeability
7 generally means based upon the totalities of the
8 circumstances would or should a reasonable person
9 know that Farmer will commit these types of acts,
10 those for which he was convicted, generally, right?

11 A. Generally. I'll accept that.

12 Q. And on respondeat superior claims,
13 foreseeability means could a person of ordinary
14 intelligence and --

15 THE COURT REPORTER: Wait, wait.

16 MR. KEACH: I'll slow it down.

17 THE COURT REPORTER: Thank you.

18 BY MR. KEACH:

19 Q. On the respondeat superior claims,
20 foreseeability means a person of ordinary
21 intelligence and prudence have reasonably
22 anticipated the conduct and probability of injury,
23 correct?

24 A. Can you repeat that one more time?

25 Q. Absolutely. On respondeat superior

1 claims, foreseeability means could a person of
2 ordinary intelligence and prudence have reasonably
3 anticipated the conduct and the probability of
4 injury?

5 A. I'll accept that's generally true.

6 Q. And that's what 41.745 says, doesn't it?

7 A. Generally.

8 Q. That quote, but nonetheless. So prior
9 instances of inappropriate conduct with female
10 patients by Farmer are relevant to these issues,
11 right?

12 A. They can be, yes.

13 Q. Okay. And any information the hospital
14 had regarding misconduct was discoverable and should
15 have been timely produced, both documents and, and
16 witnesses, right?

17 A. Can you repeat that one more time?

18 Q. Absolutely. Any information the hospital
19 had regarding this misconduct were discoverable and
20 should have been timely produced, both the documents
21 and witnesses, right?

22 A. Sure.

23 Q. And NRCP 16.1 required these disclosures,
24 correct?

25 A. Requires disclosures pending relevant

1 evidence, yes.

2 Q. And that would include any information of
3 instances of inappropriate conduct with female
4 patients by Farmer, correct?

5 A. Could, yes.

6 Q. Okay. And according to your brief and
7 according to Mr. Prangle's argument this morning,
8 after the protective order was issued on May 6th,
9 2013, you received the police file and the hospital
10 learned for the first time that nurses Murray, Wolfe
11 and Sumera had information that could be relevant to
12 Jane Doe's claims in this case, correct?

13 A. That's my understanding, yes.

14 Q. Okay. Now, at least -- well, let's talk
15 about what you know, okay.

16 At any point before May 2013, May
17 6th, 2013 when a protective order was issued, were
18 you aware that nurses Murray, Wolfe or Sumera had
19 information related that -- that could be relevant
20 to Jane Doe's claims?

21 MR. PRANGLE: Your Honor, I would just
22 object to the extent that may cause for the
23 divulgence of privileged information.

24 THE COURT: Your Honor, I'm not asking
25 him to tell me what anyone told him. I asked him if

1 he had information. That doesn't require the
2 disclosure of any communication.

3 THE COURT: All right. Overruled. You
4 can answer the question.

5 THE WITNESS: Could we get that
6 question read back, please?

7 BY MR. KEACH:

8 Q. Absolutely. At any time prior to May
9 6th, 2013 when a protective order was issued, did
10 you have knowledge that nurses Murray, Wolfe and
11 Sumera had information that could be relevant to
12 Jane Doe's claims?

13 A. No.

14 Q. Okay. So the first you ever knew about
15 anything was after May 6th, 2013 -- strike that.

16 The first you ever knew about any
17 relevant information possessed by nurses Murray,
18 Wolfe and Sumera was after May 6th, 2013, after the
19 protective order was entered, right?

20 A. Yes. For Jane Doe.

21 Q. For Jane Doe. Okay. Now, let's get back
22 to that. In terms of I heard Mr. Prangle say
23 several times in his statement that you all
24 identified Murray, Sumera and Wolfe in the RC case,
25 right?

1 A. I heard that statement as well, yes.

2 Q. Okay. And, in fact, they were on duty
3 and were actually involved in the Cagnina treatment,
4 right?

5 A. That is my understanding.

6 Q. Okay. And that was -- there was nothing
7 in the RC case identified about Sumera, prior to May
8 2013, about Sumera, Murray or Wolfe having any
9 knowledge about any facts related to prior
10 misconduct or inappropriate conduct by Farmer,
11 correct?

12 A. Can you state that one more time because
13 I think that we're getting into the realm that it
14 may be privileged.

15 Q. Can you read that back, ma'am?

16 (Whereupon, the record read as follows:

17 "Question. Okay. And that was -- there
18 was nothing in the RC case identified
19 about Sumera, prior to May 2013, about
20 Sumera, Murray or Wolfe having any
21 knowledge about any facts related to
22 prior misconduct or inappropriate conduct
23 by Farmer, correct?"

24 THE WITNESS: And are you asking
25 specifically about the disclosures?

1 BY MR. KEACH:

2 Q. Yes.

3 A. I didn't make the disclose of -- I don't
4 believe I made the disclosure of them. So I don't
5 recall specifically what the disclosures stated.

6 Q. Okay. Are you aware of any disclosures
7 in the Cagnina case prior to May 2013 related to any
8 information nurses Murray, Wolfe or Sumera had
9 relative to the facts related to inappropriate
10 conduct with female patients by Farmer?

11 A. Not aware.

12 Q. Okay. Now, when did you first become
13 aware -- forget about cases. When did you first
14 become aware that Murray, Wolfe or Sumera had any
15 information about facts that would go to issues
16 related to Farmer's inappropriate conduct with
17 female patients?

18 A. Say it one more time, please. When did I
19 become aware?

20 Q. Right. Of any facts related to Farmer's
21 inappropriate conduct with female patients by
22 Murray, Wolfe or Sumera.

23 A. The police report. And that would have
24 been May of 2013.

25 Q. So after May 6th of 2013, correct?

1 A. Correct.

2 Q. Okay. Now, you took over this case --

3 THE COURT: Well, sorry to interject you.
4 I'd still like to know when -- I know it's after the
5 police report came in, but there's been some
6 uncertainty as to when anyone from your office
7 looked at that police report.

8 If possible, can you be more
9 specific as to when you personally became aware that
10 Murray, Wolfe or Sumera from the police reports, you
11 know, had some knowledge of some alleged
12 inappropriate conduct by Mr. Farmer?

13 THE WITNESS: With respect to that, the
14 only thing that I can recall is receiving the police
15 report. It was in short order before the Cagnina
16 trial. Or the RC trial. Sorry. With respect to
17 that, it was focused on to that. So I can't recall
18 specifically when I specifically read any of those
19 statements or anything to that effect.

20 THE COURT: All right. When was the RC
21 trial?

22 MR. PRANGLE: The case settled. I don't
23 recall when.

24 THE COURT: Okay. All right, thank you.
25 Continue.

1 BY MR. KEACH:

2 Q. All right. Mr. Bemis, I'll follow up on
3 the court's question. When you received the police
4 file, you already knew that there was statements by
5 Wolfe and Murray, correct? Not the contents, but
6 the fact that there were statements.

7 A. Personally I don't believe I did.

8 Q. Okay. When you received the police file,
9 you reviewed the information you received within
10 relative short order, did you not?

11 A. Within a short amount of time, yes.

12 Q. Okay. And including within that police
13 file were the statements of Murray and Wolfe, right?

14 A. I believe so, yes.

15 Q. So it wasn't long -- and it will be fair
16 to say it wasn't long after receiving the police
17 file that you reviewed it and actually saw the
18 statements of Wolfe and Murray.

19 Would that be a fair statement?

20 A. That would be a fair statement.

21 Q. Okay. Now, the information you got from
22 those police files that alerted you to relevance of
23 Murray, Wolfe and Sumera were the police -- were the
24 actual statements of Margaret Wolfe and Christine
25 Murray which you had seen for the first time when

1 you got the police file in May 2013, right?

2 A. Correct.

3 Q. Okay. And the reason that information
4 was relevant because it had bearing on whether the
5 hospital was aware of allegations of inappropriate
6 conduct with female patients by Farmer before Jane
7 Doe was assaulted, right?

8 A. It could.

9 Q. Okay. Now, Murray said in her statement
10 two things of importance regarding Farmer's conduct
11 working with patients. First, that he was very
12 attentive to female patients more than male and was
13 more than willing to hook them up to heart monitor
14 leads or something to that effect, correct?

15 A. That's your opinion, yes.

16 Q. I mean, she said that?

17 A. Yes, she did say that.

18 Q. Okay.

19 A. But your opinion on importance.

20 Q. Okay. And, second, that Farmer was
21 sitting with a patient with the door closed and the
22 lights off and the lady yelling, "I don't want you
23 by me, get out of here," that's another thing that
24 was of importance at least or relevance to prior
25 conduct by Farmer, correct?

1 A. To whom's statement are you referring to?

2 Q. Murray.

3 A. Okay, yeah. Murray's, yes. I recall
4 that.

5 Q. Okay. Now, Wolfe in her statement said
6 several things. She described the incident with
7 Hannah, right?

8 A. I believe so, yes.

9 Q. She described the conversation she had
10 with Ray Sumera after the Hannah incident and the
11 conversation she had with him before the incident
12 where he was concerned Farmer was overly attentive
13 to female patients and anxious to connect the heart
14 monitor leads and asked Wolfe to keep an eye on
15 Farmer, right?

16 A. Yes.

17 Q. She described how Farmer would go into
18 female patients' rooms and close the door when he
19 had no reason to go in there. And it had incurred
20 multiple times, right?

21 A. She stated that.

22 Q. And she described how other staff
23 members -- how other staff were expressing the same
24 concerns also, right?

25 A. She did say that I believe.

1 Q. And she described another nurse named Kim
2 told her that she witnessed Farmer's suspicious
3 behavior also, right?

4 A. I believe she stated that as well.

5 Q. Okay. Now, you knew, once you read this,
6 that you had an obligation pursuant to 16.1 to
7 disclose this information from Wolfe and Murray,
8 right?

9 A. From? Can you repeat that again?

10 Q. Once you got those statements, you knew
11 that was relevant, you knew 16.1 required a
12 disclosure?

13 A. 16 -- in retrospect, yes. 16.1 does
14 require.

15 Q. Okay. But you didn't disclose it because
16 there was a protective order, right?

17 A. That is correct.

18 Q. All right. Now, I've got before you the
19 exhibits that have been admitted. If you could
20 start and try to get back to --

21 A. Which binder?

22 Q. Binder one, Exhibit 12.

23 A. Okay.

24 Q. This is the Notice of Entry of Order re:
25 Discovery Commissioner's Report and Recommendations.

1 Do you recall this document?

2 A. Generally, yes.

3 Q. Okay. I mean, it shows you were on the
4 service list?

5 A. Correct.

6 Q. And, in fact, what the order is is it
7 includes the protective order, correct?

8 A. I believe so, yes.

9 Q. It's Exhibit 1 to the notice of entry.
10 Do you see that?

11 A. Yes.

12 Q. Okay. And if you turn to page two of the
13 of the protective order, paragraph under the
14 recommendations, paragraph one talks about that the
15 motion's basically granted and he's got to produce,
16 right?

17 A. That is correct.

18 Q. And paragraph two is the protective
19 order, correct?

20 A. Correct.

21 Q. And other than what's in paragraph two
22 when you refer to the protective order prohibited
23 your disclosure of -- of Murray and Wolfe's
24 statement, is there any other protective order
25 you're talking about or is that it?

1 A. Well, it discussed a September 17th, 2009
2 protective order that was previously placed by the
3 discovery commissioner.

4 Q. Okay. What paragraph two says is is that
5 the deposition transcript of Mr. Farmer's deposition
6 transcript must be unsealed and all documents
7 related to the criminal action must be kept as
8 confidential, correct?

9 A. And subject to the protective order
10 entered on September 17th, 2009.

11 Q. Okay. Was there anything in the
12 protective order that prevented your disclosure of
13 the identity of those witnesses?

14 A. In looking at this, I do not see that. I
15 do not have the September 17th, 2009.

16 Q. Okay. And do you recall anything in the
17 September 17th order prohibiting your disclosure of
18 those witnesses?

19 A. I do not recall.

20 Q. Okay.

21 THE COURT: Is that something that
22 anybody wants the court to look at since you guys
23 probably should show it to me if it's relevant?

24 MR. KEACH: We don't have it. It's in
25 the RC case.

1 THE COURT: All right.

2 BY MR. KEACH:

3 Q. And nothing prohibited you from
4 describing their testimony as they will testify
5 regarding their knowledge of Farmer's conduct with
6 other patients or something generally like that, did
7 it?

8 A. As we -- as Mr. Prangle stated earlier
9 today, that is true.

10 Q. Okay. But you didn't do that?

11 A. That is correct.

12 Q. Okay. So you had an obligation under
13 16.1, which you already told me you didn't, to
14 disclose this information, right?

15 A. I understand that.

16 Q. And you didn't disclosure it, right?

17 A. That is correct.

18 Q. And the protective order didn't prevent
19 you from disclosing the names in a general category
20 or description of the testimony, right?

21 A. That is correct.

22 Q. So that's a violation of 16.1, correct?

23 A. Can be considered that, yes.

24 Q. Okay. Now, the statements of Wolfe and
25 Murray that you saw for the first time in May 2006

1 is what tipped you off that Murray, Wolfe and Sumera
2 had information irrelevant to Jane Doe's conduct,
3 correct?

4 A. That is correct.

5 Q. And but for the protective order, you
6 would have disclosed that information upon learning
7 of it summarily, right?

8 A. Once making basically a -- transitioning
9 from the RC case to the Doe case, yes.

10 Q. You keep saying that. But I've got a
11 problem with that. This information about prior
12 misconduct, that is relevant in the Jane Doe case,
13 right?

14 A. That is correct.

15 Q. Okay. It's relevant in the Cagnina case,
16 too, isn't it?

17 A. It would be, yes.

18 Q. Okay. Because the issue of
19 foreseeability, it's the same in Cagnina as it is in
20 Doe, is it not? If the hospital's on notice,
21 they're liable, right?

22 A. That'd be correct.

23 Q. Okay.

24 THE COURT: So he's not -- my take on
25 this is he's not trying to argue that the

1 information was not relevant in the Doe case. He's
2 simply trying to explain his state of mind being
3 focused on the RC case, and it would have been a
4 need to -- for some transition time before he became
5 focused on the Doe case.

6 He's not offering that as a
7 justification for not complying with 16.1. He's
8 offering that as an explanation of his state of mind
9 of why it might have taken some time?

10 That's my -- just my understanding
11 of what he's trying to explain.

12 MR. KEACH: Okay.

13 BY MR. KEACH:

14 Q. Mr. Murdock has been a bulldog on the
15 discovery in this case; is that a fair statement?

16 A. Mr. Murdock has been a very aggressive
17 attorney and has done a good job for his client.

18 Q. He's done a lot of discovery in this
19 case, hasn't he?

20 A. He has.

21 Q. He's probably taken 30 or 40 depositions?

22 A. I will take that as your word, but I
23 think it may be more.

24 Q. And maybe more. And the reason I'm
25 saying that is Mr. Prangle suggests that, that you

1 all gave him witnesses that he didn't depose.

2 Did you look at your initial
3 disclosure of who those witnesses are?

4 A. I have not looked at any initial
5 disclosure in preparation for today, no.

6 Q. Did any of those witnesses go to the
7 issue of foreseeability?

8 A. I told you I have not looked at that.

9 Q. It's the first -- it's the first exhibit
10 in the binder. Take a look at that if you would,
11 please, and tell me if you see any witness list
12 that -- that go to the issue of the prior misconduct
13 of Mr. Farmer at Centennial Hills.

14 A. Considering I don't know what all these
15 witnesses would have to say, I can't tell you that.

16 Q. Okay. I appreciate that you don't know
17 whether those witnesses have any information about
18 prior misconduct, but none of them are identified as
19 witnesses who would testify about any prior
20 misconduct by Farmer, are they?

21 A. The only one that I would go to would be
22 the executive director of the Nevada State Board of
23 Nursing.

24 Q. Okay. And the executive director has
25 knowledge of Farmer's prior misconduct with female

1 patients at Centennial Hills?

2 A. Well, if there's anything reported to the
3 Board, they will.

4 Q. Okay. Other than that?

5 A. And that would just be an assumption.

6 Q. Any other than that?

7 A. No.

8 Q. No. Okay. Now, you just told me --

9 THE COURT: Just for the record, we're
10 gonna take a break at 11. So just so --

11 MR. KEACH: That's fine, Your Honor. We
12 can take one now if the court -- I can stop at any
13 time. This is as good a time as any, we can kind of
14 take a pause.

15 THE COURT: All right. The court will be
16 in recess then for 10 minutes.

17 MR. KEACH: That's fine, Your Honor.

18 THE COURT: Thank you. You may step
19 down, Mr. Bemis. Thank you.

20 (Whereupon, a recess was had.)

21 THE COURT: All right. So we're back on
22 the record. And, Mr. Bemis, you're still sworn
23 under oath.

24 THE WITNESS: I understand.

25 THE COURT: Mr. Keach, you may proceed.

1 BY MR. KEACH:

2 Q. Okay. I think just before we left, you
3 had confirmed but for the protective order you would
4 have disclosed the information about Murray, Wolfe
5 and Sumera as it relates to any knowledge they had
6 about facts of prior misconduct by Farmer, correct?

7 A. Correct.

8 Q. Okay. But that's not really true, is it,
9 Mr. Bemis? You actually knew of the contents of
10 these police statements from Wolfe or Murray, or at
11 least some of it, long before a protective order,
12 didn't you?

13 A. Pardon?

14 Q. I said you knew the contents of the
15 police statements from Wolfe or Murray, or at least
16 some of it, long before the protective order, didn't
17 you?

18 A. I don't believe so. I think I knew the
19 fact that there was a statement from Murray.

20 Q. Okay. Now, you knew more than it was a
21 statement from Murray. You actually had her
22 recorded statement, didn't you?

23 A. Did have the recorded statement in
24 February.

25 Q. Right. February 2000 --

1 A. 2013.

2 Q. -- 2013. Three months before any
3 protective order prohibiting that disclosure.

4 You had that, didn't you?

5 A. Correct.

6 Q. Okay. You didn't disclose it, did you?

7 A. I did not disclose it.

8 Q. That's 16.1 violation, isn't it?

9 A. Well, with respect to that, I did not
10 know the contents of it.

11 Q. You got an audio tape but you didn't
12 listen to it, is that what you're telling me?

13 A. I didn't get an audio tape.

14 Q. What'd you get?

15 A. I got a CD that had an audio file on it,
16 but I did not listen to it.

17 Q. Oh, you got -- you received the, the
18 audio portion of Christine Murray's recorded
19 statement from the public defender's office in
20 February 2013, right?

21 A. That is correct.

22 Q. And you never listened to it?

23 A. No.

24 Q. Did anyone in your office ever listen to
25 it that you're aware of?

1 A. Not that I'm aware of.

2 Q. Did anyone other than you know that
3 you -- in your office know you had it?

4 A. Had the disc from the public defenders?

5 Q. Yeah.

6 A. I believe so, yes.

7 Q. Who?

8 A. Obviously my secretary had it.

9 Q. Yeah. Who else?

10 A. And I believe some of the other attorneys
11 knew that we had it on the disc.

12 Q. Who?

13 A. Who knew?

14 Q. Yeah.

15 A. I believe that Mr. Prangle knew and
16 Mr. -- I don't believe Mr. Webster knew.

17 Q. Okay. And this is information you had
18 shared with Mr. Prangle, you had the audio tape?

19 A. I didn't say that we had an audio tape.
20 I said that the public defender gave us
21 documentation.

22 Q. The public defender gave you the CD of
23 Christine Murray's recorded statement, that's what
24 you advised Mr. Prangle, right?

25 A. No. Because it had some statements from

1 the RC matter on it and then some statements of
2 other nurses.

3 Q. Recorded police -- statements from the
4 police officers?

5 A. Had not -- had audio and transcript.

6 Q. Okay.

7 A. Some audio, some transcript.

8 Q. Okay. And so you get this -- I mean, I
9 went through the emails, okay.

10 A. I understand.

11 Q. And we can go through them here if you'd
12 like, but you met with the public defender's office
13 in -- on January 21st, 2013, right?

14 A. I believe so. I think it was Martin
15 Luther King day.

16 Q. Okay. And as a result of that meeting,
17 the public defender's office wanted you to produce
18 discovery you obtained in the civil cases, right?

19 A. In the RC matter, yes.

20 Q. Court's indulgence one moment, please,
21 Your Honor. The Indictment contained allegations
22 against Farmer related to Cagnina, Doe and others,
23 correct?

24 A. I believe so, yes.

25 Q. At least Cagnina and Doe, we know that,

1 because we got a judgment of conviction on Doe,
2 right?

3 A. That is correct. But I just don't recall
4 the exact sequence of the indictment.

5 Q. Okay.

6 A. And who was involved.

7 Q. Okay. If you could, could you turn to
8 Exhibit 10A, page 14.

9 A. Okay.

10 Q. Actually turn to page 13.

11 A. 13.

12 Q. And look at the email from Bob McBride.
13 Do you see that first full email on that page?

14 A. Correct.

15 Q. It's talking about a meeting in both of
16 those emails. Do you see that?

17 A. That is correct.

18 Q. And then on page 14, Bob sends an email
19 to you and Amy and others. Amy being the PD,
20 saying -- talking about 10 o'clock and asking is
21 that good for you and Brent. Brent meaning Brent
22 Vogel, right?

23 A. That is correct.

24 THE COURT: I'm having trouble following.
25 Exhibit 10?

1 MR. KEACH: 10A. I'm sorry, Your Honor.
2 10A.

3 THE COURT: Oh, 10A is the --

4 MR. KEACH: Summary.

5 THE COURT: All right, got it. Give me a
6 sec.

7 MR. KEACH: I apologize, Your Honor, if I
8 didn't make that clear.

9 THE COURT: No, you said that. I was
10 just looking for the A and I forgot.

11 MR. KEACH: We're on page 14, Your Honor.

12 THE COURT: All right.

13 MR. KEACH: And I can go back to 13 if
14 you want me to go back through that.

15 THE COURT: Nope, nope. I got it. I'm
16 good.

17 MR. KEACH: Thank you, Your Honor.

18 BY MR. KEACH:

19 Q. And so Brent is Brent Vogel and you,
20 right?

21 A. That is correct.

22 Q. Okay. And Brent was representing ANS,
23 you were representing the hospital?

24 A. That is correct.

25 Q. Okay. And you wrote back and said Tim,

1 it's fine for me, any documents you need, right?

2 A. Correct.

3 Q. Okay. And Amy responds, 10's great, but
4 we're missing almost all the civil files. And she
5 goes through and lists the subjects she wants and
6 missing, right?

7 A. That is correct.

8 Q. Okay. And then the next page, page 15,
9 it's just more talking about meeting, right?

10 A. That is correct.

11 Q. And page 16 is an email from Amy on
12 January 22nd saying it was a pleasure to meet with
13 everybody yesterday, right?

14 A. That is correct.

15 Q. It's fair to assume the meeting took
16 place on January 21st, correct?

17 A. Correct.

18 Q. Okay. And you responded and told her
19 you're putting all the depositions on a disc and
20 getting a video depo of Scott copied for you.

21 Okay. And you go through and you
22 talk about stuff. Do you see that?

23 A. That is correct.

24 Q. I see in that email in response to her
25 that you say you want stuff on Peterson, Cagnina and

1 the Rose police files.

2 You're not just limiting it to
3 Cagnina, right?

4 A. That is correct.

5 Q. Okay. Because she asked you in a prior
6 email, I know you want the police reports. You need
7 them for all six cases, including Francis Rose or
8 just for the Peterson case, right?

9 A. That is correct.

10 Q. Okay. Because the Peterson case was --
11 the Peterson case was a case that was being
12 litigated more aggressively than any of the other
13 civil cases; is that a fair statement?

14 A. Not at this time.

15 Q. Not at this time. Okay. Well, certainly
16 she indicates that you were interested in the
17 Peterson case at that time, does she not?

18 A. That is correct.

19 Q. And, in fact, you confirmed that you were
20 interested in the Peterson case at that time,
21 correct?

22 A. That is correct.

23 Q. And the information you asked of her for
24 police files, that was relative to the Peterson case
25 as much as any other case at that time, correct?

1 A. At that time, yes.

2 Q. Okay. And so, sure enough, she told you
3 she'll get the police files for those cases, if you
4 look on page 17 and the next email, doesn't she?

5 A. Correct.

6 Q. She doesn't say she'll just send you
7 stuff on Cagnina, does she? She's sending you stuff
8 on Peterson, too, right?

9 A. That's correct.

10 Q. And, in fact, you ended up getting what
11 you told us, a CD that had all kinds of information,
12 documents and audio files and everything else on it,
13 right?

14 A. It did have some information on it, yes.

15 Q. Okay. It had a lot of information,
16 didn't it?

17 A. It had a fair amount of information.

18 Q. Okay. And that was as to the Peterson
19 case, the Cagnina case, the Rose case, right,
20 because that's what you asked for?

21 A. Correct.

22 Q. Okay. So at least as to the Peterson
23 case, in February 2013, you had Christine Murray's
24 statement, right?

25 A. Had the audio transcript of it.

1 Q. Okay. Did you disclose that to, to us?

2 A. No.

3 Q. 16.1 required that disclosure, did it
4 not?

5 A. That required me to have knowledge of
6 what was in the statement.

7 Q. Okay. So is it your testimony that you
8 can receive a police file related to the Peterson
9 case, not look at it and not -- as a result of not
10 looking at it, create an ability not to have a 16.1
11 disclosure requirement?

12 A. Well --

13 MR. PRANGLE: Your Honor, I would just
14 object to the form of the question. It assumes that
15 this audio file was specifically identified as being
16 relevant to the Peterson matter.

17 THE COURT: No, I'll allow the question.
18 I understand your point, but I don't think he's
19 assuming that.

20 Why don't you rephrase the question?

21 MR. KEACH: Thank you, Your Honor.

22 THE COURT: Just to make it -- it was a
23 long question. Why don't you rephrase it.

24 MR. KEACH: Thank you, Your Honor.

25 BY MR. KEACH:

1 Q. Was there anything on that file that you
2 received from the public defenders office that
3 identified what was related to Cagnina, what was
4 related to Peterson, and what was related to Rose?

5 A. No.

6 Q. Okay. It wasn't segregated in that
7 manner, was it?

8 A. It was not segregated.

9 Q. Okay. Because it was one indictment and
10 the police file dealt with the indictment, right?

11 A. Yes.

12 Q. Okay. The public defenders office was
13 defending the criminal case that had multiple
14 victims, correct?

15 A. That's my understanding, yes.

16 Q. And you received that police file,
17 correct, or that portions at that point in time,
18 correct?

19 A. Correct.

20 Q. There was no protective order on the --
21 preventing disclosure of that information at that
22 time, correct?

23 MR. PRANGLE: Well, I would just object
24 in light of the prior identified protective order
25 that we haven't seen.

1 MR. KEACH: You didn't take --

2 THE COURT: We did see reference to an,
3 an earlier September protective order. So can you
4 clarify your question?

5 MR. KEACH: Thank you, Your Honor.

6 BY MR. KEACH:

7 Q. Do you have any information that the
8 infor -- that the CD information you received in
9 February 2013 could not be disclosed to plaintiff
10 because of the September 17th protective order?

11 A. I don't have that information.

12 Q. Right. Now, you -- do you take the
13 position that you can receive a police file related
14 to a civil case you're involved in and willfully not
15 review the file in order to avoid your 16.1
16 disclosure requirements?

17 A. Can you repeat that one more time,
18 please?

19 Q. Absolutely. Do you believe that you can
20 receive a police file related to a civil case that
21 you're handling and willfully not review that file
22 in order to avoid your 16.1 disclosure requirements?

23 A. I do believe that you have to appreciate
24 the information that's contained, but I do believe
25 that there is an obligation to release the

1 information.

2 Q. Right. Okay. So you got it in February,
3 right?

4 A. That is correct.

5 Q. You didn't review it in February, you
6 didn't look at what's on the CD or listen to what's
7 on the CD?

8 A. Didn't listen to what's on the CD.

9 Q. Okay. In February you didn't do that?

10 A. Did not do that.

11 Q. How about March?

12 A. No.

13 Q. How about April?

14 A. Are you talking listening?

15 Q. Yeah.

16 A. No.

17 Q. So you got a recorded statement from a
18 nurse related to the Peterson case or maybe, you
19 don't know because you haven't looked at it, and you
20 have not listened to it to determine whether or not
21 it's something you need to disclose, correct?

22 A. Correct.

23 Q. That's a violation of 16.1, isn't it?
24 You have an obligation, do you not?

25 A. You have an obligation to review, yes.

1 Q. Okay. Your failure to do that in those
2 three months is a violation of 16.1, would you agree
3 with that?

4 A. It could be considered that.

5 Q. Okay. Now, when you met with the public
6 defender on January 21st, 2013, were there any
7 discussions about Christine Murray?

8 A. No.

9 Q. Okay. Were there any notes taken at that
10 meeting?

11 A. I believe it was just a checklist of what
12 items they wanted from respect to the depositions.

13 Q. Okay. So the public defenders office was
14 asking you for certain information and you were
15 making a list of the things they were asking for.
16 Is that a fair statement?

17 A. I believe so, yes.

18 Q. Okay. Were there -- was the information
19 you identified that you wanted?

20 A. There is information that we discussed
21 that I did want, yes.

22 Q. What?

23 A. The police statements of Ms. Cagnina, RC,
24 and the Jane Doe.

25 Q. Okay. What about the -- what about any

1 other statements the police had relative to those
2 cases?

3 A. I said I wanted the statements related
4 to.

5 Q. You wanted all the statements, right?

6 A. Any statements that they would provide,
7 yes.

8 Q. Did they tell you -- did anybody --
9 strike that.

10 Did anybody at that meeting mention
11 the name Margaret Wolfe?

12 A. No.

13 Q. Her name didn't come up?

14 A. Not at all.

15 Q. Did Christine Murray's name come up?

16 A. No.

17 Q. Did Ray Sumera's name come up?

18 A. No.

19 Q. Now, someone from your office met with
20 Murray, Sumera and Wolfe in summer of 2008, correct?

21 A. That is correct.

22 Q. Who?

23 A. I don't know. I believe it was Dave, but
24 I'm not sure.

25 Q. Dave Ferrainola?

1 A. Correct.

2 Q. Okay.

3 A. I wasn't there at the time.

4 Q. No, I appreciate that. You have been
5 involved in this case since 2009?

6 A. Fall 2009 I believe.

7 Q. Okay. You have reviewed the entire file,
8 have you not?

9 A. To this point.

10 Q. Your file?

11 A. Yeah.

12 Q. You know what's in your file, right?

13 A. It's extremely voluminous.

14 Q. That I appreciate. I'm not gonna ask you
15 to list everything in the file. I appreciate that.

16 Are there any references in your
17 file to Mr. Ferrainola's having met with any of
18 those three people?

19 A. The answer to that question I think would
20 be going into work product privileged information.

21 Q. Well, Mr. Prangle's already waived that
22 privilege by telling us that somebody met. So
23 asking you whether or not there's any information in
24 the file related to it, that privilege has been
25 waived.

1 MR. PRANGLE: Well, I would object to
2 that, Your Honor.

3 THE COURT: Well, so you're asking
4 whether this particular attorney -- and what's his
5 name again?

6 MR. KEACH: Dave Ferrainola.

7 THE COURT: Oh. Whether he met with
8 Murray, Wolfe or Sumera in what period of time?

9 MR. KEACH: It was summer 2008, Your
10 Honor, what -- as Mr. Prangle explained.

11 THE COURT: I'm going to overrule the
12 objection, but because -- the reason is because
13 we've already had argument by Mr. Prangle that
14 the -- that attorneys in his office as part of their
15 investigation met with Murray, Wolfe and Sumera on
16 the RC case in June, July and August of 2009.

17 I think he's opened the door to, to
18 discuss -- to test the accuracy of those
19 representations to the court. Go ahead.

20 BY MR. KEACH:

21 Q. Okay. Are there any -- is there any
22 information in your file related to the meeting from
23 someone at your office with either Murray, Wolfe or
24 Sumera?

25 A. I believe so.

1 Q. Okay. And what is the nature of that
2 information? Is it correspondence, is it emails, is
3 it a memorandum, are there written statements?
4 What's the nature of the information?

5 A. It would be a correspondence to client.

6 Q. Okay. So there's correspondence in your
7 file related to, to your client. Client being whom?

8 A. Being Centennial Hills.

9 Q. Centennial Hills. Referencing an
10 attorney's meeting with one or more of Sumera,
11 Murray and Wolfe, correct?

12 A. Correct.

13 THE COURT: And state the point in time
14 we're talking about. I want to be precise if you
15 can.

16 BY MR. KEACH:

17 Q. And that was in summer of 2008, correct?

18 A. That is correct.

19 Q. Okay. Do you know the exact date of that
20 letter?

21 A. No.

22 Q. Other than summer of 2008, is that a fair
23 characterization of it?

24 A. Summer or fall of 2008 would be a fair
25 characterization.

1 Q. Okay. And is there more than one letter
2 referencing the attorney from your offices meeting
3 with either Sumera, Wolfe or Murray in summer of
4 2008?

5 A. Are we including summer, fall 2008?

6 Q. Yes.

7 A. There may be two. I'm not a hundred
8 percent sure.

9 Q. Who authored those letters?

10 A. I believe it was Dave Ferrainola.

11 Q. Okay. And who were the letters addressed
12 to?

13 A. I believe it was to Richard Kim.

14 Q. Okay. And do you know who Mr. Kemp is?

15 A. Kim.

16 Q. Kim.

17 A. He is a adjuster with UHS.

18 Q. Okay. Now, other than that, the
19 correspondence you just referred to, which was one
20 and possibly two letters in the summer or fall of
21 2008, are there any other documents in your file
22 that reference the attorney's meeting with Murray,
23 Wolfe or Sumera in summer of 2008, fall 2008?

24 A. Not that I know of.

25 Q. Okay.

1 A. Or that I can recall at this time.

2 Q. Okay. When did anyone from your office
3 first become aware that Murray had made a statement
4 to Metro?

5 A. I don't know. I don't know. I don't
6 believe that anybody -- I don't know if I can go
7 into what we were told or anything of that. So I'm
8 not gonna --

9 Q. No, but --

10 THE COURT: Well, he's just asking when
11 you -- when you first knew. He's not asking for, at
12 least at this point in time, who said what. But
13 just --

14 MR. KEACH: Just the date.

15 THE COURT: Just when you actually
16 discovered the information existed.

17 MR. KEACH: Correct, Your Honor.

18 THE WITNESS: I believe it would be
19 the -- when I received the CD from the public
20 defenders.

21 BY MR. KEACH:

22 Q. Okay. So prior to February 2013, it's
23 your testimony that you are unaware of anyone at
24 your office being aware that Murray had made a
25 statement to the police office -- to the police

1 department, correct?

2 A. To the best of my recollection, yes.

3 Q. Okay. Same question with regard to
4 Margaret Wolfe. When did someone from your office
5 first become aware of Margaret Wolfe's statement to
6 the police office?

7 A. To the best of my recollection, it was
8 when we received the police file.

9 Q. In May 2013?

10 A. I believe so, yes.

11 Q. Okay. Now, did anyone at your office
12 meet with Carol Butler or Amy Bochenek Blasing in
13 summer 2008?

14 A. I believe so. I'm not sure on that.

15 Q. Okay. Are there any references in your
16 file to any meetings with Carol Butler or Amy
17 Blasing in 2000 -- in summer or fall of 2008 by
18 someone in your office?

19 A. I don't know.

20 Q. Okay. Now, you can see that at least as
21 of May 2013 you knew there were allegations of
22 inappropriate conduct with female patients by Farmer
23 from Murray, Wolfe and Sumera, but because of the
24 protective order, you couldn't produce the
25 statements of Wolfe or Murray, right?

1 MR. PRANGLE: Your Honor, I'd just object
2 to that characterization of those statements. The
3 statements speak for themselves.

4 THE COURT: I'm gonna allow it. I
5 think -- I don't think it, it -- well, you know
6 what, it's a question of fact for the jury to
7 result -- to determine whether the statements
8 themselves support either a conclusion or inference
9 of inappropriate conduct, but you're really asking
10 just to find out when he knew of the existence of
11 those statements.

12 MR. KEACH: Right, right.

13 THE COURT: Why don't you rephrase?

14 MR. KEACH: Okay.

15 BY MR. KEACH:

16 Q. At least as of May 2013, you were aware
17 that there were allegations, or at least potential
18 allegations of inappropriate conduct with female
19 patients by Farmer from Murray, Wolfe and Sumera,
20 but because of the protective order you couldn't
21 produce the statements of Wolfe or Murray, right?

22 A. Correct.

23 Q. Now, according to your brief on November
24 14, 2014, the protective order was removed, right?

25 A. That is correct.

1 Q. Okay. And the protective order was the
2 reason you couldn't produce the statements, correct?

3 A. Correct.

4 Q. Now, on October 27th in your seventh -- I
5 believe it was seventh, Exhibit 1G.

6 A. Did you say G?

7 Q. G as in girl. You produced the criminal
8 file, the police file that you had received in May
9 2013, correct?

10 A. I believe so, yes. That's what it says.

11 Q. I'm sorry?

12 A. That's what this says, yes.

13 Q. Okay. And what I was certain your intent
14 with this, with this document at least produced the
15 entire police file that you received, right?

16 A. Correct.

17 Q. Now, the protective order was still in
18 place on October 27th, right?

19 A. I believe that was the day or two after
20 the hearing in front of the discovery commissioner.

21 Q. Okay. Now, I heard Mr. Prangle's
22 explanation, but I want to hear it from you. And
23 that is that although the protective order was
24 technically still in effect until November 14th,
25 after the discovery commissioner ordered the

1 production of the police file that you had received
2 in May 2013, you didn't feel it was required for you
3 to wait until the release of the protective order,
4 you felt the oral order was sufficient to allow you
5 to produce this, this supplement, correct?

6 A. And I believe that she ordered to produce
7 it as quickly as possible.

8 Q. Okay. And so you felt like you were
9 complying with the court's order, correct?

10 A. That is correct.

11 Q. And the court's order was that you
12 produce the entire police file that you had received
13 in May 2013, right?

14 A. Produce everything you have, yes.

15 Q. Okay. And that includes Murray's
16 statement?

17 A. Yes.

18 Q. And that includes Wolfe's statement?

19 A. I believe so, yes.

20 Q. Okay. Because we've been arguing about
21 for several, several months now, those are the --
22 that goes to the heart, at least in our opinion, of
23 foreseeability.

24 And we've made that point very
25 clear, right?

1 A. You've made that point clear, yes.

2 Q. Okay. So when you produced the entire
3 police file, for sure you're gonna be producing
4 statements of Murray and Wolfe, right?

5 A. As long as we have them, yes.

6 Q. Well, you had them in October 2014,
7 right?

8 A. I believe so, yes.

9 Q. Well, well wait a minute. You testified
10 you received them in, in May 2013?

11 A. I received the police file May of 2013,
12 and I believe that that included those files, yes.

13 Q. Okay. Well, did you receive Murray's
14 statement from anybody other than the police file?

15 A. I know I received it from Mr. Murdock.

16 Q. Okay. Did you receive the Wolfe
17 statement from anybody other than the police file?

18 A. Mr. Murdock as well.

19 Q. Anybody else?

20 A. I can't recall.

21 Q. Okay. But you had the Wolfe statement in
22 October 2014 as well as the Murray statement in
23 2014, right?

24 A. I believe so.

25 Q. Okay. In your brief -- in your brief and

1 when Mr. Prangle argued, he made it crystal clear
2 and you made it crystal clear in the brief that in
3 May 2013 you became aware of the relevance of
4 Sumera, Wolfe and Murray because you received their
5 statements in the police file.

6 Is that a true statement?

7 A. I believe the statement was that we had
8 constructive knowledge of everything that was in the
9 police file, yes.

10 Q. Okay. Did you not look at that file
11 either in 2008, 2013 like you did listen to the
12 audio tape in February 2013?

13 A. I believe I did look through that file.

14 Q. Okay. You did look through that. When
15 you got the police file, you looked through it but
16 you don't see a statement.

17 THE COURT: He's already said he looked
18 at it relatively short order, right, so.

19 MR. KEACH: Maybe --

20 THE COURT: Those might have been your
21 words that he adopted so.

22 MR. KEACH: He did look at it pretty
23 quickly. He did say that.

24 THE COURT: Okay.

25 BY MR. KEACH:

1 Q. So Mr. Prangle advised the court today
2 that we had misspoke when we said we didn't receive
3 the Wolfe statement until January 15th because in
4 truth and fact we had received it in October 2014
5 when you produced the seventh supplement.

6 Do you recall that testimony?

7 A. I don't believe that --

8 Q. Or do you recall that, do you recall that
9 argument?

10 A. I recall that, yes.

11 Q. That's not true, is it?

12 A. Pardon?

13 Q. That's not true, is it?

14 A. I'm not a hundred percent sure.

15 Q. Okay. I'm a hundred percent sure.

16 A. Okay.

17 Q. The single most important document in
18 this case relative to foreseeability is Margaret
19 Wolfe's statement.

20 Guess what? Guess what? The only
21 document was not produced in October 2014. Do you
22 want to take a guess?

23 A. I'll let you tell me.

24 Q. Margaret Wolfe's statement. Why? Why
25 was that removed from the police file? Who told you

1 to remove it?

2 THE COURT: One question --

3 MR. KEACH: Who made that decision?

4 THE COURT: Okay. One question at a
5 time.

6 THE WITNESS: I don't believe it was
7 removed.

8 BY MR. KEACH:

9 Q. I want you to look at the screen. We
10 move for this as next in order, Your Honor. We
11 didn't include it in our -- it in our exhibits but.

12 THE COURT: Tell us the exhibit number.

13 MR. KEACH: What's our last exhibit, Miss
14 Clerk?

15 THE COURT: Oh, I thought this was in
16 your book, one that you --

17 MR. KEACH: It's not in our book, Your
18 Honor.

19 THE COURT: All right. Then --

20 THE CLERK: It would be 29.

21 MR. KEACH: This would be 29?

22 THE CLERK: What is it?

23 MR. KEACH: I'm getting ready to tell
24 you. I mean the next in order will be 29?

25 THE CLERK: Yes, your next number 29.

1 MR. KEACH: Your Honor, I'd like the
2 witness to take a look at this. Can you run through
3 it, Rob, page by page? Start at the first page.

4 MR. MURDOCK: Yeah.

5 THE COURT: Tell us what he's looking at
6 so --

7 MR. KEACH: This, this. (Indicating.)
8 I'm sorry, Your Honor.

9 THE COURT: So defense counsel can make
10 sure that he can follow along appropriately.

11 BY MR. KEACH:

12 Q. This is your supplement, seventh
13 supplement of October 27th, 2014. Take a look at
14 it. Let Rob scroll through it and just take a look
15 at it and see if you recall that as being your
16 seventh supplement. Just the actual production.

17 THE COURT: Can you show us the date and
18 who signed it? Mr. Keach, you'll show us the date
19 and who signed it?

20 MR. KEACH: I'm sorry, Your Honor?

21 THE COURT: Will you show us the date and
22 who signed it?

23 MR. MURDOCK: Oh, yeah. Here it is.

24 MR. KEACH: It's up there now, Your
25 Honor.

1 MR. MURDOCK: I'm sorry, Your Honor.

2 THE COURT: Okay, thank you.

3 BY MR. KEACH:

4 Q. That's what it is, is it not, Mr. Bemis?

5 A. That's what it looks like, yes.

6 Q. Do you have any questions that -- do you
7 have any reason to question the authenticity of this
8 exhibit?

9 A. I don't believe so.

10 Q. Keep going, Rob. He's gonna go through
11 it page by page, the list of information you
12 provided.

13 Tell him to stop when you get to
14 Margaret Wolfe's statement.

15 THE COURT: Do you happen to have a hard
16 copy he can look at because it's a little blurry on
17 the screen?

18 MR. KEACH: We don't, Your Honor.

19 THE COURT: Maybe we can blow it up
20 enough, so he can see it.

21 MR. KEACH: Your Honor --

22 THE COURT: Are you able to read it on
23 there?

24 THE WITNESS: Kind of, yes.

25 THE COURT: Well, let us know if you have

1 trouble reading it so we could do something about
2 it.

3 THE WITNESS: What did you ask me to look
4 for?

5 BY MR. KEACH:

6 Q. I want you to tell me where on there is
7 Margaret -- where is Margaret Wolfe's statement?

8 A. Okay.

9 Q. And you just tell Mr. Murdock when you're
10 ready to go to the next page.

11 A. Obviously you can skip through the
12 medical records here.

13 Q. Okay. Back it up, Rob.

14 MR. MURDOCK: Uh-huh.

15 BY MR. KEACH:

16 Q. Okay. Whose statement was that? That's
17 Farmer's, right?

18 A. I believe so, yes.

19 Q. Okay. Is that Cagnina's statement?

20 A. That is correct.

21 Q. Is there a statement of Lorraine Wescott,
22 right?

23 A. Yes.

24 Q. Statement of Karen Goodhart, right?

25 A. Correct.

1 Q. Statement of Christine Murray, right?

2 A. Correct.

3 MR. MURDOCK: That's it.

4 BY MR. KEACH:

5 Q. Where's Margaret Wolfe's statement?

6 A. It's not there.

7 Q. Now, we already had Christine Murray's
8 statement before this disclosure, didn't we?
9 Because we attached it to a reply.

10 Do you remember that?

11 A. I don't recall specifically, no.

12 Q. Okay. You didn't disclose Christine's --
13 Margaret Wolfe's statement to us in that production,
14 did you?

15 A. It's not there.

16 Q. Okay. It's not there because you didn't
17 disclose it, right?

18 A. It's not there, yeah, that is correct.

19 Q. You were ordered to produce the entire
20 file, correct?

21 A. That is correct.

22 Q. You produced everything except one thing,
23 Margaret Wolfe's statement, didn't you?

24 A. Produced everything we had, yes.

25 Q. Okay. That's coincidence?

1 A. Could be.

2 Q. Or?

3 A. That we didn't have it.

4 Q. Or?

5 A. That we didn't have it.

6 Q. Or?

7 A. That we didn't have it.

8 Q. Okay. But you already testified that you
9 did, as did Mr. Prangle. You stated in your brief
10 the way you knew about the relevance of this
11 information in May 2013 was because you had received
12 the Wolfe and Murray statements.

