

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNA MARIE BALTAR, D.O.,
and MIRIAM SITHOLE, APRN,
Petitioners,

vs.

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Elizabeth A. Brown
Clerk of Supreme Court

THE EIGHTH JUDICIAL DISTRICT
COURT, of the State of Nevada, in
and for the County of Clark; and THE
HONORABLE TARA CLARK
NEWBERRY, District Judge,

Respondents,

and

BARRY HEIFETZ, individually,
SPRING VALLEY HEALTHCARE,
LLC, a foreign limited-liability
company d/b/a SPANISH HILLS
WELLNESS SUITES

Real Parties in Interest.

PETITIONER'S APPENDIX – VOL. II 1-221

District Court Case No. A-20-808436-C

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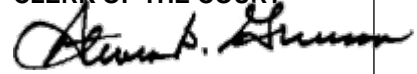
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DISTRICT COURT

CLARK COUNTY, NEVADA

BARRY HEIFETZ, an Individual,

Plaintiff,

Case No. A-20-808436-C

Dept. No. XXI

v.

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS SHANA MARIE
BALTAR, DO AND MIRAM
SITHOLE, APRN'S AMENDED
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

SPRING VALLEY HEALTH CARE, LLC, a
foreign limited-liability company, d/b/a
SPANISH HILLS WELLNESS SUITES;
SHANNA MARIE BALTAR, DO; an
individual, MIRIAM SITHOLE, APRN; an
individual, DOE DOCTOR I, an Individual;
DOE NURSE I, an individual; DOES I
through X; ROE BUSINESS ENTITIES XI
through XX, inclusive,

Defendants.

despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.” *Id.* (quoting NRS 42.001(3) (emphasis added). Here, punitive damages are appropriate because of the Defendants, and each of them, exhibited a conscious disregard for the rights and safety of Plaintiff. From the moment that Dr. Baltar and APRN Sithole were supposed to take over Plaintiff’s care, they dropped the ball in such an egregious way that it was almost certain Plaintiff would been injured in some way. Moreover, neither Dr. Baltar or APRN Sithole had an understanding of what they were supposed to do in treating Plaintiff, and instead believed that the nursing staff was supposed to make up for their shortcomings. This was in violation of both federal law and Spanish Hills’ policies and procedures.

3. Genuine issues of material fact preclude summary judgment on Plaintiff’s elder abuse claim. Under NRS 41.1395, an action for damages for injury or loss suffered by older or vulnerable person from abuse, neglect or exploitation; double damages, attorney’s fees and costs, provides in relevant part: “if a [...]vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the ...vulnerable person.” As an initial matter, Defendants cite to numerous cases outside of this jurisdiction that stand for the proposition that an elder abuse claim would be subsumed by professional negligence. This is in direct contrast to the Court in *Estate of Curtis v. S. Las Vegas Med. Inv’rs, LLC*. Defendants abused and neglect Barry, a man

STATEMENT OF FACTS

Barry Heifetz, a 79 year old male was admitted to Spanish Hills Wellness Suites on January 14, 2019 after a left total hip arthroplasty. *Spanish Hills Records*, 1-2 attached hereto as **Ex. “1”**. Mr. Heifetz’ medical problem list at the time of his admission to Spanish Hills included: left total hip arthroplasty with complication of dislocation, hypothyroidism, hypertension, glaucoma, chronic back pain, muscle wasting of the left lower extremity and neuropathy. *Id.* A Braden Assessment was performed by the nursing staff upon admission. *Id.* at 55. This was the only Braden Assessment performed, and although it was performed incorrectly, it still gave Mr. Heifetz a score of 15—which means he was at risk for the development of pressure injuries. *Id.*

Mr. Heifetz was admitted under the care of Dr. Shana Baltar. *Id.* at 1-2. Dr. Baltar met with Barry on January 15, 2021 for a quick examination. *Id.* at 15. Upon admission, she did not note any issues with Mr. Heifetz's skin. She ordered a wound consultation due to his surgical scar and a pressure relieving mattress. *Id.* at 26-28. Dr. Baltar did not order any type of offloading procedures, nor did she order Mr. Heifetz to be turned or repositioned despite the fact that he was at risk for the development of pressure injuries. *Id.* This was especially important with Barry because he suffered from neuropathy and had limited feeling in his extremities. Neither Baltar nor Sithole made any attempt to get Mr. Heifetz's prior medical records to see what he

1 suffered from or to know how to properly treat him. *Baltar Dep.*, 40:17-21, attached
2 hereto as **Ex. “2”**. *Sithole Dep.*, 55:10-12, attached hereto as **Ex. “3”**.