13 That's what you said in your brief,
14 didn't you?

15 A. That is correct.

16 Q. Okay. That's a lie. That's not a lie,
17 is it?

18 MR. PRANGLE: Objection. Argumentative.

19 THE COURT: Sustained.

20 MR. KEACH: Withdrawn.

21 BY MR. KEACH:

22 Q. Now, you didn't disclose the Wolfe
23 statement in October 27th, 2014, did you?

24 A. It's not in the disclosure, no.

25 Q. You didn't disclose it in November 2014,

1 did you? Do you want to go through all your
2 disclosures?

3 A. I don't recall a separate disclosure
4 saying Margaret Wolfe, no.

5 Q. No. Or December 2014, right?

6 A. That'd be correct.

7 Q. Or ever, right?

8 A. It wasn't in that police file, then we
9 didn't disclose it, no.

10 Q. Okay. And in that disclosure, when
11 there's no real protective order, show me where you
12 identify Christine Murray, Margaret Wolfe and Ray
13 Sumera as witnesses who may have information
14 relevant to the -- any prior acts of misconduct
15 related to Steven Farmer? It's not in there, is it?

16 A. That was an omission.

17 Q. Omission? How many supplements have you
18 done since then?

19 A. Several.

20 Q. It's still omitted, isn't it?

21 A. I realized that when I read your brief
22 and I disclosed it this morning.

23 Q. Oh, you disclosed -- you finally
24 disclosed him this morning?

25 Okay. You never disclosed Margaret

1 Wolfe's statement, did you?

2 A. Must not have.

3 Q. Okay. Now, in your October 14th, 2014
4 opposition to plaintiff's motion for summary
5 judgment re: liability, in that opposition you
6 stated, In the instant situation, there were
7 absolutely no known prior acts by Mr. Farmer that
8 could potentially put Centennial on notice that Mr.
9 Farmer would assault a patient.

10 That's what you said, isn't it?

11 A. I believe that's in the brief, yes.

12 Q. Okay. You said there were absolutely,
13 that's the word you used, absolutely, no known prior
14 acts by Mr. Farmer that could potentially put
15 Centennial on notice.

16 Absolutely means positively,
17 unconditionally, unquestionably, categorically
18 undeniable, unequivocally, without question.

19 In other words absolutely, right?

20 A. Those were the words I used, yes.

21 Q. Okay. And you said that could
22 potentially put the hospital on notice.

23 That's just not true, is it? That's
24 not true, is it?

25 A. I don't think that that is an accurate

1 portrayal of what you're saying, no. The -- I
2 believe it can be as an advocate for my client. I
3 can state that there isn't anything that potentially
4 puts him on notice.

5 I think just as, just as you are an
6 advocate for your client, you can say that there's
7 absolutely a reason to put us on notice.

8 Q. You said potentially put you on notice,
9 okay. You didn't say put you on notice. You said
10 potentially put you on notice, right? Absolutely
11 nothing could potentially put you on notice,
12 correct? That's what you said.

13 A. That is what was said.

14 Q. It wasn't true, was it?

15 A. I disagree with that characterization.

16 Q. Murray said a patient was yelling for
17 Farmer to get out of the room, I don't want you by
18 me.

19 And you said that absolutely
20 couldn't put you on notice, right?

21 A. Yes.

22 Q. And Wolfe described how Farmer will go
23 into a female's patient room and close the door and
24 when he had no reason to go in there. And it
25 happened multiple times. And she described how

1 other staff were expressing the same concerns. And
2 she described another nurse named Kim that told her
3 she witnessed Farmer's suspicious behavior. And she
4 said she had a conversation with Sumera before the
5 incident where he was concerned Farmer was overly
6 attentive to female patients and anxious to connect
7 the heart monitor leads and asked Wolfe to keep an
8 eye on Farmer.

9 And this thing about the heart
10 monitor leads, that was the same thing or similar to
11 what Murray had said in her statement. Giving more
12 credence to it now that Sumera, Wolfe and Murray all
13 thought it suspicious that he was overly anxious to
14 connect female patients to heart monitor leads.

15 And you made the statement to this
16 court and to the Nevada Supreme Court that it has
17 nothing that could potentially put the hospital on
18 notice, right?

19 A. Yes.

20 Q. You did advise the Nevada Supreme Court
21 essentially the same thing, correct?

22 A. Pardon?

23 Q. You did advise the Nevada Supreme Court
24 of essentially the same thing, right?

25 A. Similarly, yes.

1 Q. And that wasn't true then either, was it?

2 A. I disagree with your statement of it
3 being untrue.

4 MR. KEACH: Court's indulgence one
5 moment, please. Nothing further, Your Honor.

6 THE COURT: All right. So do you want to
7 break for lunch or are you ready to begin with any
8 cross-examination? If you want to go for a little
9 bit, you can.

10 MR. PRANGLE: Right now might be a good
11 time to break.

12 THE COURT: All right. I mean, it is
13 just 10 minutes before noon. Why don't we take --
14 why don't we come back at 1 p.m., 1 p.m. sharp and
15 we'll go on right then, all right?

16 MR. KEACH: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. KEACH: May we leave our stuff?

19 THE COURT: You can. It will be locked
20 up. The marshal will probably lock it up.

21 THE MARSHAL: I will lock it up, judge.

22 THE COURT: So if there's anything you
23 need before 1, make sure you bring it with you.

24 All right. Court is adjourned until
25 1.

1 (Whereupon, a lunch break was had.)

2 THE COURT: All right. Everybody ready
3 to proceed?

4 MR. KEACH: We are, Your Honor. We have
5 one housekeeping matter I'd like to bring to the
6 court's attention if I may.

7 THE COURT: Yes, sir. Mr. Keach.

8 MR. KEACH: Over the break, we made a
9 photocopy of the Exhibit 29 for the court's record.

10 THE COURT: Okay.

11 MR. KEACH: Once again, for the record,
12 Exhibit 1G was the October 27th 16.1 supplement
13 provided by the hospital. And we only provided the
14 supplement without the actual exhibits that were
15 produced.

16 What Exhibit 29 was were the
17 exhibits that were produced pursuant to that
18 supplement. And I've shown Mr. Prangle a copy of
19 Exhibit 29. It's a hundred and 90 pages.

20 So I did not make multiple copies,
21 but I'd like to have it marked and admitted into
22 evidence as plaintiff's next in order.

23 MR. PRANGLE: No objection.

24 THE COURT: All right. So admitted.
25 Thank you.

1 All right. Then we're ready to
2 proceed. Mr. Bemis, you can retake the stand.

3 MR. PRANGLE: You mean Mr. Bemis.

4 THE COURT: Pardon me?

5 MR. PRANGLE: Mr. Bemis.

6 THE COURT: Yes.

7 MR. PRANGLE: I thought you said Hughes.

8 THE COURT: No, I think I said Bemis.

9 MR. PRANGLE: I apologize.

10 THE COURT: Did I say Bemis?

11 THE WITNESS: I thought so.

12 MR. PRANGLE: Okay. I apologize. My
13 hearing is going.

14 THE COURT: Who's Mr. Hughes?

15 MR. PRANGLE: I don't know.

16 THE COURT: Okay. Okay. No problem. Mr.
17 Prangle, you may begin.

18 MR. PRANGLE: Thank you.

19 MR. PRANGLE: Miss Clerk, can I have
20 Exhibit 29?

21 CROSS-EXAMINATION

22 BY MR. PRANGLE:

23 Q. John, what I'd like to start with you is
24 what Mr. Keach finished with you, that I'll be
25 honest with you, hearing it sounds like we did some

1 pretty underhanded things, okay?

2 A. Okay.

3 Q. And I guess to put this into context, the
4 exhibit that Mr. Keach played on the screen, but
5 which we now have as Exhibit 29, includes or is our
6 supplement to the ECC that we filed October 27,
7 2004.

8 Is that your understanding?

9 A. 2014.

10 Q. I'm sorry. 2014. And this is --
11 represents the file that we received on May 6th,
12 2013. True?

13 A. True.

14 Q. And would you agree with me, having
15 followed through with Mr. Murdock or Keach or
16 whoever was operating it, that contained within
17 Exhibit 29 is not the statement of Margaret Wolfe?

18 A. That is correct.

19 Q. Okay. You heard me say this morning, and
20 I believe it's replete in our briefs, that we said
21 that we got Margaret Wolfe's statement on May 6th,
22 2013.

23 Am I right or am I wrong on that?

24 A. You're incorrect.

25 Q. Let's go through this. In light of Mr.

1 Keach's questioning, did you call your assistant to
2 get the original of the materials that were
3 delivered to us in the RC case on May 13 -- May 6th,
4 2013?

5 A. I did.

6 Q. And is that -- am I holding that?

7 A. Yes, you are.

8 MR. PRANGLE: Your Honor, I'm reluctant
9 to have it marked because your clerk tells me that
10 if she marks it she has to take it. And as an
11 original, I would prefer not to lose control of it.

12 So I guess I'm looking for some
13 guidance as to how you wish me to proceed. I can, I
14 can offer to the court that I'll have a copy made of
15 it and we can mark the copy, but this is the actual
16 original.

17 THE COURT: Let me hear from the
18 plaintiff.

19 MR. KEACH: If I can take a look at it,
20 please. I want to return it to you the same way you
21 gave it to me.

22 MR. PRANGLE: I appreciate it. Okay.
23 And, Your Honor, if you want to see it.

24 THE COURT: I would.

25 MR. PRANGLE: Sure.

1 THE COURT: Let me see. Thank you. All
2 right. I'd -- before I give my suggestion, let me
3 hear from the plaintiff on what their proposal is on
4 how we handle this.

5 MR. KEACH: Well, in terms of marking it,
6 I have no objection to a copy being made. I assume
7 Mr. Prangle would be prepared to represent on the
8 record that what is contained in what he holds is
9 the exact same thing that's contained in Exhibit 29.
10 And so I would have no problem with that
11 representation.

12 What I would have a problem with,
13 however, Your Honor, is the admission of the exhibit
14 for lack of authentication. Because when I look at
15 it, it's not bated stamped and there's no way for us
16 to tell whether anything was removed from that or
17 not.

18 So without someone being here to
19 testify that this is the complete record that was
20 provided by Metro, I don't believe it's properly
21 authenticated.

22 THE COURT: Well, we'll see if Mr. Bemis
23 can lay foundation, all right. If he can lay
24 foundation, then it would be admitted. We could
25 admit it with proper foundation and identification

1 of what that exhibit is with the representation from
2 counsel that it's the same thing as the documents in
3 Exhibit 29, or at least identifying any differences,
4 and then follow that up with actual production of a
5 copy of it by letter to opposing counsel and a
6 courtesy copy to the court identifying that what you
7 provide to us tomorrow perhaps or Monday is
8 identical to what you exhibited in court.

9 And that if you follow that
10 procedure, the court would be satisfied. And then
11 providing it to the court and having it marked as
12 Exhibit 30 or --

13 MR. PRANGLE: Or A.

14 THE COURT: Or actually Defendant's
15 Exhibit A.

16 MR. KEACH: Your Honor, just a
17 suggestion.

18 THE COURT: Yup.

19 MR. KEACH: If counsel is prepared to
20 represent it's identical to Exhibit 29, I don't see
21 why we need to clutter the record with two copies of
22 a hundred and 90 pages of the exact same thing.

23 Now, if it's not, it's a different
24 story.

25 THE COURT: Where's 29?

1 THE WITNESS: On the podium.

2 MR. KEACH: He's got it right here.

3 THE COURT: Can I see 29? That was the
4 one copy, right?

5 MR. PRANGLE: Correct. That's what was
6 on the computer before he --

7 THE COURT: Well, it can't be -- it can't
8 be identical because what he's handing us has a
9 cover letter, first of all. And I don't know what
10 it's -- I haven't compared it but.

11 MR. KEACH: No, ours has also got the
12 privileged log, too, that's not in there.

13 THE COURT: It's not identical, I'd
14 prefer that we separately mark it as defense A.

15 MR. KEACH: Thank you, Your Honor.

16 THE COURT: He makes an exact duplicate
17 of what he's gonna use in court, provide that to us.
18 Either way he's gonna do that. Whether I admit it
19 as an exhibit, depends on whether it can be
20 authenticated.

21 MR. KEACH: Thank you, Your Honor.

22 THE COURT: If he can't authenticate it,
23 we're still introducing it for identification
24 purposes. All right. Why don't you continue.

25 MR. PRANGLE: Thank you, judge. And in

1 fairness, there is one other difference between
2 Exhibit 29 and this. On each of the pages, there is
3 a stamp on the back that I don't believe was part of
4 Exhibit 29. They're not two-sided copies.

5 THE COURT: I understand.

6 MR. KEACH: And Exhibit 29 also has your
7 own date stamp on it as well.

8 MR. PRANGLE: You're correct. You're
9 correct.

10 THE COURT: All right. And then of
11 course you have the envelope with the files on the
12 CDs.

13 So why don't you go ahead and
14 continue to have this witness, see if he can
15 identify what it is you have and lay any appropriate
16 foundation.

17 BY MR. PRANGLE:

18 Q. John, I'm gonna hand you what we're gonna
19 mark as Defendant's Exhibit A, and I'll ask you what
20 is that?

21 A. That is a Las Vegas Metropolitan Police
22 Department file that we received on May the 8th.

23 Q. Of 2013?

24 A. Of 2013.

25 Q. And there was some discs on there. Do

1 you know what's on the discs?

2 A. Photographs and the 9-1-1 call.

3 Q. When you say 9-1-1 call, like a
4 transcript of it or an audio or what? If you know.

5 A. It's the original audio of the 9-1-1.

6 Q. Okay.

7 A. And then the photographs of Mr. Farmer.

8 Q. Okay. In terms of Exhibit 29, which is
9 what we produced to plaintiff in the Doe case on
10 October 27th of 2014, how, if at all, is Exhibit A
11 different from Exhibit 29?

12 A. This one does not contain our bate stamps
13 on the back of the -- each sheet. There's a stamp.
14 And on the first page it says it's from Metro that
15 says it's a hundred and 88 pages.

16 Q. Okay. Contained within Exhibit A, is
17 there a copy of nurse Wolfe's statement?

18 A. There is not.

19 Q. Okay. On the discs is there either an
20 audio or a transcript of nurse Wolfe's statement?

21 A. No.

22 Q. So again, was I correct or incorrect in
23 saying that we received nurse Wolfe's statement on
24 May 6th, 2013?

25 A. Incorrect.

1 Q. Okay. And you probably didn't count all
2 the pages of Exhibit 29, but does it appear to be
3 the same number as is indicated on the CUR stamp
4 from Las Vegas Metro?

5 A. On the pages up here, it says a hundred
6 and 92.

7 Q. Okay.

8 A. This one's a hundred and 88, but that
9 contains our privileged log I believe.

10 Q. And was that four pages?

11 A. I believe so.

12 Q. So those two things together. And over
13 lunch, did you have a chance to -- well, you didn't
14 have Exhibit 29 so, but based on what Mr. Keach put
15 up on the screen before we broke and comparing it to
16 Exhibit A, are they identical except for how you
17 just described?

18 A. That, and I know we redacted Social
19 Security numbers that were contained in the
20 original.

21 Q. Fair enough. In addition -- or strike
22 that. On May 6th or May 8th, 2013 when we received
23 Exhibit A, where did we get from?

24 A. Las Vegas Metropolitan Police.

25 Q. Do you have an understanding -- and was

1 that in the RC case or the Doe case?

2 A. The RC case.

3 Q. Do you have an understanding as to who
4 else was provided a copy of Exhibit A, if anyone?

5 A. I do.

6 Q. And who was that?

7 A. Plaintiff's counsel was simultaneously
8 given a copy of this as well as us.

9 Q. To your understanding -- or did you give
10 the copy of Exhibit A to plaintiff's counsel in the
11 RC case?

12 A. No. He had a copy himself.

13 Q. So to your understanding, he received it
14 separately from Las Vegas Metro?

15 A. He did.

16 Q. Okay. Over the lunch, did you have a
17 chance to review plaintiff's ECC supplements in the
18 RC case?

19 A. I did.

20 Q. And did you have an opportunity to review
21 their 15th supplement to the ECC?

22 A. I did.

23 Q. And what's contained -- not necessarily
24 all of it, but as relevant to this, what's contained
25 therein?

1 A. The copy of --

2 MR. KEACH: Objection, Your Honor.

3 Document we've never seen, A; best evidence rule, B.

4 THE COURT: You're talking about the
5 plaintiff's 15th supplement, not --

6 MR. PRANGLE: In the RC case.

7 THE COURT: In the RC case. Who's the
8 plaintiff in --

9 MR. PRANGLE: It's Will --

10 THE COURT REPORTER: I'm sorry.

11 MR. PRANGLE: Will Lemkul. I think it's
12 L-e-m-k-u-l. Or, Your Honor, I understand that I'm
13 talking about some things that are not currently
14 before the court. I would suggest to you the reason
15 is because of, you know, the surprise that we had at
16 the end of this morning.

17 And I'm embarrassed that I've been
18 mistaken throughout the day in terms of when we got
19 nurse Wolfe's statement, but I think this is
20 important because I think the suggestion has been
21 out there that we got Wolfe's statement and
22 destroyed it.

23 THE COURT: It's -- you know what, if you
24 don't have the actual -- if you have the actual
25 document, then perhaps the court can take judicial

1 notice of it. But absent the actual document, the
2 witness can't testify on what's in a document that's
3 not before the court. I believe that would be
4 barred based on best evidence rule and, and hearsay.

5 MR. PRANGLE: All right.

6 THE COURT: Because you're offering this
7 witness to testify what is in a document that's not
8 before the court and nobody has an opportunity to
9 test the accuracy of this witness's memory of what's
10 in that document.

11 MR. PRANGLE: Fair enough. So I guess
12 given that, what I would ask of the court given the
13 seriousness of this charge --

14 THE COURT: Uh-huh.

15 MR. PRANGLE: -- is that I can provide to
16 the court plaintiff's 15th supplement to the ECC
17 from the RC case in which plaintiff's counsel in the
18 RC case discloses Exhibit A with his date stamped
19 numbers on it.

20 And I will tell you as an officer of
21 the court it does not contain nurse Wolfe's
22 statement.

23 THE COURT: Well, I can, I can look at
24 that if it's produced to me, but I think we need the
25 actual document, right? And you don't need -- if

1 you can provide that to the court tomorrow.

2 MR. PRANGLE: I can.

3 THE COURT: Provide it also
4 simultaneously to plaintiff's counsel. And I'll
5 give plaintiff's counsel an opportunity to provide
6 the court with any statement that it wants to
7 provide to the court about such document after he
8 has an opportunity to review it, all right?

9 MR. PRANGLE: All right.

10 THE COURT: So let's proceed. But this
11 witness shouldn't talk about a document that is not
12 before the court.

13 BY MR. PRANGLE:

14 Q. Okay. Let's talk about the discussions
15 or interactions you had in February of 2013.

16 A. Okay.

17 Q. And I think you basically told us that
18 there were some email communications that -- perhaps
19 meetings that resulted in us being given a portion
20 of a file related to Mr. Farmer; is that fair?

21 A. That is fair.

22 Q. So what is your understanding, and I
23 don't know if this was an exhibit, but what did we
24 receive in February of 2013?

25 A. We received statements, the transcripts

1 of statements from Roxanne Cag -- RC, her husband at
2 the time who was in the audio file of nurse Murray's
3 statement, Christine Murray's statement, Lori
4 Wescott's statement, Karen Goodhart's statement,
5 Francis Rose's statement, and the criminal testimony
6 of Ms. Peterson. I believe her statement as well.

7 Q. Okay. Ms. Doe?

8 A. That is correct. My apologies.

9 Q. At that time, do you recall what the
10 posture of the litigation was in the RC case in
11 terms of trial?

12 A. Trial was coming up. It was imminent.

13 Q. Okay. In the materials that you were
14 provided or we were provided in February of 2013,
15 was there a copy of a written statement by nurse
16 Wolfe?

17 A. No.

18 Q. Was there an audio copy of nurse Wolfe's
19 statement?

20 A. No.

21 Q. Was there a written copy of nurse
22 Murray's statement?

23 A. No.

24 Q. Okay. The audio file for nurse Murray, I
25 think you told us all you did was listen to it?

1 A. That is correct.

2 Q. At any point, I'll say before May of
3 2013, did you look at it?

4 A. No.

5 Q. Do you remember why?

6 A. My computer doesn't have speakers at
7 work.

8 Q. And in any event, you just didn't listen
9 to it?

10 A. No.

11 Q. You were asked some questions regarding
12 nurse Murray. And are you aware that nurse Murray
13 gave a deposition in the RC case?

14 A. I'm aware of that.

15 Q. Do you recall whether nurse Murray was
16 asked whether she was aware of any prior problems or
17 words to that effect with Mr. Farmer?

18 A. Yes.

19 Q. Do you recall what her response was?

20 A. Her response was no.

21 Q. And then I think the court's probably
22 aware of this, but in terms -- what was the date of
23 Mr. Farmer's assault on Doe?

24 A. May 14th of 2008.

25 Q. And what was the date to the assault on

1 patient RC?

2 A. May 16th of 2008.

3 Q. So the assault on RC was after the
4 assault on Doe?

5 A. That is correct.

6 Q. As you sit here now, do you know when it
7 is or by what means we first received nurse Wolfe's
8 written statement?

9 A. Don't know for sure. I believe it may
10 have been through a disclosure by co-counsel from
11 defendants.

12 Q. Did you take nurse Wolfe's statement out
13 of Exhibit 29?

14 A. No.

15 Q. Did I ask you to take nurse Wolfe's
16 statement out of Exhibit 29?

17 A. No.

18 Q. Thanks, sir.

19 THE COURT: A housekeeping issue. On
20 Exhibit 29, I don't -- I didn't show in my records
21 that anyone formally moved to admit it.

22 MR. PRANGLE: I believe Mr. Keach did.

23 MR. KEACH: I did.

24 THE COURT: Oh, okay. Did I grant that?
25 Then I think I just forgot to make the notation.

1 THE CLERK: You did, judge.

2 THE COURT: All right, thank you. Just
3 had to double check. Thank you.

4 MR. PRANGLE: Oh, and I guess I
5 apologize, judge. There's a housekeeping matter
6 with regard to what we're gonna call Exhibit A. I
7 will provide a copy, as the court has suggested, to
8 all parties and I would for purposes of this hearing
9 ask for its admission.

10 THE COURT: All right. And I think the
11 plaintiff, Mr. Keach, you already indicated you
12 wouldn't have any problem to admission if he
13 represented that it was identical to Exhibit 29?

14 MR. KEACH: No, I just said I wouldn't
15 have any problem with using Exhibit 29. I still
16 have a problem with the admission of it.

17 THE COURT: State your objection.

18 MR. KEACH: Hearsay, authentication.

19 THE COURT: And it's coming in for the
20 purpose of notice. I believe it's been sufficiently
21 authenticated. You can cross-examine the witness
22 regarding you can test his memory, but.

23 MR. KEACH: Thank you.

24 THE COURT: The court overrules the
25 objection admitting Exhibit A.

1 MR. KEACH: Thank you, Your Honor.

2 THE COURT: Do you have anything else,
3 Mr. Prangle?

4 MR. PRANGLE: Just one other point. And
5 Mr. Webster has been in contact with Mr. Farmer's
6 former civil counsel. She does have a copy of
7 plaintiff's 15th supplement to the ECC that I
8 alluded to. He has offered to go get it, so we can
9 bring it here now.

10 THE COURT: Sure. Let's take care of it.

11 MR. KEACH: Well, except we're gonna be
12 calling Mr. Webster after Mr. Bemis.

13 MR. PRANGLE: Well, I thought that you
14 said the only witness you had was --

15 MR. KEACH: No, that I probably had, but
16 things came up.

17 MR. PRANGLE: Okay.

18 MR. KEACH: We identified Mr. Webster.

19 THE COURT: Well, we can find another way
20 of getting it so.

21 MR. PRANGLE: I can ask Mr. Bemis to go
22 get it.

23 MR. KEACH: He'll be five minutes I can
24 tell you that.

25 MR. PRANGLE: Okay.

1 MR. KEACH: Maybe four minutes.

2 MR. PRANGLE: We'll get it to the court
3 this afternoon. If necessary, we can call John
4 back.

5 MR. KEACH: Okay.

6 MR. PRANGLE: So I have nothing further.

7 THE COURT: Great. Redirect?

8 MR. KEACH: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. KEACH:

11 Q. Now, you don't know whether the Wolfe
12 statement was contained in Exhibit A or not, do you?

13 A. I reviewed Exhibit A. It's not in there.

14 Q. I'm sorry?

15 A. I reviewed Exhibit A. It's not in there.

16 Q. Oh, it's not in there today. You don't
17 know whether what Metro produced to you contained
18 Exhibit -- contained the Wolfe statement or not
19 though, do you?

20 A. Take a look at the first page. It says a
21 hundred and 88 pages, and this is a hundred and 88
22 pages.

23 Q. Okay. So that part you're offering for
24 the truth of the matter asserted that it is a
25 hundred and 88 pages as stated in the statement,

1 right?

2 A. Correct.

3 Q. Okay. Other than being able to read a
4 statement on the cover that says a hundred and 88
5 pages, and then I assume you counted it yourself and
6 there were a hundred and 88 pages?

7 A. A hundred and 88 pages.

8 Q. Okay. Other than that, you don't know
9 whether nurse Wolfe's statement was produced by
10 Metro or not, do you?

11 A. Well, when it comes to going back and
12 looking at the other documents that is gonna be
13 provided later, it's identical.

14 Q. Okay. You still don't know whether,
15 whether Metro produced it or not, do you? Because
16 you told me this morning you don't know whether it
17 was produced or not. You told me this morning you
18 didn't know whether it was in the file or not,
19 didn't you?

20 A. This morning I didn't have the original
21 document that we received.

22 Q. But that original's no different from
23 what I showed you. What, what -- you told me that
24 you didn't know whether the Wolfe statement was
25 contained in the Metro file or not.

1 Didn't you tell me that?

2 A. To the file that we have, it is not.

3 Q. Okay. You told me this morning you
4 didn't know whether it was contained in the file or
5 not.

6 Didn't you tell me that?

7 A. In Metro's file, that's correct.

8 Q. Okay. You didn't know. But today
9 because you see a hundred and 88 and you counted a
10 hundred and 88, you adduced that it must not have
11 been, correct?

12 A. No, I adduced that we didn't receive it.

13 Q. Okay. Now, you did --

14 THE COURT: So let me ask it my way, too.
15 Sitting here today, do you have an independent
16 recollection of having seen the Wolfe statement as
17 part of the criminal file that was produced to you
18 on or about the time when it was produced?

19 THE WITNESS: I don't have an independent
20 correction. Because what I do have a recollection
21 of the Wolfe statement is when preparing for her
22 deposition.

23 THE COURT: All right. Thank you.

24 MR. KEACH: Thank you, Your Honor.

25 BY MR. KEACH:

1 Q. Now, you stated in your brief that you
2 received the Wolfe statement in May -- on May 6th,
3 right?

4 A. That is correct.

5 Q. And you told us on the record this
6 morning that you shared the Metro file when you
7 received it with Mr. Prangle, correct?

8 A. I believe so, yes.

9 Q. Okay. And you heard Mr. Prangle state on
10 the record, as he reminded the court as an officer
11 of the court, which he did a second time this
12 afternoon, that it was his fault that he didn't
13 produce the Wolfe and Murray and Sumera information.

14 Did you hear that?

15 A. Yes.

16 Q. Okay. And certainly he was in a position
17 to make that claim because he had the file when you
18 got it.

19 I mean, you gave him a copy of the
20 file right when you got it, right?

21 A. Contemporaneously, yes.

22 Q. Okay. So he was certainly in a position
23 to make that statement, correct?

24 A. He was in a position to make that
25 statement, yes.

1 Q. And so two people in your office, you and
2 Mr. Prangle, two competent lawyers have represented
3 to the court and have told us that on May 6th you
4 had the Wolfe statement, right?

5 A. Correct.

6 Q. Okay. Now, the information about Ray
7 Sumera being concerned about Farmer's contact with
8 female patients, and in particular with heart
9 monitor leads, did that come from anywhere other
10 than Margaret Wolfe?

11 A. I don't believe so.

12 Q. Okay. So not only did you tell us and
13 Mr. Prangle told us that on May 6th you knew about
14 Margaret Wolfe, but you also knew about Ray Sumera
15 then.

16 That's what you told us, did you
17 not?

18 A. Correct.

19 Q. That's what Mr. Prangle told us, did he
20 not?

21 A. Correct.

22 Q. Okay. You're a national firm, you got
23 offices all over the country, right?

24 A. We have offices over the --

25 Q. I'm sorry?

1 A. -- several states, yes.

2 Q. Several states?

3 A. Yes.

4 Q. You're a well-respected firm. Are you
5 all "A," "B" rated?

6 A. I believe so, yes.

7 Q. I mean, Mr. Prangle told us this morning
8 when he advised the court that in retrospect Sumera,
9 Murray and Wolfe should have been identified in May
10 2013, right?

11 A. Correct.

12 Q. What information did you have in May 2013
13 that would suggest that Murray, Wolfe and Sumera
14 should have been identified in May 2013?

15 A. I didn't have Murray's statement.

16 Q. Okay. What about Wolfe and Sumera?

17 A. Nothing.

18 Q. Nothing?

19 A. No.

20 Q. Okay. And --

21 THE COURT: Wait. Can I clarify that?

22 THE WITNESS: Sure.

23 THE COURT: Are you saying that
24 definitively you did not have the Wolfe statement
25 prior to May 2013?

1 THE WITNESS: I -- we did not have the
2 Wolfe statement prior to May 2013. And according to
3 this document, Exhibit A, it wasn't included in the
4 Metro file that we received either.

5 THE COURT: Right. I'm trying to
6 reconcile some of the statements that I heard in
7 argument this morning and in the briefs.

8 It seemed to me that some members of
9 your firm thought that it had the Wolfe statement,
10 and then -- and you must have concluded that the
11 reason you had it, it came in the May 2013 criminal
12 file since now that the records seem to suggest that
13 it wasn't in the May 2013 criminal files maybe you
14 got it from another course source.

15 So I'm trying to ascertain if, if
16 it's possible that you had received it and it was in
17 the firm's possession prior to May 2013.

18 THE WITNESS: Not prior to May 2013.

19 THE COURT: All right. Thank you.

20 BY MR. KEACH:

21 Q. Okay. When did you get it?

22 A. I don't recall.

23 Q. Okay. You've gone back and looked at
24 your file. You told us that.

25 A. I went back and looked at this and then I

1 looked at the --

2 Q. Okay. You looked at anything having to
3 do with Wolfe's statement. You wanted to find out
4 when you found that out, didn't you? Isn't that
5 what you went and did on the break?

6 A. I looked at the police record to see what
7 it contained with what we received.

8 Q. Did you ask -- did you look, go through
9 and see where Wolfe's statement was produced to you?

10 A. No.

11 Q. Okay. Do you know when Wolfe's statement
12 was produced to you?

13 A. I'm not a hundred percent sure.

14 Q. Okay. Tell me what your best guess is.

15 A. It's a guess. My guess would be sometime
16 before her deposition.

17 Q. Oh, you're talking about in 2015?

18 A. Correct.

19 Q. Okay. You don't dispute that the
20 hospital knew about Ms. Wolfe's statement back in
21 the summer of 2008, do you?

22 A. I believe that any information I would
23 have about that would be protected by
24 attorney/client privilege.

25 Q. Well, you can tell me whether you dispute

1 it or not, and then when I ask you what the basis is
2 or who said it, maybe that's attorney/client, but
3 I'm asking you do you dispute whether the hospital
4 was aware of Wolfe's statement in 2008?

5 A. The contents thereof?

6 MR. PRANGLE: For clarification, just the
7 fact she gave it to him or the contents of it?

8 MR. KEACH: The fact that she gave a
9 statement to Metro police in 2008.

10 THE WITNESS: I believe that there were
11 references that people did know that she gave a
12 statement.

13 BY MR. KEACH:

14 Q. That's right. And Amy Blasing knew that
15 contained within that statement was some kind of
16 dispute between Ms. Wolfe and Ms. (sic) Sumera
17 about the details of what Ray had told her, right?

18 A. I believe she testified to that.

19 Q. Okay. So at least that portion of the
20 contents of the statement, according to Ms. Blasing,
21 were known to the hospital in 2008, right?

22 A. I haven't read Ms. Blasing's testimony
23 from this lawsuit.

24 Q. You were there.

25 A. I was not there.

1 Q. You weren't there?

2 A. I was not there.

3 Q. Oh, I'm sorry. So you haven't read that.

4 Okay. You didn't read and prepare and brief it

5 either, did you?

6 A. Pardon?

7 Q. You didn't read and prepare and brief it

8 either, right?

9 A. I did not.

10 Q. Did you read our brief?

11 A. I did.

12 Q. Did you look at any of the exhibits?

13 A. I did not look at all the exhibits.

14 Q. I said did you look at any of the

15 exhibits?

16 A. I think I looked at a couple.

17 Q. Which ones?

18 A. I don't know.

19 Q. How about Ms. Blasing's depo?

20 A. I did not.

21 Q. How about Ms. Butler's depo?

22 A. No.

23 Q. You received the audio tape of Christine

24 Murray's statement in February 2013 and didn't

25 disclose it, correct?

1 A. Correct.

2 Q. Because you didn't listen to it, you
3 didn't listen to that tape, right? You didn't
4 listen to -- to the disc?

5 A. That is correct.

6 Q. You didn't have the ability to?

7 A. That is correct.

8 Q. You never listened to it, have you?

9 A. No.

10 Q. So how do you tell us -- how do you tell
11 this court that Margaret Wolfe's statement, audio
12 statement's not on that disc? You've never listened
13 to it.

14 A. Well, it's labeled as.

15 Q. You've never listened to it?

16 A. That's correct.

17 Q. You don't know whose recorded statements
18 on that disc, do you?

19 A. That would be correct.

20 Q. Did anybody in your office listen to it?

21 A. I don't believe so.

22 Q. Did you offer it to anyone when you
23 received it?

24 A. I don't believe so.

25 Q. So you get this disc, a statement of a

1 percipient witness, at least to Metro's -- in
2 Metro's view because they took a recorded statement
3 and you don't listen to it and you don't provide
4 anybody in your office to listen to it, that's your
5 testimony?

6 A. I believe so, yes.

7 Q. Okay. So obviously you don't know
8 whether Ms. Wolfe's on that or not?

9 A. I don't know if the audio is mislabeled.

10 Q. Okay. When someone from your office
11 spoke with Ms. Wolfe in summer of 2008, did Ms.
12 Wolfe describe any of the information regarding Ray
13 Sumera?

14 A. I believe that information would be
15 covered by attorney/client privilege.

16 Q. Okay. Your lawyer didn't -- the lawyer
17 didn't object. So I'm asking you.

18 MR. PRANGLE: Well, I would object it's
19 subject to privilege.

20 MR. KEACH: Okay. It's not privilege.
21 He wasn't representing her.

22 THE COURT: Why would -- why would an
23 interview of a witness be considered privileged in
24 this particular case?

25 MR. PRANGLE: When we are retained, our

1 task or the assignment that we are given is to
2 review records and review whatever written materials
3 we believe are relevant and to act as counsel for
4 any hospital staff, meet with them and talk with
5 them, but it's under the guise of an attorney/client
6 privilege with the specific individuals.

7 So when we spoke to nurse Wolfe in
8 2008, it was as her attorney in the RC matter. Not
9 the Doe matter, but the RC matter. Same with nurse
10 Murray and nurse Sumera.

11 THE COURT: So you're contending that you
12 were representing nurse Wolfe at this time?

13 MR. PRANGLE: Yes, sir.

14 THE COURT: Did you, did you ever make it
15 known to Ms. Wolfe that you were representing her or
16 you were serving the capacity as her counsel.

17 MR. PRANGLE: I was not at the meeting,
18 but our custom is whenever we meet with nurses is to
19 advise them that the hospital has authorized us to
20 act as their attorney should they ask us to be their
21 attorney. And they always do. So I guess yes,
22 although I was not personally at the meeting.

23 THE COURT: Mr. Keach.

24 MR. KEACH: It's not privileged. They,
25 they --

1 THE COURT: If they represented her, it
2 would be privileged.

3 MR. KEACH: You know, I'm just gonna tell
4 you something, Your Honor. Throughout this case --

5 THE COURT: Go ahead.

6 MR. KEACH: And it's been a constant
7 ongoing concern. Every time a witness -- not every
8 time. When nurse witnesses come in at -- they're
9 witnesses. They come in and the whole private firm
10 comes in and says they're representing them. And
11 we've had -- and they're witnesses. And they --
12 they're not parties to the case, they're --

13 THE COURT: So the question would arise
14 why would she need representation. Are you
15 attempting simply to represent her in order to cloak
16 the discussions being privileged to prevent them
17 from being discovered?

18 So why, why -- why would you feel
19 the need to have to represent a material witness?

20 MR. PRANGLE: Well because it's for that
21 exact reason. When we're undertaking this interview
22 or this investigation, we don't know yet is it
23 something that's gonna turn into litigation or not.

24 So it's done in anticipation of
25 litigation, but there is most definitely an

1 attorney/client relationship with each of the
2 witnesses that we interview for the exact reason
3 that in a subsequent litigation, a plaintiff's
4 attorney can't query them about what was discussed.

5 It's in the same way that with their
6 clients we can't ask them when they talk about it.
7 It's no different. It's done in any case that I've
8 ever been involved with for 25 years.

9 MR. KEACH: Your Honor, it's not the
10 same. If I want to interview their client, it's one
11 thing. Every nurse at that hospital is not
12 represented by them. He did -- he was candid enough
13 to say he's doing it for the same reason, so that I
14 don't get to hear what they said.

15 But let me give you one example.
16 Ray Sumera's deposition was taken, and they came in,
17 Hall and Prangle came in and said we're representing
18 you. And you've got the deposition, it's been
19 admitted. And nurse Sumera says didn't even know he
20 was being represented. And then, then they took a
21 break off the record and he comes back in and says
22 okay, I want him to represent me.

23 The point is, Your Honor, he's
24 rep -- the representation is exactly for the
25 purposes that the court has identified, to attempt

1 to cloak a witness, non-party's statement, under
2 attorney/client privilege to prevent disclosure to
3 plaintiff.

4 He's done it for 25 years. That
5 doesn't make it -- that doesn't make it right. It
6 means that it hasn't been challenged and the court
7 hasn't ruled on it.

8 But for certain when he's, when he's
9 interviewing witnesses in a case, those witnesses do
10 not automatically become his client and he says
11 okay, I'm going to interview you now and you're my
12 client.

13 Because if that's the case, Your
14 Honor, if the court's going to hold that, then in
15 every case I will begin to interview witnesses and
16 before it starts I'm gonna say, now, I'm gonna be
17 your lawyer so you can't tell anybody this. Because
18 that's all they're doing.

19 THE COURT: Communications between an
20 attorney and client for purposes of either the
21 client seeking advice or the attorney trying to give
22 advice on -- in connection with the representation
23 obviously are privileged. But the factual
24 statements made by material witness who's not even a
25 named party in the case are not privileged.

1 So I'm gonna order this witness to
2 answer any questions regarding factual statements
3 made by Ms. Wolfe or any of the other nurses, even
4 if it was during the course of Mr. Prangle's
5 representation of Centennial.

6 Please proceed.

7 MR. KEACH: Thank you, Your Honor.

8 THE COURT: But, but work product
9 opinions, legal theories and any strategies, all
10 that remains privileged. And you're not gonna get
11 into any of that. I want only factual statements,
12 if any, made by the material witnesses to counsel.

13 MR. KEACH: I'll do my best to --

14 THE COURT: Please limit it to that.

15 MR. KEACH: -- try and do that.

16 MR. KEACH: Thank you, Your Honor.

17 THE COURT: All right. Proceed.

18 BY MR. KEACH:

19 Q. The lawyer who met with nurse Wolfe, did
20 she explain to him any of the facts as contained in
21 her statement relating to Ray Sumera's conversation
22 with her?

23 A. I don't 100 percent recall.

24 Q. Okay. What do you recall? This is, this
25 is -- we're not looking for a hundred percent. Tell

1 me what you do recall.

2 A. With regard to Ms. Wolfe, she did discuss
3 the -- I believe the Hannah matter.

4 Q. Okay. What else?

5 A. I don't recall. I was not there.

6 Q. Okay. Have you reviewed anything that
7 refreshes your recollection as to what she may have
8 said?

9 A. Not recently.

10 Q. Okay. At any point in time, not for
11 purposes of this hearing, but at any point in time
12 did you review anything that refreshed your
13 recollection as to what she may have told the lawyer
14 from your firm about her conversation with Ray
15 Sumera?

16 A. At one point I did review a letter to our
17 client.

18 Q. And what did she -- what did she tell the
19 lawyer about her conversation with Ray Sumera?

20 A. I know that it was discussed that Ray was
21 the charge nurse or relief charge nurse, something
22 like that, on the night of the May 16th. With
23 regard to subsequent or prior event, I don't know.

24 Q. Okay. Do you recall anything she said to
25 the lawyer about Ray's, for lack of a better word,

1 admonition, that she keep an eye on Farmer because
2 of his over attentiveness to female patients?

3 A. No.

4 Q. Was there anything about that?

5 A. Not that I can recall.

6 Q. Okay. Were there -- what did the -- did
7 Ray Sumera tell the lawyer from your firm when he
8 met with them about his concerns about Farmer being
9 overly attentive with female patients?

10 A. The only thing I remember is that the
11 discussion was entirely about the RC matter because
12 he was one of the nurses taking care of her.

13 Q. Okay. So he told the lawyer about events
14 that night relating to Farmer and RC, correct?

15 A. Relating with his care and RC.

16 Q. Okay.

17 A. Mr. Sumera's care.

18 Q. What about his -- the essence of the
19 information that Margaret Wolfe relayed in her
20 statement that he's being over attentive? Did he
21 say anything about that?

22 A. I don't think so. I don't recall.

23 Q. In the meeting with Christine Murray, by
24 the lawyers from your firm, did Christine Murray
25 relate to the lawyer any information about the --

1 again, for lack of a better term, the old lady who
2 was complaining about Farmer and yelling for him to
3 get away?

4 A. I don't believe so.

5 Q. Okay. Now, as a general rule, on a case
6 such as this where there are allegations of
7 misconduct by an employee where knowledge by the
8 hospital is an essential element of the case in the
9 defense, as a general rule, would you ask the nurse
10 witnesses whether they have any knowledge of any
11 improprieties by that employee?

12 A. Would I?

13 Q. Yeah.

14 A. I would ask them about their interactions
15 with the employee.

16 Q. Okay. You'd want to also know whether or
17 not this employee had ever done anything like this
18 before, right?

19 A. That's something that is a fair question,
20 yes.

21 Q. I mean, it goes to the heart of the case
22 in terms of the defense, does it not?

23 A. It can, yes.

24 Q. Okay. And were those questions ever
25 asked of either Ray Sumera, Margaret Wolfe or

1 Christine Murray to your knowledge?

2 A. To my knowledge, no. I was not there.

3 Q. Okay. And you don't have any other
4 information that would lead you to believe those
5 questions were asked; is that correct?

6 A. I don't believe so, no. I don't believe
7 I have any information that would allow me to
8 assess.

9 Q. Either you have information or you don't
10 have information. At least at this point you're
11 saying you don't have any information?

12 A. I don't think so.

13 Q. I'm troubled by your qualification, by
14 your hesitation to say either you do or don't.

15 A. Can you repeat the full question then?

16 Q. Sure. Do you have any information at all
17 that the lawyer who met with Murray, Wolfe and
18 Sumera at any time asked them whether they were
19 aware of any prior issues with Farmer related to
20 female patients?

21 A. I don't have that information.

22 Q. Okay. Now, you don't know when you got
23 Wolfe's statement, correct?

24 A. Correct.

25 Q. You didn't go back through the file to

1 determine when you -- over the break, you didn't go
2 back to your file to determine when you received
3 Wolfe's statement, correct?

4 A. Correct.

5 Q. Prior to testifying here today, you
6 didn't go back through your file to determine when
7 you received Wolfe's statement, correct?

8 A. Correct.

9 THE COURT: Well, does that mean there's
10 a possibility that your file back at the office
11 might contain the answer to when your firm received
12 the Wolfe statement? Is that a possibility?

13 THE WITNESS: From co-defendants, yes.

14 THE COURT: Okay. So you believe you got
15 it from co-defendants, but you don't know when, and
16 your file might be able to resolve that?

17 THE WITNESS: There is --

18 THE COURT: I'm not gonna order you to go
19 back and look.

20 THE WITNESS: Yeah, I believe so.

21 THE COURT: Okay, thank you.

22 BY MR. KEACH:

23 Q. In fact, you could have gotten the file
24 from the hospital, if they had it, right? You could
25 have gotten those statements from the hospital,

1 right?

2 A. If they had them.

3 Q. Okay. And certainly Carol Butler
4 testified that she had seen Murray's statement,
5 right?

6 MR. PRANGLE: Objection. That misstates
7 Ms. Butler's testimony.

8 THE WITNESS: And as I discussed earlier,
9 I did not read Ms. Butler's testimony.

10 BY MR. KEACH:

11 Q. Certainly Christine Murray testified that
12 she went through the -- that Carol Butler had read
13 her statement and was aware of it, right?

14 A. She did testify that Carol, Carol Butler
15 had read a statement of hers.

16 Q. That's right. So you certainly -- at
17 least with regard to Christine Murray, you certainly
18 could have gotten that statement from the hospital
19 as likely as any other source, right?

20 A. If they had it.

21 Q. Okay. That's as likely as any other
22 source, correct?

23 A. If they had them, yes.

24 Q. Right. Same with Margaret Wolfe, right?

25 A. If they have that statement.

1 Q. Right. Because at least we know that Amy
2 Blasing, she was fully aware of the statement,
3 correct?

4 A. As I testified earlier, I was not present
5 at Ms. Blasing's testimony, nor did I read it.

6 Q. The point of all of this is since you
7 don't know when you got the statement and you
8 haven't gone back and looked at the file to try and
9 ascertain when Amy Wolfe's -- excuse me, when
10 Margaret Wolfe's statement came in, it's just as
11 likely you got it in 2008, 2009, 2010 or 2011 or '12
12 or '13 as it is you got it in 2015, is it not?