3 Dr. Baltar never saw Mr. Heifetz again. *Baltar Dep.*, 125:7-23, attached hereto
4 as **Ex. “2”**; *See, e.g., Spanish Hills Records*, attached hereto as **Ex. “1”**. APRN Sithole
5 was the provider that was providing the care and treatment to Barry. *Id.* Neither Dr.
6 Baltar nor APRN Sithole created a proper baseline care plan in accordance with
7 federal law requiring a care plan to be implemented within 48 hours. 42 CFR § 483.21.
8 *Id.* at 11-22.

9 While Dr. Baltar and APRN Sithole stated that it is Spanish Hill’s responsibility
10 to create the care plan, that is not the case. *Sithole Dep.*, 55:13-18, attached hereto as
11 **Ex. “3”**. Even their expert, Dr. Jeong conceded that caring for a patient is a multi-
12 disciplinary approach. *Jeong Dep.*, 12:7-19, attached hereto as **Ex. “4”**. Moreover, §
13 483.21 requires that physician orders be part of the care plan, so naturally, physicians
14 and APRNs must be part of creating the plans.

15 APRN Sithole ordered compression stockings to be taken on and off every 12
16 hours on January 16th, 2019. *Spanish Hills Records*, 28 attached hereto as **Ex. “1”**.
17 Barry had a history of vascular insufficiency and had worn compression stockings for
18 years. *Barry Dep.*, 27:1-13, attached hereto as **Ex. “5”**. Barry was even admitted to
19 Spanish Hills with the compression stockings on. *Id.* at 64:7-25, attached hereto as
20 **Ex.”5”**. By the time of this order, the compression stockings had been on Barry for 2
21 days. *Id.* Nobody, not Dr. Baltar, not APRN Sithole, and not Spanish Hills staff
22 bothered to remove them. *Id.* The stockings remained on Barry until a family friend
23 came to remove them after noticing the compression stockings had rolled down and
24

1 caused severe swelling in Barry's ankle. *Id.* at 65:1-24; *Photos*, HEIFETZ 3-4, attached
2 hereto as **Ex. "6"**. APRN Sithole failed to ensure that these orders were being followed
3 and that her patient was receiving proper care. More importantly, APRN Sithole does
4 not believe it is her responsibility to check and make sure her orders are being
5 followed. *Sithole Dep.*, 31:5-32:3, attached hereto as **Ex. "3"**.

6 Neither Baltar nor Sithole noted any issues with Barry's cognitive abilities,
7 likely because none existed. Still, Nurse Sithole ordered a psychiatric consult after a
8 nurse incorrectly conveyed information that Barry's father, and not Barry, experienced
9 sundowning. *Spanish Hills Records*, 29 attached hereto as **Ex. "1"**; *Barry Dep.*, 97:9-
10 25, attached hereto as **Ex. "5"**. That psychiatrist, prescribed unneeded medication to
11 Barry. *Id.* Neither Baltar nor Sithole intervened to make sure their patient was
12 receiving the proper medications.

13 Neither Dr. Baltar or APRN Sithole noted that Mr. Heifetz was immobile and
14 needed to be turned or repositioned. *Spanish Hills Records*, 29 attached hereto as **Ex.**
15 **"1"**; They argue this is a nursing function, but concede that they could have created
16 orders on subject. *Baltar Dep.*, 74:1-22, attached hereto as **Ex. "2"**. *Sithole Dep.*, 79:1-
17 80:23, attached hereto as **Ex. "3"**. Neither Defendant ensured that their patient was
18 repositioned or turned. *Id.* Ultimately, on January 23, 2019, the staff of Spanish Hills
19 discovered multiple pressure injuries on Barry. *Spanish Hills Records*, 228-29 attached
20 hereto as **Ex. "1"**; The wounds were a deep tissue injury which means they did not
21 form over night. *Photos*, HEIFETZ 2, attached hereto as **Ex. "7"**. Neither Baltar nor
22 Sithole was aware of the development of the wounds for the days they were
23 progressing. *Baltar Dep.*, 101-12-103:7, attached hereto as **Ex. "2"**. Once discovered,
24