13 A. I don't believe so.

14 Q. Well, how can you say you don't believe
15 so when you say you don't know? You said you don't
16 know when you got the file. Now all of a sudden
17 you're telling me you do?

18 MR. PRANGLE: Your Honor, this is
19 argumentative.

20 MR. KEACH: It's cross-examination, Your
21 Honor.

22 THE COURT: I'll give a little bit of
23 leeway here, but I believe he testified, at least in
24 response to my question to him also, that -- that he
25 does not recall having seen it at any point in time

1 before May 2013. But I'll let you ask the question.

2 MR. KEACH: Right.

3 THE COURT: Go ahead.

4 BY MR. KEACH:

5 Q. You haven't -- you don't recall seeing
6 it, but the point is you don't know when it was
7 produced to your office, do you? You don't. You've
8 already said that.

9 A. I don't know when it was specifically
10 produced.

11 Q. It could have been produced --

12 THE COURT: Hold on, hold on. You've got
13 to let him finish his answer. Go ahead.

14 THE WITNESS: But since it was a police
15 statement, I believe that it would have to come from
16 the police.

17 BY MR. KEACH:

18 Q. Well, you got --

19 A. Or the public defender or the DA.

20 Q. Right. Maybe you got it from the public
21 defender and you just didn't know it, right? Could
22 have?

23 A. Could have. I don't believe so.

24 Q. You don't believe so, but you don't know,
25 right?

1 A. That is correct.

2 Q. Okay. You don't know when you got it,
3 you don't know if you got it in 2013 or not, do you?

4 A. Correct.

5 MR. KEACH: Nothing further, Your Honor.

6 THE COURT: All right. Recross?

7 RECROSS-EXAMINATION

8 BY MR. PRANGLE:

9 Q. The only source of nurse Wolfe's
10 statements would have been either one of the parties
11 to the criminal matter or one of the parties to this
12 litigation, true?

13 A. That's my understanding, yes.

14 Q. Now, looking at Exhibit A or Exhibit 29,
15 which were the materials that we received in May of
16 2013, was the Wolfe statement in those materials?

17 A. No.

18 Q. There's been some talk about a disc that
19 you received in February of 2013.

20 In that disc, was there a copy of
21 Wolfe's statement?

22 A. No.

23 MR. KEACH: Objection. Lack of
24 foundation. He never heard it so he can't answer
25 the question.

1 BY MR. PRANGLE:

2 Q. Well, no. Was there a piece of paper --
3 was the written statement part of that disc?

4 MR. KEACH: Objection. Hearsay.

5 THE COURT: Well, no, he's just -- why
6 would that be hearsay?

7 MR. KEACH: Because he's offering what
8 was on the statement -- on that piece of paper for
9 the truth of the matter asserted, and Margaret
10 Wolfe's statement wasn't on the tape.

11 MR. PRANGLE: I'm not talking about the
12 tape.

13 THE COURT: No, no. He wants to know --
14 I think he's asking if a hard copy of the Wolfe
15 statement was produced at the same time the disc was
16 produced.

17 MR. KEACH: I apologize, Your Honor.

18 THE COURT: I think that's his question.

19 MR. KEACH: I misunderstood. I thought
20 he was asking whether the cover sheet that came with
21 the disc.

22 I apologize and I withdraw the
23 objection.

24 THE COURT: No problem. Thank you.

25 BY MR. PRANGLE:

1 Q. So on the disc was various paper
2 documents but also audio files, correct?

3 A. Correct.

4 Q. Focusing only on the paper documents, was
5 nurse Wolfe's statement contained therein?

6 A. No.

7 Q. Would the audio files that you didn't
8 listen to, were they named?

9 A. They were.

10 Q. Was one of the files named Murray?

11 MR. KEACH: Objection. Hearsay, offer
12 for the truth of the matter asserted.

13 THE COURT: Well, don't we have the files
14 here? Didn't you guys stipulate to put them into
15 evidence?

16 MR. PRANGLE: Well --

17 THE COURT: You actually -- you have it
18 here. You introduced it as Exhibit A.

19 MR. PRANGLE: I apologize. Exhibit A is
20 what we received in May of 2013. I'm talking about
21 there were some documents, including an audio file,
22 that we received in February of 2013.

23 THE COURT: And you haven't produced
24 that? It's not an exhibit to your brief or?

25 MR. PRANGLE: That's correct, judge. But

1 it's something that Mr. Keach asked John about
2 receiving this audio file in February of 2013.

3 THE COURT: The issue is whether the
4 defense would have had notice that it had received
5 Murray's statement, such that it would have
6 triggered a duty for defense counsel to produce it.

7 The issue is not whether -- what the
8 document that was actually received was actually the
9 Murray statement. So I'm gonna allow you to ask the
10 question.

11 MR. KEACH: Thank you, Your Honor.

12 BY MR. PRANGLE:

13 Q. So let -- you know, I'm not a very
14 computer literate guy, but there are discs, you put
15 them into a computer and then a list of files comes
16 up?

17 A. Correct.

18 Q. And there's a way based on the title of
19 the file that tells whether it's a PDF versus an
20 audio file; is that right?

21 A. Correct.

22 Q. And so you were able to identify that
23 there was at least one audio file on that disc,
24 true?

25 A. True.

1 Q. And did it have a file name to it?

2 A. Yes.

3 Q. What was the file name?

4 A. Murray.

5 Q. Okay. Were there more than one audio
6 file?

7 A. I believe so, but I can't recall.

8 Q. Were any of the audio files titled Wolfe?

9 A. No.

10 MR. KEACH: Objection. Hearsay.

11 THE COURT: I'll allow it. Go ahead.

12 Objection is overruled.

13 BY MR. PRANGLE:

14 Q. Did you listen to any of the audio files?

15 A. No.

16 Q. You were asked some questions regarding
17 the meeting that we had with nurse Wolfe back in
18 2008, and you mentioned the name Hannah.

19 What's your understanding of what
20 nurse Wolfe -- nurse Wolfe told us about patient
21 Hannah?

22 A. From that, I know that there was --
23 there's an issue with her believing that Mr. Farmer
24 on May 16th of 2008 was inappropriately handling the
25 leads on Ms. Hannah for telemetry.

1 Q. And was that, just in the sequence of
2 things, when was Doe?

3 A. May the 14th of 2000 --

4 Q. Okay. So this event where nurse Wolfe
5 told us about the adjustment of the leads, that
6 would have been after Doe?

7 A. Correct.

8 Q. Did you review the nurses' employee files
9 as part of this case?

10 A. I have.

11 Q. Okay. Is contained within nurse Murray's
12 employment file a copy of her written police
13 statement?

14 A. No.

15 Q. Okay. Thank you, judge.

16 THE COURT: Okay. Can we ask were the --
17 were the employees' files produced in litigation in
18 this case?

19 MR. PRANGLE: Well --

20 THE COURT: You're talking about
21 personnel files of the employees?

22 MR. PRANGLE: Correct. And I don't know,
23 number one. Number two, I would doubt it given
24 nurse Murray's role in the RC case versus this case.

25 THE WITNESS: I can answer that question.

1 They're -- in the process, they're being redacted.

2 But they were asked for, they're redacted.

3 They're in the process of being disclosed.

4 MR. PRANGLE: All right. So --

5 THE COURT: All right. Is that the
6 subject of a discovery commissioner order do you
7 know or --

8 MR. PRANGLE: I don't know.

9 THE COURT: All right, thanks. Very
10 good. So you each had two opportunities to ask
11 questions of this witness.

12 So, Mr. Bemis, you are now excused.
13 Thank you very much, sir.

14 THE WITNESS: The original --

15 THE COURT: You can go ahead and leave
16 all that. You can take the originals and give that
17 back to Mr. Prangle of Exhibit A.

18 All right. Mr. Keach, do you have
19 anymore witnesses?

20 MR. KEACH: Mr. Webster.

21 THE COURT: Mr. Webster, you're called to
22 the stand, sir.

23 THE WITNESS: Thank you, Your Honor.

24 (Whereupon, Kenneth McCrea Webster was
25 duly sworn to tell the truth, the whole

1 truth, and nothing but the truth.)

2 THE CLERK: Thank you. Please be seated.
3 State your full name, spell first and last for the
4 record, please.

5 THE WITNESS: Kenneth McCrea Webster.
6 K-e-n-n-e-t-h. W-e-b-s-t-e-r.

7 THE COURT: You may continue.

8 MR. KEACH: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. KEACH:

11 Q. Mr. Webster, you're an attorney with Hall
12 Prangle?

13 A. Correct.

14 Q. Earlier this year you had some
15 involvement in this case when we were trying to
16 ascertain the identity of the patient who yelled,
17 "get out of my room" that Christy Murray referred
18 to; is that correct?

19 A. True.

20 Q. And you worked with Mr. Murdock on that
21 in attempting to identify that patient; is that
22 correct?

23 A. That is correct.

24 Q. Part of the problem was the patient
25 wasn't nurse Murray's patient, correct?

1 A. I believe that to be true. I'm not a
2 hundred percent certain at this time.

3 Q. Okay. In fact, what you tried to do and
4 were unsuccessful was you could not identify the
5 exact date that the incident occurred, could you?

6 A. We could not.

7 Q. You couldn't identify the nurses that
8 were assigned to that particular person either,
9 correct?

10 A. No. Because we didn't know who the
11 patient was.

12 Q. Couldn't identify the shift that it
13 occurred on, correct?

14 A. We knew that it was a night shift.

15 Q. Night shift, but you don't know what day
16 that shift occurred on, correct?

17 A. Right.

18 Q. And what you ultimately did was provide a
19 list of about 15 or so nurses that worked at or
20 about that time and said here's -- here's what we
21 believe the possibilities are, to Mr. Murdock,
22 correct?

23 A. I thought it was closer to 30, but I
24 haven't looked at it in a long time. So if it's 15
25 or 30, we produced a list of names, correct.

1 Q. And, in fact, Mr. Murdock stated he
2 deposed those witnesses, did he not?

3 A. Don't know.

4 Q. Okay. He did. He deposed like 15 of
5 those witnesses. And you know what they knew? None
6 of them knew any of it.

7 A. Okay.

8 Q. Point being the delay in attempting to
9 identify -- to the delay in learning Christine
10 Murray's information has prejudiced us in attempting
11 to identify the day, the shift, the patient, the
12 nurses that, that she refers to in the statement,
13 correct?

14 A. I don't know the answer to that question.

15 MR. KEACH: Nothing further, Your Honor.

16 THE COURT: All right.

17 Cross-examination?

18 MR. PRANGLE: No questions, judge.

19 THE COURT: All right. Mr. Webster,
20 you're excused. Thank you, sir.

21 THE WITNESS: Thanks, judge.

22 THE COURT: Mr. Keach, do you have any
23 further witnesses?

24 MR. KEACH: We have the depositions, Your
25 Honor. And I'm not sure -- I don't have any other

1 live witnesses at this time. We have a deposition,
2 Your Honor, and I'm not sure how the court would
3 like us to proceed.

4 THE COURT: You can introduce them by --
5 well, I have the --

6 MR. KEACH: They are admitted.

7 THE COURT: So I am not going to require
8 that you actually read everything for them to be
9 deemed admitted into the record for purposes of my
10 analysis. Unless defense counsel wants them read.
11 If he wants them read, it's his right to have them
12 read into the record.

13 MR. PRANGLE: We discussed it. I have no
14 problem with him handling it anyway they want.

15 THE COURT: So why don't you make
16 specific -- specifically identify which deposition
17 excerpts you want this court to read and I will read
18 them.

19 If it's everything that you've
20 already produced and identified in your binders, I
21 will read those. If it's -- if it's something you
22 haven't yet provided, then go ahead and introduce it
23 now.

24 MR. KEACH: Your Honor, what we have, we
25 have taken the liberty of copying the pages and

1 highlighting the relevant testimony that we
2 believe -- that we would ask the court to, to
3 consider for the purposes of this hearing.

4 We have those and we were prepared
5 to do one of two things; either have Mr. Murdock sit
6 on the stand and be the witness and I can go through
7 the excerpts, or just provide you copies of the
8 highlighted excerpts and you can just look at the
9 yellow highlights and, and realize that that's --
10 those are the pages that we're referring to.

11 THE COURT: That would be fine with me
12 provided Mr. Prangle's had an opportunity to counter
13 designate.

14 Have you had that opportunity or do
15 you want that opportunity?

16 MR. PRANGLE: I don't need that
17 opportunity.

18 THE COURT: Okay. Then so admitted.
19 Then all the yellow highlighted portions of the
20 depositions that you were gonna provide to the court
21 will be read by the court and used and reviewed and
22 relied upon by the court in rendering its decision
23 in this case.

24 MR. KEACH: That's fine, Your Honor. If
25 the court will give me just a second to put

1 together.

2 Your Honor, for the record, we're
3 providing Mr. Prangle a copy of what we're asking
4 the court to admit.

5 They are excerpts from the June
6 19th, 2015 deposition of Carol Butler. Excerpts
7 from the May 1st, 2015 deposition of Ray Sumera,
8 Renato Sumera. Excerpts from the May 5th, 2015
9 deposition of Margaret Wolfe. Excerpts of the
10 June -- July 28th, 2015 deposition of Amy Blasing.

11 And I don't know if the court wants
12 us to mark these as a separate exhibit next in order
13 as --

14 THE COURT: I'll tell you what, Butler's
15 gonna be 30. That will be admitted. Sumera, 31,
16 admitted. Wolfe, excerpts, Exhibit 32 admitted.
17 And Blasing, Exhibit 33 will be admitted.

18 MR. KEACH: Your Honor --

19 THE COURT: Anything else?

20 MR. KEACH: I missed one.

21 THE COURT: Okay.

22 MR. KEACH: It was in a stack, but I just
23 missed it. It's the January 8th, 2015 excerpts of
24 the deposition of Christine Murray.

25 THE COURT: And Murray will be Exhibit

1 34.

2 MR. PRANGLE: (Positive nod of the head.)

3 THE COURT: All right. Any objection to
4 those?

5 MR. PRANGLE: No, sir.

6 THE COURT: All right. They're admitted.
7 Thank you. Give those to the clerk and the court
8 will read them.

9 Anything else, Mr. Keach?

10 MR. KEACH: No, Your Honor. We rest.

11 THE COURT: All right. Would the defense
12 like to present any witnesses?

13 MR. PRANGLE: Your Honor, we've decided
14 not to call any live witnesses. I will -- we will
15 stand on our briefs in the openings and closings.

16 The one thing that I would like to
17 do is number one, apologize to the court. Number
18 one, I'm happy to answer any questions you may have
19 of me, but I want to apologize to the court. And I
20 take full responsibility for this in terms of when
21 we received nurse Wolfe's statement. I made an
22 assumption that it was part of the May 6th, 2013
23 disclosure. I'm embarrassed that I can't even tell
24 you that I was wrong.

25 What I will tell you is that I did

1 speak to co-counsel, Mr. Farmer's counsel. I did
2 not anticipate what happened toward the end of Mr.
3 Bemis's testimony this morning, and I'm embarrassed
4 that I was wrong. But it appears that counsel for
5 Farmer is --

6 MR. KEACH: If he's going to testify as
7 to something that someone else told him, I'm going
8 to object as hearsay. Because while he's not on the
9 stand and under oath, he's essentially testifying.

10 And he did it this morning and I
11 didn't, I didn't object, but if he wants to testify,
12 I have no problem. If he wants to testify, I have
13 no problem with him getting on the stand and subject
14 to cross, but this is testimony.

15 MR. PRANGLE: Well --

16 THE COURT: If he wants, I think what
17 he's about to do is, is as an officer of the court
18 represent something about his own internal record
19 keeping.

20 MR. PRANGLE: It's actually with co --

21 THE COURT: Well --

22 MR. PRANGLE: Ms. Hall told me --

23 THE COURT: Well, hold on a second. Let
24 me think about this.

25 MR. PRANGLE: Sure.

1 THE COURT: Make an offer of proof of
2 what evidence you would introduce. And I'm gonna
3 have to decide, number one, if I'm gonna consider it
4 and what opportunity the plaintiff would have.

5 MR. PRANGLE: Sure.

6 THE COURT: To, to test the validity. So
7 go ahead and make an offer of proof.

8 MR. PRANGLE: The offer of proof is
9 simply that Ms. Hall and her firm on behalf of Mr.
10 Farmer on February 12, 2015, and I don't know which
11 supplement to their ECC this was, they filed nurse
12 Wolfe's statement as part of that submission. I'm
13 happy to obtain a copy of that and provide it to the
14 court.

15 THE COURT: Well, is that an ECC -- hold
16 on. Who was starting to interrupt?

17 MR. MURDOCK: I was, Your Honor.

18 THE COURT: Okay, go ahead.

19 MR. MURDOCK: I apologize.

20 THE COURT: That's okay.

21 MR. MURDOCK: I apologize. Your Honor,
22 that's just patently false. I mean, if we're gonna
23 do this, I'd like to have Ms. Hall take the stand.
24 I'll go through her 16.1, no problem. Because it's
25 not there.

1 THE COURT: And I don't know what weight
2 I would give -- even if your offer is true, because
3 Mr. Bemis has already testified as, as -- I'm not
4 going to summarize his testimony, but he already
5 testified as to his knowledge as to when your firm
6 might have received the Wolfe statement, all right.

7 And so even if records were to show
8 that you had received it in February 2015, that
9 doesn't in any way in my mind negate the possibility
10 that it was received earlier.

11 MR. PRANGLE: Right. Okay. So that
12 aside --

13 THE COURT: But I understand -- look, you
14 made your offer of proof of what, of what additional
15 evidence you would provide I guess if you had
16 thought of it earlier, right? So I don't know what
17 else to make of that.

18 MR. PRANGLE: And that's fine, judge. I
19 just wanted --

20 THE COURT: You're not here to present
21 the actual ECC, you're simply as an officer of the
22 court telling me that there's something in your
23 files that indicate you did receive the Wolfe
24 statement February 2015.

25 MR. PRANGLE: Correct.

1 THE COURT: All right.

2 MR. PRANGLE: So I have nothing other
3 than, other than the briefs and what I would reserve
4 for closing.

5 THE COURT: Okay. So what we need to do
6 now -- appreciate that. What we need to do now is
7 closing arguments. I want to hear from the
8 plaintiff, the defense, and then reply from the
9 plaintiff.

10 And I think I have a pretty good
11 handle of the facts, but in light of the testimony
12 that we've heard, if you could highlight the most
13 significant points, that would be helpful to me
14 analyzing this.

15 MR. KEACH: Well, one of the most
16 significant points, Your Honor, is that we were
17 prejudiced by the delay in identifying Christine
18 Murray and her statement.

19 Mr. Webster explained what we
20 already knew, which was when we finally got
21 Christine Murray's deposition -- I mean statement
22 and started trying to find out well, what actually
23 happened. They couldn't identify the patient, the
24 date, the shift, the nurse, anything. The point
25 being, seven years after the fact, six years after

1 we filed our lawsuit, information is lost. And
2 that's not -- that's not beyond the realm of common
3 knowledge. We know that six and seven years later
4 people don't remember things and documents get lost
5 and information gets lost. And that's what happened
6 here.

7 What also is not in dispute, and the
8 court will see when reviewing the deposition
9 transcripts, is the hospital was fully aware of
10 Christine Murray's statement in 2000 -- summer of
11 2008.

12 The hospital was fully aware of, of
13 Margaret Wolfe's allegations and complaint and
14 statements regarding what Ray Sumera had told her.

15 Now, whether they actually had
16 physically a copy of the statement or not to me
17 doesn't -- is irrelevant. The point is they knew
18 the identity of a witness who had relevant
19 information. They failed to disclose it at any
20 point at time. That's a fact. That's a fact.
21 There's nothing they can say to get around that
22 fact.

23 They can make excuses, but the fact
24 is 16.1 is mandatory, Your Honor. It requires the
25 production of witnesses and a summary of their

1 testimony, a brief description of their testimony of
2 all witnesses they know. And they knew them. It's
3 not all -- Your Honor, let's --

4 THE COURT: I understand 16.1. I think
5 what's important for the court to hear now is why
6 the severe sanction of, you know, case terminating
7 sanction would be appropriate under the
8 circumstances as opposed to a less severe sanction,
9 and, and if any sanction is warranted, what degree
10 of willfulness is needed by counsel and -- and
11 whether -- whether the hospital itself can be held
12 responsible for its failure to disclose a statement
13 to counsel, so they can produce it as part of 16.1.

14 MR. KEACH: Your Honor --

15 THE COURT: Those are some of the issues.
16 And I have my, you know, general concept and answers
17 of each of those, but I want to hear from you on
18 that.

19 MR. KEACH: Your Honor, 16.1 requires the
20 party to disclose the information. Now, I don't
21 know what Hall Prangle does with their clients. I
22 know what their -- I know what 16.1 requires them to
23 do. It requires them to tell me that -- tell me
24 everything you possibly know about this case, even
25 remote stuff. Here are the issues. Did anybody,

1 did anybody say -- have any information about Farmer
2 engaging in any type of conduct like this. They
3 have that responsibility.

4 And Mr. Bemis was candid, and I
5 appreciate this, but if he were -- if he were on the
6 job, he'd be asking those questions because he
7 understands the significance of it. Now --

8 THE COURT: Let me interrupt you again
9 though.

10 MR. KEACH: Yes, Your Honor.

11 THE COURT: And, again, I understand
12 that. What is it that you believe you could have --
13 could have uncovered that would have been so
14 compelling to present to the jury to support your
15 case that you don't already have now? I mean, now
16 you have the statements.

17 MR. KEACH: No, Your Honor.

18 THE COURT: You have the Metro statements
19 and you have -- you have -- I've read the
20 depositions of, of many of the excerpts already.

21 What is it that -- that was -- that
22 you believe you would have uncovered that was so
23 crucial that you've lost that has deprived you of an
24 opportunity to more persuasively convince the jury?

25 MR. KEACH: Number one, what Christine

1 Murray -- I mean, there's two, there's two separate
2 things; Christine Murray and Wolfe and Sumera. The
3 court obviously appreciates that.

4 THE COURT: Of course.

5 MR. KEACH: Christine Murray, I just told
6 you, we could have found out who the victim was. We
7 could have asked her, what did he do and what did
8 you tell them, what did you tell your nurses.
9 Because what their knowledge, it's the hospital's
10 knowledge. And of course, Your Honor, we argued
11 that before and we, and we supplied authorities for
12 that. The denials of the employees' imputed to the
13 hospital. And so we, we -- that's the whole point.
14 We don't know what that -- we don't know what that
15 victim told her particular nurse. All we know is
16 Christine Murray who was working on the floor. It
17 wasn't she -- and what her testimony says, it wasn't
18 her patient.

19 THE COURT: So having been deprived of
20 the ability to obtain that information, is there a
21 presumption of prejudice under the law or is the
22 prejudice merely the fact that you've been deprived
23 of the opportunity to search for that information?

24 MR. KEACH: I have to be honest with the
25 court. I don't fully understand the importance of

1 the court's question.

2 THE COURT: Okay. Well, I guess what I'm
3 trying to say would -- should the court presume as a
4 matter of law that you've been prejudiced and should
5 the court presume that had you been informed of
6 these police statements sooner, then that would have
7 led you to critical evidence that would have been
8 more persuasive to the jury in proving your case or
9 is it the fact that you don't know what people would
10 have said had you been able to analyze this several
11 years earlier and the mere fact that you've been
12 deprived of the opportunity to find out what they
13 would have said, what they would have known, that is
14 the prejudice?

15 MR. KEACH: Okay. I don't know if this
16 is appropriate or not, Your Honor, but I think we're
17 prejudiced on both counts. I think we're prejudiced
18 because we don't know specifically what we could
19 have found out. And, and as a result, we're left
20 without potentially crucial evidence that goes to
21 the heart of the issue, foreseeability.

22 And if the court knows anything
23 about this case, it's a foreseeability case. That's
24 what it is.

25 But it also -- also, Your Honor, I

1 do think the court is entitled to make a presumption
2 that -- that this -- this evidence would have
3 benefitted us and we would have -- and we would have
4 obtained the information that -- that would have
5 been the proverbial nail in the coffin.

6 You know, part of Christine -- well,
7 at least with Christine Murray, Your Honor, I think
8 it's pretty clear that information was lost because
9 of the six-year delay. We can't identify the date,
10 the victim, the shift, the nurses who worked there.

11 And since the court allowed Mr.
12 Prangle to make representations as an officer of the
13 court, I'll make a representation as well and that's
14 this: Mr. Murdock did take approximately 15
15 depositions after they gave us the laundry list of
16 these are the people. Not one of them knew a thing,
17 okay, and that's because it's seven years after the
18 event and six years after the, after the disclosure
19 should have been made.

20 Now, as to Sumera and Wolfe, that to
21 me is equally as troubling, Your Honor, because Ms.
22 Wolfe tells us a number of things. She does make it
23 clear in her statement that a lot of people were
24 talking about it. Six years ago we could have found
25 out who those "lot of people were" by name and, and

1 depose them. As I recall in her deposition, she
2 recalled one, one name, Kim, I think in response to
3 someone's question. She thought it might be a lady
4 named Kim Davis. As far as I know, we were unable
5 to locate or even identify who this Kim Davis was.

6 As for all the other people who were
7 talking about it, we don't even know their names,
8 who they are or where they are or anything. And of
9 course it's seven years after the fact and six years
10 after the information was known by the hospital
11 administrative people. Not just nurse Wolfe.
12 Because an argument was made I believe at our motion
13 for summary judgment that was just a nurse.

14 Let's take it beyond who knew, let's
15 take it beyond the nurse. This is the management.
16 This is the nursing, head of nursing and the head of
17 emergency services. And they knew the general
18 substance of the allegations that Ms. Wolfe was
19 making and Ray Sumera was -- that Ray Sumera was
20 concerned and that Margaret Wolfe was concerned.

21 Now, there's no way to go back and
22 unring that bell. When you read Ray Sumera's entire
23 deposition, as I said in the opening statement, he,
24 he -- he doesn't deny that he told Margaret Wolfe,
25 you know, look out for this guy. But seven years

1 later he says yeah, I thought he was a pretty good
2 guy.

3 Well, you know, they don't, they
4 don't -- they don't reconcile. And that's the
5 problem because it's now seven years later. And
6 while he -- he also said many times I don't
7 remember, I don't remember, I don't recall. And I
8 don't have the exact count, but you can go through
9 his deposition.

10 And that's the case with Margaret
11 Wolfe as well. And although she was much better,
12 and Christine Murray, too, those people don't
13 recall.

14 Well, that's information that's
15 lost. And it's lost because they had it and they
16 didn't give it to us.

17 The court I hope doesn't believe
18 that sanctions are only appropriate for counsels'
19 misconduct because that -- that's not the law. The
20 law is the party has the obligation.

21 And now we thought that there -- and
22 we've been thinking it because of all the
23 representations that they made that -- that we had a
24 smoking gun. And --

25 THE COURT: Well, and I understand 16.1

1 is an obligation of the party. The reason I had
2 mentioned those other questions is it seemed that
3 the discovery commissioner was more focused, at
4 least what got her riled up, if that's the right
5 word, was -- was -- was the alleged misconduct by
6 counsel. And that's what's triggered her grave
7 concern. I know she was also concerned about, about
8 the parties' misconduct.

9 MR. KEACH: Your Honor --

10 THE COURT: But I got that sense that it
11 was, it was counsel's knowledge and failure back in
12 2008, 2009 to turn over the statements.

13 MR. KEACH: Your Honor, I wasn't --

14 THE COURT: If I'm, if I'm -- if I'm
15 misreading what the discovery commissioner's concern
16 was, then correct me and I'll go back and check the
17 record.

18 MR. KEACH: I'd ask you to do that
19 because I wasn't present at the hearing. Mr.
20 Murdock was.

21 THE COURT: Okay. I'll take another
22 look at it.

23 MR. KEACH: But the concern as I
24 understand it, and my understanding is from Mr.
25 Murdock and from reviewing the transcript, the

1 concern was that the hospital had knowledge of these
2 witnesses and knowledge of the substance of their
3 statements, whether they had the actual statement or
4 not, years before it was disclosed to us.

5 Now, it does rise, I'm not gonna
6 deny this, it rises to a different level if, if
7 counsel is complicit in, in this concealment because
8 it goes to a different level than just Rule 37
9 sanctions. It now goes to the Bar. And so that is
10 a different concern.

11 But one thing -- one thing I would
12 suggest, Your Honor, is as I recall, the sanctions
13 were not against the firm. The sanctions were
14 against the defendants.

15 Now, now -- and Mr. Murdock confirms
16 that I am right on that.

17 THE COURT: Okay.

18 MR. KEACH: And I point that out, Your
19 Honor, because if the court's concern -- if Judge
20 Bulla's concern was truly just that the firm had
21 concealed information --

22 THE COURT: Uh-huh.

23 MR. KEACH: -- my thought would be the
24 sanction would be against the firm. Because I'm not
25 proud of it, but I've had sanctions imposed against

1 me personally. And so -- at least once. And so I
2 know that when counsel is engaged in certain
3 conduct, then counsel can be sanctioned personally
4 and not the client. And that's not what happened
5 here.

6 THE COURT: Okay.

7 MR. KEACH: What happened here was the
8 client, the hospital, was sanctioned. And I
9 believe, Your Honor, that it's because the party,
10 the hospital, had information that it concealed from
11 plaintiff for six years relevant information. And
12 whether, whether -- at least I haven't heard counsel
13 back down on the fact that, that Sumera, Murray and
14 Wolfe's testimony is relevant in this case.

15 I mean, Mr. Prangle was pretty
16 emphatic about that, agreeing to that in his
17 opening. And so whether they knew about this, saw
18 the statements in May 2013 or not, they at least
19 have conceded that is relevant and important
20 information for us in this case.

21 And so there's no question about the
22 duty to disclose, there's no question that they knew
23 and willfully failed to disclose.

24 The only question is what the court
25 is going to do as a result of that.

1 You know, the hospital has not
2 provided an excuse or a reason as to why it didn't
3 disclose. Now, they have argued or suggested that
4 they were too wrapped up in the Cagnina case and
5 they weren't really thinking about this case and so
6 that's why -- that's why it wasn't disclosed.

7 But here's the reality, Your Honor,
8 as Mr. Bemis admitted: The foreseeability goes
9 in -- it is just as relevant in the, in the Cagnina
10 case as it is in our case. It was never disclosed
11 in that case either. And they didn't overcome that.

12 So if they were focused on the
13 Cagnina case and that that was their concern and
14 that's the reason why it somehow slipped through the
15 cracks in this case, then wouldn't they have to also
16 go to the next step and say because we disclosed it
17 and we knew it was relevant, we knew it was
18 important, we disclosed it in Cagnina case and we
19 just weren't thinking about it in this case?
20 Because that's essentially what they're saying,
21 except they're missing that one key part. They
22 didn't disclose it in the Cagnina case.

23 And the foreseeability that Ray
24 Sumera, Margaret Wolfe and Christina Murray provide,
25 that evidence was just as relevant in Cagnina's case

1 as it is here because it goes directly to the issue.

2 THE COURT: So how do you know it wasn't
3 disclosed in the RC case?

4 MR. KEACH: It hadn't -- it wasn't. I
5 think they conceded that. They conceded that.

6 THE COURT: All right. All right.

7 MR. KEACH: As to the lawyers, they
8 give --

9 THE COURT: There was, there was some
10 reference to -- I guess there was an issued raised
11 of whether defendant's firm should be disqualified,
12 right?

13 MR. KEACH: Your Honor, our issue with
14 that primarily rested on our belief that they didn't
15 disclose. I mean, they have been telling -- they
16 have taken the position that they were aware of
17 Margaret Wolfe's statement when they got the police
18 file in, in -- I mean, in May of 2013. And then
19 they disclosed it in October 2014, and they disclose
20 Margaret Wolfe.

21 I mean, to me that tied up the
22 entire, the entire issue of, of their intent because
23 if in fact they had that Margaret Wolfe statement as
24 part of the police production and they didn't -- and
25 that was the only thing that didn't -- wasn't

1 produced, well, I still don't have a witness saying
2 we intended to hide the ball from you. That's
3 pretty good circumstantial evidence that they're
4 trying to hide that Margaret Wolfe ball.

5 THE COURT: Well, now that we have a
6 pretty good idea that it wasn't in there.

7 MR. KEACH: We do -- we do have a pretty
8 good idea, Your Honor, I will concede, that it
9 wasn't part of the police production, okay. I
10 accept that.

11 And so that kind of takes away
12 because, to me, let's just assume a scenario that we
13 ended before the lunch with which was they produce
14 the police file, the police file contained Margaret
15 Wolfe, and the only thing not produced was Margaret
16 Wolfe. That's a pretty good smoking gun
17 circumstantially to show that there's an intent by
18 the firm to conceal the ball.

19 THE COURT: Well, actually you were
20 suggesting to the court, too, and yet you had that
21 police file and you could have known before we
22 started this morning that the Wolfe statement wasn't
23 in there.

24 MR. KEACH: Yeah, we did know the Wolfe
25 statement wasn't in there.

1 THE COURT: No, in the police file.

2 Okay.

3 MR. KEACH: We knew, we knew the Wolfe
4 statement --

5 THE COURT: You thought it was
6 intentionally taken out?

7 MR. KEACH: Right.

8 THE COURT: Okay.

9 MR. KEACH: Because they kept saying they
10 had it since May. What they keep saying they had --

11 THE COURT: But then they were saying
12 that you got it directly from the --

13 MR. KEACH: No, no, no. No, no. We
14 didn't get it from the police. We never did. No,
15 no. He'll tell you right now we didn't get it from
16 the police. We got it -- we got it from them. The
17 Cagnina plaintiff --

18 THE COURT: All right, all right.

19 MR. KEACH: -- got the file from the
20 police. Mr. Prangle, please set the record straight
21 on that.

22 MR. PRANGLE: No, I -- can you repeat
23 what you were saying?

24 MR. KEACH: That the Cagnina plaintiff's
25 attorney got the police file directly from the

1 police, not the Doe plaintiffs. We didn't get them
2 directly from the police.

3 MR. PRANGLE: I believe that's correct.

4 MR. KEACH: We got our police file from
5 them.

6 THE COURT: All right. All right.
7 That's fine. Thank you for clarifying. I
8 appreciate it. Go ahead.

9 MR. KEACH: And so at least from our
10 perspective where they've been telling us,
11 forever --

12 THE COURT: I can see how you were
13 confused on that issue.

14 MR. KEACH: I wasn't confused --

15 THE COURT: How, how it raised a serious
16 concern on your part.

17 MR. KEACH: Right.

18 THE COURT: All right. Why don't you
19 continue.

20 MR. KEACH: Right. So I'm not so certain
21 that -- that in the absence of that their recusal is
22 necessarily appropriate, okay. And so I'm not
23 asking for that. Unless of course the court finds
24 that they had it because, because as we know now,
25 they don't know when they had it, they don't know

1 where they got Margaret Wolfe's statement from, they
2 don't know when they first had it.

3 Now, they have some suggestions as
4 to when they could have got it. They certainly want
5 to argue that they got it sometime in 2015, but for
6 sure, they didn't get it from, from Mr. McBride's
7 firm in that disclosure because that offer of proof
8 just didn't hold water. It wasn't true. That
9 wasn't produced then.

10 So now we're back to -- now we're
11 back to the same point we were before. They have
12 the Wolfe file, they have the Wolfe statement. They
13 didn't get it from McBride, they didn't get it from
14 the police.

15 So where did they get and when did
16 they get it?

17 THE COURT: Well, I don't know that
18 speculation on when the firm got it is enough for me
19 to find fault in the firm.

20 MR. KEACH: Okay. I'll accept that, Your
21 Honor.

22 THE COURT: So we're back to whether
23 there's fault by the client Centennial.

24 MR. KEACH: Okay. I accept that. Except
25 there are, there are -- there are other factors

1 related to the firm aside from the Wolfe statement.

2 THE COURT: No, I know. But I just on
3 that Wolfe statement.

4 MR. KEACH: I agree with that, Your
5 Honor.

6 THE COURT: So let's -- but let's move
7 forward.

8 MR. KEACH: And so we go back to the
9 February 2013 disclosure. Now, that's before this
10 protective order with the police file.

11 THE COURT: Right.

12 MR. KEACH: They get Christine Murray's
13 statement. Now, and what the email shows is that
14 quid pro quo. They're meeting with public defender
15 off -- they're sharing information back and forth
16 and public defender wants depositions and, and
17 production requests and interrogatory answers. And
18 they've got no problem giving them. And they say
19 okay, we'll give them to you.

20 And Mr. Bemis says, and I want the
21 police files. And I don't just want some police
22 files, I'm specific, I want Cagnina, Peterson and
23 Rose. And that's what the email says. She says,
24 you want everything. He says, this is what I want.
25 And so what does he get? He gets apparently a disc

1 from the public defenders office that has
2 information on it. And contained in that disc is
3 statement of Christine Murray.

4 THE COURT: Uh-huh.

5 MR. KEACH: Well, he admitted he had a
6 duty to -- under 16.1 to determine what that
7 information was. He claims he never, he never
8 listened to it because he doesn't have speakers on
9 his -- on his computer. And that as far as he
10 knows, he didn't tell anybody else about it and
11 nobody else listened to it.

12 Now, that is a willful concealment
13 of evidence, Your Honor. You can't, you can't get
14 evidence that you know is relevant to this case
15 because that's what you asked for, and then -- and
16 intentionally not look at it and then say well, I
17 didn't disclose it because I didn't know what it
18 was. It doesn't work that way.

19 They've got a duty under 16.1. So
20 at least as to that, Your Honor, they had a duty.
21 More to the point, Your Honor --

22 THE COURT: So --

23 MR. KEACH: Go ahead.

24 THE COURT: So your whole theory of
25 memories fade, all right.

1 MR. KEACH: They do.

2 THE COURT: If you had received the
3 Murray statement on or about February 2013, this is
4 already --

5 MR. KEACH: Yes.

6 THE COURT: -- five years, almost five
7 years after the fact.

8 MR. KEACH: It's five years after the --

9 THE COURT: Wouldn't Murray's memory
10 already have faded? And what additional harm did
11 you suffer by, you know, in not getting the
12 statement until almost two years later?

13 MR. KEACH: Okay. As to, as to the
14 failure to disclose in 2013, either in February or
15 in May, because regardless of whether they had the
16 Wolfe statement in May, they had Christine Murray's
17 statement in May and they didn't disclose that. I
18 don't know how much more she would have remembered
19 two years ago, okay. It's impossible to know that.

20 What I do know is they had an
21 absolute duty to produce it. What I do know is an
22 additional two years has lapsed. And what I do know
23 is memories fade every day. And the passage of time
24 is the worst thing for a memory.

25 So am I suggesting that everything I

1 could have gotten in 2009 I would have gotten in
2 2013? No, I'm not. Because I'm -- because
3 realistically memories do fade.

4 So I'm going to assume, I'm gonna
5 assume as for my own personal experiences I remember
6 more last year, less two years, less three years,
7 less four years and as a gradual thing.

8 Maybe -- maybe Christine Murray is
9 different. Maybe she forgot it all after one year
10 and, and she -- there would be no difference in
11 2013, 2015. The point is we don't know.

12 The point is we don't know what
13 information Mr. Webster could have provided to us
14 about that incident in 2013 that he couldn't provide
15 in 2013. I don't know what the record keeping
16 situation is at the hospital, and so I don't know
17 the answer to that.

18 THE COURT: Okay.

19 MR. KEACH: I don't know who's come and
20 gone.

21 THE COURT: I had to ask because you're
22 asking for a very serious remedy and I just want to
23 make sure I've considered all aspects of this.

24 MR. KEACH: I appreciate that, Your
25 Honor.

1 THE COURT: Okay.

2 MR. KEACH: I want the court to
3 understand, more than anything our focus and always
4 has been that the hospital in 2 -- summer of 2008
5 knew. And whether they knew it because of the
6 Cagnina case where foreseeability was an issue or
7 whether they knew it because of the Doe case a year
8 later, the same foreseeability. And they knew and
9 they had a duty. And the firm had a duty to elicit
10 that information.

11 And so one of two things happened:
12 Either the firm attempted to elicit it and the
13 hospital did not provide it, which is what I'm going
14 to presume, because I don't think the firm would
15 have concealed it intentionally at that point, or
16 the firm intentionally concealed it, which I don't
17 really think that happened.

18 So what it just as likely is, nobody
19 asked a question. Because at least when, when the
20 facts were described as to what, what was told to
21 the lawyer, that information wasn't in there. Of
22 course, I don't know what conversations were had
23 with management because that's, that's really --

24 THE COURT: Okay.

25 MR. KEACH: So again, Your Honor, the

1 sanction primarily goes to the hospital because they
2 are the party that had a duty to disclose.

3 Secondarily, from at least 2013 the
4 Prangle firm for sure without, without doubt failed
5 to, failed to disclose Christine Murray's
6 information. And they had it and they had it at the
7 time when there was no protective order.

8 And even if the -- even once the
9 protective order was in place, they could have still
10 identified the witness and identified the general
11 nature of her testimony and then we could have taken
12 the laboring to try and find out well, somebody's
13 talking about prior incidents, we're gonna look into
14 it. We were never given that opportunity.

15 Lastly, Your Honor, and this doesn't
16 really go to any of those issues, but it goes to
17 address the point made by Mr. Prangle, and that's
18 this: Well, how do we know that plaintiff would
19 have done anything.

20 I've made a point to have Mr. Bemis
21 look at the initial disclosure of 14 witnesses that
22 Mr. Prangle suggests we didn't want to depose. They
23 don't go to the heart of the case, Your Honor. The
24 heart of this case is foreseeability. But what he
25 didn't -- did tell you is 30 or 40 depositions in a

1 case and tons and tons and the court got, you can
2 pull up Wiznet, there's no lack of motions, there's
3 no lack of supplements, there's -- there's no lack
4 of diligence on, on plaintiff's part in trying to
5 ferret out the real issue in the case which is what
6 did the hospital know, when did they know it. And
7 that's what's been concealed from us, Your Honor.

8 And when the court asked why should
9 the court impose such a serious sanctions case
10 terminating, I responded this way, Your Honor:
11 Suppose, Your Honor, the hospital is faced with a
12 multi-million dollar lawsuit, which it was in this
13 case, and your staff has information that goes
14 directly to the heart of the case, which it did in
15 this case. If you see -- if you conceal that
16 information, you can win the case, save yourself
17 millions of dollars. If you disclose the
18 information, you can lose the case, lose millions of
19 dollars.

20 So you think about it for a minute
21 and you ask what's the worst thing will happen if we
22 conceal it and the worst thing will happen if we get
23 caught. And your answer is we pay a fine. And so
24 suppose you figure well, we'll pay a big fine,
25 \$18,000, \$25,000, \$50,000, a hundred thousand

1 dollars.

2 Your Honor, that's pretty easy for
3 the hospital to do the math and realize that who
4 wouldn't risk 50 or a hundred thousand dollars to
5 save \$5,000,000. Because if the court only imposed
6 a monetary sanction, the gamble that the hospital
7 took won. For them it was worth the risk. Rich,
8 well-healed litigants cannot be allowed to gain the
9 system. And that's what's happened here.

10 There have been to checks and
11 balances. And those checks and balances are Rule
12 37, Your Honor.

13 THE COURT: So let me ask you another
14 question. Why would you go so far as to asking that
15 the court determine liability as a matter of law and
16 not just foreseeability and leave the other elements
17 for resolution by the jury? You know, independent
18 venture and the course of conduct -- or within the
19 scope of work.

20 MR. KEACH: Okay. Your Honor, I think
21 there's law that suggests that when the conduct is
22 not too egregious, an appropriate sanction is to
23 impose the least sanction that addresses, directly
24 addresses --

25 THE COURT: Uh-huh.

1 MR. KEACH: -- the harm that was caused.
2 We want to be candid with the court because we want
3 to earn our credibility. Okay. You earn trust
4 every day, just like I tell my kids.

5 The truth is what they concealed
6 goes directly to foreseeability. I don't see it as
7 much as the very task assigned or, or, or course and
8 scope, but -- because that's not what Christine
9 Murray was talking about and that's not what --
10 that's not what Margaret Wolfe and Ray Sumera were
11 talking about. What I see them talking about was
12 foreseeability.

13 And while I believe, Your Honor,
14 that the conduct by the hospital was so egregious
15 that the Answer should be stricken.

16 If the court does not believe that
17 at the outer limits, which is basically where you
18 need to be to strike the answer in terms of their
19 misconduct, then at the very least what should
20 happen is what they prevented us from doing we
21 should get. And that's foreseeability.

22 Now, I don't want that. I want the
23 answer to be stricken because I think it's
24 appropriate. But -- and their, and their -- the
25 court can impose liability as well. But the reality

1 is in this case foreseeability's really the issue.
2 That is the issue. And that's what they concealed.
3 And that's what, that's what -- that's what angers
4 us because they had the information from day one
5 that goes right to the heart of the case.

6 And we've been litigating for six
7 years nonstop because, because the record will show
8 that. And at the 11th hour we find out, oh, here's
9 the information you got, but too bad, everybody's
10 gone. Well, that's what happened.

11 And a fine doesn't rectify that,
12 Your Honor, and striking the answer does.

13 THE COURT: All right. Thank you for
14 your arguments, Mr. Keach.

15 MR. KEACH: Thank you, Your Honor.

16 THE COURT: All right. Mr. Prangle, we'd
17 love to hear from you, sir.

18 MR. PRANGLE: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. PRANGLE: There's one part of Mr.
21 Keach's closing statement that I agree with
22 wholeheartedly is that we earn credibility every
23 day.

24 And that's why I'm as mortified as I
25 am for --

1 THE COURT: By the way, I didn't tell you
2 when you apologized earlier, I appreciate you being
3 candid, apologizing to the court. Thank you for
4 that.

5 MR. PRANGLE: Because the key to this
6 business I believe is maintaining credibility. And
7 I'm just appalled that I did not check my sources
8 before I made that conclusion. So I apologize to
9 the court, I apologize to counsel.

10 But focusing on this issue, you may
11 recall that the reason why Commissioner Bulla issued
12 the sanction, she did a thousand dollars per year
13 times the three so \$18,000.

14 THE COURT: Right, right, right.

15 MR. PRANGLE: Is because she felt that
16 we, the attorneys, because we had met with Murray,
17 Wolfe and Sumera in 2008 in the RC case had
18 sufficient information that prompted us to disclose
19 under 16.1.

20 She did invite the court, however,
21 to have such a hearing to determine whether it
22 really was when we had this knowledge in '08, or was
23 it at a point later. And that if it was at a point
24 later, she invited the court to reduce the sanction.
25 And that's exactly what I'm asking the court to do.

1 But in Mr. Keach's closing, you
2 know, he focuses so much on the hospital. And I
3 believe the egregious conduct done by the hospital
4 that he wants to put the focus on would be Amy
5 Bochenek or Blasing, and Donna -- or nurse Butler,
6 the CNO. Ms. Bochenek was the director of emergency
7 services in 2008, and nurse Butler was the CNO in
8 2008.

9 When this lawsuit was filed in 2009,
10 both of them were no longer employees of Centennial
11 Hills. So anything in connection with this case
12 that would be from their conduct I believe would be,
13 would be unfair to hold Centennial Hills responsible
14 for the conduct of former employees.

15 But what did they say? I mean, it
16 is true, and a lot of people, this happens in every
17 case that I have, witnesses don't recall things.
18 And nurse Bochenek and nurse Butler testified they
19 don't recall exactly the details of what they did.
20 But what they both said, and I encourage Your Honor
21 to read their depositions, is that we didn't have
22 the sense that Mr. Farmer had done something
23 improper before and this is something we missed.

24 I don't recall if it was nurse
25 Butler or nurse Blasing who talked about she -- I

1 think it was Butler who recalled in speaking either
2 with Sumera or Wolfe that Sumera and Wolfe had had
3 the interaction. I believe it was after the Hannah
4 patient which was on the 15th or 16th, the day after
5 the Doe incident with the adjusting of the leads,
6 that was patient Hannah that was after Doe.

7 But I believe they were both clear
8 that they had no knowledge when they did their
9 interviews of the staff of Mr. Farmer having prior
10 bad acts. So that's just not there.

11 So I don't believe, even if we
12 consider their knowledge to be somehow imputable to
13 the corporation, even though they're no longer
14 employees, it doesn't rise to the level of
15 misconduct.

16 The reality, judge, is they rely on
17 me. The hospital relies on me to handle the
18 lawsuit. And with all due respect to Mr. Keach's
19 comments, this is on me. It's not on John. John
20 has a role as an attorney as well, but this is my
21 responsibility and this is my case.

22 So as I started with I believe this
23 morning to address Commissioner Bulla's concern, did
24 we have that information in 2008? And the answer to
25 that is simply no. I will -- and I believe Mr.

1 Keach even in his opening statement this morning
2 agreed that the touch stone or the key moment when
3 their participation became relevant was when we got
4 the statements. And I believe that's still true.
5 The police statements.

6 Early on in the RC case, efforts
7 were made to get the police file that included the
8 statements. We were rebuffed. We couldn't get
9 them. And that's why I don't believe, even though I
10 think it's nurse Wolfe said that, or nurse Murray
11 that Ms. Butler or Ms. Bochenek had the statement.
12 I don't know how that can be true. I just don't
13 know how that can be true.

14 The reality of the situation is that
15 we get Murray's statement in an audio file
16 apparently in February of 2013. So that's the first
17 point in time based on statements that I believe I
18 could be held to have done something with it.

19 And as John I think told you, we
20 were getting ready for the RC case at the time, he
21 didn't listen to the file. I mean, he didn't have
22 the speakers, but we didn't take efforts to open it.
23 I'm sure we could have if we wanted to, but we
24 didn't. I never listened to the tape.

25 But then three months later is when

1 the joint motion to compel is granted and
2 Commissioner Bulla makes a specific point to say but
3 you can only use this information in this case. So
4 whether it was May or February, certainly from
5 Commissioner Bulla's perspective this only -- can
6 only be used in the RC case now. And that's why she
7 entered the protective order.

8 So I will acknowledge, as I did this
9 morning and I believe correctly this morning, that
10 as to nurse Murray the first point that we had
11 knowledge that she had information that would be
12 relevant was what we got her statement in May of
13 2013. Back it up to February if you believe that I
14 was negligent or John was negligent not listening to
15 it, but we didn't listen to it.

16 And bear in mind that nurse Murray
17 was one of the nurses involved with RC, not Doe. It
18 just wasn't something that was important to us for
19 Doe. It was important for the RC case, but we
20 didn't open it at the time. We did get it in May.
21 And I -- as I've said, I believe at that point we
22 should have disclosed nurse Murray's name and we
23 didn't. I take full responsibility for that. It
24 wasn't -- we weren't trying to hide anything.

25 We -- I think Mr. Murdock or Mr.

1 Keach maybe misspoke or maybe I misunderstood what
2 he said. We did disclose Murray, Wolfe and Sumera
3 in the RC case. We did.

4 Nurse Murray gave a deposition in
5 the RC case. And as John testified, nurse Murray
6 was specifically asked, did you have any problems at
7 all in the past with Mr. Farmer. And she said, no.
8 She didn't volunteer the sitter incident in her
9 deposition. The first time that we get that
10 knowledge is when we get her statement and actually
11 read it sometime in May or later. I still don't
12 recall when I read that.

13 Turning now to nurse Wolfe --

14 THE COURT: Uh-huh.

15 MR. PRANGLE: -- I, I -- I'm gonna say it
16 again, I feel bad that I was just wrong. I will
17 tell you absolutely and categorically we did not
18 take nurse Wolfe's statement out of that file. We
19 didn't.

20 I believe when Your Honor sees --
21 and actually I think we have it. And I appreciate
22 where evidentially this may not be appropriate, but
23 we did get the 15th supplement that was filed by
24 plaintiff in the RC case that has the identical
25 documents that was Exhibit 29.

1 THE COURT: What? Filed or produced?
2 Does it have the file stamp on it? Was it served?
3 Sometimes these things --

4 MR. PRANGLE: I believe it was served.

5 THE COURT: Okay.

6 MR. PRANGLE: But this is from Will
7 Lemkul's firm. Point being is that he's independent
8 of us, gets the same documents in May of 2013.

9 THE COURT: May 2013.

10 MR. PRANGLE: Okay. And he, separate
11 from us, filed or produced them in the RC case. My
12 point is that when Your Honor looks at this, I
13 believe you'll be convinced that nurse Murray's --
14 or nurse Wolfe's statement is not contained with it.

15 We did not withhold nurse Wolfe's
16 statement. We did not take that out. If that were
17 true, report me to the Bar. Because that is
18 absolutely improper. And I, I -- I'm not gonna risk
19 my license over something like that, judge. We did
20 not have it.

21 I'll be honest with you. If -- as I
22 stand here now, I don't know when we got it. I
23 don't know from what source we got it. What I will
24 tell you is we didn't get it from the police.
25 Because the only thing that we got from the police

1 is what John told you about in February of 2013,
2 which didn't have Wolfe's statement in it, and it
3 didn't have at least an audio file titled Wolfe.

4 THE COURT: Well, you know, I've got to
5 be honest, what's concerning to me is being
6 sanctioned by the discovery commissioner. She
7 insists we have an evidentiary hearing. We come and
8 have an evidentiary hearing with thousands of pages.

9 One of the critical issues is why
10 did you delay in turning over the Wolfe statement.
11 And -- and no one from your firm apparently
12 researched when and how you got the Wolfe statement.
13 Is that -- that kind of troubles me why that wasn't
14 done.

15 MR. PRANGLE: I'm right there with you,
16 judge. I don't recall specifically how I came to
17 the belief that the Wolfe statement was in the May
18 2013 disclosure. I don't remember how I came to
19 that belief.

20 THE COURT: I mean, I'm assuming had you
21 known the truth that you found out today you would
22 have then found out when you actually received it.

23 MR. PRANGLE: I will tell you, judge, I
24 believe the truth is that we didn't get it until
25 much later to be honest. And it may have been even

1 in 2015. I just don't know know for sure.

2 What I can tell you, absolutely,
3 categorically we did not have it before 2015. The
4 earliest point that we would have gotten it is in
5 May of 2013 when we get the Metro file and it's not
6 in there. So what I --

7 THE COURT: Okay.

8 MR. PRANGLE: Well, here's what I would
9 suggest, because I share your concern, I'm
10 disappointed in myself beyond what I can tell you.
11 Let's assume that that's actually when I got it for
12 purposes of this discussion.

13 As I said this morning, when I get
14 it I would have an obligation to disclose nurse
15 Wolfe's name. But I was not in a position then to
16 disclose the statement because of the protective
17 order that Commissioner Bulla placed on it.

18 So all that I could have done, I
19 could have disclosed the name and I probably would
20 have characterized the disclosure the same way we
21 did those other 14, that we have relevant testimony
22 that will talk about the circumstances of their
23 involvement. Something like that. And then if Mr.
24 Murdock chose to take the deposition at that point,
25 we still wouldn't have the benefit of the statement

CASE NO.

**IN THE
SUPREME COURT OF NEVADA**

Electronically Filed
Aug 17 2016 08:53 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**HALL PRANGLE & SCHOONVELD, LLC, MICHAEL PRANGLE,
ESQ., KENNETH M. WEBSTER, ESQ. AND JOHN F. BEMIS, ESQ.**

Petitioners,

vs.

**EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,**

Respondent,

-and-

**MISTY PETERSON, AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF JANE DOE,**

Real Party in Interest

District Court Case No.: A-09-595780-C

**PETITIONERS' APPENDIX TO
PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME V of XVII**

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF

VOLUME V of XVII

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Plaintiff's Exhibit 10 – Public Defender's Office E-mails	XIV	61	PA2623-PA2757
Plaintiff's Exhibit 10a – Chronology of Public Defender's Office E-mails	XIV	62	PA2758-PA2790
Plaintiff's Exhibit 11 – Letter from Amy Feliciano to McBride, Bemis & Vogel dated January 31, 2013	XIV	63	PA2791
Plaintiff's Exhibit 12 – Notice of Entry of Order Re: Discovery Commissioner's Report and Recommendations dated May 6, 2013	XIV	64	PA2792-PA2804

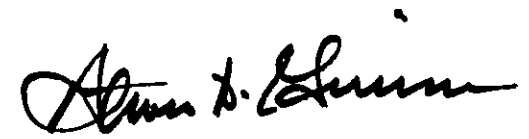
<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 13 – Christine Murray Voluntary Statement to Las Vegas Metropolitan Police Department dated June 13, 2008	XIV	65	PA2805-PA2820
Plaintiff's Exhibit 14 – Margaret Wolfe Voluntary Statement to Las Vegas Metropolitan Police Department dated May 30, 2008	XIV	66	PA2821-PA2834
Plaintiff's Exhibit 15 - Defendants Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Objection to Discovery Commissioner Report and Recommendation filed July 30, 2015	III	16	PA0566-PA0580
Plaintiff's Exhibit 16 – Defendant Valley Health Systems, LLC d/b/a Centennial Hills Hospital Medical Center's Motion for Protective Order filed June 19, 2013	XIV	67	PA2835-PA2850
Plaintiff's Exhibit 17 – Discovery Commissioner's Report and Recommendation filed September 4, 2013	XIV	68	PA2851-PA2856
Plaintiff's Exhibit 18 – 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 filed October 14, 2014	I	6	PA0099-PA0112
Plaintiff's Exhibit 19 – Petitioners Valley Health System, LLC, d/b/a Centennial Hills Medical Center's and Universal Health Services, Inc.'s Petition for Writ of Mandamus and/or Writ of Prohibition filed April 29, 2015	III	11	PA0363-PA0406
Plaintiff's Exhibit 20 – Rule 3.3 Candor Toward Tribunal	XIV	69	PA2857

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 21 – Recorder's Transcript of Proceedings – Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services filed August 4, 2015	IV	17	PA0581-PA0601
Plaintiff's Exhibit 22 – Deposition Transcript of Christine Murray dated January 8, 2015	XV	70	PA2858-PA2880
Plaintiff's Exhibit 23 – Deposition Transcript of Sajit Pullarkat dated August 7, 2015	XV	71	PA2881-PA2896
Plaintiff's Exhibit 24 – Deposition Transcript of PMK of Centennial Hills Hospital (Sajit Pullarkat) dated August 7, 2015	XV	72	PA2897-PA2908
Plaintiff's Exhibit 25 – Deposition Transcript of Janet Calliham dated August 18, 2015	XV	73	PA2909-PA2964
Plaintiff's Exhibit 26 – Deposition Transcript of Margaret Wolfe, RN dated May 5, 2015	XV	74	PA2965-PA2984
Plaintiff's Exhibit 27 – Defendant Valley Health System, LLC's Responses to Plaintiff's Eleventh Set of Interrogatories dated June 12, 2015	XV	75	PA2985-PA2989
Plaintiff's Exhibit 28 – Defendant Valley Health System, LLC's Responses to Plaintiff's Tenth Set of Interrogatories dated June 10, 2015	XV	76	PA2990-PA2993

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Exhibit 29 – Las Vegas Metropolitan Police Department's Criminal file of Steven Dale Farmer bates labeled LVMPD00001-LVMPD00190 with Privilege Log (Exhibit W to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center's Seventh Supplement to Its Initial Early Case Conference List of Witnesses and Documents dated October 27, 2014)	XVI	77	PA2994-PA3185
Plaintiff's Exhibit 30 – Excerpts of Deposition of Carol Butler dated June 9, 2015	XVII	78	PA3186-PA3201
Plaintiff's Exhibit 31 – Excerpts of Deposition of Renato Sumera, RN dated May 1, 2015	XVII	79	PA3202-PA3213
Plaintiff's Exhibit 32 – Excerpts of Deposition of Margaret Wolfe, RN dated May 5, 2015	XVII	80	PA3214-PA3221
Plaintiff's Exhibit 33 – Excerpts of Deposition of Amy Blasing, MSN, RN dated July 28, 2015	XVII	81	PA3222-PA3246
Plaintiff's Exhibit 34 – Excerpts of Deposition of Christine Murray, RN dated January 8, 2015	XVII	82	PA3247-PA3251
Plaintiff's Exhibit List from Vault	X	34	PA1864-PA1866
Plaintiff's Motion for NRCP 37 Sanctions Against Valley Health System LLC, d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, LLC filed April 29, 2015	III	12	PA0407-PA0468
Plaintiff's Motion for Summary Judgment Re: Liability filed September 29, 2014	I	4	PA0022-PA0093

<u>Document Title:</u>	<u>Volume No.:</u>	<u>Tab No.:</u>	<u>Page Nos.:</u>
Plaintiff's Opposition to Defendant's Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motion for Reconsideration of this Court's November 4, 2015 Order filed December 2, 2015	IX	26	PA1590-PA1821
Reply in Support of Motion for Reconsideration filed December 4, 2015	X	28	PA1825-PA1838
Reply to Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for NRCP 37 Sanctions filed May 21, 2015	III	15	PA0490-PA0565
Reply to Defendants' Oppositions to Plaintiff's Motion for Summary Judgment Re: Liability filed November 21, 2014	II	8	PA0117-PA0343
Reporter's Transcript of Evidentiary Hearing and Motions held on August 28, 2015	VI & VII	22	PA0949-PA1175
Stipulation and Order for Dismissal with Prejudice filed February 29, 2016	X	31	PA1848-PA1853
Transcript of Proceedings – Defendant Valley Health System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health Services, Inc.'s Motion for Reconsideration of this Court's November 4, 2015 Order	XVII	83	PA3252-PA3305

TAB 21



CLERK OF THE COURT

MURDOCK & ASSOCIATES, CHTD.
ECKLEY M. KEACH, CHTD.
Robert E. Murdock, Esq.
Nevada Bar No. 4013
Eckley M. Keach, Esq.
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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

**EVIDENTIARY HEARING BRIEF
IN SUPPORT OF THE STRIKING
OF DEFENDANT CENTENNIAL
HILLS HOSPITAL'S ANSWER
TO PLAINTIFF'S AMENDED
COMPLAINT AND
AFFIRMATIVE DEFENSES**

DATE:
TIME:

I. INTRODUCTION

This case has been going on since 2009. It has had numerous twists and turns, stays and starts. Between discovery and pleadings, this case has kept all counsel busy. But, the Motion for Sanctions, which was heard by the Discovery Commissioner, and resulted in \$18,000 worth of sanctions and an evidentiary hearing to determine whether Centennial's answer should be struck, is different. Centennial has blatantly and flagrantly ignored the rules in this case in an effort to prevent Plaintiff from discovering information that goes to the heart of foreseeability. Their

1 actions succeeded because witnesses now don't recall various events. If a young lawyer learned
2 how to litigate a case using Centennial as its mentor, the Bar would be in scary shape. Centennial
3 has some of the best lawyers, not only in Nevada, but in the Country. They are smart and they
4 win. But, it's *how* they win that has now come into question. Here we are not just talking about
5 Centennial as a party and what they did; it's also about what Hall Prangle—their legal counsel—
6 has done. And their actions were not negligent; they were intentional.

8 For Plaintiff, the upcoming hearing will be presented primarily from deposition testimony,
9 and perhaps one or two live witnesses. Most of the briefing has already been presented to the
10 Discovery Commissioner, and Plaintiff hereby incorporates by reference the written and oral
11 arguments below. So, this Brief will be rather short and to the point.

13 The sanctions at issue from the Discovery Commissioner focused on Centennial's failure
14 to identify three witnesses and two LVMPD statements. The witnesses and the documents were
15 required to be produced under NRCP 16.1; this obligation was mandatory—not discretionary.

17 **A. The Law That Governs This Hearing**

18 As this Court well knows, NRCP 16.1(a)(1) governs initial disclosures:

19 (a) Required Disclosures.

20 (1) Initial Disclosures. Except in proceedings exempted or to the
21 extent otherwise stipulated or directed by order, a party must, without
awaiting a discovery request, provide to other parties:

22 (A) The name and, if known, the address and telephone number of
23 each individual likely to have information discoverable under Rule 26(b),
including for impeachment or rebuttal, identifying the subjects of the
information;

24 (B) A copy of, or a description by category and location of, all
25 documents, data compilations, and tangible things that are in the
26 possession, custody, or control of the party and which are discoverable
under Rule 26(b)...

27 Rule 16.1 also makes clear: "A party must make its initial disclosures based on the information
28 then reasonably available to it and is not excused from making its disclosures because it has not

1 fully completed its investigation of the case or because it challenges the sufficiency of another
2 party's disclosures or because another party has not made its disclosures." NRCp 16.1(a). Rule
3 37(a)(2) specifically authorizes sanctions for failure to disclose documents and witnesses per
4 NRCp Rule 16.1. Rule 37(c)(1) specifically authorizes the Court to impose any of the sanctions
5 available per NRCp Rule 37(b)(2)(A), (B), and (C) — which includes striking pleadings.
6

7 **B. Nevada Is Not A Progressive Sanctions State:**

8 "Nevada jurisprudence does not follow the federal model of requiring progressive
9 sanctions against a party for failing to comply with a discovery order." **Bahena v. Goodyear**
10 **Tire & Rubber Co.**, 245 P.3d 1182, 1184 (Nev. 2010). The evidentiary hearing should look at
11 the following factors:
12

13 "The factors a court may properly consider include, but are not limited to, the
14 degree of willfulness of the offending party, the extent to which the non-offending
15 party would be prejudiced by a lesser sanction, the severity of the sanction of
16 dismissal relative to the severity of the discovery abuse, whether any evidence has
17 been irreparably lost, the feasibility and fairness of alternative, less severe
18 sanctions, such as an order deeming facts relating to improperly withheld or
19 destroyed evidence to be admitted by the offending party, the policy favoring
adjudication on the merits, whether sanctions unfairly operate to penalize a party
for the misconduct of his or her attorney, and the need to deter both the parties
and future litigants from similar abuses."

20 **Young v. Johnny Ribeiro Bldg.**, 106 Nev. 88, 93 (Nev. 1990). The sanctions cases make clear
21 that if case concluding sanctions are at issue, the Court should have an evidentiary hearing.

22 **C. Three Essential Witnesses and Two LVMPD Statements Were Not Produced**

23 The start of this case is actually began with another incident at Centennial involving
24 another patient and Farmer. RC was a patient at Centennial and alleged that she was sexually
25 assaulted by Steven Farmer on May 16, 2008. See Centennial Incident Report. As the story
26 became public, other women began to come forward with their allegations regarding Farmer. One
27 of those women was Plaintiff.
28

1 On the day of the RC assault, a meeting was had at Centennial where all of the “C-Suite”
2 (the Centennial CEO, the CFO, the COO, the CNO, the Risk Manager, and perhaps others) were
3 present and counsel was on the telephone. Depo of CEO Sajit Pullarkat at 35-36, Depo of
4 Calliham at 16, 20-21. No notes supposedly exist from that meeting. Pullarkat at 39. However,
5 the Risk Manager just recently testified (August 18, 2015) that indeed her notes do exist—yet
6 Centennial refuses to produce them (this will be the subject of another Motion to Compel).
7 Calliham Depo at 15-20.¹ The point is, everyone had their marching orders. Pullarkat at 27. After
8 that meeting, at some point in time between May 16 and August 1, 2008, Centennial met with staff
9 regarding Farmer. No Administration member can remember the exact date of the meetings with
10 staff nor do they recall if they took notes. Butler Depo at 76; Blasing Depo at 30-32.

13 Nevertheless, some of the staff had given (or were going to give) statements to the
14 LVMPD. On June 13, 2008, Christine Murray, a Registered Nurse at Centennial who had worked
15 with Farmer gave a recorded statement to the LVMPD. She not only told the LVMPD about
16 Farmer, about RC, about how Farmer would always ask if he could help with heart leads (where
17 he would have to lift the female patient’s breast), and that he was “more helpful” to female
18 patients, but she also told the LVMPD about an incident with Farmer a few months prior to the RC
19 incident when Farmer was a Sitter for an elderly woman. The lights were off; the door was
20 closed; and Nurse Murray heard yelling coming from the room, “Get outta here! I don’t want you
21 by me!” She thought it was just the “crazy old lady” and “they didn’t put any credence into what
22 she was saying.” Murray LVMPD Statement at LVMPD00180-181.

25 At some point in time, Nurse Murray met with the Chief of Nursing who had read
26 Murray’s statement to the LVMPD, and the Chief of Nursing knew what she had told the police:

27 _____
28 ¹ Mr. Prangle has yet to forward the notes despite Ms. Calliham using the notes to prepare for her deposition and
testifying as to what the notes said. He has not even had the courtesy to respond to an August 19, 2015 LR 2.34 email
regarding the notes making clear that they were also requested in written discovery. See Murdock/Prangle Email
Dated August 19, 2015. Exhibit “1”.

1 Q: But the director of nursing called you down after she read the statement, is
2 that correct?

3 A: Yes. She talked to all of us.

4 Q: What do you mean, she talked to all of you?

5 A: She talked to all the nurses that were involved in this.

6 Q: Did you go through the statement with her?

7 A: She asked me what happened. I told her what I knew. We didn't pick this
8 up and go through it line by line like we are now, but she knew what was -
9 - I mean she had read it.

10 Murray Depo at 61. However, Ms. Murray does not recall if she specifically discussed the sitter
11 incident. Id. The Chief of Nursing does not recall the specific meeting but may have met with
12 her. Butler Depo at 92.

13 Nurse Ray Sumera met with Centennial staff but he does not remember when, who was
14 there, what they discussed, or even where the meeting was. But, he does recall that a lawyer was
15 there. Sumera Depo at 31-37. (Sumera thought that it was Mr. Bemis, but Mr. Bemis was not with
16 Hall Prangle yet and all parties believe that it was Dave Ferrainolo, an associate at Hall Prangle).
17 Nevertheless, when asked about the statement Sumera gave during the meeting, Centennial's
18 counsel (Mr. Bemis) instructed him not to answer on grounds of privilege. Id; and, Id at 41-42.

19 Nurse Margaret Wolfe gave a statement to Metro on May 30, 2008. This Court well
20 knows what she alleged in the statement regarding what Nurse Sumera told her weeks before the
21 sexual assault of RC about Farmer being overly attentive to female patients and wanting to place
22 heart leads where he would have to open their shirt. Wolfe LVMPD Statement at 8.

23 She also met with Centennial Administration (Amy Bochenek) at some point. She does
24 not recall when or the exact details of the discussion. Wolfe Depo at 41-42. CNO Butler does not
25 recall specifically meeting with Wolfe but **became aware of Wolfe's Metro Statement at some**
26 **point before August 1, 2008.** Butler Depo at 114. The Head of the Emergency Room, Amy
27 Blasing (aka Bochenek) testified that she did not recall the specifics of Nurse Wolfe's allegations,
28 but she was aware that Nurse Wolfe was alleging something about Farmer, and that while Sumera

1 and Wolfe disagreed about the details of certain events relating to Farmer's misconduct, she never
2 investigated the issue to determine which story was correct. Blasing Depo at 33-43. However, the
3 point for this Hearing is that Nurse Blasing was well aware of Wolfe and Sumera's involvement in
4 this case as it relates to allegations of misconduct by Farmer—she just doesn't remember the
5 details, nor did she attempt to get to the bottom of this. **But, she was aware of the issues before**
6 **August 1, 2008.** Blasing Depo at 99-103. Ms. Blasing testified that she and Carol Butler met
7 with Nurses Wolfe, Sumera, Goodheart and others shortly after the incident but in any event,
8 before August 2008. Id at 28-33.
9

10 Fast forward to 2009. On July 23, 2009, Plaintiff filed her lawsuit. The allegations were
11 based on respondeat superior and negligence and specifically alleged that the actions of Farmer
12 were foreseeable. See Par 19 of Amended Complaint. **Centennial's 16.1 did not identify**
13 **Murray, Wolfe, or Sumera.** See CH Initial 16.1 at 2-4. To this date, August 26, 2015,
14 Centennial has yet to specifically identify Nurse Murray, Nurse Wolfe, and/or Nurse Sumera.
15

16 On January 29, 2014, Plaintiff identified various witnesses and documents via 16.1
17 (including Wolfe and Murray). These came directly from the last witness list that the State had
18 filed in the criminal case (See State's Eighth Supplemental Witness List). However, Plaintiff had
19 NO IDEA what these people would actually testify to and that is why their identification is a direct
20 copy from the State's witness list. See Affidavit of Murdock and Compare State's Witness List.
21 (On March 2, 2010, Plaintiff identified numerous documents from the Wiznet Criminal filings and
22 the other women who were alleging sexual assault against Farmer. These updates from the
23 criminal filings continued.)²
24
25
26

27
28 ² Centennial argues in its Objection that Plaintiff disclosed Murray and Wolfe in March of 2010, and May of 2010 for Sumera. Regarding Murray and Wolfe, Plaintiff did not identify them. They were merely named in documents listed. Regarding Sumera, his name did come up in a deposition in the RC case. However, without the Wolfe LVMPD Statement, Sumera would be meaningless to Plaintiff.

1 Because of various issues in the criminal case, it had become apparent that civil defense
2 counsel for the hospital, ANS, and Farmer had been helping Mr. Farmer's criminal case.
3 According to one of the criminal Motions for Continuance, civil counsel gave the PD's Office
4 depositions from the civil case. See Court Minutes from Farmer's Motion to Continue (Criminal
5 Case) dated February 25, 2013 ("Deft. present in custody Counsel met with Court in chambers
6 regarding motion to continue and depositions and discovery given to counsel from civil action.")³
7 So Plaintiff began to get suspicious about what was going on. This resulted in a deposition notice
8 to Mr. Bemis. However, the Discovery Commissioner quashed that subpoena because she did not
9 want counsel deposed. See Report and Recommendation dated September 4, 2013. Exhibit "2".
10

11 Before then, however, Plaintiff sent a FOIA Request to the Public Defender's Office.
12 And that is when things began to shake out. In August of 2014, from the FOIA request, Plaintiff
13 received emails between the Public Defender's Office and civil defense counsel for Farmer, ANS,
14 and Centennial. These made clear that Mr. Bemis had not only met with the PD but documents
15 were shared (including medical records). PD00055-58, 00075-81. Mr. Bemis had requested
16 certain records from the PD in January of 2013. And, the criminal documents were going to be
17 provided by the PD to Mr. Bemis etc. in January, 2013. Id.
18

19 Then, in response to a subpoena to the PD's Office asking for the specific documents she
20 provided to civil counsel, the PD affirmed that she did not make a list of what she provided but
21 she was producing certain documents that she thought were provided. See Affidavit of Feliciano.
22 However, along with various records from the criminal discovery, she produced a letter from the
23 PD's Office to Mr. Bemis and other defense counsel and thanked them for being "consultants" to
24 the PD's Office and provided the requested records. See Exhibit "3". Also included was the
25
26
27
28

³ In his criminal appeal, Mr. Farmer states that "In early 2013, defense counsel obtained thirty (30) additional deposition transcripts from RC's and MP[Jane Doe] civil lawsuits..." Farmer Opening Brief at 42.

1 LVMPD Statement of Christine Murray. See Exhibit “4”. And, Christine Murray (as this Court
2 will recall) was the nurse who discussed the Farmer “sitter” issue.

3 Nevertheless, *at around this time*, Plaintiff filed a Motion for Summary Judgment. In its
4 Opposition, Centennial stated “In the instant situation, there were absolutely no known prior acts
5 by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a
6 patient.” CH Opp. to MSJ at 9 (As we will explain, this was **false**.)

7
8 Because of the fact that Ms. Feliciano could not be sure that these were the exact
9 documents provided, Plaintiff moved to compel the production of documents. Per an Agreement
10 between Phil Kohn and Plaintiff’s counsel, the PD provided a copy of the State’s Discovery
11 because that included all of the reports from the police (which Mr. Bemis specifically wanted).
12 Upon reviewing the discovery, Plaintiff’s counsel was shocked. A nurse by the name of Margaret
13 Wolfe had alleged in a statement to the LVMPD that, weeks before the RC assault, another nurse
14 had told her to watch out for Farmer because he was “very overly attentive” to female patients etc.
15 At the very least, that “potentially put Centennial on notice.” Mr. Bemis had to know about the
16 Margaret Wolfe Statement when he received the police records and statements.

17
18 Centennial asserts it did not have the statements until May of 2013. Objection at 3-4.
19 **They certainly had the names and knew they were 16.1 required identifications as of August**
20 **1, 2008, and of course when the 16.1 was had in this case in November 2009.** And, tellingly,
21 Centennial admits that in May of 2013, they knew that those statements would impact Plaintiff’s
22 case. Id at 7. (“Upon obtaining a copy of Mr. Farmer’s file, the Hospital Defendants learned for
23 the first time that Nurses Murray, Wolfe and Sumera had information that could be relevant to
24 Plaintiff’s claims”). **Yet, no production of the documents or names.**

25
26 Oddly, Centennial alleges that they didn’t produce the Reports (or names) because of a
27 Protective Order in the RC case. Objection at 7. First, the names were known in August of 2008,
28

1 and were certainly known in 2009, at the initial 16.1 and there was no identification. There was
2 no Privilege Log or any indication that there was something “out there” that, as Centennial
3 concedes could be relevant to Plaintiff’s case.”

4 Now in terms of misleading look at the timing again. Rule 3.3 of the Nevada Rules of
5 Professional Conduct states “(a) A lawyer shall not knowingly: (1) Make a false statement of
6 fact or law to a tribunal or fail to correct a false statement of material fact or law previously made
7 to the tribunal by the lawyer.” Giving Centennial every benefit of the doubt, **at the very least, as**
8 **of May of 2013, Centennial had the Wolfe and Murray LVMPD Statements, knew that**
9 **Nurse Murray discussed a sitter situation with Farmer and Nurse Wolfe discussed what**
10 **Nurse Sumera told her, and they knew it “could be relevant” to Plaintiff’s case. Still,**
11 **Centennial and its counsel told this Court in October of 2014, a minimum of eighteen (18) months**
12 **after admitting they had the criminal file with the names and statements, that “In the instant**
13 **situation, there were absolutely no known prior acts by Mr. Farmer that could potentially put**
14 **Centennial on notice that Mr. Farmer would assault a patient.” CH. Opp. to MSJ at 9. That was**
15 **simply untrue.** Then, to make matters worse, Centennial filed a Writ in **May 2015** with the
16 Nevada Supreme Court and made the same statement: Centennial “urged that there were no known
17 prior acts or any other circumstances that could have put Centennial on notice that Farmer would
18 sexually assault Ms. Doe.” Writ at 14-15. **That was simply untrue.**

19 Centennial concedes that it knew the witnesses and documents could be relevant to
20 Plaintiff’s case. So, telling this Court and the Nevada Supreme Court that Centennial had no
21 knowledge about any issues with Farmer, was misleading. And, intentionally so.

22 The impact on this case is memory loss. Centennial doesn’t remember much. See Butler
23 at 75-76, Blasing at 32-35. Centennial cannot even determine when the “sitter” incident occurred
24 with Nurse Murray. (Attorney Ken Webster will confirm this). And, as this Court knows, Nurse

1 Sumera recalls nothing. This is the same as intentional destruction of evidence except by their
2 actions, Centennial destroyed memories. There is no difference. The evidence is lost and it is all
3 due to the intentional conduct of Centennial.

4 This Court should strike the answer, all affirmative defenses, and allow Plaintiff to prove
5 up damages. This Court must impose a harsh penalty for the conduct of Centennial and its
6 counsel. This Court cannot allow Centennial to win by hiding and destroying evidence. And a
7 fine of \$500, \$5,000, or even \$50,000 would be a cheap price to pay compared to the millions in
8 damages that could be recovered by Plaintiff. If this Court allows Centennial to game the system
9 and only pay a fine, then all litigants will follow in the course of Centennial.

10 In the alternative, this Court could strike the answer and all affirmative defense, but allow
11 Centennial to argue damages. This would be reasonable because the damages portion would not
12 be affected by Centennial's conduct.

13 In addition, and Plaintiff does not say this lightly, because Counsel in this matter aided and
14 abetted the conduct of Centennial (the Court will recall that Hall Prangle has been involved with
15 this matter since day one), this Court should remove them as counsel and refer the matter to the
16 State Bar of Nevada for a full investigation of these allegations.

17 Dated this 26th day of August, 2015.

18 Respectfully Submitted,

19 MURDOCK & ASSOCIATES, CHTD.
20 ECKLEY M. KEACH, CHTD.

21 /s/ Robert E. Murdock
22 Robert E. Murdock Bar No. 4013
23 Eckley M. Keach Bar No. 1154
24 521 South Third Street
25 Las Vegas, NV 89101
26 Attorneys for Plaintiff
27
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STATE OF NEVADA)
COUNTY OF CLARK) ss.

ROBERT E. MURDOCK, declares:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.
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 email from Robert Murdock to Michael Prangle, dated August 19, 2015.
4. Attached hereto as Exhibit 2 is a true and correct copy of Discovery Commissioner's Report and Recommendation, dated September 4, 2013.
5. Attached hereto as Exhibit 3 is a true and correct copy of correspondence from Amy A. Feliciano to Robert McBride, John F. Bemis, and S. Brent Vogel, dated January 31, 2013.
6. Attached hereto as Exhibit 4 is a true and correct copy of Christine Murray's LVMPD statement, dated June 13, 2008.
7. Attached hereto as Exhibit 5 is a true and correct copy of Centennial Hills Incident Report, dated, May 16, 2008..
8. Attached hereto as Exhibit 6 is a true and correct copy of the relevant pages of Person Most Knowledgeable of Centennial Hills Hospital Sajit Pullarkat's Deposition, dated August 7, 2015.
9. Attached hereto as Exhibit 7 is a true and correct copy of the relevant pages of Janet Calliham's Deposition, dated August 18, 2015.
10. Attached hereto as Exhibit 8 is a true and correct copy of the relevant pages of Carol Butler's Deposition, dated June 19, 2015.
11. Attached hereto as Exhibit 9 is a true and correct copy of the relevant pages of Amy Blasing's Deposition, dated July 28, 2015.
12. Attached hereto as Exhibit 10 is a true and correct copy of the relevant pages of Christine Murray's Deposition, dated January 8, 2015.

- 1 13. Attached hereto as Exhibit 11 is a true and correct copy of the relevant pages of Renato
2 Sumera's Deposition, dated May 1, 2015.
- 3 14. Attached hereto as Exhibit 12 is a true and correct copy of Margaret Wolf's LVMPD
4 statement, dated May 30, 2008.
- 5 15. Attached hereto as Exhibit 13 is a true and correct copy of the relevant pages of Margaret
6 Wolfe's Deposition, dated May 5, 2015.
- 7 16. Attached hereto as Exhibit 14 is a true and correct copy of Plaintiff's Amended Complaint,
8 dated August 21, 2009.
- 9 17. Attached hereto as Exhibit 15 is a true and correct copy of Defendant Centennial Hills
10 Hospital and Universal Health Services, Inc.'s Initial Early Case Conference List of
11 Witnesses and Documents, dated November 24, 2009.
- 12 18. Attached hereto as Exhibit 16 is a true and correct copy of Eighth Supplemental Notice of
13 Witnesses and/or Expert Witnesses, dated January 27, 2014.
- 14 19. Attached hereto as Exhibit 17 is a true and correct copy of Robert E. Murdock's Affidavit,
15 dated August 26, 2015.
- 16 20. Attached hereto as Exhibit 18 is a true and correct copy of Court Minutes from Farmer's
17 Motion to Continue, dated February 25, 2013.
- 18 21. Attached hereto as Exhibit 19 is a true and correct copy of the relevant pages of Steven
19 Dale Famer's Opening Brief to Nevada Supreme Court, dated June 12, 2015.
- 20 22. Attached hereto as Exhibit 20 is a true and correct copy of PD00055-58; PD00075-81.
- 21 23. Attached hereto as Exhibit 21 is a true and correct copy of Amy A. Feliciano's
22 Declaration, dated November 17, 2014.
- 23 24. Attached hereto as Exhibit 22 is a true and correct copy of Defendants Centennial Hills
24 Hospital and Universal Health Services, Inc.'s Opposition to Plaintiff's Motion for
25 Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited
26 Opposition, dated October 14, 2014.
- 27 25. Attached hereto as Exhibit 23 is a true and correct copy of Defendant Valley Health
28 System LLC d/b/a Centennial Hills Hospital Medical Center and Universal Health

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Services, Inc.'s Objection to Discovery Commissioner Report and Recommendation, dated July 30, 2015.

26. Attached hereto as Exhibit 24 is a true and correct copy of Petitioners Valley Health System, LLC, d/b/a Centennial Hills Medical Center's and Universal Health Services, Inc.'s Petition for Writ of Mandamus and/or Writ of Prohibition, dated April 29, 2015.
FURTHER YOUR DECLARANT SAYETH NAUGHT.

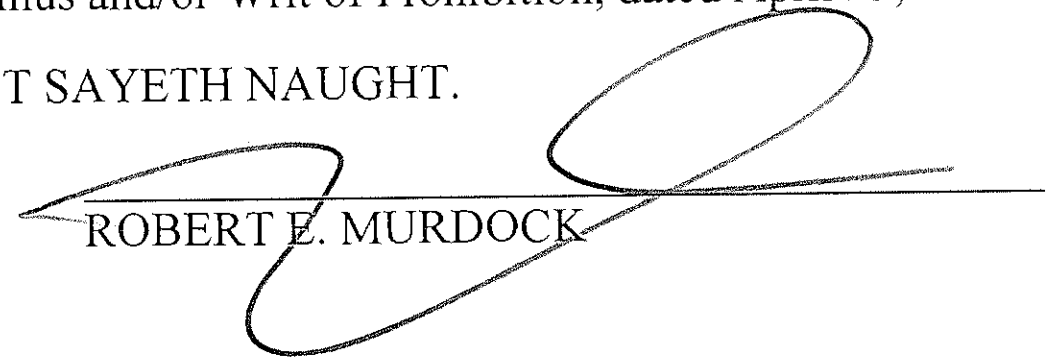
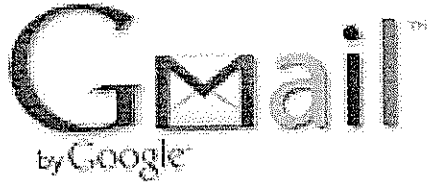

ROBERT E. MURDOCK

EXHIBIT “1”

EXHIBIT “1”



Tiffany Dube <tdube@keachmurdock.com>

Valley rsps to RFP 22.pdf

1 message

Robert Murdock <lasvegasjustice@aol.com>

Wed, Aug 19, 2015 at 9:46 AM

To: Mike Prangle <mprangle@hpslaw.com>, John Bemis <jbemis@hpslaw.com>, Ken Webster <kwebster@hpslaw.com>

Cc: Tiffany Dube <tdube@keachmurdock.com>

Mike, this is regarding the Calliham notes. I sent a Specific request for the notes. You objected via privilege. There was obviously no privilege based on her testimony. And, if there was, you allowed her to testify as to what the notes said. Therefore you waived the privilege.

Demand is hereby made that you produce the notes immediately. And, produce her again for a continued depo on the notes. This email is written per LR 2.34.

Robert E. Murdock, Esq
Murdock & Associates Chtd.
521 South Third St.
Las Vegas, Nevada. 89101
702-685-6111 office
702-685-6222 fax
702-497-7560 cell

Sent from my iPhone
Please excuse any spelling errors

**Valley rsps to RFP 22.pdf**

159K

EXHIBIT “2”

EXHIBIT “2”

HALL PRANGLE & SCHOONVELD, LLC

1160 NORTH TOWN CENTER DRIVE

SUITE 200

LAS VEGAS, NEVADA 89144

TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

DCRR

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

KENNETH M. WEBSTER, ESQ.

Nevada Bar No. 7205

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

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mprangle@hpslaw.com

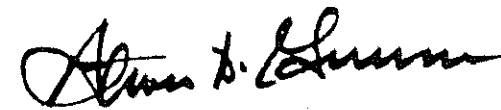
kwebster@hpslaw.com

jbemis@hpslaw.com

Attorneys for Defendant

Centennial Hills Hospital

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09/04/2013 10:46:15 AM



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

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

Defendants.

CASE NO. A595780
DEPT NO. II

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

DATE OF HEARING: 7/24/13
TIME OF HEARING: 9:00 a.m.

APPEARANCES:

Plaintiff: Robert Murdock, Esq.
MURDOCK & ASSOCIATES

Defendant: Kenneth Webster, Esq.
Centennial Hills Hospital HALL PRANGLE & SCHOONVELD, LLC

Defendant: Amanda Brookhyser, Esq.
American Nursing Services, Inc. LEWIS BRISBOIS BISGAARD & SMITH

Defendant: Robert McBride, Esq.
Steven Dale Farmer MANDELBAUM, ELLERTON & MCBRIDE

I.

FINDINGS

This matter having come on for hearing before the Honorable Discovery Commissioner, Bonnie Bulla on Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital's Motion for Protective Order to prohibit Plaintiff from deposing defense counsel, John Bemis, Esq.

The Honorable Discovery Commissioner finds the applicable test for this question is found in *Club Vista Financial Services, LLC v. Eighth Judicial District Court*, 276 P.3d 246, 247-248 (Nev. 2012). The three-factor test which the party seeking the deposition must demonstrate requires:

"(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case."

The Honorable Discovery Commissioner finds Plaintiff does not meet her burden of proof regarding the *Club Vista* factors. First, other means are available to obtain the information regarding how many times and on what dates Hospital counsel met with or spoke to defendant

Farmer's criminal counsel, including an affidavit or declaration. Second, the information regarding the number and timing of conversations between Hospital counsel and defendant Farmer's criminal counsel is not relevant to the current litigation and is not reasonably calculated to lead to the discovery of admissible evidence. The information could potentially be privileged as work product, but the fact remains that it is still not relevant. Finally, the information sought is not crucial to the preparation of the case by Plaintiff's counsel in the civil case.

II.

RECOMMENDATIONS

Based upon the findings above, the Honorable Discovery Commissioner recommends the following:

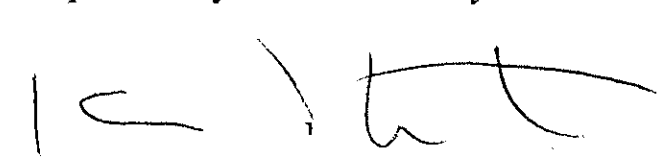
1. Defendant's Motion for Protective is GRANTED.

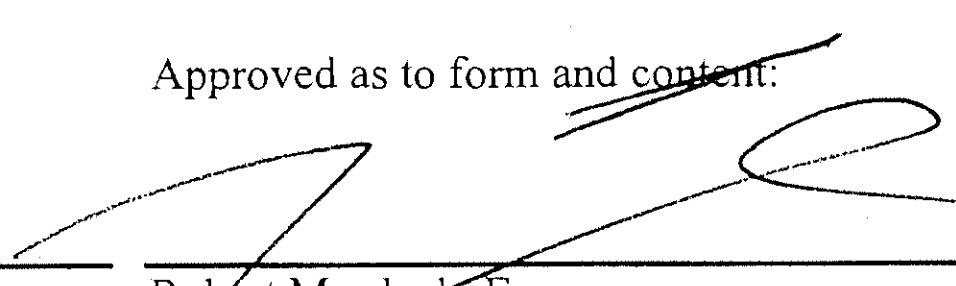
DATED this 5 day of August, 2013.


DISCOVERY COMMISSIONER

Respectfully submitted by:

Approved as to form and content:


Kenneth M. Webster, Esq.
Nevada Bar No. 7205
Hall Prangle & Schoonveld, LLC
1160 N. Town Center Dr., Ste. 200
Las Vegas, NV 89144
Attorneys for Defendant
Centennial Hills Hospital


Robert Murdock, Esq.
Murdock & Associates
520 South Fourth Street
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Attorney for Plaintiff

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1160 NORTH TOWN CENTER DRIVE

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LAS VEGAS, NEVADA 89144

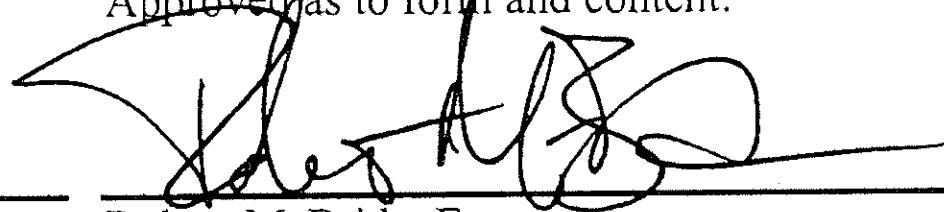
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Approved as to form and content:



Amanda Brookhyser, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Blvd., Suite 600
Las Vegas, NV 89118
Attorney for Defendant
American Nursing Services, Inc.