1 the staff of Spanish Hills called Dr. Baltar. Dr. Baltar could not be bothered to come
2 see or treat her patient. *Id.*; *See, e.g., Spanish Hills Records*, attached hereto as **Ex.**
3 **“1”**. She did not ask about the characteristics of the wounds, and instead, gave phone
4 orders for treatment. *Id.* APRN Sithole also failed to care about the characteristics or
5 the treatment of the wounds. *Sithole Dep.*, 148:16-24, attached hereto as **Ex. “3”**.
6 Instead, she left it all up to the “wound care team.” *Id.* at 149:5-150:10. Neither
7 provider inquired about his skin assessments, or what they revealed. *Id.* at 87:23-89:5.
8 In fact, APRN Sithole who was a RN prior to becoming an APRN, had no idea what a
9 Braden Skin Assessment entailed or whether one should have been performed. *Id.*
10 Neither provider ordered any type of interventions to ensure Mr. Heifetz would not
11 further develop pressure injuries. *See, e.g., Spanish Hills Records*, attached hereto as
12 **Ex. “1”**.

13 These providers never even spoke to Barry to make sure that he was getting his
14 normal hygiene. Barry testified that he had to beg for a bath, and because there was
15 not an order, Spanish Hills would not give one. *Barry Dep.*, 60:25-61:22, attached
16 hereto as **Ex. “5”**. Eventually, they brought him a wash cloth for Barry to bathe
17 himself. *Id.* The providers, that were supposed to be caring for him, never even realized
18 that Barry had full bed pans, and that he would have to beg for a new one while he was
19 bedridden. *Id.* at 58:8-23.

20 Once the wounds were discovered, neither Dr. Baltar nor APRN Sithole
21 communicated Barry’s life changing change in condition with his family. *Sithole Dep.*,
22 130:12-15, attached hereto as **Ex. “3”**. *Baltar Dep.*, 118:22-119:5, attached hereto as
23 **Ex. “2”**. This is despite federal law requiring them to do so. 42 CFR § 483.20.

1 When Mr. Heifetz was discharged, APRN Sithole failed to recognize that Mr. Heifetz
2 had suffered a serious injury while at Spanish Hills. Instead, she called his stay
3 “uneventful.” *Spanish Hills Records*, 268 attached hereto as **Ex. “1”**. Moreover, Dr.
4 Baltar rubber stamped the discharge summary without ever even checking on her
5 patient or speaking with APRN Sithole about what had occurred. *Baltar Dep.*, 125:7-
6 23, attached hereto as **Ex. “2”**.

7 Dr. Baltar and APRN Sithole never even bothered to learn any of the Spanish
8 Hills policies and procedures despite them being required to do so. *Credentialing File*,
9 SITHOLE 19, BALTAR 17 attached hereto as **Ex. “8”**; *Baltar Dep.*, 22:8-23:17 attached
10 hereto as **Ex. “2”**. *Sithole Dep.*, 22:3-22, attached hereto as **Ex. “3”**. If they had, this
11 incident may have been prevented. For example, there is a specific policy on
12 documenting a plan for turning and repositioning—this was not done. *Turning and*
13 *Repositioning Policy*, POLICIES AND PROCEDURES 5, attached hereto as **Ex. “9”**.
14 Another for documenting the size and characteristics of a pressure wound—this was
15 not done. *Wound Documentation Policy*, 570-571, attached hereto as **Ex. “10”**. Another
16 for the proper compression to be used once a pressure wound was discovered—this was
17 not followed as an ACE bandage was used. *Spanish Hills Records*, 268 attached hereto
18 as **Ex. “1”**; *Wound Care Policy*, POLICIES AND PROCEDURES 67-76, attached hereto
19 as **Ex. “11”**. Dr. Baltar was not even aware that she was supposed to be supervising
20 APRN Sithole, and she did not do so. Yet, Spanish Hills had a policy that required the
21 supervision of Sithole. *Baltar Dep.*, 22:8-23:17 attached hereto as **Ex. “2”**; *Supervision*
22 *Policy*, POLICIES AND PROCEDURES 4, attached hereto as **Ex. “12”**.