Approved as to form and content:



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

HALL PRANGLE & SCHOONVELD, LLC
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Doe v. Valley Health System, LLC et al.
District Court Case No. A595780

NOTICE

Pursuant to NRCP 16.1 (d) (2), you are hereby notified you have five (5) days from the date you received this document within to file written objections.

Pursuant to E.D.C.R. 2.34(f) and objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(F).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiffs/Defendant at the following address on this _____ day of _____, 2013.

✓ _____ Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 6 day of August, 2013.

STEVEN D. GRIERSON

By: Natilee Fehs *her*
DEPUTY CLERK

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

The parties having waived the right to object thereto,

No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34 (f).

Having received objections thereto and the written argument in support of said
objections, and good cause appearing.

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations is affirmed and adopted,

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's
Report is set for _____, 2013, at _____:_____ a.m.

DATED this 19th day of August, 2013.


DISTRICT JUDGE

EXHIBIT “3”

EXHIBIT “3”



Office of the Public Defender

309 So. Third St. • Second Floor • PO Box 552610 • Las Vegas NV 89155-2610

(702) 455-4685 • Fax (702) 455-5112

Philip J. Kohn, Public Defender • Daren 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

/aaf
Enclosure(s)

EXHIBIT “4”

EXHIBIT “4”

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

CONFIDENTIAL

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

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

DOB:		SOCIAL SECURITY #:	
RACE:		SEX:	Female
HEIGHT:		WEIGHT:	
HAIR:		EYES:	
WORK SCHEDULE:		DAYS OFF:	
HOME ADDRESS:	3350 N. Durango #1120 Las Vegas, Nevada 89149	HOME PHONE:	734-624-2755
WORK ADDRESS:		WORK PHONE:	

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, 04/20/1950, a address of 3350 North Durango Drive #1, 120 Las Vegas, Nevada 89129. She has a contact phone number of 734- a 624-2755. 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

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

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

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

CONFIDENTIAL

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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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

CONFIDENTIAL

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7**

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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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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, it=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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 9

CONFIDENTIAL

EVENT #:080516-1021

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 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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT #:080516-1021

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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 11

CONFIDENTIAL

EVENT #:080516-1021

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

CONFIDENTIAL

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 12

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

CONFIDENTIAL

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 13

EVENT #:080516-1021

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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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CONFIDENTIAL

EVENT #:080516-1021

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

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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CONFIDENTIAL

EVENT #.080516-1021

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

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

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CONFIDENTIAL

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 13th of June, 2008. Same people present, same location. Thank
you.

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

MS:sl

LVMPD0182

EXHIBIT “5”

EXHIBIT “5”

Incident Report

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
400 E STEWART
LAS VEGAS, NEVADA 89101
(702) 828-3111

Incident Number: LLV080516001021

Incident Summary

Incident Type: CRIMINAL INCIDENT
Inc Occurred Address: 6900 N DURANGO DR CENTENNIAL HILLS HOS LAS VEGAS, NV
Inc Occurred Start: 05/16/2008 03:00 Inc Occurred End: 05/16/2008 05:00
Domestic: N Bias Motivation: NO Gang Related: N Substance: U
Contact Nature: Reported Date/Time: 05/16/2008 09:40
Reporting Officer: CASPER, M 6549 Primary Assigned Officer: SAUNDERS, M
Case Status: Disposition: Disposition: 05/16/2008 00:00

Offenses

Statute Code: SEXA200.366A
Statute Desc: SEXUAL ASSAULT
Counts: 1 Statute Severity: FELONY

Enhancers:

Persons Involved

Person#: 0001 MNI: 3082374 Can ID Suspect: Yes

Event Association: VICTIM

Name: [REDACTED]

Contact

DOB: 07/06/1973

Age: 34

SEX: FEMALE

Race: WHITE/CAUCASIAN

Height: 5'3" - 5'3"

Weight: 150 - 160 lbs

Eye Color: EL

Hair Color: RED

Address: [REDACTED]

Sector/Beat:

Phone Type 1: RESIDENCE

Phone# 1: [REDACTED]

Phone Type 2:

Phone# 2:

Occupation:

Employer/School: UNEMPLOYED

Person#: 0002

MNI: 86016

Can ID Suspect: No

Event Association: CONTACT

Name: [REDACTED]

Contact Date/Time:

Height:

DOB:

Age:

Sex:

Race:

Address:

Eye Color:

Hair Color:

Phone Type 1:

Phone# 1:

Ext 1:

Sector/Beat:

Phone Type 2:

Phone# 2:

Ext 2:

Occupation:

Employer/School:

Person#: 0003

MNI: 8603651

Can ID Suspect: No

Event Association: SUBJECT

Name: FARMER, STEVEN DALE

Contact Date/Time:

Height:

DOB:

Age: -

Sex: MALE

Race:

Address:

Weight:

Eye Color:

Hair Color:

Phone Type 1:

Phone# 1:

Ext 1:

Sector/Beat:

Phone Type 2:

Phone# 2:

Ext 2:

Occupation:

Employer/School:

The Use and Dissemination of this
Record is Regulated by Law. Secondary
Dissemination of any kind is Prohibited
and could subject the offender to Criminal
and Civil Liability.

This Information Released To:
Insurance/Attorney/Other

CAG000024

By: 48009S Date: 07-25-08
Las Vegas Metro Police Dept.

Incident Report

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
400 E STEWART
LAS VEGAS, NEVADA 89101
(702) 828-3111

Incident Number: LLV080516001021

Narratives

ENTERED DATE/TIME: 5/20/2008 09:35:20

NARRATIVE TYPE: INCIDENT CRIME REPORT

SUBJECT: SEXUAL ASSAULT

AUTHOR: CASPER, M 6549

THE VICTIM HAS A HISTORY OF SEIZURES AND THIS MORNING WHILE AT HER RES. SHE
SUFFERED ANOTHER EPISODE. SHE HAS A PANIC ALARM AT HOME WHICH SUP. [REDACTED]
[REDACTED] WAS TRANSPORTED TO CENTENNIAL HILLS HOSPITAL.

[REDACTED] SAYS THAT WHILE IN THE ELEVATOR A MALE NURSE BEGAN TO TOUCH HER LEG IN AN
EFFORT TO COMFORT HER. ONCE THEY ARRIVED IN HER ROOM, [REDACTED] SAID THAT THE NURSE
STARTED TO FONDLE HER BREASTS, STROKING HER NECK AND [REDACTED] WITH TWO FINGERS TO
PENETRATE HER VAGINA.

[REDACTED] WAS HEAVILY MEDICATED DURING THE ASSAULT BUT SAID THAT THE NURSE KEPT
TELLING HER TO RELAX AND HE WAS DOING THESE THINGS TO HELP HER RELAX. ROXANNE FURTHER
STATED THAT THE NURSE THEN SAID TO HER AS HE EFFORTFULLY PENETRATED HER WITH
FINGERS, THAT HE WANTED [REDACTED] TO "CUM". [REDACTED] ALSO BELIEVES THAT SUSPECT
ORALLY ASSAULTED HER AS WELL.

[REDACTED] IS NOT SURE HOW LONG THE ASSAULT LASTED BUT SAYS SHE WAS VERY SCARED AND
WASN'T SURE WHAT TO DO.

AFTER THE SUSPECT LEFT, [REDACTED] CALLED HER HUSBAND, [REDACTED] AND THEN SAYS SHE CALLED 911.
THE SUSPECT RETURNED TO [REDACTED] ROOM AT 0700, BUT THE NIGHT NURSE WAS IN THE
ROOM AT THE TIME. THE SUSPECT AND NIGHT NURSE LEFT THE ROOM TOGETHER.

CAG000025

Specific Crime(s) SEXUAL ASSAULT

Attempt	<input checked="" type="checkbox"/> City	<input type="checkbox"/> FLD	<input type="checkbox"/> TELE	<input type="checkbox"/> STA	Sect/Best
<input type="checkbox"/>	<input type="checkbox"/> County	<input type="checkbox"/> M	<input type="checkbox"/> GM	<input checked="" type="checkbox"/> F	X5

Location of Incident: (Number & Street)	Bldg. #	Apt. #	City	State	Zip Code
1900 N. Durango	CENTENNIAL HILLS HOUS P.		LV	NV	

Occurred	Month	Day	Year	Day/Wk	Time	Report Taken	Month	Day	Year	Time	Bias Crime	Gang Related	Substance Abuse
	05	16	08	SAT	0300		05	16	08	0940	Y (N) U	Y (N) U	Y N (U)
On / Btw	05	16	08	SAT	0500	Citizen Advd Follow-Up (N) N N/P	Connecting Reports VAL						

If Arrest was made, name Arrestee(s) on appropriate page and place # of Arrestees in box		P #	Reporting Officer	Squad	Follow-Up
Y N		154	M. CASPER	1020	Y (2)

Was there a witness? <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Other	<input checked="" type="checkbox"/>	Can suspect vehicle be identified?	<input checked="" type="checkbox"/>	P #	Reporting Officer	Squad
Can suspect be named?	<input checked="" type="checkbox"/>	Is stolen property traceable? (identifiable?)	<input checked="" type="checkbox"/>			
Can suspect be located?	<input checked="" type="checkbox"/>	Is there physical evidence present?	<input checked="" type="checkbox"/>	P #	Supervisor Approving Report	Follow-Up
Can suspect be described?	<input checked="" type="checkbox"/>	Is there significant M.O.?	<input checked="" type="checkbox"/>			Y N
Can suspect be identified?	<input checked="" type="checkbox"/>	Criminallistics work performed?	<input checked="" type="checkbox"/>	P #	I.D. Specialist	

▼ ALWAYS LIST VICTIM (s) FIRST ▼

<input checked="" type="checkbox"/> V <input type="checkbox"/> Contact <input type="checkbox"/> W <input type="checkbox"/> P <input type="checkbox"/> R <input type="checkbox"/> M <input type="checkbox"/> A <input type="checkbox"/> S <input type="checkbox"/> H <input type="checkbox"/> O <input type="checkbox"/> T <input type="checkbox"/> I <input type="checkbox"/> N <input type="checkbox"/> G <input type="checkbox"/> R <input type="checkbox"/> E <input type="checkbox"/> Y		V.#	Statement Y		Can I.D. (Y)		Name (Last / First / Middle) OR Business Name					
			Obtained? N		Suspect? N		[REDACTED]					
Date of Birth:	Social Security #	Race	Sex	Ht.	Wt.	Hair	Eyes	Work Sch'd. (Hrs / Days Off)	Business Address			
07-06-73	524-02-3575	W	F	5'3"	160	Brd	GRN	/	[REDACTED] 5435			
Residence Address: (Number & Street)		Bldg./Apt.#	City		State		Zip Code		Phone			
3717 LOWER SAXON		/	NLV		IN		49085		[REDACTED]			
Bus. (Local) Address: (Number & Street)		Bldg./Apt.#	City		State		Zip Code		Tourist Depart Date			

#2	<input type="checkbox"/> V <input checked="" type="checkbox"/> (Contact)	Veh. #	Statement <input checked="" type="checkbox"/> Y	Can I.D. <input checked="" type="checkbox"/> Y	Name (Last / First / Middle)	
<input type="checkbox"/> W <input type="checkbox"/> P/R <input type="checkbox"/> Miss/Roadway			Obtained? <input checked="" type="checkbox"/> N	Suspect? <input checked="" type="checkbox"/> N	[REDACTED]	
Date of Birth	Social Security #	Race	Sex	Ht.	Wt.	Hair
7-3-68	530843398	W	M	6'1"	230	BLK
		Eyes	Work	(H)	(T)	Business / School
		BLU	<input checked="" type="checkbox"/> V			CCDC
Residence Address: (Number & Street)		Bldg./Apt. #	City	State	Zip Code	Res. Phone:
3717 Lower Saxon		1	NW		20000	870-5435
Bus. (Local) Address: (Number & Street)		Bldg./Apt. #	City	State	Zip Code	Bus. Phone:
400 E. STEWART		1	NW		20000	828-3111
					Occupation	<input type="checkbox"/> Tourist: Depart Date
					CO	

<input type="checkbox"/> Suspect <input type="checkbox"/> Victim <small>(New York State Resident)</small>	Year	Make	Model	Value	DESCR	12 Off-Road	18 Trailer
					1 2-door	13 Pickup	19 Utility Truck
License #		State	LIC Type	Mo./Yr.	2 4-door	14 P/up w/Camper	20 Van/Mini Van
					3 9 min. (no utility	15 RV	99 Other (describe)
					4 4-door	16 Snowmobile	
					5 2-door	17 Station Wagon	
					6 2-door		
					7 2-door		
					8 2-door		
					9 2-door		
					10 2-door		
					11 2-door		

VIN #				25 Year		5 Year		2 Year		1 Year	
COLOR 1 (top)	COLOR 2 (bottom)	COLOR 3 (middle)									
1. Unknown	7 Bronze	13 Lt. Green	18 Purple								
2. Beige	8 Brown	14 Green	20 Red								

Black	9 Copper	15 Dk. Green	21 Silver	29 Gold	Lost/Stolen Plates Only	# of Plates Missing	<input type="checkbox"/> Front <input type="checkbox"/> Rear	Where Is Other Plate?	WVS	P # / Date / Time
Li. Blue	10 Cream	16 Maroon	22 Tan	30 Mk. I	Vehicle used In <input type="checkbox"/> YES <input type="checkbox"/> NO Event #'s					
Blue	11 Gold	17 Orange	23 Aqua	31 Dk. Blue						
Dk. Blue	12 Gray	18 Pink	24	32						

Registered: Owner's Name (Last, First, Middle Initial) Legal:		Commission of Crimes? <input type="checkbox"/> NO	Date of Birth	Social Security #
--	--	--	---------------	-------------------

Address: (Number & Street)	Apartment #	City	State	Zip Code	Res. Phone:
					Bus. Phone:

▼ S = Stolen L = Lost E = Stolen, but Retained by Security Property Listing Complete? Y N U

Ser. #	SDLE Status	UCR Code	Make & Model	Color(s)	Caliber Size	Barrel Length	S=Ser.# O=OAN M=Misc	Serial Number / OAN	Qty.	Description (Include other Marks of I.D.)	Value
			MAY 16 2008 J					Enter SAAS Log			
								Enter LRMS			
								Create Case File			
								Fax CPS			
								Det. Assigned		SAUNDERS	
								Ev. No.		080516-1021	

UCR CODE CATEGORIES	A Cash/Notes/Gamino Chips/etc.	E Office Equip. (Incl. Computers)	H Household Goods/Appliances	K Miscellaneous (Bicycles/Auto Parts/ Badges/etc.)
B Jewelry & Precious Metals		F TVs/Stereos/Cameras/VCRs/Phones	I Consumable Goods (Incl. Drugs)	
C Clothing & Furs		G Firearms (NOT Ammo or Scopes)	J Livestock (NOT Domestic)	

LYMPD 803 - A (REV. 9-97)

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
INCIDENT REPORT**

Event # **080516-1021**

Page **2** of **4**

# 3	<input checked="" type="checkbox"/> Susp. <input type="checkbox"/> Arrest <input type="checkbox"/> Cited <input type="checkbox"/> Sum.	Veh. #	Statement Y Obtained? N	Name (Last, First, Middle) FARMER STEVEN DALE				Monikers				ID #	
Age or DOB	Social Security # 555-86-1676		Race W	Sex M	Ht.	Wt.	Hair	Eyes	Business / School		Occupation NUISE		
Address: (Number & Street)			Bldg./Apt. #		City		State		Zip Code		Res. Phone:		
											Bus. Phone:		
Last Seen Wearing								Citation #		ATL	P# Taking ATL	Date	Time

Narrative 603B must be completed, whether suspect is in custody or not.

THE VICTIM HAS A HISTORY OF SEIZURES, AND THIS MORNING, WHILE AT HER RESIDENCE SHE SUFFERED ANOTHER SEIZURE. SHE HAS A PANIC DISORDER AT HOME WHICH SUMMONS HELP. SHE WAS TRANSPORTED TO CENTENNIAL HILLS HOSPITAL. [REDACTED] SAYS THAT WHILE IN THE ELEVATOR A MALE NUISE BEGAN TO STROKE HER LEG IN AN EFFORT TO COMFORT HER. ONCE THEY ARRIVED IN HER ROOM, [REDACTED] SAYS THAT [REDACTED] STARTED TO FONDLE HER BREASTS, STROKING HER NECK AND HE THEN USED TWO FINGERS TO PENETRATE HER VAGINA. [REDACTED] WAS NEEDED IMMEDIATELY DURING THE ASSAULT BUT SAYS THAT THE NUISE KEPT TELLING HER [REDACTED] HE WAS DOING THOSE THINGS TO HER TO HELP HER RELAX. [REDACTED] FURTHER STATED THAT THE NUISE THEN SAID TO HER AS HE REPEATEDLY PENETRATED HER WITH HIS FINGERS, THAT HE WANTED [REDACTED] TO "CUM". [REDACTED] BELIEVES THAT SUSPECT ORALLY ASSAULTED HER AS WELL. [REDACTED] SAYS [REDACTED] ARE NOW LONG THE ASSAULT LASTED BUT

ASSAULT DATA 1 Hands, Fist, Feet (with substantial injury) 2 Hands, Fist, Feet (without substantial injury)		OFFENSE A Pocket-Picking B Purse-Snatching C Shoplifting D From Building (Exc. Shoplifting & Coin Oper. Machine) E From Autos (Exc. Parts & Access.) F Other		BURGLARY DATA 1 Residence 2 Non-Residence 3 Night (8 pm-6 am) 4 Day (8 am-6 pm) 5 Unknown 6 Force 7 No Force	
PREMISE (general) Occupied? N 1 Airport 2 Apartment 3 Bank/Savings/Credit Union 4 Bar/Lounge 5 Bus Station/Bus 6 Casino 7 Church 8 Condo/Townhouse 9 Construction Site 10 Convenience Store 11 Convention Facility 12 Desert 13 Dormitory		PREMISE (specific) 14 Fast Food 15 Fenced Yard 16 Garage 17 Gas/Service Station 18 Grocery Store 19 Industrial 20 Office 21 Park 22 Public Building 23 Rental Storage 24 Restaurant 25 Retail Business 26 School/Child Care 27 Shopping Mall 28 Single Family Residence 29 Sports Complex 30 Store Room/Shed 31 Street/Roadway/Alley 32 Vehicle 33 Warehouse 34 Other		RELATIONSHIP TO SUSPECT 1 None 2 Co-Worker/Partner 3 Former Co-Worker/Partner 4 Flance 5 Spouse 6 Former Spouse 7 Roommate 8 Former Roommate 9 Friend/Acquaintance 10 Immediate Family 11 Neighbor 12 Relative by Marriage 13 Rival Gang Member 14 Other	

Patrol Follow-Up

SAYS SHE WAS VERY SCARED & WASN'T SURE WHAT TO DO. AFTER THE SUSPECT LEFT, SHE CALLED HER HUSBAND [REDACTED] & THEN SAYS SHE CALLED 911. THE SUSPECT RETURNED TO [REDACTED] ROOM AT 0700, BUT THE NIGHT NUISE WAS IN THE ROOM AT THE TIME. THE SUSPECT & NIGHT NUISE LEFT THE ROOM TOGETHER.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
INCIDENT REPORT

Event #

080516-1021

SEE COLOR LIST ON P.1A		FACIAL HAIR		TEETH		TATTOOS (describe in narrative)		PRIMARY MEANS OF ATTACK	
CLOTHING COLOR		1 1 Clean Shaven		1 1 Normal		1 1 Name		1 1 Handgun	
Headwear		2 2 Unshaven		2 2 Missing/Gaps		2 2 Initials		2 2 Shotgun	
Coat		3 3 Full Beard		3 3 Protrude/Overbite		3 3 Words		3 3 Rifle	
Shirt		4 4 Goatee		4 4 Decayed		4 4 Picture		4 4 Simulated Gun	
Pants		5 5 Moustache		5 5 Crooked		5 5 Number/s		5 5 Unknown Gun	
Shorts		6 6 Sideburns		6 6 Broken		6 6 Symbols		6 6 Strongarm	
Skin		99 99 Other		7 7 Gold Design/Cap				7 7 Threats	
Shoes				8 8 Silver Design/Cap				8 8 Drugs/Poison	
				9 9 Braces				9 9 Knife	
BUILD		SPEECH MANNER		EYES		SCARS / MARKS / TATTOOS & INJURIES (Location Identifiers)		WEAPON FEATURES	
1 1 Thin		1 1 Not Heard		1 1 Normal		1 None Observed		1 1 None Observed	
2 2 Medium		2 2 Not Unusual		2 2 Crossed		2 Head		2 2 Explosives	
3 3 Heavy		3 3 Apologetic		3 3 Small		3 Left Cheek		3 3 Vehicle	
4 4 Muscular		4 4 Articulate		4 4 Large		4 Right Cheek		4 4 Club/Tire Iron	
HANDEDNESS		5 5 Bad Grammar		5 5 Afflicted Eye		5 Chin		5 5 Blunt Object	
1 1 Left		5 5 Polite		6 6 Glasses		6 Forehead		6 6 Fire/Incendiary Devices	
2 2 Right		7 7 Profane/Abusive		7 7 Contact Lenses		7 Lip		99 99 Other	
HAIR LENGTH		99 99 Other		8 8 Different Colors		8 Nose		WEAPON FEATURES	
1 1 Over Ears		SPEECH CHARACTERISTICS		99 99 Other		9 Left Ear		1 1 None Observed	
2 2 Short		1 1 Accent		COMPLEXION		10 Right Ear		2 2 None Observed	
3 3 Bald/Shaved		2 2 Stutter		1 1 Fair		11 Eyebrow/Eyes		3 3 None Observed	
4 4 Balding		3 3 Lisp		2 2 Medium		12 Neck		4 4 None Observed	
5 5 Varies Length		4 4 Sturred		3 3 Dark		13 Left Upper Arm		5 5 None Observed	
6 6 Shoulder Length		5 5 Loud		4 4 Suntanned		14 Right Upper Arm		6 6 None Observed	
99 99 Other		6 6 Soft		5 5 Acne		15 Left Forearm		7 7 None Observed	
HAIR STYLE		7 7 Slow		6 6 Pock Marks		16 Right Forearm		8 8 None Observed	
1 1 Afro		8 8 Rapid		7 7 Freckled		17 Left Hand		9 9 None Observed	
2 2 Curly		9 9 Not Unusual		99 99 Other		18 Right Hand		10 10 None Observed	
3 3 Jem Curls		APPEARANCE		INJURY/CONDITION		19 Finger(s)		11 11 None Observed	
4 4 Straight		1 1 Stocking Mask		1 1 None Observed		20 Cheek		12 12 None Observed	
5 5 Braided		2 2 Ski Mask		2 2 Cast		21 Shoulder		13 13 None Observed	
6 6 Thin		3 3 Bandana Mask		3 3 Crutches		22 Leg		14 14 None Observed	
7 7 Ponytail		4 4 Costume Mask		4 4 Cane		99 Other		15 15 None Observed	
8 8 Flat Top		5 5 Facial Disguise		5 5 Limping				16 16 None Observed	
9 9 Shaved Design		6 6 Ragged/Transient		6 6 Bandages				17 17 None Observed	
99 99 Other		7 7 Business Clothes		7 7 Bleeding/Blood Stains				18 18 None Observed	
		8 8 Casual Clothes		8 8 Appeared Sick				19 19 None Observed	
		9 9 Uniform		9 9 Appeared Intoxicated				20 20 None Observed	
		10 10 Coat/Jacket		99 99 Other				21 21 None Observed	
		11 11 Dressed as Opp. Sex						22 22 None Observed	
		12 12 Distinctive Jewelry						23 23 None Observed	
		99 99 Other						24 24 None Observed	

SUSPECT DESCRIPTION

LIST THE PERSON MISSING									
CHECK <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile									
CHECK <input type="checkbox"/> Voluntary <input type="checkbox"/> Involuntary <input type="checkbox"/> Unknown									
CHECK <input type="checkbox"/> Abducted by Stranger <input type="checkbox"/> Voluntary <input type="checkbox"/> Abducted by Parent <input type="checkbox"/> Cause Unknown									
How Long at Present Address?									
Previous Address (Number & Street)									
State Zip Code									
Place of Birth									
Last Seen Wearing									
Desc									
Scars, Tattoos, Teeth Info, etc.									
Blood Type									
Fingerprints Available?									
Footprints Available?									
X-Rays?									
Dental Records?									
Corrected Vision?									
Circumcision?									
Photo Attached?									
Cust. Parent / Lgl. Guardian (if juv.) - Relationship									
Address (Number & Street)									
Zip									
Res. Phone:									
Bus. Phone:									
Work Schdl. (Hrs / Days Off)									
Parent / Legal Guardian (if juv.) - Relationship									
Address (Number & Street)									
Bldg./Apt. # City / State / Zip									
Year Make Model									
Hull Identification # (HIN)									
State Registration #									
State / Year Reg.									
VESSEL TYPE									
HULL MATERIAL									
TYPE PROPULSION									
Boat Length									
Boat Color									
Engine Make & Model									
H. P.									
Engine Serial #									
Propulsion Serial #									
Value									
Marks of Identification									
TRAILER INFORMATION									
Year Trailer Brand									
Trailer License #									
State									
Year									
Style									
Trailer Length									
# of Axles									
Trailer Color									
Primary									
Secondary									
Trailer VIN #									
Value									
Marks of Identification									

MISSING PERSON

BOAT & TRAILER

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
INCIDENT REPORTEvent #
080516-1021

ANY INFORMATION GIVEN SHOULD BE DETAILED IN NARRATIVE

ENTRY/EXIT POINT (Include Attempt) 1 Unknown 2 Adjacent Building 3 Attic/Crawl Space 4 Balcony 5 Coin Operated Machine 6 Doggie Door 7 Door 8 Duct/Vent 9 Fence 10 Fire Escape 11 Floor 12 French Door 13 Garage/Carport 14 Roof 15 Skylight 16 Sliding Door 17 Wall 18 Window 99 Other _____	ENTRY <input type="checkbox"/> EXIT <input type="checkbox"/>	7 Rear 8 Side 99 Other _____ ENTRY OR ATTEMPT METHOD 1 Admitted - No Force 2 Bodily Force 3 Broke Hole in Wall 4 Climbed In/Over/Thru 5 Concealment 6 Cut 7 Explosion/Burned 8 Fraud/Hoax 9 Kicked In 10 Knob Twist 11 Lock Punch 12 Open for Business 13 Pried/Jimmied 14 Smash & Grab 15 Unlocked 99 Other _____ ENTRY TOOL 1 Bolt Cutters 2 Chemicals 3 Club Type Object 4 Coat Hanger/Wire 5 Cutting Torch 6 Drill/Saw 7 Explosives	8 Glass Cutter 9 Key 10 Knife 11 Lock Pick/Card 12 Lock Puller 13 Pry Bar 14 Rock/Brick 15 Screwdriver 16 Vehicle 17 Vice Grips/Pliers 99 Other _____ VEHICLE ENTRY P = Passenger Side D = Driver Side 1 Front Door/Window 2 Rear Door/Window 3 Vent/Wing Window 4 Cargo Window 5 Windshield/Back Glass 6 Trunk/Hood 7 Roof/Top 8 Open Bed/Trailer 9 Camper Shell 10 Unlocked 99 Other _____ SAFE ENTRY 1 Drill 2 Explosives 3 Hammered	4 Key/Combination 5 Pry/Peel 6 Removed from Premises 7 Torch 8 Unlocked 99 Other _____ SUSPECT ACTIONS 1 Ate/Drank on Premises 2 Attempted to Defeat Alarm 3 Covered Hands (Gloves, etc) 4 Cut Self/Bled at Scene 5 Cut/Discon. Phone Cord 6 Defeated Alarm 7 Defecated/Urinated 8 Disabled Vehicle 9 Gang Graffiti/Markings 10 Hid Property Close 11 Knew Loc/Hid. W. s 12 Left Note/Message 13 Left Tools at 14 Left Vehicle 15 Suspended Lat. Personal Property 16 Tied Victim/Methodical 17 Typed Alarm, Returned Later 99 Other _____	22 Turned Lights On/Off 23 Used Lookout/Complice 24 Used Matches 25 Used Tools Found at Scene 26 Wiped/Removed Prints 27 Shoplifting 99 Other (See Narrative)	VICTIM LOCATION 1 Home 2 Ch. s 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____ 26 _____ 27 _____ 28 _____ 29 _____ 30 _____ 31 _____ 32 _____ 33 _____ 34 _____ 35 _____ 36 _____ 37 _____ 38 _____ 39 _____ 40 _____ 41 _____ 42 _____ 43 _____ 44 _____ 45 _____ 46 _____ 47 _____ 48 _____ 49 _____ 50 _____ 51 _____ 52 _____ 53 _____ 54 _____ 55 _____ 56 _____ 57 _____ 58 _____ 59 _____ 60 _____ 61 _____ 62 _____ 63 _____ 64 _____ 65 _____ 66 _____ 67 _____ 68 _____ 69 _____ 70 _____ 71 _____ 72 _____ 73 _____ 74 _____ 75 _____ 76 _____ 77 _____ 78 _____ 79 _____ 80 _____ 81 _____ 82 _____ 83 _____ 84 _____ 85 _____ 86 _____ 87 _____ 88 _____ 89 _____ 90 _____ 91 _____ 92 _____ 93 _____ 94 _____ 95 _____ 96 _____ 97 _____ 98 _____ 99 Other _____	ADDITIONAL FACTORS 1 Alarm Inoperative 2 Home Invasion 3 Key Hidden On/By Premises 4 Premises Under Construction 5 Premises Vacant 6 Similar Crimes In Neighborhood 7 Victim of Similar Crime 98 Other _____
Maid	Inspectress	Electronic Locks Y N	Video Surveillance Y N				

ANY INFORMATION GIVEN SHOULD BE DETAILED IN NARRATIVE

PRE-INCIDENT CONTACT 1 None 2 Gambling 3 Making Arrest 4 Opening/Closing - Business 5 Party 6 Shopping 7 Sleeping 8 Traffic Related 9 Walking 99 Other <u>ADVICE/</u> <u>PATIENT</u>	SUSP(s) SOLICITED/OFFERED 1 Aid For Vehicle 2 Assistance 3 Con Game/Scam 4 Drugs 5 Information 6 Merchand 7 Money 8 Ride 9 Sex 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____ 26 _____ 27 _____ 28 _____ 29 _____ 30 _____ 31 _____ 32 _____ 33 _____ 34 _____ 35 _____ 36 _____ 37 _____ 38 _____ 39 _____ 40 _____ 41 _____ 42 _____ 43 _____ 44 _____ 45 _____ 46 _____ 47 _____ 48 _____ 49 _____ 50 _____ 51 _____ 52 _____ 53 _____ 54 _____ 55 _____ 56 _____ 57 _____ 58 _____ 59 _____ 60 _____ 61 _____ 62 _____ 63 _____ 64 _____ 65 _____ 66 _____ 67 _____ 68 _____ 69 _____ 70 _____ 71 _____ 72 _____ 73 _____ 74 _____ 75 _____ 76 _____ 77 _____ 78 _____ 79 _____ 80 _____ 81 _____ 82 _____ 83 _____ 84 _____ 85 _____ 86 _____ 87 _____ 88 _____ 89 _____ 90 _____ 91 _____ 92 _____ 93 _____ 94 _____ 95 _____ 96 _____ 97 _____ 98 _____ 99 Other _____	SUSP(s) ACTIONS 1 Choked/Strangled Victim 2 Covered Victim's Face 3 Cut/Stabbed Victim 4 Fired Shots 5 Forced Entry 6 Grabbed Purse 7 Had Victim Bag Property 8 Had Victim Lie Down 9 Handcuffed/Tied Victim 10 Hit/Assaulted After Act 11 Hit/Assaulted During Act 12 Hit/Assaulted Prior to Act 13 Locked Victim in Room/Area 14 Moved Victim's Location 15 Multiple Suspects 16 Picked Pocket	17 Presented Note 18 Pulled/Held/Grabbed Victim 19 Ritual/Occult Related 20 Shot Victim 21 Suspect's Face Concealed 22 Yelled Gang/Club Name 99 Other Unusual/MO Behavior SEXUAL ACTS 1 Anal Intercourse 2 Ejaculated 3 Fondled/ Sexual Abuse 4 Had Victim Bath/Shower 5 Had Victim Dierobe 6 Had Victim Masturbate Subject 7 Homosexual Assault/Acts 8 Indecent Exposure 9 Masturbated Victim 10 Oral Sex 11 Showed Photos - Magazines / Movies	12 Used Sexual Paraphernalia 13 Vaginal Intercourse 99 Other _____ VEHICLE INVOLVEMENT 1 Suspect A Pedestrian 2 Suspect Disabled - Victim's Vehicle 3 Suspect Forced - Victim to Curb/Stop 4 Suspect Forced Way - Into Victim's Vehicle 5 Suspect Hid In Victim's Vehicle 6 Suspect In Vehicle 7 Suspect Took Victim's Vehicle 8 Victim A Pedestrian 9 Vict. Forced Into Susp. Vehicle 10 Victim In Vehicle 99 Other _____
VICTIM CONDITION 1 Under 18 2 Over 65 3 Alone 4 Intoxicated/UICS 5 Physically/Mentally - Challenged 6 Tourist 99 Other <u>SEEN/</u> <u>ED</u>	EL (s) PRETENDED TO BE 1 Customer 2 Job Applicant 3 Military Person 4 Police Officer 5 Renter/Buyer 6 Repair/Service man 7 Salesman			

EXHIBIT “6”

EXHIBIT “6”

COPY

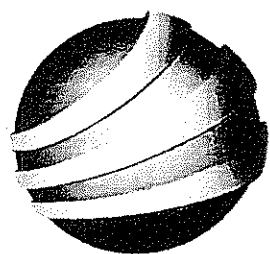
In the Matter Of:

JANE DOE vs. VALLEY HEALTH

09-A-595780

SAJIT PULLARKAT

August 07, 2015



ESQUIRE
S O L U T I O N S

800.211.DEPO (3376)
EsquireSolutions.com

1 BY MR. MURDOCK:

2 Q. Did you have tasks at all with regard to
3 the Steven Farmer issues? In other words, in terms
4 of investigation, in terms of getting meetings
5 together, anything?

6 A. Yes.

7 Q. What were your tasks regarding Steven
8 Farmer?

9 A. I was initially notified via our security
10 department of the incident, and from that point met
11 with getting together with the other leaders of the
12 organization.

13 Number one, obviously report the
14 incident; and number two, get our committees
15 together, that being the patient safety committee and
16 perform a root cause analysis.

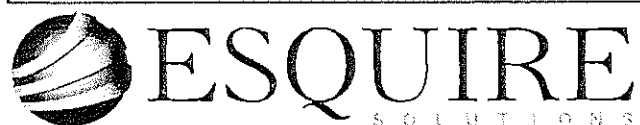
17 Q. So just so I'm clear, so your job, when you
18 were immediately notified -- and you were immediately
19 notified about the incident the day of the incident,
20 correct?

21 A. Yes.

22 Q. Within minutes of security being notified
23 you were notified, correct?

24 A. Right.

25 Q. So you were aware within minutes, right?



1 patient is alleging that she was sexually assaulted
2 by someone who was working at Centennial Hills
3 Hospital in 2008 -- you find out in 2009, but you
4 don't believe you have a duty to do a Midas report at
5 that point. Is that correct?

6 A. That's correct.

7 Q. Okay. So you get this call from security,
8 and you said that -- I think I got this right, maybe
9 I got it wrong, I'm not trying to do anything here --
10 but you said you were immediately notified by the
11 security department, and then from that point you
12 started meeting with other leaders of the
13 organization?

14 A. Correct.

15 Q. And you met with other leaders of the
16 organization regarding the Steven Farmer incident,
17 right?

18 A. Correct.

19 Q. Who did you meet with?

20 A. It was a multitude of leaders across the
21 organization. C-Suite, regulatory risk.

22 Q. Is regulatory risk the same thing, or is
23 that separate?

24 A. I think at the time it was the same, I
25 believe.

1 Q. Who was regulatory risk? Was that Janet
2 Callahan?

3 A. Yes.

4 Q. Did C-Suite have a meeting, or were you
5 just on the phone from one to the next to the next to
6 the next?

7 A. We talked together initially to report the
8 incident out formally, and then to begin the process
9 of getting together a patient safety committee and
10 perform the RCA.

11 Q. When you say you got together initially to
12 report the incident out, who was that going to? When
13 you say you were going to report the incident out,
14 what is that talking about?

15 A. That's reporting the incident to the state.

16 Q. And how was that going to be done?

17 A. Basically we're self-reporting the
18 incident, so --

19 Q. Did you make a phone call? How did that
20 work?

21 A. I didn't witness the detail.

22 Q. What was the decision of the committee?
23 How were you going to do it?

24 A. The CEO was on technically on that.

25 Q. Was he to call them, write them? What was

1 A. I honestly don't remember.

2 Q. Okay. Well, so the C-Suite got together
3 and you had to report the incident to the state, and
4 that's what you did, right?

5 A. Yes.

6 Q. So that meeting lasted like 30 seconds,
7 because all you did was say, "Hey, go report it to
8 the state?"

9 A. It was pretty quick.

10 Q. How long did you talk? A minute, 30
11 seconds?

12 A. No, it was probably a little longer than
13 that.

14 Q. How long?

15 A. Maybe 10, 20 minutes.

16 Q. Did you take notes from that meeting?

17 A. I probably did, yes.

18 Q. And where are those notes today?

19 A. I probably don't have them at this
20 juncture.

21 Q. Why not?

22 A. Again, most of the notes were to follow up
23 on items or just to figure out what the next steps
24 were. So the next steps were to go to an RCA, so we
25 went to an RCA.

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 SAJIT PULLARKAT on August 7, 2015 commencing at
the hour of 1:30 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 17th day of August, 2015.

Carol O'Malley
Carol O'Malley, CCR No. 178

EXHIBIT “7”

EXHIBIT “7”

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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 JANET CALLIHAM

Tuesday, August 18, 2015

1:30 p.m.

18 Q. What was the form back at Centennial Hills?

19 A. I don't remember which form they had.

20 Q. Did they have a form, or did they have a  
21 system called Midas? Do you remember that?

22 A. Yeah, they had a Midas system. I don't  
23 remember what all went into it.

24 Q. Okay. And would you keep your own file  
25 about that? For example, the slip and fall would

♀  
+

15

1 happen. Would you keep your notes and things like  
2 that in a file?

3 A. If it went into the computer, my notes  
4 would probably be in the computer.

5 Q. Okay.

6 A. If it were notes for me to say, "Follow up  
7 on this or check on that," it might be in the paper  
8 file.

9 Q. Back in May of 2008 there was an incident  
10 involving Steven Farmer. Do you remember that?

11 A. A little bit.

12 Q. Tell me what you remember. Let's start  
13 with that.

14           A.    I remember being contacted to come talk  
15   with a patient.  When I was talking with the patient,  
16   her concerns were of inappropriate touching.  That  
17   immediately made this a police matter.

18                        I remember having security come to  
19   stay outside the door, checking with nursing to make  
20   sure that the nurse taking care of the patient that  
21   day was a female, and I made the request of only  
22   female caregivers for the remainder of the patient's  
23   stay.  I notified the CEO of the facility, and I  
24   notified the police.

25                        When the police arrived at the

16

1   building I escorted them up to the patient's room and  
2   I waited at the nurses' station until the police were  
3   done, in case I needed to facilitate anything, if I  
4   could assist in any way.

5           Q.    Is that it?

6           A.    I went and made some notes, and at some  
7   point later in that day we had a conference call.  
8   Beyond that, that's about it.

9           Q.    Okay.  Where did you make these notes?

10           A.    Upon discussion with my attorney and able  
11 to review them, I made them on a piece of paper.

12           Q.    I'm sorry, what was the first part of that?

13           A.    Upon discussion with my attorney and  
14 reviewing documents, they were on a piece of paper.

15           Q.    I don't understand that first part, "upon  
16 discussion with your attorney."

17                   MR. PRANGLE:  She talked to me.

18                   THE WITNESS:  On discussion with my  
19 attorney.

20 BY MR. MURDOCK:

21           Q.    In 2008?

22           A.    No.  This morning.

23           Q.    Oh.

24                   MR. PRANGLE:  I think she's telling you  
25 that after talking to me, she remembered.

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17

1                   MR. MURDOCK:  Oh, okay.

2                   THE WITNESS:  I didn't remember what I  
3 had done with my notes.

4 BY MR. MURDOCK:

5           Q.    Okay.  Where are those notes today?

6 MR. PRANGLE: They're in my possession.

7 MR. MURDOCK: Is there a reason I don't  
8 have them?

9 Mr. PRANGLE: Because they relate  
10 solely to Cagnina.

11 Janet, is it correct all your  
12 notes were specific to the patient Cagnina?

13 THE WITNESS: Yes. They were my notes  
14 reminding me of things I needed to do.

15 BY MR. MURDOCK:

16 Q. What did you need to do?

17 A. Well, I wanted to make sure that the  
18 department managers remind their staff if a patient  
19 expresses discomfort with a caregiver, to not have  
20 that caregiver take care of them anymore.

21 Q. That was in the note?

22 A. Yeah. It was things like that to follow up  
23 on.

24 Q. Okay. So what does that have to do with  
25 Cagnina herself? That's just a general statement,

♀  
†

18

1 right?

2           A.    Right, but those are things that you do  
3   after an event.  You re-educate staff.

4           Q.    Well, you said "re-educate."  That assumes  
5   staff is educated, correct?

6           A.    The people that are hired are experienced  
7   people.

8           Q.    Well, were staff educated in that?

9           A.    I would not know what they were educated in  
10  prior to being hired at Centennial Hills.

11          Q.    So the notes that you wrote don't  
12  specifically say "re-educate staff," do they?

13          A.    I'd have to go back and look at them.

14          Q.    When was the last time you saw them?

15          A.    This morning.

16          Q.    So you reviewed those in preparation for  
17  your deposition today, is that correct?

18          A.    (Witness nods.)

19          Q.    Is that yes?

20          A.    Yes.  But I don't remember the exact word.  
21  It could have been "remind staff," "educate" --

22                   MR. MURDOCK:  I think I'm entitled to  
23  the notes.

24                   MR. PRANGLE:  And I'm going to  
25  disagree, because this was an event that happened two

1 days after Mrs. Doe's event, and it was things -- I  
2 guess in my possession, and maybe we can take it up  
3 with the Discovery Commissioner or someone else. And  
4 this was solely related to Cagnina. It had nothing  
5 to do with Doe.

6 MR. MURDOCK: But it goes to notice.  
7 It goes to foreseeability -- the whole thing about  
8 education and everything.

9 MR. PRANGLE: Well, if another event  
10 happened two days after that, they would do the same  
11 thing.

12 MR. MURDOCK: Yeah, but it's the same  
13 thing.

14 MR. PRANGLE: I will respectfully  
15 disagree.

16 MR. MURDOCK: Okay. I'm going to keep  
17 the deposition open, because I mean that's just not  
18 right. Now I understand the issue. Okay.

19 BY MR. MURDOCK:

20 Q. So what else did your notes say?

21 A. To also make sure that the managers

22 remember to tell their staff if they felt  
23 uncomfortable with the patient, to reassign them to a  
24 different patient.

25 To remind them that any time a

20

1 patient voices discomfort and wished to talk to  
2 somebody, to get the right person in there to talk  
3 with them immediately.

4 If they make any allegation of  
5 anything, to remind them to notify their supervisor  
6 immediately so they will notify the right person.

7 Q. Was there an issue that someone wasn't  
8 notified?

9 A. No.

10 Q. So I don't understand why you're  
11 re-educating about things that didn't happen.

12 A. Because that's what we do in quality and  
13 risk. We remind everybody of the things that they  
14 need to do as part of their job responsibilities when  
15 an event of any kind occurs.

16 Q. Okay.

17 A. That's just what we do. It's part of our



18 job.

19 Q. Okay. You said you had a conference call?

20 A. Yes.

21 Q. Who did you have a conference call with?

22 A. Kevin called somebody in legal and risk,  
23 and Kevin, myself, Carol -- and I don't remember if  
24 there was even anybody else in the room.

25 Q. Okay. And tell me about the phone call.

♀  
†

21

1 A. It was to relate the incident that  
2 occurred; that we had notified the police.

3 Q. Okay. So it was like a one-minute phone  
4 call?

5 A. I don't remember that. I don't remember.

6 Q. Did you take notes?

7 A. No.

8 Q. As a result of that conference did you do  
9 anything?

10 A. Just followed up on whatever was on my  
11 notes.

12 Q. Which notes?

13 A. That I had made after I talked with the

14 patient.

15 Q. And how did you follow up on that? How did  
16 you do that?

17 A. I picked up the piece of paper and I looked  
18 to make sure, "Let's have a department managers'  
19 meeting, let's talk to the managers," and that kind  
20 of thing.

21 Q. So there was a department managers' meeting  
22 after this, is that correct?

23 A. At some point.

24 Q. When was it?

25 A. I don't remember.

♀  
†

22

1 Q. Was it days after? Was it weeks after?  
2 What are we talking about here?

3 A. I don't remember. I could only speculate.  
4 I don't remember.

5 Q. So you had a department managers' meeting.  
6 Who was there?

7 A. I assume department managers.

8 Q. Was there an agenda?

9 A. I don't know.

18  
19  
20  
21  
22  
23  
24  
25

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1 REPORTER'S CERTIFICATE

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

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

6 That I reported the taking of the deposition  
7 of JANET CALLIHAM on August 18, 2015 commencing at  
8 the hour of 1:30 p.m.;

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

12 That I thereafter transcribed my said  
13 shorthand notes into typewriting and that the

14 typewritten transcription of said deposition is a  
15 complete, true, and accurate transcription of my said  
16 shorthand notes taken down at said time. Review of  
17 the transcript was requested.

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

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of Nevada,  
23 this 23rd day of August, 2015.

24

25 Carol O'Malley, CCR No. 178

♀

46

1 DEPOSITION ERRATA SHEET

2

3 File No. J0173225

4 Case Caption: Doe vs. Valley Health System

5

6

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8 DECLARATION UNDER PENALTY OF PERJURY

9

**EXHIBIT “8”**

**EXHIBIT “8”**

## DISTRICT COURT

## CLARK COUNTY, NEVADA

|                                  |   |                |
|----------------------------------|---|----------------|
| ESTATE OF JANE DOE, by and       | ) |                |
| through its Special              | ) | Case No.       |
| Administrator, Misty             | ) | 09-A-0595780-C |
| Petersen,                        | ) | DEPT. No. II   |
|                                  | ) |                |
| 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.                      | ) |                |

DEPOSITION OF CAROL BUTLER  
June 19, 2015

1 that refresh your recollection?

2 A -- in person or on the phone.

3 Q Do you remember you were in a conference  
4 room with them?

5 A No. I don't.

6 Q Okay. Who did you speak with? Can you  
7 name me some of them?

8 A I can't.

9 Q Did you speak with Ray Sumera?

10 A I don't recall.

11 Q Do you know who Ray Sumera was?

12 A I do know Ray.

13 Q What was Ray?

14 A Ray was one of our charge nurses in the  
15 emergency department.

16 Q Okay. And Ray, wouldn't he have been  
17 one of the people that you would normally talk to,  
18 assuming he was there that night?

19 A If he was on shift; yes.

20 Q Right. Okay. Margaret Wolfe? You  
21 might want to talk to her; right?

22 A If she was on shift --

23 Q Okay.

24 A -- that day.

25 Q Okay. And so if these people were on

1 shift, am I correct that you did talk to them? You  
2 believe you talked to them at least?

3 A I believe so.

4 Q Okay. And when you talked to them, did  
5 you write notes about that?

6 A I don't recall.

7 Q I'm -- I'm trying to figure out how you  
8 cannot recall whether or not you took notes from  
9 conversations with staff members. How is that  
10 possible?

11 MR. PRANGLE: Objection. Argumentative.

12 A How many years ago was this?

13 Q (BY MR. MURDOCK) Oh, so, again, if I  
14 asked you five years ago, you might have a better  
15 answer; right? Your memory?

16 A Certainly.

17 Q So I guess you went home that night;  
18 right?

19 A Eventually, I'm sure I did.

20 Q Okay. By the way, that entire day, did  
21 you ever go look to see if there was a policy and  
22 procedure that you should follow?

23 A I don't recall.

24 Q That entire day, did you ever go speak  
25 with Ms. Cagnina?



1                   At some point, did you obtain witness  
2 statements that nurses or staff members, CNAs or  
3 whoever might have given to the police?

4                   A     No. Police. No.

5                   Q     Do you remember a nurse by the name of  
6 Christine Murray? Does that name sound familiar?

7                   A     I do remember.

8                   Q     Do you remember speaking with Christine  
9 Murray about this incident?

10                  A     I don't remember specifically speaking  
11 with Christine about this incident.

12                  Q     Okay. Do you remember attending a  
13 meeting where you spoke with not just Christine Murray,  
14 but all the staff in one setting about this incident?

15                  A     All the staff ... you mean all the staff  
16 that might have witnessed this incident?

17                  Q     Yeah. Yes.

18                  A     I -- I guess I would assume that those  
19 were the people that were present for the sentinel  
20 event meeting.

21                  Q     Okay. And the reason I'm asking you  
22 that is -- let's mark this.

23                             (Exhibit 1 marked.)

24                   MR. VOGEL: What are you looking at,  
25 Rob?

1     aware of that?

2             A     I think someone told me after she gave a  
3     statement that a statement had been made.

4             Q     Okay. Did you ever talk to her about  
5     the statement?

6             A     I don't recall talking to her about the  
7     statement.

8             Q     But you knew she had given a statement?  
9     It was pretty close to the time that she gave a  
10    statement; correct? I mean, she gave it to -- if she  
11    gave it on May 30, 2008, would you agree with me that  
12    you found out that she gave a statement about the  
13    incident, let's say, by August 1, 2008? Would that  
14    make sense?

15            A     Probably.

16            Q     Okay. That would make sense; right?

17            A     Yes.

18            Q     It's more likely than not; correct?

19            A     Correct.

20            Q     Okay. Ms. Wolfe stated in her statement  
21    Ray Sumera had told me to watch Steve Farmer around her  
22    female patients. Do you remember that?

23            A     No. I do not.

24            Q     She said that Ray Sumera was concerned  
25    because he was very overly attentive to female patients

## C E R T I F I C A T E

STATE OF COLORADO )  
COUNTY OF ARAPAHOE ) ss

I, Bonnie Carpenter, duly appointed to take the deposition of CAROL BUTLER, do hereby certify that previous to the commencement of the examination of the said above-named Deponent, she was first by me duly sworn to testify the truth, the whole truth and nothing but the truth touching and concerning the matters in controversy between the parties hereto, so far as she should be interrogated concerning the same;

That said deposition was stenographically reported by me at the time and place heretofore set forth, and was reduced to typewritten form under my supervision as per the foregoing;

That the foregoing is a true and correct transcript of my shorthand notes then and there taken;

That after the deposition was transcribed, the same was submitted by letter to the Deponent for reading and signing, a copy of which is hereto annexed;

That I am not kin or in anywise associated with any of the parties to said cause of action or their counsel and that I am not interested in the event thereof;

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Bonnie Carpenter  
12510 East Iliff  
Suite 120  
Aurora, CO 80014

**EXHIBIT “9”**

**EXHIBIT “9”**

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO. 09-A-595780-C  
DEPT. NO. II

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.

DEPOSITION OF AMY BLASING, MSN, RN

1:00 p.m.

July 28, 2015

Williams & Associates  
1608 Fifth Street, NW  
Albuquerque, New Mexico

PURSUANT TO THE RULES OF CIVIL PROCEDURE, this  
deposition was:

TAKEN BY: MR. ROBERT E. MURDOCK  
Attorney for the Plaintiffs

REPORTED BY: Dawn Redwine, RPR, CRI, NM CCR #165  
WILLIAMS & ASSOCIATES, LLC  
1608 Fifth Street, NW  
Albuquerque, NM 87102  
(505) 843-7789  
www.WilliamsNM.com

ESTATE OF JANE DOE vs. VALLEY HEALTH, et al.  
09-A-595780-C

Amy Blasing, MSN, RN  
July 28, 2015

1 A. Not that I recall.

2 Q. Okay. In other words, did you give a recorded  
3 statement to anybody?

4 A. Not that I recall.

5 Q. Did you ever give a written statement?

6 A. Not -- As part of an investigation, I'm not sure if  
7 -- I don't know that I ever wrote anything down.

8 Q. Okay.

9 A. I know that we had discussions, internal  
10 discussions about the incident, following.

11 Q. Okay. And who did you have internal discussions  
12 with?

13 A. Carol Butler, Quality and Risk.

14 Q. Who was at Quality and Risk?

15 A. I believe that was Janet Callahan and Yvette Wilson  
16 at the time.

17 Q. Okay. Any other people that you had discussions  
18 with?

19 A. Carol and I had discussions with employees after  
20 the incident.

21 Q. Where did those discussions take place?

22 A. In the hospital.

23 Q. I understand that. Where?

24 A. But I couldn't tell you specifically.

25 Q. Was it in a conference room?

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1           A.     I'd be guessing if I answered. It could've been an  
2 office or a conference room.

3           Q.     Was it on the floor?

4           A.     I don't recall.

5           Q.     Okay. Do you believe -- Is it more likely than not  
6 that it occurred in an office or a conference room type of  
7 setting?

8           A.     That would be more likely.

9           Q.     Okay. And it was you and Carol. Is that correct?

10          A.     To my knowledge, yes.

11          Q.     Was there anybody else there?

12          A.     Not that I recall.

13          Q.     Was there a lawyer there?

14          A.     Not that I recall.

15          Q.     Okay. Who did you speak with?

16          A.     I remember speaking with Ray Sumera, Karen  
17 Goodhart, Darby Curlee.

18          Q.     Anybody else?

19          A.     Margaret Wolfe later. There may have been more  
20 people, but those are the names I recall.

21          Q.     When you say "later," how much later?

22          A.     I don't know the timing, but the conversation with  
23 Margaret was more specific to additional concerns that she  
24 shared, so I know it was later for that reason.

25          Q.     Would you agree with me that it would've been

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1 within two months of the initial conference you had with  
2 Sumera, Goodhart, and Curlee?

3 A. That sounds right.

4 Q. Okay. So if the initial conference occurred  
5 in late May, could we put an outside date on it of about  
6 August 1st? Would you agree with that?

7 A. That sounds fair. I don't recall the exact date.

8 Q. Okay. And were there notes taken at that meeting?

9 A. Not that I recall.

10 Q. Did you take any notes?

11 A. Not that I recall.

12 Q. Did Carol take any notes?

13 A. Not that I recall.

14 Q. Were the meetings tape-recorded?

15 A. No.

16 Q. Were they video-taped?

17 A. No.

18 Q. I'm sorry?

19 A. No.

20 Q. I'm curious. Why didn't you take any notes?

21 A. I just don't remember taking notes. It doesn't  
22 mean that I didn't.

23 Q. Oh, okay. So it's possible you took notes?

24 A. It was several years ago, so...

25 Q. I understand. So it's possible you took notes?

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1 A. It's possible, but I don't recall taking them.

2 Q. Okay. When you're in a meeting-type setting like  
3 that, would you agree with me it's more likely than not that  
4 you actually took notes?

5 A. Depends on the situation. If I'm having a  
6 conversation with someone, I don't always write anything down.

7 Q. Okay. This was more -- more than a conversation,  
8 though. You were actually investigating what occurred. Right?

9 A. Investigations were more Risk and Quality.

10 Q. Okay. So why were you talking to these people?

11 A. Our conversations, Carol and I, were more about did  
12 we miss anything, did the staff know that they could come  
13 forward if they felt uncomfortable about anything. Just more  
14 kind of follow-up to the concerns that we had become aware of,  
15 and making sure that we weren't missing any opportunities.

16 Q. Okay. So you don't know if you took notes or not.

17 A. Correct.

18 Q. If you took notes -- let's assume, just for the  
19 sake of argument, you did -- where would those notes be today?

20 A. I don't have any way of knowing that.

21 Q. Okay. What would you have done with them after the  
22 meeting? In other words, did you have a secretary who you  
23 would say, you know, "Type these up" --

24 A. No.

25 Q. -- or did you have a file, things like that?

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ESTATE OF JANE DOE vs. VALLEY HEALTH, et al.  
09-A-595780-C

Amy Blasing, MSN, RN  
July 28, 2015

1 A. I did not.

2 Q. Okay. Did you have anything at all where you would  
3 have put notes?

4 A. Not formally, no.

5 Q. What about informally?

6 A. If I were to take notes on a notepad, it might be  
7 something that I used, like, to work with that day.

8 Q. Okay.

9 A. But if it wasn't part of any formal investigation  
10 or anything that I was typing up, I don't know where it would  
11 end up. I honestly don't recall taking any notes specific to  
12 this case.

13 Q. Okay. So, in other words, it's possible you did.  
14 You're just not sure. Is that right?

15 A. I don't remember taking any.

16 Q. Okay. So it's more likely than not that you didn't  
17 take any.

18 A. That's correct.

19 Q. Okay. Do you recall Carol Butler taking any notes  
20 at these meetings?

21 A. I don't.

22 Q. After the meetings, did you have discussions with  
23 Carol about your -- about your meetings with these nurses?

24 A. It's fair to say that that would have happened, but  
25 I couldn't tell you specifics.

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1 Q. How long afterwards would you have had that  
2 meeting?

3 A. Most likely, immediately.

4 Q. Okay. Now, the Margaret Wolfe meeting took place a  
5 couple of months later. Right?

6 A. I don't know the exact date. I just --

7 Q. No.

8 A. -- know it was after.

9 Q. I know.

10 A. But within a couple of months is fair.

11 Q. Within a couple of months.

12 A. Uh-huh.

13 Q. When did -- Did you have a discussion with Carol  
14 Butler about the Margaret Wolfe meeting?

15 A. I'm sure that we did. I can't tell you specifics.

16 Q. Why did you meet with Carol -- with Margaret Wolfe?

17 A. What I remember is that we were made aware that  
18 Margaret had expressed concerns, and we were following up to  
19 find -- it was new information to us, so we were both following  
20 up to get more information and making sure that people knew  
21 what the proper channel would be if they had concerns in the  
22 future.

23 Q. In fact, my understanding is that you became aware  
24 that a -- that Margaret had spoken with the police about the  
25 situation. Is that right?

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1       A.   That sounds familiar, but I couldn't tell you  
2 specifics.

3       Q.   Right. And as a -- as a matter of fact, you became  
4 aware, and this was back in -- In between May of 2008 and  
5 August of 2008, you became aware that there actually was a  
6 police report, where Margaret spoke to the police. Right?

7       A.   I don't remember the specifics.

8       Q.   Well --

9       A.   I became aware that she had shared information. I  
10 don't know that I had knowledge of the police report or not.

11      Q.   Okay. Did you ever ask for a police report?

12      A.   No.

13      Q.   Have you ever read a police report?

14      A.   Not that I recall.

15      Q.   It's possible you did? You just don't know?

16      A.   I don't recall ever seeing a police report related  
17 to this case.

18      Q.   Okay. Well, that's funny, because I understand  
19 that you had a meeting with several of the nurses where you  
20 actually went over some of the police reports. Do you remember  
21 that?

22      A.   I remember meeting with the nurses about how to  
23 escalate concerns, but I don't remember ever having copies of  
24 police reports or sharing them.

25      Q.   Okay. Do you remember meeting with a nurse by the

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1 name of Christine Murray?

2 A. I don't.

3 Q. Okay.

4 A. I don't remember who that is.

5 Q. Margaret Wolfe told the police on May 30th, 2008,  
6 that -- about conversations she had with Mr. Ray Sumera. Do  
7 you remember that?

8 A. I remember that, yes.

9 Q. Okay. Did you ever confirm that with Mr. Sumera?

10 A. Carol and I, I believe, spoke to Ray.

11 Q. And Ray confirmed it, I assume.

12 A. Ray remembered having a conversation with Margaret,  
13 but the content was different.

14 Q. Okay. Did you ever speak to Margaret about that?  
15 In other words, did you confront her with that and say, "Well,  
16 wait a minute. Ray says you had a different conversation"?

17 A. I believe that we did, but I don't know the  
18 specifics.

19 Q. Okay. And, of course, did you make a report of it?

20 A. Report?

21 Q. Well, she lied to you.

22 A. I think we --

23 MR. PRANGLE: Well, that's argumentative.

24 Q. I don't know. If she lied to you or -- I mean, she  
25 told you something that Ray didn't remember.

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1           A.     I didn't say she said something that Ray didn't  
2 remember. I said that the content was different in each of  
3 their stories.

4           Q.     Okay. So which one was telling the truth?

5           A.     I wouldn't know --

6           Q.     Did you ever determine that?

7           A.     -- that. I wasn't there. I wouldn't know that. I  
8 wasn't there.

9           Q.     Did you ever investigate it?

10          A.     We talked to them both, yes.

11          Q.     And tell me about who you talked to and how you  
12 talked to them. Tell me about that.

13          A.     What I remember is that we talked to Ray, and Ray  
14 remembered having a conversation with Margaret, but it was more  
15 about her not being happy that Steven Farmer was doing tasks  
16 without being directed to do so, and she wanted to know when  
17 someone was doing something for any patient that was in her  
18 care, and that she was also concerned about making sure that  
19 doors or curtains -- I'm not sure which -- were closed for  
20 privacy. And I believe that Ray had a conversation with Steve  
21 about the privacy piece. Margaret's version was different than  
22 that.

23          Q.     What was Margaret's version?

24          A.     Margaret said that she expressed concerns that  
25 Steven Farmer seemed to seek out duties with females and was

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1 overeager and that she felt uncomfortable. I'm using my own  
2 words, but that's paraphrasing.

3 Q. No, I understand.

4 Margaret also told you that Ray Sumera had come to  
5 her with concerns?

6 A. I don't know if she told us that or that was the  
7 report, I can't remember which, but that was a difference in  
8 their stories, as well.

9 Q. Well, what do you mean, "that was the report"?  
10 What report?

11 A. I don't know if that was what she told law  
12 enforcement or if that was what she told Carol. We got the  
13 story kind of secondhand.

14 Q. Well, how do you know she told law enforcement if  
15 you never saw the report?

16 A. It got back to --

17 Q. How did it get --

18 A. -- us somehow and --

19 Q. -- back to you?

20 MR. PRANGLE: Hold on. Hold on.

21 A. I can't remember the specifics.

22 MR. PRANGLE: Hold on. Let her --

23 Q. How did you find out before the report?

24 MR. PRANGLE: -- finish the answer. When that's  
25 done --

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1           A.     I don't remember.

2           Q.     Okay. So, in other words, you testified earlier  
3 today you've never seen a report, but now you know about the  
4 report.

5           A.     I still haven't seen it.

6           Q.     So tell me when the first time you found out about  
7 the report.

8           A.     I couldn't tell you the details. I don't know if  
9 Margaret came and told us or if someone else did, but somehow  
10 it got back to us that Margaret had shared concerns with law  
11 enforcement. I don't -- I don't know that details were shared  
12 initially. And then we started talking about it with the team.

13          Q.     Was that before you met with her in between May and  
14 August?

15          A.     We became aware of it and then met with her, yes.

16          Q.     Okay. But you -- as you sit here today, you have  
17 no idea how you became aware of it?

18          A.     I can't remember. I don't want to guess.

19          Q.     I don't want you to guess. Okay. So you have no  
20 idea how you became aware of it, but you actually became aware  
21 of the contents of it, as well. Right?

22          A.     I became aware that she shared information.  
23 Contents of the police report, those are two different things  
24 to me.

25          Q.     Well, you were aware, as you just told me before,

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1 that Margaret was saying that Ray came to her.

2 A. When she told the story of how she expressed the  
3 concerns, yes.

4 Q. When did she tell you that?

5 A. When we met with her and talked to her.

6 Q. Okay. So let's put it this way. As of August of  
7 2008, you, as the Department of Emergency -- as the head of  
8 Department of Emergency Services at Centennial Hills Hospital,  
9 you were aware that Margaret Wolfe was alleging that Ray Sumera  
10 had come to her and expressed concerns about Ray Sumera. Is  
11 that correct?

12 A. She didn't express concerns about Ray Sumera.

13 Q. I'm sorry. I'm sorry. Let me restate the  
14 question. That was my bad.

15 In between May and August 1 of 2008, you, as the  
16 department -- as the head of the Department of Emergency  
17 Services at Centennial Hills, became aware that -- through  
18 Margaret Wolfe that Ray Sumera had come to Margaret Wolfe with  
19 concerns about Steven Farmer. Is that correct?

20 A. I don't remember the details enough to say if I  
21 heard that directly from her or from someone else. What I  
22 remember is that Margaret had expressed concerns to Ray. Who  
23 initiated the conversation, I don't know what I was told  
24 initially.

25 Q. Well, you already -- you just testified somehow you

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1 were aware that Margaret stated that Ray told her about  
2 concerns. Right? About Farmer.

3 A. I remember there being several different versions  
4 of the story. One was that --

5 Q. Okay.

6 A. -- Ray went to Margaret and initiated a  
7 conversation. The other was that Margaret went to Ray and  
8 initiated the conversation.

9 Q. Let's just keep those two for right now. Whatever  
10 it is, okay, those two versions, at least.

11 A. Yes.

12 Q. You knew those two versions as of August 1, 2008.  
13 Would you agree with that?

14 A. At some point within a few --

15 Q. Is that fair?

16 A. -- months if we say August. I -- I can't validate  
17 the date, but that sounds fair, yes.

18 Q. Okay. When was the first time you spoke with  
19 counsel about this matter?

20 A. Cagnina case?

21 Q. Any. I don't care.

22 A. I don't -- I don't know that I could tell you.

23 Q. Okay. Did you ever investigate -- You said you  
24 had two different versions here. Did you have each of them,  
25 Mr. Sumera and Ms. Wolfe, write down their respective versions?

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1           A.     We did not have them write them down, to my  
2 recollection. We spoke to them each.

3           Q.     Did you take notes from that?

4           A.     Not that I recall.

5           Q.     Okay. Did you ever have them both in a room  
6 together --

7           A.     Not that I recall.

8           Q.     -- where they could say, "Well, wait a minute.  
9 Margaret, I didn't say that" or "Wait a minute, Ray. I didn't  
10 say that"? Did you ever do that?

11          A.     Not that I recall.

12          Q.     Did you ever get to the bottom of the truth?

13          A.     The stories were different.

14          Q.     I know.

15          A.     And they stuck to their stories.

16          Q.     Did you ever get to the bottom of it, though?

17          A.     There wasn't a way to really prove or disprove.  
18 They both had different versions --

19          Q.     Okay.

20          A.     -- of what they remembered.

21          Q.     Okay.

22          A.     So we addressed it by making sure that people knew  
23 how to escalate and when to come forward with concerns in the  
24 future.

25          Q.     Did you ever put a note into her employee file

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1 about this incident?

2 A. Not that I recall.

3 Q. So you didn't know what happened, you didn't know  
4 what version was the correct version, Ray's version or  
5 Margaret's version; but, nevertheless, is it safe to say that  
6 you believed it was more like the game of telephone, as opposed  
7 to someone was lying?

8 A. I don't --

9 Q. Or the other way around. Maybe you thought someone  
10 was lying.

11 A. I personally at the time -- I think that it's easy,  
12 when you hear something surprising and horrible, to start  
13 looking back and seeing things.

14 Q. Okay. That doesn't answer my question.

15 A. I -- I don't know that I would classify it the way  
16 that you just said it, no.

17 Q. So you wouldn't classify it as a lie?

18 A. I don't know. I can't call something a lie without  
19 seeing the truth myself.

20 Q. Okay. Wouldn't it have been -- Wouldn't it --  
21 Strike that.

22 Wouldn't it have been important to come to a  
23 conclusion?

24 A. If we had proof, that would be easy.

25 Q. Well, but if Margaret is making up stories, that's

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1 a terminable offense.

2 A. I couldn't prove that either of them was telling  
3 the truth or not telling the truth.

4 Q. Right. And I was just going to say, and if Ray  
5 is telling stories that aren't true, that's a terminal --  
6 turna- -- turnable -- termable -- terminable --

7 MR. PRANGLE: He can be fired for that.

8 MR. MURDOCK: Thank you.

9 MR. PRANGLE: Sure.

10 MR. MURDOCK: Thanks.

11 Q. -- offense. Is that correct?

12 A. It could be, yes.

13 Q. Okay. But a decision was made just to kind of let  
14 it be and decide, you know what, we're not going to get to the  
15 bottom of it. What we're going to do is we're going to say,  
16 "Look, if you see concerns, report it." And you gave them, you  
17 gave all your staff, ways to make sure -- policies and  
18 procedures to make sure they knew what to do in certain  
19 situations. Is that right? Is that fair?

20 A. That's fair.

21 Q. Okay. Now, do you know Crystal Johnson?

22 A. Yes.

23 Q. Were you involved at all with bringing on agency  
24 staff?

25 A. Not directly, no.

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1 Karen Goodhart. Darby Curlee. Darby Curlee was, I believe,  
2 the charge nurse. So we knew who was working.

3 With the second incident, when we became aware of  
4 the other concerns that Margaret expressed, Ray was named in  
5 that information, so we talked to the two of them.

6 Q. You said Ray was named in that information.

7 A. That Margaret had shared with him.

8 Q. Okay.

9 A. That was the story that we became aware of.

10 Q. Well, were there any documents, though, that had  
11 that?

12 A. Not that I know of.

13 Q. I'm trying to figure out how you became aware of  
14 the whole Ray Sumera and Margaret Wolfe drama.

15 A. And I can't recall. It was so long ago, I don't  
16 know if it was a phone call or an in-person. I have no idea  
17 how that came back to us. It could have been Margaret herself.  
18 I don't know.

19 Q. And just so I'm clear, after the whole situation,  
20 after your discussions with Mr. Sumera and Ms. Wolfe, neither  
21 of them was written up. Correct?

22 A. Not to my knowledge.

23 Q. You didn't write them up?

24 A. Not that -- No, not that I know of.

25 Q. You're the director of the Emergency Services.

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1 A. Right.

2 Q. So you would've been the one to write them up.

3 A. Uh-huh.

4 Q. Right?

5 A. I could have been. Not --

6 Q. Okay. But you didn't.

7 A. -- the only one. Not that I know of, no.

8 Q. Okay. But you didn't specifically. Right?

9 A. No.

10 Q. You didn't specifically write up Ms. Wolfe.

11 A. Right.

12 Q. Outside of you and Ms. Butler, are you aware of

13 anybody else knowing about the Ray Sumera and Margaret Wolfe

14 discussions?

15 A. I would think Risk and Quality did, but --

16 MR. PRANGLE: Don't guess.

17 A. -- but I'm guessing, so never mind. No --

18 Q. How would you guess that?

19 A. -- I'm not, because typically that's something that

20 they would be aware of.

21 Q. How would they be aware of it?

22 A. Somebody would notify them.

23 Q. Who?

24 A. It could be many people.

25 Q. Did you?

WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICES

**WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICE**  
505-843-7789

1 A. I don't remember.

2 Q. Did Carol?

3 A. I couldn't answer that.

4 Q. Did you do a MIDAS report?

5 A. I don't recall.

6 Q. Should you have done a MIDAS report?

7 A. Somebody should have --

8 Q. Did you?

9 A. -- if they thought there was risk.

10 The Margaret-and-Ray incident was tough because it  
11 really boiled down to different perceptions of a conversation.

12 Q. Okay. But, nevertheless, it affected patient care.  
13 Right?

14 A. Not that we identified, no. It was, I have a bad  
15 feeling about someone, versus, that's not what she communicated  
16 to me. But there was no action that was identified from that  
17 incident. To my -- To my memory, that was what the  
18 conversations were about. There was no allegation of any  
19 wrongdoing. It was, I have a bad feeling. He's putting leads  
20 on my patients, which was part of the job. And Ray having a  
21 totally different understanding of that exchange.

22 Q. Actually, let me do this. I'm trying to pull this  
23 up. I'm going to have you read the Margaret Wolfe statement.  
24 It's PDDISC0162. It's where it starts. Why don't you just  
25 take a breeze through that. Take some time. It's 15 pages. I

WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICES

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1 want you to read through there. Okay? Do you know how to work  
2 that?

3 A. Maybe.

4 MR. SILVESTRI: Is this the police statement?

5 MR. MURDOCK: Yes.

6 MS. BROOKHYSER: Can we take a break while she's  
7 doing that?

8 MR. MURDOCK: Of course. Of course. Take a break.

9 (A recess was taken from 3:10 p.m. to 3:14 p.m.)

10 MR. MURDOCK: Okay. We can go back on the record.

11 Q. (By Mr. Murdock) You've read -- You've now read  
12 the Las Vegas Police Department statement of Margaret Wolfe.  
13 Is that correct?

14 A. Yes.

15 Q. Is that the first time you've ever read it?

16 A. I don't remember reading it before.

17 Q. That's not what I asked you.

18 A. I -- I --

19 Q. Is that the first time you've ever read it?

20 A. To the best of my knowledge, yes.

21 Q. Okay. Is it possible you read it before?

22 A. Anything's possible.

23 Q. Well, no, it's not.

24 A. Yes, it is possible.

25 Q. Okay. Have you ever been shown this document

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**WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICE**  
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1 before?

2 A. Today is the first time that I've read it, to my  
3 knowledge.

4 Q. I understand that. Have you ever been shown --

5 A. Not that I remember.

6 Q. -- this document before?

7 A. Not that I remember before now.

8 Q. Has anybody discussed this document with you?

9 A. I knew of its existence.

10 Q. And you knew of its existence prior to -- and I  
11 think we agreed on this before -- August 1, 2008. Is that  
12 correct?

13 A. I knew in that first few months after that Margaret  
14 had expressed concerns with the Police Department, yes.

15 Q. Okay. And you knew of the existence of the  
16 voluntary statements. Correct?

17 A. I think that's fair.

18 Q. Okay. During that same time frame? Is that  
19 correct? Is that fair?

20 A. Sure.

21 Q. Okay. Now, the statement goes a little bit further  
22 than what you just said before. Do you agree with that?

23 MR. PRANGLE: Objection to the form. Vague.

24 A. What I was telling you before was what I remember  
25 from the conversations with Margaret and Ray, yes.

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**WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICE**  
505-843-7789



ESTATE OF JANE DOE vs. VALLEY HEALTH, et al.  
09-A-595780-C

Amy Blasing, MSN, RN  
July 28, 2015

1 taking of the deposition.

2 I FURTHER CERTIFY that examination of this  
3 transcript and signature of the witness was requested by the  
4 witness and/or all parties present. On \_\_\_\_\_, a  
5 letter was mailed or delivered to the witness or his/her  
6 attorney regarding obtaining signature of the witness; and  
7 corrections, if any, will be appended to the original  
8 transcript, and copies sent to place in each copy of the  
9 deposition.

10 I FURTHER CERTIFY that the recoverable cost of the  
11 original and one copy of the deposition, including exhibits, to  
12 MR. ROBERT E. MURDOCK is \$ .

13 I FURTHER CERTIFY that I did administer the oath to  
14 the witness herein prior to the taking of this deposition; that  
15 I did thereafter report in stenographic shorthand the questions  
16 and answers set forth herein, and the foregoing is a true and  
17 correct transcript of the proceeding had upon the taking of  
18 this deposition to the best of my ability.

19 I FURTHER CERTIFY that I am neither employed by nor  
20 related to nor contracted with (unless excepted by the rules)  
21 any of the parties or attorneys in this case, and that I have  
22 no interest whatsoever in the final disposition of this case in  
23 any court.

24 

25 Dawn Redwine, RPR, CCR, CRI  
NM Certified Court Reporter #165  
License Expires: 12/31/15

WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICES

WILLIAMS & ASSOCIATES -- COURT REPORTING SERVICE  
505-843-7789

**EXHIBIT “10”**

**EXHIBIT “10”**

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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
CHRISTINE MURRAY, RN

Thursday, January 8, 2015

1:30 p.m.

521 S. Third Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

1 this, I talked to her. And that was it.

2 Q. Who was the director of nursing at the
3 time?

4 A. I really don't know.

5 Q. But the director of nursing called you down
6 after she read the statement, is that correct?

7 A. Yes. She talked to all of us.

8 Q. What do you mean, she talked to all of you?

9 A. She talked to all the nurses that were
10 involved in this.

11 Q. Did you go through the statement with her?

12 A. She asked me what happened. I told her
13 what I knew. We didn't pick this up and go through
14 it line by line like we are now, but she knew what
15 was -- I mean she had read it.

16 Q. Did she ask you about the little crazy old
17 lady patient? Was that something you discussed?

18 A. You know, I'm not sure. She just asked
19 about what I knew. No, I don't believe we did go
20 through that. We went through the other part,
21 because that was what was coming up.

22 Q. And outside of me asking you about this
23 little crazy old lady patient, and the detective, has
24 anybody else ever asked you about it?

25 A. No.

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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 CHRISTINE MURRAY, RN on January 8, 2015 commencing
at the hour of 1:30 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 not 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 15th day of January, 2015.

Carol O'Malley
Carol O'Malley, CCR No. 178

EXHIBIT “11”

EXHIBIT “11”

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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

RENATO SUMERA, RN

Friday, May 1, 2015

9:30 a.m.

521 S. Third Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR

1 Q. Prior to yesterday had you ever heard Mr.  
2 Bemis' name?

3 A. A while back. I don't know exactly when.

4 Q. Would it have been right when this incident  
5 occurred?

6 A. I think so, yes.

7 Q. Okay. Can you tell me the circumstances  
8 under which you met Mr. Bemis?

9 A. The conversation I don't remember.

10 Q. Hold on. I'm not asking about the  
11 conversation itself. I'm asking you, was it at the  
12 hospital?

13 A. At the hospital.

14 Q. Was it in a room at the hospital?

15 A. Yes. In a room at the hospital, yes.

16 Q. And you said it would have been right  
17 around the time of the incident, is that correct?

18 A. Possibly after the incident, yes. After  
19 the incident.

20 Q. And the incident we're talking about is  
21 with Mr. Farmer, is that correct?

22 A. Yes.

23 Q. And who was in the room with you besides  
24 Mr. Bemis?

25 A. I don't remember. I really don't remember.

1 Q. Was there anybody in there?

2 A. Two more people, but I don't remember who  
3 they are.

4 Q. Were they lawyers?

5 A. I don't remember.

6 Q. Was it Ms. Bochenek?

7 A. No, she wasn't there.

8 Q. How do you know that?

9 A. I would know her. I know what she looks  
10 like.

11 Q. So it's two people there who you just  
12 didn't know who they were?

13 A. Yeah.

14 Q. Is that a yes?

15 A. That's a yes.

16 Q. And tell me about the discussion that was  
17 had.

18 A. I don't remember the conversation.

19 Q. How long was the conversation?

20 A. Timewise I don't remember.

21 Q. Can you estimate it for me?

22 A. Ten minutes.

23 Q. Do you believe that the conversation took  
24 place within days of the arrest of Mr. Farmer, or are  
25 we talking months down the line?

1 MR. BEMIS: I object to form.

2 THE WITNESS: I don't remember the  
3 time, as far as time span.

4 BY MR. MURDOCK:

5 Q. Is it more likely than not that it occurred  
6 within days after the arrest?

7 A. I don't know exactly, but maybe.

8 Q. Well, was it more likely than not that  
9 that's when it occurred?

10 MR. BEMIS: I object to form.

11 THE WITNESS: Yes, sir.

12 BY MR. MURDOCK:

13 Q. Okay. By the way, what room was it in at  
14 the hospital?

15 A. Oh, gosh. It might be one of the  
16 conference rooms.

17 Q. Were you seated?

18 A. Yes, I was.

19 Q. And do you recall being shown any  
20 documents?

21 A. No.

22 Q. Do you recall who spoke?

23 A. John. John was there.

24 Q. Right, I know John was there, but you said  
25 there were two other people as well.

1           A.     Yeah, but I don't know who they are. I  
2 don't remember who they are, and I don't recall the  
3 conversation.

4           Q.     Okay. Did someone take a recorded  
5 statement of you?

6           A.     I don't think so.

7           Q.     Was there a video camera there?

8           A.     I don't remember a video camera.

9           Q.     Were people taking notes?

10          A.     I don't recall.

11          Q.     Can you describe the other people in the  
12 room?

13          A.     No, I can't.

14          Q.     Were they men or women?

15          A.     I don't recall. I want to say one is a  
16 female.

17          Q.     How were they dressed?

18          A.     I don't recall.

19          Q.     Did they give you a card?

20          A.     No.

21          Q.     Did they have you sign anything?

22          A.     No.

23          Q.     Did you ask to sign anything?

24          A.     No.

25          Q.     And you can't recall anything about the

1 conversation?

2 A. That's too long ago.

3 Q. Did they ask you your name?

4 MR. BEMIS: I object to form. I'm

5 going to instruct him not to answer any communication

6 he had after now.

7 MR. MURDOCK: You weren't his lawyer.

8 MR. BEMIS: I'm going to object to form

9 and instruct him not to answer.

10 THE WITNESS: I don't remember the

11 conversation.

12 MR. MURDOCK: John, you keep

13 instructing him not to answer. You weren't his

14 lawyer.

15 MR. BEMIS: I absolutely was.

16 MR. MURDOCK: No, you were the

17 hospital's lawyer.

18 BY MR. MURDOCK:

19 Q. Do you understand he's the hospital's

20 lawyer? Do you understand that?

21 A. Yes.

22 Q. Do you understand that this man also helped

23 Mr. Farmer? Do you understand that?

24 MR. BEMIS: I object to form.

25

1 BY MR. MURDOCK:

2 Q. Do you understand that?

3 A. He's the hospital lawyer.

4 Q. Do you understand he helped Mr. Farmer as  
5 well?

6 MS. HUETH: I object to form.  
7 Argumentative. Harassing.

8 THE WITNESS: What's your point?

9 BY MR. MURDOCK:

10 Q. Well, my point is, are you going to listen  
11 to him? Do you want him to represent you?

12 MR. BEMIS: I object to form.

13 MS. HUETH: Objection. Argumentative.

14 BY MR. MURDOCK:

15 Q. Or do you want your own lawyer?

16 MR. BEMIS: I'm going to object to  
17 form. He is represented by counsel.

18 MR. MURDOCK: Do you know what  
19 champerty is, John?

20 MR. BEMIS: I'm not here to answer  
21 questions, Rob.

22 MR. MURDOCK: Yeah, I know that.

23 BY MR. MURDOCK:

24 Q. Sir, let's go back to the meeting, okay?

25 A. Okay.



1           Q.    First you said to me you didn't remember  
2   the conversation.  Then your lawyer jumped in  
3   afterwards and said, "No, I don't want you to talk  
4   about it."

5                        So what's it going to be?  Are you  
6   going to tell me about the conversations, or are you  
7   going to listen to the hospital's lawyer?

8                       MR. BEMIS:  I object to form.  
9   Argumentative.

10                      MS. HUETH:  Objection.  Argumentative.  
11   Harassing.  Asked and answered.

12   BY MR. MURDOCK:

13           Q.    You can answer the question.

14           A.    Again, I do not remember the conversation.  
15   I do not remember the other people in the room.

16           Q.    I didn't ask you that, sir.

17           A.    Okay.

18           Q.    All I asked you was, are you going to  
19   listen to your lawyer, or are you going to tell me  
20   about the conversation?  Whatever you remember.  If  
21   you don't remember, you don't remember.

22           A.    You can ask me.

23           Q.    Okay.  Thank you.

24                      MR. BEMIS:  No, no, no.  I'm going to  
25   instruct him not to answer.

1 So go ahead. Take your break.

2 (Recess.)

3 MR. MURDOCK: Okay. We can go back on.

4 BY MR. MURDOCK:

5 Q. Sir, during your break did you have any  
6 conversations with anybody?

7 A. I just told John I feel uncomfortable.

8 Q. And what did John say to you?

9 A. I'm doing okay.

10 Q. Okay. You're doing great.

11 So getting back to where we were,  
12 tell me about the conference that was had at the  
13 hospital that you believe was more likely than not  
14 just a few days after the arrest of Mr. Farmer,  
15 between you, Mr. Bemis, and two other individuals.

16 MR. BEMIS: I'm going object that it  
17 calls for attorney-client privilege and instruct him  
18 not to answer.

19 BY MR. MURDOCK:

20 Q. Are you going to follow Mr. Bemis'  
21 instruction?

22 A. Yes, I am.

23 Q. Okay. Very good. And I represent to you  
24 that you may be coming back here, and I'm not paying  
25 for it. So that being said, we can go that route.

1                   Now, sir, you said the meeting was  
2 about ten minutes, is that correct?

3           A.    I don't know exactly what time, but  
4 approximately ten minutes.

5           Q.    And were any documents shown to you at all?

6           A.    I don't recall any documents.

7           Q.    Did you show any documents to them?

8           A.    I did not show any documents to them.

9           Q.    Were you asked anything about Mr. Farmer?

10                   MR. BEMIS: I'm going to object. That  
11 calls for attorney-client privilege and I instruct  
12 him not to answer.

13 BY MR. MURDOCK:

14           Q.    Are you going to listen to Mr. Bemis?

15           A.    Yes, I am.

16           Q.    Did you ask why you were called into the  
17 meeting?

18                   MR. BEMIS: I'm going to make the same  
19 objection and instruct him not to answer.

20 BY MR. MURDOCK:

21           Q.    Are you going to listen to Mr. Bemis?

22           A.    Yes, I am.

23           Q.    How did you get called into the meeting?

24           A.    They called my department while I was at  
25 work.

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 RENATO SUMERA, RN on May 1, 2015 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 5th day of May, 2015.

*Carol O'Malley*  
Carol O'Malley, CCR No. 178

**EXHIBIT “12”**

**EXHIBIT “12”**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 1

EVENT #: 080530-2056 (Reference 080516-1021)

SPECIFIC CRIME: OPEN & GROSS LEWDNESS

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: MARGARET WOLFE

DOB: 06/11/70

SOCIAL SECURITY #:

RACE:

SEX: F

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HOME PHONE:

WORK ADDRESS: CENTENNIAL HILLS HOSPITAL

WORK PHONE: 629-1211

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 MAY 30, 2008 at 0758 hours.

Q. Hello operator. This is Detective M. Saunders, P# 6076, dictating—or not dictating. I'm sorry. Uh, having one taped interview reference event number 080516-1021. This interview is taking place at 8775 West Deer Springs Road, Las Vegas, Nevada 89149. The time is approximately 0758 hours on the 30<sup>th</sup> of May, 2008. Present for this interview, last name of Wolfe, W-O-L-F-E, first name of Margaret, M-A-R-G-

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 2

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A-R-E-T. Her date of birth is 06/11 of 1970. She has a work phone number of 629-

---

1211. Is that information true and correct?

A. Yes.

Q. Okay. Is it all right if I call you Margaret?

A. Yes.

Q. Okay. Margaret, um, I was talking to you a little while ago about an incident that you're aware of that occurred at your hospital, uh, and you work at Centennial Hills Hospital. Correct?

A. That's correct.

Q. And where do, where, what do you do for uh, uh, Centennial Hills Hospital?

A. I'm an E.R. nurse.

Q. \_\_\_\_\_ And were you working on the day of uh, or the, the evening shift or graveyard shift of...uh...May 15<sup>th</sup> to May 16<sup>th</sup>?

A. Yes, I was.

Q. Okay. And was there somebody that worked with you or was assisting, I should say, in the E.R., by the name of Steven Farmer?

A. Yes.

Q. Okay. And what was Steven Farmer's job?

A. He was a CNA. Contracted out through an agency.

Q. \_\_\_\_\_ And what would you say his job duties were?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 3

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. Um, he was to assist the nurses with um, patient care, taking them to the bathroom, uh, possibly changing their clothing, cleaning any uh, messes that patient, you know, may have. Uh, just, just general assistance in patient care. Transporting patients to and from different units.
- Q. Okay. Um...and did you know Mr. Farmer?
- A. Just through work.
- Q. Just through work. Okay. Um...I want to direct you back to--on that specific in--uh, specific night there was a young lady that was brought into the E.R. that I believe, um, um, Nurse Goodheart, uh, Karen Goodheart worked on, and uh--or was assigned to and her name was um...Roxanne Ca--uh, Cagnina. Was that--does that name sound familiar?
- A. No.
- Q. Okay. Um, are you familiar with the circumstances with Mr. Farmer and his arrest?
- A. Yes.
- Q. Um, that night--uh, let me back up. There was--while I was talking to you um, you relayed some information to me that you saw something one night--on that same night. It was the 15<sup>th</sup>, that you felt was inappropriate and, and suspicious and can you tell me about what that situation was again.
- A. Yes. I had a patient that was um...brought in...by ambulance and uh, she was laying on the gurney, uh, in a gown that opened from the front. She was brought



**VOLUNTARY STATEMENT**

PAGE 4

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

from a Quick Care. Our gowns open in the back, but um, this gown happened to  
open in the front and...

Q. Okay.

A. um, he went into her room for uh, no apparent reason. The call light was not  
on. The alarms on the monitor were not going off and I was standing right outside  
the patient's room. So he had no reason to have gone in there.

Q. And she was your patient?

A. Yes, she was.

Q. Okay. And he was not assigned to her?

A. No, he was not.

Q. Okay.

A. He's just assigned to the general E.R.

Q. Okay.

A. Not to specific patients.

Q. Okay.

A. Um, so he went into the room, opened her gown, fully, underneath the sheets. Uh,  
he put his hands inside of her gown. I didn't see what he was touching but to me  
it looked like he pretended like he was uh, checking the monitor wires that were on  
her to see if there were placed correctly which again, he would have absolutely no

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 5

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

reason to do that and in fact it's out of his scope of practice to be checking monitor

placements. Um--

Q. What was the...what was this um, this patient, um, what was her mental status?

Was she awake, asleep, was she--

A. She was awake and alert.

Q. \_\_\_\_\_ Um, was she on any medications?

A. I don't recall if I gave her any morphine or not.

Q. Okay.

A. Um, if she had any medication it would have been morphine.

Q. Okay. And what would--uh, I don't know if you can tell me or not, do you remember what she was brought in for?

A. I do.

Q. Okay. I don't know--what, you know, never mind. We won't--I don't need to know that. Do you remember what the patient's name was?

A. It was Denise Hanna.

Q. Denise Hanna. Do you remember how that's spelled?

A. The last name is H-A-N-N-A. The first name is D-E-N-I-S-E.

Q. Okay. And how old was she?

A. Uh, approximately thirties or forties.

Q. Thirties to forties? Okay. And white female, black female, Hispanic?

**VOLUNTARY STATEMENT**

PAGE 6

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. White female.

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Q. White female. Okay. Okay. And so...did Ms. Hanna say anything to you or...

A. I was out, outside of the room, but within view, um, at the time. She didn't say anything but she quickly closed her gown and appeared very uncomfortable about what had just happened. Um, when I had gone back into the room, she didn't say anything about the situation but uh, continued to just act in a way that she was uh, very self conscious about uh, being covered up.

Q. Okay. Now you say that he put his hands, \_\_\_\_ he opened up the front of her gown but he put his hands under the sheets. Were there sheets still laying over the top of her?

A. He lifted the sheet up and opened her gown, so the sheet wasn't touching her but it was lifted up over the top of her body.

Q. Okay. So were her breasts completely exposed?

A. Yes.

Q. Okay. And could you see her breasts—

A. \_\_\_\_

Q. —from where you were at?

A. Not from where I was at but the view he was standing at, she would have been completely exposed.

Q. She was completely exposed to him?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 7

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. Yes.

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Q. Okay. And he did this...um...under the pretense that, that you could assu—that you assumed by what you could see what he was doing, like wanting to check wires?

A. Right. The heart monitor.

Q. The heart monitor. Okay. And where would the probes, so to speak, be placed on a, on a female patient, um, that had this type of monitor hooked up to them?

A. There's five leads. Two of them go underneath the clavicle, midline underneath the clavicle. One of them goes, um, approximately between the breasts and then there's two that would be on the ribs, kind of on the sides, that would be on a woman, usually fall underneath her breasts.