23 ///

LEGAL ARGUMENT

A. LEGAL STANDARD FOR SUMMARY JUDGMENT

Pursuant to NRCP 56(c) summary judgment is only appropriate if “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP 56 (c). Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

“A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.* at 724, 121 P.3d at 1031. In reviewing a request for summary judgment, the facts must be viewed in the “light most favorable to the non-moving party” and a Court must “give that party the benefit of all favorable inferences that may be drawn from the subsidiary facts. *Id.*

In the present case, genuine issues of material fact preclude Summary Judgment.

B. PUNITIVE DAMAGES ARE APPROPRIATE IN THIS CASE BECAUSE DEFENDANTS’, AND EACH OF THEM, EXHIBITED A CONSCIOUS DISREGARD

“Punitive damages are designed to punish and deter a defendant’s culpable conduct and act as a means for the community to express outrage and distaste for such conduct.” *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243 252 (2008); *see also Republic Ins. v. Hires*, 107 Nev. 317, 320, 810 P.2d 790, 792 (1991) (“Punitive damages provide a benefit to society by punishing undesirable conduct not punishable by the criminal law”). Punitive damages are a “means of punishing the tortfeasor and deterring the tortfeasor and others from engaging in similar conduct.”

1 *Siggelkow v. Phoenix Ins. Co.*, 109 Nev. 42, 44-45, 846 P.2d 303, 304-05 (1993). “The
2 allowance of punitive damages also provides a benefit to society by punishing
3 undesirable conduct that is not punishable by the criminal law.” *Id.* at 45, 846 P.2d at
4 305.

5 “A plaintiff may recover punitive damages when evidence demonstrates that the
6 defendant has acted with ‘malice, express or implied.’” *Wyeth v. Rowatt*, 126 Nev. Adv.
7 Rep. 44, 244 P.3d 765, 783 (2010) (quoting NRS 42.005(1)). “‘Malice, express or
8 implied,’ means conduct which is intended to injure a person or despicable conduct
9 which is engaged in with a conscious disregard of the rights or safety of others.” *Id.*
10 (quoting NRS 42.001(3) (emphasis added). “A defendant has a ‘conscious disregard’ of a
11 person’s rights and safety when he or she knows of ‘the probable harmful consequences
12 of a wrongful act and a willful and deliberate failure to act to avoid those
13 consequences.’” *Id.* (quoting NRS 42.001(1)). “In other words, under NRS 42.001(1), to
14 justify punitive damages, the defendant’s conduct must have exceeded ‘mere
15 recklessness or gross negligence.’” *Id.* (quoting *Countrywide Home Loans, Inc. v.*
16 *Thitchener*, 124 Nev. 725, 742-43, 192 P.3d 243, 254-55 (2008)).

17 In *Maduikie v. Agency Rent-A-Car*, the Nevada Supreme Court held that refusal
18 to repair a known dangerous condition, without more, will not support punitive
19 damages. 114 Nev. 1, 953, P.2d 24, 26-27 (1998). However, the Court retreated from
20 this approach in *Thitchener* and ruled that the disjunctive “implied malice” prong of
21 the punitive damages statute permits such damages for conscious disregard of unsafe
22 conditions. 124 Nev. at 739-40 & n.51, 192 P.3d at 253-55 & n.51. A conscious
23 disregard is defined as the “knowledge of the probable harmful consequences of a
24

wrongful act and a willful and deliberate failure to act to avoid those consequences.”
NRS 42.001(1).

In *Thitchener*, the Court allowed punitive damages in a wrongful eviction case, under the implied malice theory, where plaintiffs “presented evidence of multiple ignored warning signs suggesting that Countrywide knew of a potential mix-up, as well as evidence indicating Countrywide continued to proceed with the foreclosure despite knowing of the probable harmful consequences of doing so.” *Thitchener*, 124 Nev. at 744, 192 P.3d at 255. The Court has also allowed punitive damages in a simple business transaction where plaintiffs accused defendants of misrepresentation and fraud. *See Ace Truck v. Kahn*, 103 Nev. 503, 511, 746 P.2d 132, 137 (1987), *abrogated on other grounds by Bongiovi v. Sullivan*, 122 Nev. 556, 582-83, 138 P.3d 433, 451-52 (2006) (noting that this “can probably be said to be toward the lower end of the spectrum of malevolence found in punitive damages case[s]”).