Q. Okay. So it'd be just, just under the—to, \_\_\_\_ to the right and the left of the breasts?

A. Yes.

Q. Okay. Um...did he say anything to you, did he say anything to you when uh, when he came out of the room?

A. No, he did not. He walked away.

Q. Did he immediately go to another room or what did he—did you see where he went to or what he did?

A. I didn't see where he went after that.

Q. Okay. Um, and, and Ms. Hanna never said anything to you?

A. No.

**VOLUNTARY STATEMENT**

PAGE 8

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- 
- Q. Okay. Did anybody, um...did you talk to anybody about this?
- A. I did. I told another male nurse. His name is Ray Sumera.
- Q. Okay.
- A. And I asked him if he would talk to him about it, which he told me he did.
- Q. Okay. Did Ray say, did Mr. Sumera say anything about what uh, Mr. Farmer's response was to him?
- A. No, he did not.
- Q. Did uh...excuse me. Um...has uh, anybody else in the E.R. room, that you've worked with, uh, ev--ever come to you or have you ever talked to anybody that shared similar concerns that you do about Mr. Farmer?
- A. Um, the same nurse, Ray Sumera, had told me um, another time that he--to watch him around my female patients. That he was concerned because he was very, overly attentive with female patients and very anxious to um to connect them to the monitors and disconnect them from the monitors, which would, um, require him to reach into their clothing.
- Q. Okay. Had, had anybody else \_\_\_\_--had you talked to anybody else about Mr. Uh, Mr. Farmer?
- A. I told Julie, who is the nurse I gave report to that morning, about the situation that happened with Ms. Hanna.
- Q. Okay. And again, all this occurred on the uh, morning of the 16<sup>th</sup>?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 9

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. Correct.

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Q. Okay. Um...was uh, Ms. Hanna, um, released from E.R.—did she go home or was she admitted to the hospital?

A. She was admitted to the hospital but she was released um, later that day.

Q. Later that day. Okay. Um...can you think of anything that uh, might be beneficial that I might have forgot to ask to something that you feel is important that I need to know?

A. He was just very suspicious in his activities. Um, such as going into rooms with doors closed with female patients when he was not asked to.

Q. Is that against protocol?

A. It's not against protocol. It's just unusual—

Q. It's just unusual.

A. —for a CNA to do something like this.

Q. Okay.

A. Typically, if they enter a room, it's because a call light is on or um, a nurse has asked them to go in there. Especially when a door is closed, it's um, very atypical for somebody, even another nurse, just to walk into that room when there's no need for it.

Q. Okay. Wh—are the door normally closed? What would be a reason that they would close doors?

**VOLUNTARY STATEMENT**

PAGE 10

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. If there was um, some sort of exam going on.

---

Q. Okay.

A. Um...if there was a procedure going on that was exposing the patient or a patient would be uncomfortable about. Uh, if a patient was sleeping.

Q. Okay.

A. Typically the doors stay open and um, curtains, often times, are closed, but doors typically stay open.

Q. How...if you had to give me an estimate, how many times would you say that you...you've seen him walk into rooms, for female patients, where the doors are closed but there's no, no need for him to be in that room?

A. Multiple times. I couldn't put a number on it.

Q. Okay. Um...have you ever had any conversations or talked to Mr. Farmer, before?

A. Um, just in general—

Q. Just \_\_\_\_\_

A. —course of work.

Q. Okay. Um...and you said that he just—these, these actions that he was doing is what made uh...it, it was of a concern and made you suspicious?

A. Yes.

**VOLUNTARY STATEMENT**

PAGE 11

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- Q. Had there been anything else or had any other patients ever come forward to you on anything else, um, anything that Mr. Farmer had ever done that seemed inappropriate?
- A. Not any other patients. No.
- Q. \_\_\_\_\_ patients? But, but uh, some—Ms. Hanna's the only, only one that, that \_\_\_\_\_ to mind with you, where you actually observed him do something that, as you put it, was beyond his scope?
- A. Yes.
- Q. Okay. Um...okay. And then you understand that Mr. Farmer is the subject of an investigation right now, into a, a sexual assault?
- A. Yes, I do.
- Q. Okay. Okay. Do you harbor any...do you have any personal gain by coming forward to uh, with—to me with this information?
- A. No, I don't. In fact um, I \_\_\_\_\_ fear that I could possibly get uh, in trouble with my job if I were to give out information uh, you know, regarding—against \_\_\_\_\_ with my patients.
- Q. Okay. Um, anything else you can think of that might be of uh, useful information to me to assist me in my investigation?
- A. Um, nothing that comes to mind other than, like I said, there were other people that had um, told me that they had the same—



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**

PAGE 12

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

Q. Ex-expressed concerns?

---

A. Yeah. Concerns about him.

Q. Okay. And that would be Ray S-Sumera. Did Julie say she had any concerns?

A. Julie hasn't worked with him because she works on the day shift.

Q. Okay.

A. So um, she wouldn't normally be able to observe--

Q. Okay.

A. --any actions of his.

Q. Okay. And was he primarily just E.R. help? Did he ever go to any other areas of the hospital and assist there instead?

A. He worked on multiple floors.

Q. He worked multiple floors?

A. He was not specifically assigned to the E.R. every night.

Q. Okay. All right.

A. Sometimes he was um, assigned to be what's called a sitter, with um, psychiatric patients that are not medically cleared, if they are transferred up to the medical floor and are a flight risk or need to be observed um, for suicide precautions, things like that. Then they're um...they're put on a one on one sitter situation where he would be alone, watching that patient.

Q. Gotcha. Okay. All right. Well, um, anything else?

**VOLUNTARY STATEMENT**

PAGE 13

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

- A. There's one other nurse that had come to me that I'm, I'm trying to remember her name, that had told me some of the same things. Um...if you could turn it off one second and give me a second to think \_\_\_\_\_
- Q. That, that's all right. What we'll do, we'll uh, what we'll do is, we'll go ahead and terminate this interview. Uh-
- A. Kim. That's her name. Kim.
- Q. Kim?
- A. Yeah.
- Q. Okay. And where, where does Kim work?
- A. She works in the E.R. as well.
- Q. She works in the E.R. as well?
- A. Yes.
- Q. Okay. And she, she um, relayed some concern to you also?
- A. The same concerns that Ray had said about uh, his actions were suspicious, especially with a female patient.
- Q. Was--and, and is Ray a nurse also or is he a--
- A. Yes.
- Q. Okay.
- A. He's a nurse and occasionally works as a charge nurse.
- Q. Okay. Okay. Um...okay. Anything else?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 14

EVENT #: 080530-2056 (Reference 080516-1021)

STATEMENT OF: MARGARET WOLFE

A. (No audible response.)

---

Q. That you can think of? If I needed to speak with you about anything further, would that, would that still be possible?

A. Yes.

Q. Okay. Operator, this will end the interview. The time is uh...0811 hours on the 30<sup>th</sup> of May, 2008. Same people present. Same location. Thank you.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT 8775 WEST DEER SPRINGS ROAD, LAS VEGAS, NEVADA 89149, ON THE 30<sup>TH</sup> DAY OF MAY, 2008 AT 0811 HOURS.**

MS:gm

**EXHIBIT “13”**

**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

MARGARET WOLFE, RN

Wednesday, May 5, 2015

9:30 a.m.

521 S. Third Street

Las Vegas, Nevada

Carol O'Malley, CCR 178, RMR3

1 with you regarding Mr. Farmer?

2 A. When I was subpoenaed for his criminal
3 trial.

4 Q. And before then no lawyers, like for
5 instance Mr. Bemis -- he never called you?

6 A. No.

7 Q. And nobody from risk management had called
8 you?

9 A. No.

10 Q. Now, your discussion with Amy Bochenek --
11 that was after the Denise Hanna incident, correct?

12 A. Yes.

13 Q. And you said that occurred that day of the
14 Denise Hanna incident, correct?

15 A. Correct.

16 Q. After that day, speaking with Amy Bochenek,
17 did you speak with anybody else regarding Mr. Farmer,
18 in terms of administrators or administration at
19 Centennial Hills Hospital?

20 A. Not that I can recall.

21 Q. Okay. When you spoke with Amy Bochenek,
22 did you tell her that the nursing staff had all been
23 talking about Steven Farmer?

24 A. I don't recall.

25 Q. Is that something that you believe that

1 it's more likely than not that you did?

2 A. I can't recall. I can't answer that.

3 Q. When Mr. Farmer was arrested, that didn't
4 come as a complete shock or surprise to you, did it?

5 A. No.

6 MS. HALL: Objection. Lack of
7 foundation.

8 BY MR. MURDOCK:

9 Q. And it didn't come as a complete shock or
10 surprise because you already basically had these
11 suspicions, correct?

12 MR. BEMIS: I object to form.

13 BY MR. MURDOCK:

14 Q. You can go ahead.

15 A. Correct.

16 Q. And these are the suspicions that you had
17 voiced to Ray and others, correct?

18 MR. BEMIS: Same objection.

19 THE WITNESS: Correct.

20 BY MR. MURDOCK:

21 Q. Now, do you remember Kim's last name?

22 MR. SILVESTRI: Who?

23 MS. HALL: Kim.

24 THE WITNESS: No, I don't. I'm sorry.

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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 MARGARET WOLFE, RN on May 6, 2015 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 7th day of May, 2015.

Carol O'Malley
Carol O'Malley, CCR No. 178

EXHIBIT “14”

EXHIBIT “14”

ORIGINAL

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ACOM
Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
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702-384-5563

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Attorneys for Plaintiff

FILED

2009 AUG 21 A 11:51

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

A-09-595780-C
343898



JANE DOE,

Plaintiff,

vs.

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

Defendants.

CASE NO. A-09-595780-C
DEPT. NO. II

AMENDED COMPLAINT

COMES NOW Plaintiff Jane Doe, by and through her attorneys of record, Murdock &
Associates, Chtd. and Eckley M. Keach, Chtd., and for her cause of action, alleges as follows:

CLERK OF THE COURT

AUG 21 2009

RECEIVED

1 1. This action is instituted for damages, attorney's fees, costs of suit and pre-
2 judgment interest.

3 2. At all times mentioned herein, Plaintiff Jane Doe was and is a resident of Las
4 Vegas, Clark County, Nevada.¹

5 3. At all times mentioned herein, Defendant Valley Health System LLC
6 ("Valley Health") was and is a Delaware limited liability company, duly licensed in the State of
7 Nevada, and conducting business in Las Vegas, Clark County, Nevada, as Centennial Hills
8 Hospital Medical Center.

9 4. At all times mentioned herein, Universal Health Services, Inc. ("UHS") was and
10 is a Delaware corporation, duly licensed in the State of Nevada, and conducting business in Las
11 Vegas, Clark County, Nevada.

12 5. At all times mentioned herein, Defendant American Nursing Services, Inc.
13 ("American Nursing") was and is a Louisiana corporation, duly licensed in the State of Nevada,
14 and conducting business in Las Vegas, Clark County, Nevada.

15 6. At all times mentioned herein, Defendant Steven Farmer was and is a resident of
16 Las Vegas, Clark County, Nevada.

17 7. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants Does I through X are unknown to Plaintiff, who therefore sues said
19 Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that
20 each of the Defendants designated herein as a Doe is negligently responsible in some manner
21 for the events and happenings herein referred to and negligently caused injury and damages
22 proximately thereby to Plaintiff as herein alleged. Plaintiff will ask leave of court to amend this
23 Complaint to insert the true names and capacities of said Doe Defendants when same have been
24 ascertained by Plaintiff, together with the appropriate charging allegations, and to join such
25 Defendants in this action.

26 8. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants Roe Corporations I through X are unknown to Plaintiff, who therefore
28

¹ Plaintiff is using the fictitious name of Jane Doe because of the nature of the allegations. Under confidential arrangements, Plaintiff will furnish her true names to the Court and to Defendants.

sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a Roe Corporation is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately thereby to Plaintiff as herein alleged. Plaintiff will ask leave of court to amend this Complaint to insert the true names and capacities of said Roe Corporation Defendants when same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join such Defendants in this action.

FIRST CAUSE OF ACTION

9. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 8 as though fully set forth herein at length.

10. In or around May 2008, when Plaintiff was a patient at Centennial Hills Hospital, Jane Doe was sexually assaulted, and otherwise injured and terrorized by Farmer. Upon information and belief, prior to the attack on Jane Doe, Mr. Farmer sexually assaulted and/or molested other patients

11. In or around May 2008, Plaintiff Jane Doe was a patient at Centennial Hills Hospital. Plaintiff Jane Doe was recovering from seizures which were quite severe in nature. Steven Farmer entered her room and sexually assaulted Jane Doe. Jane Doe could not scream out because of the damages from the seizures. However, she was conscious, terrorized, in fear, and in severe pain and shock.

12. At all relevant times, Plaintiff Jane Doe exercised due care and caution for her own safety.

13. The Defendants, as the owner, affiliate and/or operator of Centennial Hills Hospital, owed a duty to Plaintiff and to all others lawfully upon the premises to maintain the premises in a safe and secure fashion so that Plaintiff and others lawfully upon the premises would not be subject to injury from perils known or unknown.

14. With regard to all of the actions leading up to, contributing to, and proximately causing the injury to Plaintiff, each of the named Defendants and all of the Doe/Roe Defendants acted as agents of one another and in concert with each other.

1 15. The corporate Defendants, and each of them individually and in their corporate
2 capacities, and through their agents, servants and employees, maintained the premises in a
3 negligent manner.

4 16. As a direct and proximate result of the negligent acts or omissions, more fully set
5 forth herein, of the corporate Defendants, and each of them individually, and by and through
6 their agents, servants, and employees, Plaintiff was sexually assaulted by Farmer.

7 17. The corporate Defendants are responsible for the acts and omissions of their
8 employees consistent with the doctrine of *respondeat superior* and pursuant to Nevada statute.

9 18. As a direct and proximate result of the corporate Defendants' negligence as
10 herein alleged, Plaintiff was injured in and about her head, neck, back, body, limbs, organs and
11 nervous system and was otherwise injured and caused to suffer great pain of body and mind, all
12 of which conditions may be permanent and disabling in nature, all to her general damage in an
13 amount in excess of \$10,000.00.

14 19. Plaintiff's injuries were caused by the negligence, and gross negligence,
15 recklessness, willfulness and wantonness of the corporate Defendants in that the corporate
16 Defendants failed to properly provide adequate security, failed to maintain the premises in a
17 safe condition, and failed to provide safe premises for its patients, despite the well known
18 foreseeability of an event such as this occurring.

19 20. As a further and direct and proximate result of the corporate Defendants'
20 negligence as herein alleged, Plaintiff has incurred expenses for medical care and treatment and
21 expenses incidental thereto, all to her damage in a sum according to proof at trial; Plaintiff is
22 informed and believes and thereon alleges that such expenses will continue in the future, all to
23 her damage and in a presently unascertainable amount, and in this regard, Plaintiff prays leave
24 of Court to insert all damages herein when the same have been fully ascertained.

25 21. As a further direct and proximate result of the negligence of the corporate
26 Defendants as described herein, Plaintiff has suffered physical and emotional injuries as herein
27 set forth which has damaged Plaintiff in that she has suffered a loss of enjoyment of life;
28 Plaintiff is informed and believes and thereon alleges that such expenses will continue in the

1 future, all to her general damage in an amount in excess of \$10,000.00.

2 22. It has become necessary for Plaintiff to retain the services of an attorney to
3 prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through
6 22 as though fully set forth herein at length.

7 24. The corporate Defendants, and each of them, in their corporate capacities,
8 individually, and by and through their agents, servants, and employees, knew or should have
9 known of the substantial risk of harm which existed to persons lawfully upon the premises as
10 patients. As a result of the acts and omissions of the corporate defendants, and each of them, in
11 their corporate capacities, individually, and by and through their agents, servants and
12 employees, harm and injury was certain to come to patients. The corporate Defendants, and
13 each of them, consciously disregarded their duty of care which they owed to all patients with
14 the sure knowledge of the consequences of such conscious disregard of the substantial injury to
15 patients which would necessarily and certainly flow from such acts and omissions of the
16 corporate Defendants, and each of them, in their corporate capacities, individually, and by and
17 through their agents, servants and employees. Additionally, in so acting, the corporate
18 Defendants acted with a conscious disregard for the rights of others, which constitutes an act
19 subjecting Plaintiff to cruel and unjust hardship. Such willful, malicious and oppressive
20 conduct gives rise to a cause of action for exemplary damages and an exemplary damage award
21 appropriate to such conduct and deemed sufficient to punish the corporate Defendants, and each
22 of them, for acting with such callous disregard for the health and safety of their patients and to
23 deter others in the future from acting in a similar fashion is an amount in excess of \$10,000.00.

24 **THIRD CAUSE OF ACTION**

25 25. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through
26 24 as though fully set forth herein at length.

27 26. In or around May 2008, Defendant Farmer sexually assaulted Plaintiff.

28 27. As a direct and proximate result thereof, Plaintiff was severely injured thereby.

1 28. It has become necessary for Plaintiff to retain the services of an attorney to
2 prosecute this action, and Plaintiff is therefore entitled to attorney's fees and costs of suit.

3 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
4 jointly and severally, as set forth below:

- 5 1. For general damages in an amount in excess of \$10,000.00;
6 2. For punitive damages in the amount in excess of \$10,000.00;
7 3. For all medical, hospitalization and incidental expenses incurred and to be
8 incurred by Plaintiff in an amount in excess of \$10,000.00;
9 4. For damages for loss of enjoyment of life in an amount in excess of \$10,000.00;
10 5. For attorney's fees, costs incurred and interest; and
11 6. For such other and further relief as the Court deems just and proper.

12 MURDOCK & ASSOCIATES, CHTD.
13 ECKLEY M. KEACH, CHTD.


14 
15 _____
16 Robert E. Murdock Bar No. 4013
17 Eckley M. Keach Bar No. 1154
18 520 South Fourth Street
19 Las Vegas, NV 89101
20 Attorneys for Plaintiff
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EXHIBIT “15”

EXHIBIT “15”

HALL PRANGLE & SCHOONVELD, LLC

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

ECC

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

DAVID P. FERRAINOLO, ESQ.

Nevada Bar No. 8452

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Attorneys for Defendants

Centennial Hills Hospital and

UHS, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

JANE DOE,

Plaintiff,

vs.

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

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANT CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH
SERVICES, INC.'S INITIAL EARLY CASE CONFERENCE
LIST OF WITNESSES AND DOCUMENTS**

DEFENDANT VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS
HOSPITAL (hereafter Centennial Hills Hospital), by and through its attorneys of record, the law

firm of HALL PRANGLE & SCHOONVELD, LLC, hereby submits its NRCP 16.1 List of

Witnesses and Documents as follows:

I.

WITNESSES

1. Jane Doe
c/o Robert E. Murdock, Esq.
Murdock & Associates, Chtd.
520 South Fourth Street
Las Vegas, Nevada 89101

Jane Doe is expected to testify as to the facts and circumstances surrounding this matter and her alleged damages.

2. Jane Doe's two sons

Jane Doe's two sons are expected to testify as to the facts and circumstances surrounding this matter, their mother's alleged damages and conversations they had with their mother about the incident.

3. Steven Dale Farmer
c/o Robert C. McBride, Esq.
Nevada Bar No. 7082
Mandelbaum Schwarz Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106

Mr. Farmer is expected to testify as to the facts and circumstances surrounding this matter and the allegations made against him.

4. Debra Scott, MSN, RN, FRE
Executive Director
Nevada State Board of Nursing
5011 Meadowwood Mall Way
Suite 300
Reno, Nevada 89502-6567

Ms. Scott is expected to testify regarding The certification process, background check and investigation performed by the Nevada Board of Nursing prior to certification. The Certification Process for a Certified Nurses Assistant. Revocation of Steven Dale Farmer's CNA Certificate (CNA021509). Investigation of Steven Dale Farmer by the Nevada Board of Nursing prior to revocation of Steven Dale Farmer's CNA certificate (CNA021509).

5. Michael Egstad, Manager I
Licensing and Certification Program
California Department of Public Health (CDPH)
ATCS - MS 3301
P.O. Box 997416
1615 Capitol Avenue
Sacramento, CA 95899-7416

Mr. Egstad is expected to testify regarding The certification process, background check and investigation performed by the California Board of Nursing prior to CNA certification. The Certification Process for a Certified Nurses Assistant. The Certification Process for Steven D. Farmer (Home Health Certificate Number 00199703, Nurse Assistant Certificate 00659300). Revocation of Steven Dale Farmer's CNA Certificate (Home Health Certificate Number 00199703, Nurse Assistant Certificate 00659300).

6. Collado Jeunnesse, RN
Kim Moon, RN
Abraham Deppa, CNA
Nikki Carter, CNA
Marina McDowell, CNA
Alana Schons, CNA
Nelina Arante, RN
Ronald Lodevico
Venise Abelard, CNA
Paula Mosley, RN
Pamela Flagg, CNA
Amber Vergara
Loretta Korinis
Michelle Lucas

The above identified nurses and certified Nurses' Assistants are expected to testify as to the care and treatment rendered as well as the facts and circumstances surrounding this matter.

7. Curtis E. Bazemore, M.D.
Cobinder S. Chopra, M.D.
James E. Mock, M.D.

The above identified physicians are expected to testify as to the care and treatment rendered as well as the facts and circumstances surrounding this matter.

8. Employees, former employees, representatives
of and former representatives of American
Nursing Services, Inc.,
c/o Lewis Brisbois Bisgaard & Smith
400 South Fourth Street Suite 500
Las Vegas, Nevada 89101

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


The above described witnesses are expected to be identified during discovery and to testify in regards to all facts and circumstances surrounding Steven Farmer and the incident in questions including but not limited to investigations performed, background checks performed regarding Steven Farmer and the assignment of Steven Farmer to Centennial Hills Hospital.

9. Defendant reserves the right to supplement its list of witnesses.
10. Defendant reserves the right to call any witnesses identified by any other parties in this litigation.

II. DOCUMENTS

1. Jane Doe's medical records Bates Stamped CH00001 through CH00317 (Exhibit A on attached CD).
2. Centennial Hills Hospital Daily Security Logs
Bates Numbered SDAL 000001 – 001421 (Exhibit B on attached CD).
3. Records produced by Nevada State Board of Nursing
(Exhibit C on attached CD).
4. Centennial Hills Hospital Job Description for CNA
Bates Numbered Unit Coord/C N A – 1 -8 (Exhibit D on attached CD).
5. Defendant reserves the right to supplement this list of documents.
6. Defendant reserves the right to utilize any document utilized or identified by any other party to this litigation.

Dated this 24 day of November, 2009.

HALL PRANGLE & SCHOONVELD, LLC
By: 
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
DAVID P. FERRAINOLO, ESQ.
Nevada Bar No. 8452
777 North Rainbow Blvd., Ste. 225
Las Vegas, Nevada 89107
Attorneys for Defendant
Centennial Hills Hospital

CERTIFICATE OF SERVICE

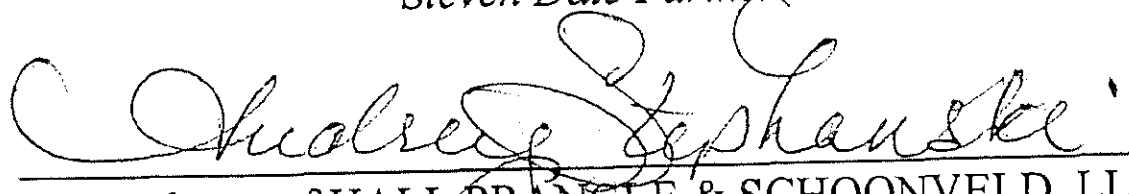
I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 24 day of November, 2009, I served a true and correct copy of the foregoing
DEFENDANT CENTENNIAL HILLS HOSPITAL AND UNIVERSAL HEALTH SERVICES, INC.'S INITIAL EARLY CASE CONFERENCE LIST OF WITNESSES AND DOCUMENTS in a sealed envelope, via US Mail, first class postage pre-paid to the following parties at their last known address:

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

Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith
400 South Fourth Street, Ste. 500
Las Vegas, Nevada 89101
Attorneys for American Nursing Services, Inc.

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

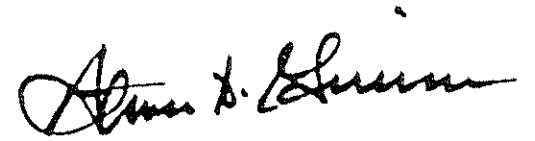
Robert C. McBride, Esq.
Nevada Bar No. 7082
Mandelbaum Schwarz Ellerton & McBride
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Steven Dale Farmer


An employee of HALL PRANGLE & SCHOONVELD, LLC

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

EXHIBIT “16”

EXHIBIT “16”



CLERK OF THE COURT

1 **NOTC**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACQUELINE BLUTH
6 Deputy District Attorney
7 Nevada Bar #010625
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 STEVEN DALE FARMER,
13 #2679879)

14 Defendant.)

CASE NO: 08C245739

DEPT NO: V

15 **EIGHTH SUPPLEMENTAL NOTICE OF WITNESSES**

16 **AND/OR EXPERT WITNESSES**
17 **[NRS 174.234]**

18 **TO: STEVEN DALE FARMER, Defendant; and**

19 **TO: JEFF MANINGO, DPD, Counsel of Record:**

20 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the STATE
21 OF NEVADA intends to call the following witnesses/expert witnesses in its case in chief:

22 *indicates additional witness(es) and/or modifications

23 ✓ANDERSON, DEANN; RAWSON-NEAL PSYCH. HOSPITAL

24 BAGULEY, DR. BRITTANY; WASHOE COUNTY, Sheriff's Office; Will testify as
25 an expert in the collection, analysis and identification of DNA evidence.

26 BAS, JENNIFER or Designee; LVMPD#09944; Will testify as an expert as to the
27 collection, analysis and identification of DNA evidence, and/or as to the collection, analysis
28 and identification of DNA evidence in the instant case.

1 BAZMORE, DR. CURTIS; Will testify as to the examination, treatment, observations
2 and diagnosis of the victim in the instant case. Will also testify as to the possible effects of
3 medications on patients.

4 BOMER, AARON; RAWSON-NEAL PSYCH. HOSPITAL

5 BORROMEO, DR. SALVADOR; Will testify as to the examination, treatment,
6 observations and diagnosis of the victim in the instant case. Will also testify as to the
7 possible effects of medications on patients.

8 ✓BROWN, DR. FREDRICK M.; RAWSON-NEAL PSYCH. HOSPITAL; Will testify
9 as to the examination, treatment, observations and diagnosis of the victim in the instant case.

10 ✓BUTLER, CAROL; CENTENNIAL HILLS HOSPITAL; Will testify as ~~an expert~~ as
11 to the proper protocols, procedures and standards in regards to the Certified Nursing
12 Assistant Profession; will testify as an expert as to procedures, processes and protocol of
13 utilizing EKG machines on/with patients.

14 ✓CAGNINA, ROXANNE; 3717 LOWER SAXON AVE., LVN 89085

15 CAGNINA, SCOTT; ADDRESS UNKNOWN

16 ✓CASPER, MICHELLE; LVMPD#06549

17 ✓CODY, LORA; LVMPD#07294

18 ✓COLDSMITH, JOHN; CENTENNIAL HILLS HOSPITAL; Will testify as ~~an expert~~
19 as to the proper protocols, procedures and standards in regards to the Certified Nursing
20 Assistant Profession; will testify as an expert as to procedures, processes and protocol of
21 utilizing EKG machines on/with patients.

22 COR or Designee; AMERICAN NURSING SERVICES

23 COR or Designee; CCDC

24 COR or Designee; CENTENNIAL HILLS HOSPITAL

25 COR or Designee; LVMPD RECORDS

26 COR or Designee; RAWSON-NEAL PSYCH. HOSPITAL

27 COR or Designee; VALLEY HEALTH SYSTEM

28 //

1 DAMAJ, DR. NOUHAD; CENTENIAL HILLS HOSPITAL; Will testify as to the
2 examination, treatment, observations and diagnosis of the victim in the instant case. Will
3 also testify as to the possible effects of medications on patients.

4 DAVIS, KIMBERLY R.N.; CENTENIAL HILLS HOSPITAL; ~~Will testify as to the~~
5 ~~examination, treatment and observations of the victim in the instant case.~~ Will also testify to
6 proper protocols and procedures when treating patients in a nursing capacity.

7 DOTSON, ADA; UNK

8 /DOTY, LUKE; LVMPD#09368

9 EBBERT, LINDA R.N.; S.A.N.E.; Will testify as a medical expert as to the sexual
10 assault examination of the victim in the instant case; and/or as to the nature, process and
11 limitations of sexual assault examinations.

12 /EDWARDS, CHRISTEN R.N.; CENTENIAL HILLS HOSPITAL; ~~Will testify as to~~
13 ~~the examination, treatment and observations of the victim in the instant case.~~ Will also
14 testify to proper protocols and procedures when treating patients in a nursing capacity.

15 EKG SPECIALIST or Designee; CENTENIAL HILLS HOSPITAL; Will testify as an
16 expert as to procedures, processes and protocol of utilizing EKG machines on/with patients.

17 /FABERT, CRAIG; CCDA-SVU INVESTIGATIONS

18 GAUTHIER, KELLIE; LVMPD#8691; Will testify as an expert as to the collection,
19 analysis and identification of DNA evidence, and/or as to the collection, analysis and
20 identification of DNA evidence in the instant case.

21 /GOODHART, KAREN R.N.; CENTENIAL HILLS HOSPITAL; ~~Will testify as to~~
22 ~~the examination, treatment and observations of the victim in the instant case.~~ Will also
23 testify to proper protocols and procedures when treating patients in a nursing capacity.

24 HAIDER, DR. HAMID; CENTENIAL HILLS HOSPITAL; Will testify as to the
25 examination, treatment, observations and diagnosis of the victim in the instant case. Will
26 also testify as to the possible effects of medications on patients.

27 HANNA, DENISE ; 7932 OLYMPUS AVE., LVN

28 /HANNA, THOMAS; 7932 OLYMPUS AVE., LVN

1 HOUSTON, DR. DARRIN; CENTENIAL HILLS HOSPITAL; Will testify as to the
2 examination, treatment, observations and diagnosis of the victim in the instant case. Will
3 also testify as to the possible effects of medications on patients.

4 HYMAN, NEIL; 2441 W. HORIZON RIDGE PARKWAY #120, HND 89052

5 ✓ JAMES, JEANINE R.N.; CENTENIAL HILLS HOSPITAL; ~~Will testify as to the~~
6 ~~examination, treatment and observations of the victim in the instant case.~~ Will also testify to
7 proper protocols and procedures when treating patients in a nursing capacity.

8 JESKIE, EMILY; SORENSON FORENSICS; Will testify as an expert as to the
9 collection, analysis and identification of DNA evidence, and/or as to the collection, analysis
10 and identification of DNA evidence in the instant case.

11 ✓ JEX, CRAIG; LVMPD #05597

12 ✓ KNEPP, ELAINE; CCDA-SVU INVESTIGATIONS

13 LAJVARD, DR. ALLADIN; CENTENIAL HILLS HOSPITAL; Will testify as to the
14 examination, treatment, observations and diagnosis of the victim in the instant case. Will
15 also testify as to the possible effects of medications on patients.

16 ✓ LEHAN, TIMOTHY; 5209 FIRESIDE RANCH AVE., LVN 89131

17 ✓ LEON, RUTH; CCDA-SVU INVESTIGATIONS

18 MARSCHNER, JULIE; LVMPD#8806; Will testify as an expert as to the collection,
19 analysis and identification of DNA evidence, and/or as to the collection, analysis and
20 identification of DNA evidence in the instant case.

21 ✓ MCCORMICK, RAYMOND; 1841 LEONARD, LVN

22 MILFORD, DR. CHRISTOPHER; CENTENIAL HILLS HOSPITAL; Will testify as
23 to the examination, treatment, observations and diagnosis of the victim in the instant case.
24 Will also testify as to the possible effects of medications on patients.

25 ✓ MILLER, RONALD; LVMPD#03233

26 ✓ MONTERO, JULIE R.N.; CENTENIAL HILLS HOSPITAL; ~~Will testify as to the~~
27 ~~examination, treatment and observations of the victim in the instant case.~~ Will also testify to
28 proper protocols and procedures when treating patients in a nursing capacity.

1 MUHAMMAD, DR. BHATTI; Will testify as to the examination, treatment,
2 observations and diagnosis of the victim in the instant case. Will also testify as to the
3 possible effects of medications on patients.

4 MURGA, KIM; LVMPD#10140; Will testify as an expert as to the collection,
5 analysis and identification of DNA evidence, and/or as to the collection, analysis and
6 identification of DNA evidence in the instant case.

7 ~~✓ MURRAY, CHRISTINE R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to~~
8 ~~the examination, treatment and observations of the victim in the instant case.~~ Will also
9 testify to proper protocols and procedures when treating patients in a nursing capacity.

10 ~~✓ PAGAIN, SANDRA R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to the~~
11 ~~examination, treatment and observations of the victim in the instant case.~~ Will also testify to
12 proper protocols and procedures when treating patients in a nursing capacity.

13 PAULETTE, KRISTINA or Designee; LVMPD#08805; Will testify as an expert as to
14 the collection, analysis and identification of DNA evidence, and/or as to the collection,
15 analysis and identification of DNA evidence in the instant case.

16 ✓ PENCE, MISTY; LVMPD#04950

17 PETERSON, MARCIA; c/o CCDA-SVU INVESTIGATIONS

18 PETERSON, MARSHAL; Son of Marcia Peterson

19 PETERSON, MICAH; Son of Marcia Peterson

20 ✓ RACKLEY, JULIE R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to the
21 examination, treatment and observations of the victim in the instant case. Will also testify to
22 proper protocols and procedures when treating patients in a nursing capacity.

23 ✓ ROBERTSON, PAM R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to the
24 examination, treatment and observations of the victim in the instant case. Will also testify to
25 proper protocols and procedures when treating patients in a nursing capacity.

26 ✓ ROSE, FRANCES; 2104 CLUB PACIFIC WAY, #19-102, LVN 89128

27 SAUNDERS, MICHAEL; LVMPD#06076

28 ✓ SHANK, HEATHER; 5209 FIRESIDE RANCH AVE., LVN 89131

1 SCHUMACHER, JACKIE R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to
2 the examination, treatment and observations of the victim in the instant case. Will also
3 testify to proper protocols and procedures when treating patients in a nursing capacity.

4 SHUJA, DR. AMIR; CENTENIAL HILLS HOSPITAL; Will testify as to the
5 examination, treatment, observations and diagnosis of the victim in the instant case. Will
6 also testify as to the possible effects of medications on patients.

7 /*SIMMONS, MELISSA; AMERICAN NURSING AGENCY

8 SLAUGHTER, DR. KEVIN; CENTENIAL HILLS HOSPITAL; Will testify as to the
9 examination, treatment, observations and diagnosis of the victim in the instant case. Will
10 also testify as to the possible effects of medications on patients.

11 SMITH, ERNESTINE; UNK

12 SMITH, JEFFERY; LVMPD#08177

13 SPURLOCK, LEDAHLIA; 4408 SAN GABRIEL HILL AVE., LVN 89115

14 RACKLEY, JULIE R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to the
15 examination, treatment and observations of the victim in the instant case. Will also testify to
16 proper protocols and procedures when treating patients in a nursing capacity.

17 WESCOTT, LORRAINE R.N. or Designee; CENTENIAL HILLS HOSPITAL; Will
18 testify as an expert as to EKG machines and their usage, as well as to the scope of
19 employment and duties of a Certified Nursing Assistant, and hospital procedures and
20 policies.

21 WOLFE, MARGARET R.N.; CENTENIAL HILLS HOSPITAL; Will testify as to
22 the examination, treatment and observations of the victim in the instant case. Will also
23 testify to proper protocols and procedures when treating patients in a nursing capacity.

24 //

25 //

26 //

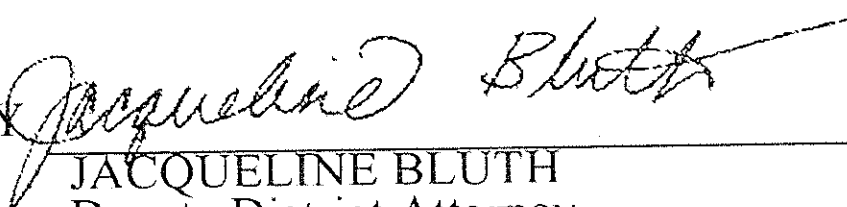
27 //

28 //

1 These witnesses are in addition to those witnesses endorsed on the Information and
2 any other witness for which a separate Notice has been filed. The substance of each expert
3 witness testimony and copy of all reports made by or at the direction of the expert witness
4 has been provided in discovery.

5 A copy of each expert witness curriculum vitae, if available, is attached hereto.

6 STEVEN B. WOLFSON
7 DISTRICT ATTORNEY
8 Nevada Bar #001565

9 BY 
10 JACQUELINE BLUTH
11 Deputy District Attorney
12 Nevada Bar #010625

13
14
15
16
17
18
19 **CERTIFICATE OF ELECTRONIC FILING**

20 I, HOWARD CONRAD, hereby certify that service of the above and foregoing, was
21 made this 27th day of January, 2014, by Electronic Filing to:

22 JEFF MANINGO, DPD
23 e-mail: harrolah@ClarkCountyNV.gov

24 
25 Secretary for the District Attorney's Office

26
27
28 hjc/SVU

EXHIBIT “17”

EXHIBIT “17”

STATE OF NEVADA)
COUNTY OF CLARK) ss.

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Eckley M. Keach, am the attorney for Plaintiff in the captioned action.
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. In 2014, I highlighted the names of anyone listed in the last (Eighth) Supplemental Notice of Witnesses and/or Expert Witnesses from State v. Farmer, who had to do with the investigation or was a nurse at Centennial and we identified them in Plaintiff's Supplemental Disclosures.
4. But, I had no way of knowing what they would testify to, or what "victim" they would even testify about because the State's witness list did not identify which victim.
5. And, of course, the issue of foreseeability was not in issue in the criminal case. To me, these were just people who either investigated or were nurses at Centennial.
6. However, once we received the documents from the Public Defender's Office, it was quite clear that Nurse Murray, Wolfe and Sumera, were quite important to the foreseeability issue in Plaintiff's case.

ROBERT E. MURDOCK

EXHIBIT “18”

EXHIBIT “18”

§
§
§
§
§

Cross-Reference Case Number:
Defendant's Scope ID #:
Lower Court Case Number:
Supreme Court No.:

C249693
2679879
08GJ00078
65936

RELATED CASE INFORMATION

Related Cases
08C245739 (Consolidated)

PARTY INFORMATION

Defendant Farmer, Steven D

Lead Attorneys
Public Defender
Retained
702-455-4685(W)

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: Farmer, Steven D	Statute	Level	Date
1. SEXUAL ASSAULT	200.366	Felony	01/01/1900
1. SEXUAL ASSUALT	200.364	Felony	01/01/1900
2. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Gross Misdemeanor	01/01/1900
3. SEXUAL ASSAULT	200.366	Felony	01/01/1900
3. SEXUAL ASSUALT	200.364	Felony	01/01/1900
4. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Gross Misdemeanor	01/01/1900
5. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Gross Misdemeanor	01/01/1900
6. INDECENT OR OBSCENE EXPOSURE	201.220	Gross Misdemeanor	01/01/1900

EVENTS & ORDERS OF THE COURT

02/25/2013

All Pending Motions (9:00 AM) (Judicial Officer Ellsworth, Carolyn)
2/25/13

Minutes
02/25/2013 9:00 AM
- CALENDAR CALL...DEFT'S MOTION TO CONTINUE TRIAL
DATE

Deft. present in custody Counsel met with Court in chambers regarding motion to continue and depositions and discovery given to counsel from civil action. Court advised Mr. Murdock and Mr. Hyman, attorney's on civil case against Deft. that they are not a real party of interest in this criminal case. Argument by Mr. Murdock who advised the 5 year rule is approaching. Court advised there is a different burden of proof, and noted if they can get the stay lifted, they can depose Deft. but noted he can take the fifth. Colloquy between Court and counsel regarding civil trial and discovery. COURT advised good cause showing, trial date VACATED and RESET, with a FIRM SETTING.

CUSTODY (COC)

1/27/14 9 AM CALENDAR CALL

2/3/14 1:30 PM JURY TRIAL - FIRM (6 WEEKS)

Parties Present
Return to Register of Actions

EXHIBIT “19”

EXHIBIT “19”

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 STEVEN DALE FARMER,
5
6 Appellant,

7 vs.

8
9 THE STATE OF NEVADA,

10 Respondent.

NO. 65935

Electronically Filed
Jun 12 2015 01:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

11
12 **APPELLANT'S AMENDED OPENING BRIEF**

13 (Appel from Judgment of Conviction)

14
15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEF.
17 309 South Third Street, #226
18 Las Vegas, Nevada 89155-2610
19 (702) 455-4685

20 Attorney for Appellant

STEVEN B. WOLFSON
CLARK COUNTY DIST. ATTY.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

1 On August 20, 2010, the State filed a Motion for Videotaped
2 Testimony of MP in order to accommodate her seizure disorder and spare her
3 from testifying before the jury. (II:294-300). Defense counsel opposed the
4 motion on Sixth Amendment grounds, arguing that “videotaped testimony
5 given prior to trial will not allow Mr. Farmer the opportunity to effectively
6 cross-examine his accuser” as to information discovered after her deposition
7 and during trial. (II:303,305-06). The court granted the State’s motion, but
8 ruled that the deposition could only be presented to the jury if MP were truly
9 “unavailable” at trial. (II:308-09).

10 MP’s deposition was taken on January 20, 2012. (V:785-835). During
11 the deposition, the court unreasonably restricted Mr. Farmer’s cross-
12 examination of MP regarding her ability to perceive the events in question
13 and her motives to fabricate. See Argument Section II (B), supra. MP even
14 had a seizure in the middle of defense counsel’s cross-examination.
15 (V:824;State’s Exhibit 25 at 11:28:00). Although MP’s deposition was
16 videotaped, her responses were largely inaudible. (XIII:2526).

17 In early 2013, defense counsel obtained thirty (30) additional
18 deposition transcripts from RC’s and MP’s civil lawsuits, along with
19 “numerous interrogatories and answers, as well as additional pleadings” that
20

EXHIBIT “20”

EXHIBIT “20”

Subject: RE: Steven Farmer criminal trial

Date: Wed, 16 Jan 2013 14:10:54 -0800

From: Bob McBride <bob@memlaw.net>

To: 'Amy Feliciano' <johnsoaa@ClarkCountyNV.gov>

Cc: Jeffrey Maningo <maningjs@ClarkCountyNV.gov>, "JBemis@HPSLaw.com" <JBemis@HPSLaw.com>, "bvogel@lbbslaw.com" <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

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

Sent from my iPhone

Begin forwarded message:

From: Bob McBride <bob@memlaw.net>
Date: January 16, 2013 12:58:43 PM PST
To: 'Jeffrey Maningo' <maningis@ClarkCountyNV.gov>
Cc: Allie Hanson <Allie@memlaw.net>, Heather Hall <Heather@memlaw.net>
Subject: RE:Steven Farmer criminal trial

Jeff,

Just wondering if Steven's trial is still going next month, or if it is being continued. Any brief update that I can pass along to the others in our civil case? When you get a chance. Thanks!

Bob

Robert C. McBride, Esq.
Mandelbaum, Ellerton & McBride
2012 Hamilton Lane
Las Vegas, NV 89106
702-367-1234 (o)
702-367-1978 (f)
702-285-7315 (c)
bob@memlaw.net

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From: Jeffrey Maningo [<mailto:maningjs@ClarkCountyNV.gov>]
Sent: Monday, November 14, 2011 1:14 PM
To: Bob McBride
Subject: farmer

Thanks.

Subject: RE: Steven Farmer criminal trial

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

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

To: 'John Bemis' <JBemis@HPSLaw.com>, Bob McBride <bob@memlaw.net>

Cc: Jeffrey Maningo <maningjs@ClarkCountyNV.gov>, "bvogel@lbbslaw.com" <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>]

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

To: Bob McBride; Amy Feliciano

Cc: Jeffrey Maningo; 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>]

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

To: 'Amy Feliciano'

Cc: Jeffrey Maningo; John Bemis; 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>]

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!

Subject: RE: Farmer

Date: Tue, 22 Jan 2013 11:18:58 -0800

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

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

Cc: Diana Cox <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; 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.

RE: Farmer

Page 2 of 2

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>

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

Cc: Jeffrey Maningo <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 Brent Vogel, Esq.
BRISBOIS Las Vegas Administrative Partner
BISGAARD LEWIS BRISBOIS BISGAARD & SMITH LLP
& 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 <http://www.lbbslaw.com>

ATLANTA • BEAUMONT • CHARLESTON • CHICAGO • DALLAS • FORT LAUDERDALE • HOUSTON • LA QUINTA • LAFAYETTE • LAS VEGAS • LOS ANGELES • MADISON COUNTY • NEW ORLEANS • NEW YORK • NEWARK • ORANGE COUNTY • PHOENIX • SACRAMENTO • SAN BERNARDINO • SAN DIEGO • SAN FRANCISCO • SEATTLE • TAMPA • TEMECULA • TUCSON

The information contained in this message may be privileged, confidential and protected from disclosure.
If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.
If you think that you have received this e-mail message in error, please e-mail the sender at bvogel@lbbslaw.com.

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.

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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)

LEWIS
BRISBOIS
BISGAARD
ATTORNEYS AT LAW

Subject: RE: Farmer

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

From: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

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

Cc: Diana Cox <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,

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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; John Bemis
Cc: Jeffrey Maningo
Subject: Farmer

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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 13:14:30 -0600

From: John Bemis <JBemis@HPSLaw.com>

To: Amy Feliciano <johnsoaa@ClarkCountyNV.gov>

Cc: Diana Cox <DCox@HPSLaw.com>

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.

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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; 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.

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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)

EXHIBIT “21”

EXHIBIT “21”

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DECLARATION

AMY A. FELICIANO makes the following declaration:

1. That I am an attorney duly licensed to practice law in the State of Nevada since 2005 that I am currently employed by Clark County, Nevada at the Clark County Public Defender's Office as a Deputy Public Defender.

2. That on or about September 5, 2014, I was issued a subpoena and notice of deposition in the case of the Estate of Jane Doe, et. al. v. Centennial Hills Hospital Medical Center Auxillary, et. al., Case No. 09-A-595780, by Plaintiff.

3. That one of the defendants named in the above-stated civil case, Steven Dale Farmer, was criminal charged and convicted of open or gross lewdness, indecent exposure and sexual assault. My office provided the criminal defense representation of Mr. Farmer of which I was a part.

4. That on September 19, 2014, a Motion for Protective Order Quashing Subpoeana and Notice of Deposition was filed on my behalf by the Civil Division of the Clark County District Attorney's Office.

5. That the hearing on the above-stated motion was held on October 1, 2014 and heard by Commissioner Bulla. Commissioner Bulla granted the Motion for Protective Order with respect to my deposition testimony but ordered that the documents I disclosed to counsel for the defendants in this civil case be disclosed to the Plaintiff.

6. Neither I nor my office has a copy of the documents that I disclosed to counsel for defendants in this civil case. Therefore, I have diligently assembled the documents that I believe to the best of my knowledge were disclosed to counsel for defendants in this case. Attached are the documents I assembled that to the best of my knowledge are the same ones I disclosed to counsel for defendants in this case.

7. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

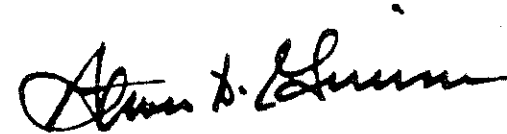
EXECUTED on this 17 day of November, 2014.



AMY A. FELICIANO

EXHIBIT “22”

EXHIBIT “22”



CLERK OF THE COURT

OPP

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
702-889-6400 – Office
702-384-6025 – Facsimile
efile@hpslaw.com
Attorneys for Defendants
Centennial Hills Hospital and
Universal Health Services, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

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

Defendants.

CASE NO. A595780
DEPT NO. II

**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**

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
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE
SUITE 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 PRANGLE & SCHOONVELD LLC, and provides their Opposition to Plaintiff's Motion for
2 Summary Judgment Re: Liability and Joinder to Defendant Steven Dale Farmer's Limited
3 Opposition.

4 This Opposition/Joinder is made and based upon the pleadings on file, the Memorandum
5 of Points and Authorities that follow, and any oral argument of counsel that may be heard at the
6 time of hearing of this motion.
7

8 DATED this 14th 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 A.

19 **FACTUAL STATEMENT/INTRODUCTION**

20
21 **1. The Parties.**

22 Jane Doe is a single woman with adult children. She was hospitalized at Centennial Hills
23 Hospital from May 14, 2008 until May 19, 2008. Approximately one month prior to her
24 hospitalization, she suffered a brain injury that caused her to experience seizures. She was
25 brought to CHH after experiencing a seizure on our about May 14, 2008. Plaintiff committed
26 suicide on July 10, 2013.
27
28

1 American Nursing Services, Inc., was a supplemental staffing agency that provided the
2 alleged perpetrator of the assault, Steven Farmer, to Centennial Hills Hospital. Since the time of
3 the incident, ANS has declared bankruptcy.

4 Broadlane Inc., is a non-party "middleman" who connected Centennial Hills Hospital
5 with American Nursing Services, Inc., to supply supplemental staffing. There is no direct
6 contract between American Nursing Services, Inc and Centennial Hills Hospital. Instead, there
7 is a contract between American Nursing Services, Inc and Broadlane and Broadlane and
8 Centennial Hills Hospital. Broadlane is not a party to the instant litigation.

9 Steven Farmer is the alleged assailant and a former employee of American Nursing
10 Services, Inc. On June 2, 2014, a Judgment of Conviction was filed in the criminal case against
11 Mr. Farmer. See Plaintiff's MSJ, Exhibit 2.

12 Centennial Hills Hospital is the facility where the alleged assault occurred.

13
14
15 **2. The Incident.**

16 Plaintiff was brought to Centennial Hills Hospital on or about May 14, 2008. Plaintiff
17 was brought to the hospital due to having a seizure at the grocery store. Plaintiff alleges that
18 while she was a patient, a nurse named Steven came in and improperly touched her on several
19 occasions. Plaintiff did not come forward with her story until about 1 – 1 ½ months after her
20 discharge. Mr. Farmer was convicted of sexual assault on Plaintiff.

21
22 **3. Joinder to Defendant Steven Dale Farmer's Limited Opposition.**

23 That Defendants CENTENNIAL HILLS HOSPITAL and UNIVERSAL HEALTH
24 SERVICES, INC. adopt, and incorporate as if fully set forth herein, the points and authorities,
25 and arguments contained in Defendant Steven Dale Farmer's Limited Opposition to Plaintiff's
26 Motion for Summary Judgment Re: Liability.
27
28

WHEREFORE, Defendants CENTENNIAL HILLS HOSPITAL and UNIVERSAL HEALTH SERVICES, INC., pray that Plaintiff's Motion for Summary Judgment Re: Liability in the above-entitled action be DENIED.

B.

ARGUMENT

Plaintiff seeks summary adjudication against Steven Farmer, American Nursing Services and Centennial Hills Hospital. In Nevada, conviction of a crime may be introduced as conclusive proof of all facts necessary to sustain a conviction. *See* NRS 41.133. In this case, Mr. Farmer was convicted of, amongst other crimes, sexual assault of Plaintiff. Through her Motion, Plaintiff seeks to apply strict liability to Centennial Hills Hospital. The conviction can be introduced against all Defendants. This Opposition does not seek to address whether the assault occurred. Rather this Opposition shows that there is no authority for Plaintiff's request for strict liability against Centennial Hills. As completely shown below, there is no authority to support finding Centennial Hills strictly liable for the acts of Mr. Farmer.

As this Court is aware, NRS 41.745 provides:

Liability of employer for intentional conduct of employee; limitations.

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

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

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

and

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

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

2. **Nothing in this section imposes strict liability on an employer for any unforeseeable intentional act of an employee. (emphasis added)**

1 Thus, in order to establish liability for the conduct of an employee, Plaintiff must
2 establish that the act was not a truly independent venture, the act was committed in the course of
3 the task assigned to the patient, and that the act was reasonably foreseeable. Plaintiff's Motion
4 wholly neglects the topic of whether the instant act was reasonably foreseeable.

5 As further discussed below, Defendant, Centennial Hills cannot be held liable for Steven
6 Farmer's intentional conduct as his conduct was a truly independent venture. Additionally, Mr.
7 Farmer's actions weren't reasonably foreseeable under the facts and circumstances of the case.
8 Moreover, the finding of liability pursuant to NRS 41.745 is a question of fact for the jury. As
9 such, Plaintiff's Motion should be denied as to Centennial Hills.
10

11 **1. The Alleged Assault is a Truly Independent Venture.**

12 Initially, the alleged assault was a truly independent venture of Mr. Farmer. Both before
13 and after the passage of N.R.S. 41.745, the Nevada Supreme Court has spoken numerous times
14 as to how to determine whether acts fall within the course and scope of one's employment. For
15 example, to determine course and scope, the Nevada Supreme Court looks to:
16

17 a. whether the employee was "acting on behalf of" or "out of any sense of
18 duty owed to" the employer, or "furthering the business interests", *Wood v.*
19 *Safeway, Inc.*, 121 Nev. 724, 37-738, 121 P.3d 1026, 1035, *Burnett v.*
20 *C.B.A. Sec. Service, Inc.*, 107 Nev. 787, 789, 820 .2d 750, 751-752
21 (1991); and
22

23 b. whether the employer "exercise[d] control over," or "received a
24 benefit," from the employee's conduct, *Kornton v. Conrad, Inc.*, 119 Nev.
25 123, 123, 67 P.3d 316, 317 (2003).
26
27
28

1 In the instant matter, it is patently clear that sexual assaults are outside the course and scope
2 of certified nurse assistant's job. This much is admitted in Plaintiff's Motion. The Nevada State
3 Board of Nursing provides a CNA Skills Guidelines which itemizes a list of specific skills for
4 CNA scope of practice. See Nevada State Board of Nursing CNA Skills Guidelines attached
5 hereto as Exhibit A. In reviewing said exhibit, there is no reference to molestation, digital
6 insertion of fingers into a patient's vagina, rectum or groping of breasts, and legs. See Exhibit A.
7 In fact, there are no skills listed on the CNA Skills Guidelines that could be considered sexual in
8 nature. *Id.*

10 Additionally, taking a look at the Centennial Hills Job Description/Performance Review
11 for CNA's, there is no reference to molestation, digital insertion of fingers into a patient's
12 vagina, rectum or groping of breasts, and legs. See Centennial Hills Job Description attached
13 hereto as Exhibit B. Specifically, the Description/Purpose of Position states:

15 Responsible for assisting the planning, organizing, implementing and evaluating
16 the activities occurring in the nursing unit by performing clerical and receptionist
17 duties, and performing patient care/service activities/procedures as outlined by the
18 state board of nursing and within the Nevada Nurse Practice Act. Performs
assigned duties under the supervision of licensed nursing staff. *Id.*

19 Again, nothing in this description could possibly be interpreted to advocate or endorse the sexual
20 assault of patients. In fact, this premise has been clearly admitted by Plaintiff. See Motion for
21 Summary Judgment at 10:15-16.

22 Moreover, in *Wood v. Safeway*, the Nevada Supreme Court held that the repeated sexual
23 assaults of a mentally retarded employee by a janitor hired to clean the store was clearly outside
24 the course and scope of employment of the janitor and liability could not be extended to the
25 employer. 121 Nev. at 739. In *Wood*, Safeway Stores, Inc. hired a mentally retarded individual,
26 Doe, to work as a part-time courtesy clerk. Doe was hired through the store's special hiring
27
28

1 program, where job coaches were provided by Doe's high school. Doe also received assistance
2 from a job coach at Easter Seals and the state provided a vocational rehabilitation counselor.
3 Prior to beginning employment, Doe attended a daylong orientation session for new employees
4 where she received specific training for her job duties. The orientation also covered Safeway's
5 employment policies, including its policies on sexual harassment in the workplace. Doe was
6 accompanied to the orientation by one of her job coaches, to ensure she understood all the
7 materials and information.

8
9 During her employment, Doe met Ronquillo-Nino, who was employed by Action
10 Cleaning, and was contracted to work as a nighttime janitor at the Safeway store. On three
11 separate occasions Ronquillo-Nino sexually assaulted Doe while she was at work. The assaults
12 occurred in a cleaning supply room, and also outside behind a trash dumpster while Doe was
13 collecting shopping carts from the parking lot. As a result of the assaults, Doe became pregnant
14 and gave birth to a healthy child. Doe filed a Complaint against both Safeway and Action
15 Cleaning based upon the multiple sexual assaults. Safeway brought a Motion for Summary
16 Judgment based upon the Nevada Industrial Insurance Act providing the sole and exclusive
17 remedy for injuries arising out of the course and scope of employment. Action Cleaning brought
18 a Motion for Summary Judgment based upon NRS 41.745, claiming that it cannot be held liable
19 for the intentional torts of its employee. The district court granted both motions, and denied
20 Doe's Motion for Reconsideration. Thereafter, the Nevada Supreme Court upheld the summary
21 adjudication.

22
23
24 The Nevada Supreme Court held that because Ronquillo-Nino was not acting out of any
25 sense of duty owed to Action Cleaning, the multiple sexual assaults against Doe were an
26 independent venture and outside the course and scope of his employment. *See Wood*, 121 Nev.
27
28

1 at 739. Based upon the assaults being an independent venture by Ronquillo-Nino, the Nevada
2 Supreme Court held that Doe's argument must fail. *Id.*

3 Likewise, in the instant matter, there is absolutely no possible scenario that alleged sexual
4 assault can be considered within the course and scope of Mr. Farmer's employment. As such,
5 the alleged sexual assault must be considered a truly independent venture of Mr. Farmer. Based
6 upon Mr. Farmer's alleged sexual assault being a truly independent venture, Centennial Hills
7 cannot be held liable for the intentional tort allegations.
8

9 **2. There is Absolutely No Clear Notice of a Propensity for the Type of Action**
10 **that is Alleged to Have Occurred.**

11 Most importantly, the alleged sexual assault committed by Mr. Farmer was completely
12 unforeseeable under the facts and circumstances of the case considering the nature and scope of
13 his employment. In order to hold an employer liable for the intentional torts of an employee,
14 NRS 41.745 requires that the action of the employee was reasonably foreseeable under the facts
15 and circumstances of the case considering the nature and scope of his employment. Moreover,
16 NRS 41.745 states "for the purposes of this subsection, conduct of an employee is reasonably
17 foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated
18 the conduct and the probability of injury." The Nevada Supreme Court has held that if an action
19 is not reasonably foreseeable, the court does not need to look at the other two elements of NRS
20 41.745(1). *Vaughan v. Harrah's Las Vegas Inc.*, 2008 WL 6124455, 2, attached hereto as
21 Exhibit C.
22

23
24 The Nevada Supreme Court determined that whether an intentional act is reasonably
25 foreseeable depends on whether one has reasonable cause to anticipate such act and the
26 probability of injury resulting therefrom. *See Rockwell v. Sun Harbor Budget Suites*, 112 Nev.
27 1217, 925 P.2d 1175 (1996) (citing *Thomas v. Bokelman*, 86 Nev. 10, 462 P.2d 1020 (1970)).
28

1 The Nevada Supreme Court has quoted, with approval, the California Court of Appeal in
2 explaining foreseeability in the context of respondeat superior as follows:

3 Foreseeability, as a test for respondeat superior merely means that in the context of
4 the particular enterprise an employee's conduct is not so unusual or startling that it
5 would seem unfair to include the loss resulting from it among other costs of the
6 employer's business. In other words, where the question is one of vicarious liability,
7 the inquiry should be whether the risk was one 'that may fairly be regarded as typical
8 of or broadly incidental' to the enterprise undertaken by the employer.

9 Under the modern rationale for respondeat superior, the test for determining whether
10 an employer is vicariously liable for the tortious conduct of his employee is closely
11 related to the test applied in workers' compensation cases for determining whether an
12 injury arose out of or in the course of employment. See *Wood*, 121 Nev. at 740
13 (citing *Rodgers v. Kemper Construction Co.*, 50 Cal.App.3d 608, 124 Cal.Rptr. 143,
14 148-49 (1975)).

15 In *Wood*, the Nevada Supreme Court concluded that the because the assailant had no prior
16 criminal record in the United States or Mexico, and because there was no prior complaints
17 against the assailant for sexual harassment, that it was not reasonably foreseeable that the
18 assailant would sexually assault a Safeway employee. 121 Nev. at 740. In *Vaughan*, the Nevada
19 Supreme Court held that based on a lack of a criminal record and no worker complaints of
20 violent assault, Harrah's could not be held liable for its employee assaulting a patron in the
21 bathroom. *Exhibit C*, 2008 WL 6124455, 2.

22 In the instant situation, there were absolutely no known prior acts by Mr. Farmer that
23 could potentially put Centennial Hills on notice that Mr. Farmer would assault a patient. Prior
24 to the alleged incident, Steven Farmer was a certified nurses' assistant in California and Nevada.
25 Mr. Farmer went through a background check to receive his certification in both states.
26 Centennial Hills was provided with a criminal background check, proof of negative drug test and
27 employment background information prior to booking shifts with Mr. Farmer. Thereafter,
28 Centennial Hills performed a primary source verification with the Nevada State Board of
Nursing prior to hiring Mr. Farmer. Further, in reviewing Mr. Farmer's employment file at

1 Centennial Hills Hospital, there are absolutely no reports of ill character. *See* Centennial Hills
2 Employee File of Steven Farmer attached hereto as Exhibit D.

3 Plaintiff will allege that Centennial Hills was on notice of Mr. Farmer's nefarious
4 background based upon an allegation of "patient abuse" that occurred at Rawson Neal Hospital.
5 Mr. Farmer was placed on "Do Not Return" status that the facility, but was cleared of any
6 wrongdoing. There was no report to the Nevada Board of Nursing. Rather, Rawson Neal and
7 American Nursing Services conducted separate investigations into the matter. Both
8 investigations cleared Mr. Farmer of wrongdoing. American Nursing Services did not provide
9 any information regarding the Rawson Neal Hospital accusations to Centennial Hills. As such,
10 there is no way that Centennial Hills had prior knowledge of any prior improper conduct of Mr.
11 Farmer.
12

13
14 The former clinical director of American Nursing Services' Las Vegas branch, Michelle
15 Simmons, was deposed on November 15, 2012. Ms. Simmons is a former employee due to
16 American Nursing Services declaring bankruptcy and closing business. Ms. Simmons testified
17 that before sending an employee for an assignment, ANS would ensure that the individual was
18 proper for whatever job they were booked. *See* Deposition of Michelle Simmons attached hereto
19 as Exhibit E, 26:2-5. This included verifying credentialing, references, background check. *Id.* at
20 26:6-21. Additionally, Ms. Simmons would follow up with the facilities on how the patients
21 were doing when on assignment. *Id.* at 27:1-28:3
22

23
24 Ms. Simmons did recall incident related to Mr. Farmer at Rawson Neal Hospital. *Id.* At
25 59:2-60:1. Mr. Farmer was placed on "Do Not Return" status at Rawson Neal pending the
26 outcome of an internal investigation. On, or about, January 25, 2008, Rawson Neal Hospital
27 informed American Nursing Services that Mr. Farmer was "Do Not Return" status. *Id.* At 74:5-
28

10. Despite being on "Do Not Return" status at Rawson Neal, Mr. Farmer was booked at other facilities. *Id.* 115:5-11. Ms. Simmons testified that she did not inform Centennial Hills of the "Do Not Return" status or ongoing investigation at Rawson Neal. *Id.* CITE. American Nursing Services did not inform Centennial Hills of the investigation into the alleged patient abuse at Rawson Neal. *Id.* At 140:1-25. Ms. Simmons stated that American Nursing Services prevented her from informing Centennial Hills of the investigation. *Id.*

Clearly, there is no evidence that Centennial Hills Hospital had reasonable cause to anticipate the alleged conduct and the probability of injury resulting therefrom. Accordingly, pursuant to the *Wood* and *Vaughan* cases, this Honorable Court must deny Plaintiff's Motion.

3. **Whether NRS 41.745 Liability Exists, Is a Question of Fact for the Jury.**

Establishing liability for intentional conduct of an employee or agent is similar, but more onerous than establishing ostensible agency. With regard to ostensible agency, the Supreme Court of Nevada first addressed the issue of agency in a medical setting in *Oehler v. Humana*, 105 Nev. 348, 775 P.2d 1271 (1989). Plaintiff Beverly Oehler filed a Complaint against Humana Hospital Sunrise and numerous physicians alleging that Humana Hospital Sunrise and numerous physicians were liable under a negligent supervision theory (respondeat superior) and a vicarious liability (agency) theory. Discovery was conducted and Humana Hospital Sunrise filed a Motion for Summary Judgment which was granted and Plaintiff appealed.

The *Oehler* Court found that there was not a genuine issue of material fact regarding the vicarious liability (agency) theory. The Court found that agency did not exist as a matter of law, stating that "[a] hospital is not vicariously liable for acts of physicians who are neither employees nor agents of the hospital." *Id.* at 351, citing *Gasbarra v. St. James Hospital*, 406 N.E.2d 544 (Ill. App. 1980); *Cooper v. Curry*, 589 P.2d 201 (N.M. 1978).

The most recent Nevada case to address the agency theory is *Schlotfeldt*, where the Court looked to other jurisdictions as a guide for establishing the presence of agency between a doctor and hospital and evoking vicarious liability. *Schlotfeldt v. Charter Hospital of Las Vegas*, 112 Nev. 42, 48 (1996). Looking to *Hill v. St. Clare's Hospital*, 67 N.Y.2d 72; 490 N.E.2d 823, 827 (1986), the Court found that "absent an employment relationship, a doctor's mere affiliation with a hospital is not sufficient to hold a hospital vicariously liable for the doctor's negligent conduct." See also, *Ruane v. Niagara Falls Memorial Medical Center*, 60 N.Y.2d 908, 458 N.E.2d 1253 (1983). A physician or surgeon who is on a hospital's staff is not necessarily liable for his tortuous acts. *Evans v. Bernhard*, 533 P.2d 721, 725, 23 Ariz. App. 413 (1975). A hospital does not generally expose itself to vicarious liability for a doctor's actions by merely extending staff privileges to that doctor. *Moon v. Mercy Hospital*, 373 P.2d 944, 946; 150 Colo. 430 (1962); *Hundt v. Proctor Community Hospital*, 284 N.E.2d 676, 678; 5 Ill. App. 3d 987.

In Footnote 3 of *Schlotfeldt*, the Court pointedly stated that their holding did not disturb *Oehler* and the cases were distinguishable because:

Determining the existence of agency is quite different than determining the absence of agency. First, concluding agency exists requires an affirmative finding on all the elements of agency. Concluding agency does not exist requires only the negation of one element of the agency relationship. Second, the legal consequences of concluding that agency exists are much different from concluding the opposite. One defendant's liability can become inextricably linked to the tortuous acts of another defendant through the conclusion of agency. On the other hand, refusing to find agency merely requires a plaintiff to prove a case against each defendant individually.

Analyzing *Oehler* and *Schlotfeldt* together, a judge may determine that agency does not exist as a matter of law; as concluding that agency does not exist requires only the negation of one element of the agency relationship. In contrast, concluding agency does exist requires an affirmative finding on all the elements of agency and is a question of fact for the jury to decide.

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1 Likewise, this Court can conclude that NRS 41.745 liability does not exist as a matter of law.
2 Such a conclusion only requires the negation of one of the three elements. However, this Court
3 cannot conclude that NRS 41.745 liability is established, as that requires an affirmative finding
4 of all three elements. Such a finding is a question of fact for a jury. Accordingly, Plaintiff's
5 Motion as to Centennial Hills must be denied.
6

7 C.

8 **CONCLUSION**

9 Based on the foregoing, Defendant respectfully requests that Plaintiff's Motion for
10 Summary Judgment Re: Liability be DENIED.

11 DATED this 14th day of October, 2014.

12 HALL PRANGLE & SCHOONVELD, LLC

13
14 By:

15 MICHAEL E. PRANGLE, ESQ.

16 Nevada Bar No. 8619

17 JOHN F. BEMIS, ESQ.

18 Nevada Bar No. 9509

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23 *Centennial Hills Hospital and*

24 *Universal Health Services, Inc.*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 14th day of October, 2014, I served a true and correct copy of the foregoing **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** via E-Service on Wiznet pursuant to mandatory NEFCR 4(b) to the following parties:

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An employee of HALL PRANGLE & SCHOONVELD, LLC

4822-6833-8463, v. 1

EXHIBIT “23”

EXHIBIT “23”

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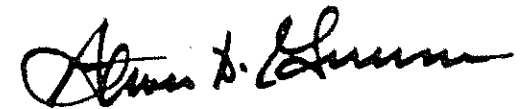
Attorneys for Defendants

Valley Health System, LLC d/b/a

Centennial Hills Hospital and

Universal Health Services, Inc.

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MISTY PETERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

Plaintiff,

vs.

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

Defendants.

CASE NO. A595780
DEPT NO. II

**DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS
HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S
OBJECTION TO DISCOVERY COMMISSIONER REPORT AND
RECOMMENDATION**

///

///

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COME NOW, Defendants, VALLEY HEALTH SYSTEMS, LLC d/b/a CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER AND UHS OF DELAWARE, INC., (hereinafter
“Hospital Defendants”) by and through their attorneys, HALL PRANGLE & SCHOONVELD,
LLC, and hereby file their Objection to the Discovery Commissioner’s Report and
Recommendations that Plaintiff’s Motion for NRCP 37 Sanctions.

The Discovery Commissioner’s Report and Recommendations is attached hereto as
Exhibit A. This Objection is made and based on the papers and pleadings on file herein, the
Points and Authorities attached hereto and such argument of counsel which may be adduced at
the time of the hearing on said objection.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.
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Centennial Hills Hospital and
Universal Health Services, Inc.

I.

INTRODUCTION

The matter originally came before the Discovery Commissioner on Plaintiff’s Motion for
NRCP 37 Sanctions against the Hospital Defendants – seeking a finding that Farmer’s sexual
assault was foreseeable as a matter of law – due to their delay in disclosing Nurse Margret Wolfe
pursuant to NRCP 16.1 and for their alleged complicity in her non-appearance at deposition on

1 April 28, 2015. At the hearing on Plaintiff's Motion, Plaintiff expanded her request for sanctions
2 to include the Hospital Defendants' delay in disclosing two additional nurses, Nurse Christine
3 Murray and Nurse Ray Sumera in their NRCP 16.1 disclosures. After entertaining argument, the
4 Discovery Commissioner determined that while Nurse Wolfe's failure to appear for her
5 deposition was a "non-issue", Plaintiff's Motion should nonetheless be granted in part. The
6
7 Discovery Commissioner made the following additional recommendations:

- 8 • That "full admission of the nurses' LVMPD statements without the
9 necessity of foundation, and without restriction both as to substance and
10 form; hearsay cannot be an objection, and there cannot be objections to
11 recorded statements as the statements are the best information at or near
12 the time of the events";
- 13 • Hospital Defendants to be sanctioned in the amount of \$1,000 per
14 unidentified nurse (3) for each year not identified (6) for a total of
15 \$18,000.00;
- 16 • Due to length of time that elapsed between filing of Plaintiff's Complaint
17 and their ultimate disclosure, an evidentiary hearing should be held by the
18 District Court to determine additional sanctions, including whether case
19 terminating sanctions are warranted, whether the Hospital Defendants
20 intended to thwart the discovery process and hinder Plaintiff's ability to
21 discover relevant facts, and whether the Hospital Defendant's misled the
22 court; and
- 23 • That the District Court "may reconsider reducing the amount of sanctions
24 if the [Hospital Defendants] were to sufficiently prove with a degree of
25 probability that the hospital had no knowledge of Sumera or Wolfe until
26 just recently." **Exhibit A.**

27 The Hospital Defendants request that the Court reject the Discovery Commissioner's
28 Recommendations and deny Plaintiff's Motion for Sanctions, or, in the alternative and in
accordance with the Discovery Commissioner's final recommendation, reduce the sanctions
awarded because the Hospital Defendants did not have knowledge that these persons had
information relevant to *this* Plaintiff's claims (or knowledge of the substance of either Nurse
Wolfe's or Nurse Murray's 2008 statements to the LVMPD) until after they received a copy of

Farmer's police file in **May 2013** – documentation the Hospital Defendants were precluded from disclosing pursuant to a Protective Order until November 12, 2014.

Notwithstanding these facts explaining the Hospital Defendants' delay in disclosing these witnesses and their statements, Plaintiff nonetheless knew of Nurse Murray and Nurse Wolfe, and that they may have information relevant to the instant case, **as early as March 17, 2010** when she disclosed them as part of her Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1. Likewise, Plaintiff also had knowledge of Nurse Sumera **as early as May 13, 2010**, when she filed her Sixth Supplemental 16.1 List of Witnesses and Documents disclosing two depositions wherein Nurse Sumera was identified as a nurse taking care of another patient and possibly in a relief charge role for the evening of the Cagnina incident (May 16, 2008). Thus, contrary to the Discovery Commissioner's finding, Plaintiff was not prejudiced by any delay in disclosure of the identifies of these witnesses by the Hospital Defendants since she clearly knew of their existence and potential relevance to the instant case no later than May 13, 2010, less than a year after filing suit when she included them in her own NRCP 16.1 disclosures.

Alternatively, to the extent Plaintiff did suffer any prejudice as a result of the Hospital Defendants' delay in disclosing these witnesses' identities, the Discovery Commissioner's sanctions ordering the full admission of the Police Statements and \$18,000 in additional sanctions far outweigh the alleged violation given the aforementioned reasons explaining the delay *and* Plaintiff's possession of this information less than a year after filing suit. Accordingly, for each of the aforementioned reasons, the Hospital Defendants request that this Court deny Plaintiff's Motion for Sanctions, or, in the alternative, reduce the sanctions in a manner it deems just and proper.

II.

LEGAL ARGUMENT

A. The Hospital Defendants Did Not Know That These Witnesses Had Information Relevant To The Incident At Issue Until May 2013 – Almost Two Years After They Had Already Been Disclosed By Plaintiff.

The Discovery Commissioner's recommendations for sanctions should not be adopted or, in the alternative, should be substantially reduced, because the Hospital Defendants did not have knowledge that either witness had information relevant to *this* Plaintiff's claims, or of the substance of Nurse Wolfe's and/or Nurse Murray's statements to the Las Vegas Metropolitan Police, until May 2013, after plaintiff had already disclosed these witnesses in her March and May 2010 Fifth and Sixth Supplemental NRCP 16.1 disclosures. Indeed, as discussed more fully below, the sequence of events following the incident in question demonstrate that there was no willful noncompliance with a court order or any attempt by the Hospital Defendants to intentionally thwart the discovery process such that sanctions would be warranted, much less the severe sanctions recommended here.

At the time Plaintiff filed her Complaint in the instant case, the State of Nevada, as of July 2, 2008, had already instituted criminal proceedings against Mr. Farmer in *State v. Farmer*, No. C245739 based on another patient (Cagnina) complaint arising from an incident on May 16, 2008. The Cagnina criminal case was later consolidated with allegations by other claimants, including Doe, alleging that they too had been sexually assaulted by Mr. Farmer (Case No. 08C249693). Approximately one year later, close in time to when Plaintiff filed her initial complaint in this case, Nurse Christine Murray and Nurse Margaret Wolfe were disclosed as witnesses in the criminal proceedings. See September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses and October 16, 2009 Third Supplemental Notice of

Witnesses And/Or Expert Witnesses, attached hereto as **Exhibit B** and **C**, respectively. Several of the witnesses named in these disclosures, including Nurses Murray and Wolfe, were neither assigned to nor involved in the instant Plaintiff's treatment. Rather, Nurse Murray was assigned to one of the other complaining witnesses (Cagnina) while Nurse Wolfe (and Nurse Sumera) was an emergency room nurse who also did not provide any care or treatment to Plaintiff, much less work on the same floor as Plaintiff's hospital room. While the Hospital Defendants interviewed Nurses Wolfe, Murray, and Sumera immediately following the Cagnina incident, those interviews took place *before* the Hospital Defendants had any knowledge of the incident involving the instant Plaintiff. Once the instant Plaintiff's allegations surfaced, the Hospital Defendants did not re-interview these witnesses because neither Nurse Wolfe, Nurse Murray, nor Nurse Sumera were assigned to Plaintiff or provided her any care and treatment. As a result, the Hospital Defendants reasonably believed that they would not have any information relevant to Plaintiff's claims but instead, had information relevant only to the other criminal complainants – the patient(s) to whom they had actually provided treatment. Thus, given this knowledge, the Hospital Defendants made the decision, in good faith, not to include these witnesses in their NRCP 16.1 initial or supplemental disclosures in the instant case.

However, on May 6, 2013, during the course of proceedings in *Cagnina v. Centennial Hills Hospital*, No. A5707056, the Hospital Defendants, pursuant to a joint motion with the plaintiff to compel, obtained a copy of the Las Vegas Metropolitan Police Department file for Steven Farmer. See May 6, 2013 Notice of Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina v. Centennial Hills Hospital*, No. A570756, attached hereto as **Exhibit F**. Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had spoken with the police but they neither attended nor were privy to the substance of

those interviews/statements. Upon obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that Nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's claims. The Hospital Defendants, however, were precluded at that time from disseminating Mr. Farmer's police file outside the confines of the *Cagnina* Proceedings due to a protective order. See Exhibit F, at 2, ¶2. Indeed, it was not until November 14, 2014, that the Hospital Defendants were able to produce the file when they were ordered to do so by this Court. See November 12, 2014 Discovery Commissioner's Report and Recommendation, attached hereto as Exhibit G. By that time, over *three years* had already passed since Plaintiff had disclosed Nurses Murray and Wolfe in her Fifth and Sixth Supplemental NRCP 16.1 Disclosures.

Thus, as demonstrated by this sequence of events, the Hospital Defendants did not willfully withhold any information, much less know that these witnesses had information relevant to the instant Plaintiff's claims until May 2013 at the earliest. Moreover, even upon receiving the police file, the Hospital Defendants were prevented from disclosing or producing the file until November 2014. Given these facts, and that Plaintiff had already disclosed Nurse Murray and Wolfe as individuals who may have knowledge of his claims approximately *3 years earlier*, this Court should decline to adopt the Discovery Commissioner's recommendations or, in the alternative, substantially reduce the recommended sanctions.

B. Plaintiff Was Not Prejudiced By The Hospital Defendants' Failure to Disclose The Identities Of Nurses Murray, Wolfe, Or Sumera Because She Had Knowledge Of Their Identities And Potential Relevance As Early As March and May 2010 – Within One Year After Filing Suit.

The Discovery Commissioner's recommendations should also not be adopted or, in the alternative, should be substantially reduced because Plaintiff was not prejudiced – or at best only minimally prejudiced – by the Hospital Defendants' failure to timely disclose Nurses Murray,

1 Wolfe, and Sumera.

2 As discussed *supra*, at the time of filing of Plaintiff's Complaint, criminal proceedings on
3 behalf of several complaining witnesses had already been underway against Farmer. In the
4 course of those proceedings, the District Attorney filed certain witness disclosures, identifying
5 numerous staff at Centennial Hills Hospital. Specifically, on September 28, 2009, the District
6 Attorney filed his Second Supplemental Notice of Witnesses and/or Expert Witnesses,
7 identifying Carol Butler, Christine Murray, Margaret Wolfe, Christen Edwards, Jeanine James,
8 Julie Montero, P. Robertson, Jackie Schumacher and Lori Wescott. See **Exhibit B**. Three weeks
9 later, the District Attorney filed his Third Supplemental Notice of Witnesses and/or Expert
10 Witnesses, further identifying additional witnesses and documentation, including Kim Davis,
11 Karen Goodhart and Sandra Pagain. See **Exhibit C**. Several of these witnesses, including
12 Christine Murray and Margaret Wolfe, were not assigned to Plaintiff nor had any involvement in
13 her care and treatment while a patient at Centennial Hills.
14
15

16 On March 17, 2010, Plaintiff identified and disclosed both of these witness lists in their
17 entirety as part of her Fifth Supplemental 16.1 Statement of Witnesses and Documents. See
18 Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1, attached
19 hereto as **Exhibit D**. Shortly thereafter, on May 13, 2010, Plaintiff filed a Sixth Supplement to
20 Case Conference Disclosures Pursuant to 16.1 wherein she identified certain additional
21 documentation, including the deposition of Karen Goodhart and Amy Bochenek from the
22 *Cagnina v. Centennial Hills Hospital* civil case. See Plaintiff's Sixth Supplement to Case
23 Conference Disclosures Pursuant to NRCP 16.1, attached hereto as **Exhibit E**. Notably, the
24 depositions of Ms. Goodhart and Ms. Boechenek both identify Rey Sumera as a nurse taking
25 care of the patient and possibly as a relief charge nurse for the evening of May 16, 2008. See
26
27
28

1 March 10, 2010 Deposition of Amy Bochenek, RN, attached hereto as **Exhibit H**, at 33, 49, and
2 January 27, 2010 Deposition of Karen Goodhart, RN, attached hereto as **Exhibit I**, at 35, 48, 75,
3 89-90. While Plaintiff chose to disclose these witnesses at that time, the Hospital Defendants did
4 not because, as discussed above, these witnesses were not assigned to Plaintiff and thus, they
5 reasonably believed they were included in the District Attorney's witness lists solely because
6 they were relevant to the other complaining witnesses' claims. In retrospect, the Hospital
7 Defendants could have and in fairness should have disclosed these three witnesses in a
8 supplemental NRCP 16.1 disclosure at that time. However, all of these witnesses were already
9 known to and identified by Plaintiff in her own NRCP 16.1 disclosures almost three years earlier.

11 Thus, despite any delay by the Hospital Defendants in disclosing these witnesses'
12 identities, Plaintiff already had demonstrated her belief that Nurses Murray and Wolfe – as early
13 as March 2010 – and Nurse Sumera via Ms. Goodhart and Ms. Bochenak's deposition – as early
14 as May 2010 – had information relevant to her claims when she identified and disclosed the
15 State's Witness Lists in their entirety in her own NRCP 16.1 disclosures. Accordingly, for this
16 additional reason, the Court should decline to adopt the Discovery Commissioner's
17 recommendations or, in the alternative, substantially reduce the recommended sanctions.
18

19
20 **C. To The Extent Sanctions Are Still Warranted, They Should Be Reduced.**

21 While the Hospital Defendants believe no sanctions are warranted given the above
22 sequence of events – especially considering Plaintiff's knowledge of these witnesses' identities
23 *less than a year after filing suit* – if sanctions are to be issued, they should be substantially
24 reduced.
25

26 Nevada law is clear that sanctions may only be imposed where there has been willful
27 noncompliance with a court order or where the adversary process has been halted by the actions
28

1 of the unresponsive party. *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747
2 P.2d 911, 913 (1987). *GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323,
3 325 (1995). Fundamental notions of due process require that the discovery sanctions for
4 discovery abuses be just and that the sanctions relate to the claims which were at issue in the
5 discovery order which is violated. *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 591 (9th
6 Cir.1983). *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990).
7 Implicit in district judge's authority to sanction parties for failure to comply with pretrial
8 conference orders is that district judge must design sanction to fit violation. Rules Civ.Proc.,
9 Rule 37(b)(2). *City of Sparks v. Second Judicial Dist. Court In and For County of Washoe*,
10 1996, 920 P.2d 1014, 112 Nev. 952.
11

12 Here, the Discovery Commissioner sanctioned Defendant \$18,000, employing a formula
13 of \$1,000 per "unidentified nurse (3) for each year not identified (6). . . ." See **Exhibit A**. In
14 addition, she recommended
15

- 16 • due to the "time length involved in UHS' failure to identify the nurses," an
17 evidentiary hearing before this Honorable Court to determine whether case
18 terminating sanctions are appropriate;
- 19 • the full admission of the nurses' Las Vegas Metropolitan Police
20 Department statements without the necessity of foundation, without the
21 restriction both as to substance and form, and barring any objections based
22 on hearsay or to recorded statements; and
- 23 • that the District Court "may reconsider reducing the amount of sanctions if
24 the [Hospital Defendants] were to sufficiently prove with a degree of
25 probability that the hospital had no knowledge of Sumera or Wolfe until
26 just recently." **Exhibit A**.

27 Given the sequence of events discussed *supra* (Points I.A. and I.B.), this Court should
28 decline to adopt the Discovery Commissioner's recommendations. Nonetheless, to the extent
this Court determines that sanctions are still warranted because of the Hospital Defendants'

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1 failure to supplement their NRCP 16.1 disclosures in May 2013 (upon receipt of the police file),
2 the recommended sanctions should be substantially reduced to a monetary fine. The reduction is
3 appropriate because the Hospital Defendants did not willfully disobey a court order or otherwise
4 attempt to thwart the discovery process. Rather, the Hospital Defendants' decision not to
5 identify Nurses Wolfe, Murray and/or Sumera in their NRCP 16.1 disclosures prior to May 2013
6 was motivated by a good faith belief that these persons did not have information relevant to the
7 instant Plaintiff's case. Thus, any monetary sanctions should instead reflect the period of time
8 between when they acquired the police file in May 2013 (and arguably knew these nurses
9 possessed potentially relevant information) and their ultimately disclosure of the file containing
10 their identities and statements in November 2014. Employing the Discovery Commissioner's
11 formula, the monetary sanctions should therefore be reduced from \$18,000 to \$3,000,
12 representing \$1,000 per "unidentified witness" for the year they knew about the witnesses and
13 their potential knowledge relevant to the instant Plaintiff's case yet failed to disclose their
14 identities.
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III.

CONCLUSION

Based on the foregoing, Defendants Centennial Hills Hospital and UHS respectfully request this Honorable Court rescind the sanctions recommended by the Discovery Commissioner, or, in the alternative, reduce the sanctions to a monetary fine of \$3,000.

DATED this 30th day of July, 2015.

HALL PRANGLE & SCHOONVELD, LLC

/s/: John F. Bemis, Esq.

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

1160 North Town Center Drive, Suite 200

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Attorneys for Defendants

Centennial Hills Hospital and

Universal Health Services, Inc.

///

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///

DECLARATION OF JOHN F. BEMIS, ESQ. RE LR 2.34

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

JOHN F. BEMIS, being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and, along with Michael E. Prangle, Esq., am the attorney for Defendants Centennial Hills Hospital and Universal Health Services, Inc. in the above captioned action.
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 A is a true and correct copy of the July 14, 2015 Discovery Commissioner's Report and Recommendations.
4. Attached hereto as Exhibit B is a true and correct copy of the District Attorney's Office September 28, 2009 Second Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
5. Attached hereto as Exhibit C is a true and correct copy of the District Attorney's Office October 16, 2009 Third Supplemental Notice of Witnesses And/Or Expert Witnesses in *State v. Farmer*, No. C245739.
6. Attached hereto as Exhibit D is a true and correct copy of Plaintiff's Fifth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.
7. Attached hereto as Exhibit E is a true and correct copy of Plaintiff's Sixth Supplement to Case Conference Disclosures Pursuant to NRCP 16.1.

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- 1 8. Attached hereto as Exhibit F is a true and correct copy of the May 6, 2013 Notice of
- 2 Entry of Order re: Discovery Commissioner's Report and Recommendations in *Cagnina*
- 3 *v. Centennial Hills Hospital*, No. A570756.
- 4 9. Attached hereto as Exhibit G is a true and correct copy of this Court's November 12,
- 5 2014 Discovery Commissioner's Report and Recommendation.
- 6 10. Attached hereto as Exhibit H is a true and correct copy of the March 10, 2010 Deposition
- 7 of Amy Bochenek, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
- 8 specifically pages 33 and 49.
- 9 11. Attached hereto as Exhibit I is a true and correct copy of the January 27, 2010 Deposition
- 10 of Karen Goodhart, RN, in *Cagnina v. Centennial Hills Hospital*, No. A570756,
- 11 specifically pages 35, 48, 75, 89 and 90.
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FURTHER YOUR DECLARANT SAYETH NAUGHT.

15 /s/: John F. Bemis, Esq.

16 JOHN F. BEMIS, ESQ.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 30th day of July, 2015, I served a true and correct copy of the foregoing

DEFENDANTS VALLEY HEALTH SYSTEM LLC d/b/a CENTENNIAL HILLS

HOSPITAL MEDICAL CENTER AND UNIVERSAL HEALTH SERVICES, INC.'S

OPPOSITION TO PLAINTIFF'S MOTION FOR NRCP 37 SANCTIONS via Electronic

Service through Wiznet to the following parties at their last known address:

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-and-

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Attorneys for Defendant
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Las Vegas, Nevada 89113
Attorneys for Defendant
Steven Dale Farmer

/s/: Audrey Ann Stephanski
An employee of HALL PRANGLE & SCHOONVELD, LLC

4824-6661-0982, v. 1

EXHIBIT “24”

EXHIBIT “24”

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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.: ____

District Court No.
09-A-595780-C

Dept. II

Electronically Filed
Apr 29 2015 08:40 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**PETITIONERS VALLEY HEALTH SYSTEM, LLC, d/b/a CENTENNIAL
HILLS MEDICAL CENTER'S AND UNIVERSAL HEALTH SERVICES,
INC.'S PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF
PROHIBITION**

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No. 8619

JOHN F. BEMIS, ESQ.

Nevada Bar No. 9509

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

4810-6907-6259, v. 1

1 against Jane Doe, which included sexual assault, open or gross lewdness, and
2 indecent exposure. (WA0122-24, Vol. I).

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4 **C. Plaintiff Moves For Summary Judgment On Liability**

5 On September 29, 2014, Plaintiff moved for summary judgment on the issue
6 of liability against all defendants, including ANS, Centennial Hills and UHS.
7 (WA0053-124, Vol. I). Plaintiff urged that each of these corporate entities was
8 vicariously liable as a matter of law for Farmer's criminal assaults on Ms. Doe.
9 (WA0062-64, Vol. I). However, Plaintiff's initial motion did not cite to NRS
10 41.745, or even argue the issue of foreseeability as to any of the corporate
11 defendants. (WA0053-124, Vol. I).
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15 Centennial Hills and UHS opposed Plaintiff's summary judgment motion,
16 citing NRS 41.745 and urging that Plaintiff could not recover even at a jury trial,
17 much less as a matter of law, as Centennial Hills and UHS urged that in criminally
18 assaulting Ms. Doe, Farmer was engaged in a truly independent venture; that he
19 was not acting within the course and scope of any assigned task or duties as nurse
20 assistant; and that his criminal assaults of Ms. Doe were not reasonably foreseeable
21 to Centennial Hills. (WA0129-38, Vol. I). Specifically, Centennial Hills and UHS
22 relied upon this Court's decision in *Wood v. Safeway, Inc.*, 121 Nev. 724, 737, 121
23 P.3d 1026, 1035 (2005), and urged that there were no known prior acts or any
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1 other circumstances that could have put Centennial Hills on notice that Farmer
2 would sexually assault Ms. Doe. (WA0132-35, Vol. I). ANS provided Centennial
3 Hills with documentation showing that Farmer was certified as a CNA in both
4 California and Nevada, that he had passed a criminal background test in both
5 states, as well as a negative drug test. (WA0133-34, WA0170-72, WA0183; Vol.
6 I). ANS also provided Centennial Hills with Farmer's prior employment
7 information, which contained no reports of improper conduct or bad character.
8 (WA0133-34, Vol. I).

12 In her Reply, Plaintiff urged that she was required to prove only the "general
13 foreseeability" standard discussed in *State Dep't of Hum. Res. v. Jimenez*, 113 Nev.
14 735, 941 P.2d 969 (1997), a Nevada Supreme Court opinion that was subsequently
15 withdrawn. (WA0521, Vol. III). Although Plaintiff acknowledged that the Nevada
16 legislature intended to overrule *Jimenez* when it drafted NRS 41.745 (WA0519, fn.
17 9; Vol. III); nevertheless, she urged that it was sufficient for her to show that
18 Farmer's sexual assaults were "not so unusual or startling," given that CNAs and
19 other hospital personnel often have physical contact with a patient. (WA0521-24,
20 Vol. III). Plaintiff even urged that foreseeability was established as to ANS by the
21 fact that ANS had purchased liability insurance to cover sexual assaults.
22 (WA0523, Vol. III). Plaintiff also provided "expert" affidavits asserting the
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