Here, punitive damages are appropriate because of the Defendants, and each of them, exhibited a conscious disregard for the rights and safety of Plaintiff. From the moment that Dr. Baltar and APRN Sithole were supposed to take over Plaintiff’s care, they dropped the ball in such an egregious way that it was almost certain Plaintiff would be injured in some way. Moreover, neither Dr. Baltar or APRN Sithole had an understanding of what they were supposed to do in treating Plaintiff, and instead believed that the nursing staff was supposed to make up for their shortcomings. This was in violation of both federal law and Spanish Hills’ policies and procedures.

For example, Mr. Heifetz was at risk for the development of pressure injuries. He had a prior medical history of dislocation, hypothyroidism, hypertension, glaucoma,

1 chronic back pain, muscle wasting of the left lower extremity and neuropathy. *Spanish*
2 *Hills Records*, 1-2 attached hereto as **Ex. “1”**. He was admitted after a hip surgery
3 with a hip brace. *Id.* This meant that Barry was unable to move around on his own,
4 and instead, was stuck in his bed unless he had assistance. His condition also made it
5 to where he had limited feeling in his extremities. Defendants ignored these conditions
6 and failed to order any sort of turning or repositioning of Barry. This was even despite
7 the fact that the Braden Assessment identified Plaintiff as at risk. *Id.* at 55. This is
8 likely because Defendants do not even understand the purpose of a skin assessment or
9 what factors go into an assessment. What is really troubling is that APRN Sithole was
10 a nurse and still has no clue as to how to perform a Braden Assessment. *Sithole Dep.*,
11 148:16-24, attached hereto as **Ex. “3”**.

12 These providers chose to ignore these red flags and assumed the nursing staff
13 would take care of turning and repositioning Barry, or they just did not care if Barry
14 was repositioned. This failure was also in direct contrast to Spanish Hills’ policy
15 requiring a program to be implemented for immobile patients. *Repositioning Policy*,
16 **POLICIES AND PROCEDURES 5**, attached hereto as **Ex. “13”**. This was likely
17 because Dr. Baltar and APRN Sithole never bothered to learn any of the policies and
18 procedures despite them being required to do so. *Credentialing File*, SITHOLE 19,
19 BALTAR 17 attached hereto as **Ex. “8”**; *Baltar Dep.*, 22:8-23:17 attached hereto as **Ex.**
20 **“2”**. *Sithole Dep.*, 22:3-22, attached hereto as **Ex. “3”**.

21 Another example stems from the failure to properly create a care plan. Federal
22 law requires that a care plan be created within 48 hours. 42 CFR § 483.21. The fact
23 that this was not done is below the standard of care. What makes this conduct punitive
24

1 is that these providers never assisted in the creation of the care plan, nor did they
2 know they had to do so. *Sithole Dep.*, 55:13-18, attached hereto as **Ex. “3”**. Even their
3 expert, Dr. Jeong conceded that caring for a patient is a multi-disciplinary approach.
4 *Jeong Dep.*, 12:7-19, attached hereto as **Ex. “4”**. Moreover, § 483.21 requires that
5 physician orders be part of the care plan, so naturally, physicians and APRNs must be
6 part of creating the plans. The fact that Dr. Sithole and APRN Sithole did not know
7 they had to participate in a care plan likely means they have never followed this law
8 with any patient. It was certainly foreseeable that something would happen to Barry.

9 Another example extends from the use of compression stockings on Barry. APRN
10 Sithole ordered compression stockings to be taken on and off every 12 hours on
11 January 16th, 2019. *Spanish Hills Records*, 28 attached hereto as **Ex. “1”**. Barry had a
12 history of vascular insufficiency and had worn compression stockings for years. *Barry*
13 *Dep.*, 27:1-13, attached hereto as **Ex. “5”**. Barry was even admitted to Spanish Hills
14 with the compression stockings on. *Id.* at 64:7-25, attached hereto as **Ex.”5”**. By the
15 time of this order, the compression stockings had been on Barry for 2 days. *Id.* Nobody,
16 not Dr. Baltar, not APRN Sithole, and not Spanish Hills staff bothered to remove them.
17 *Id.* The stockings remained on Barry until a family friend came to remove them after
18 noticing the compression stockings had rolled down and caused severe swelling in
19 Barry’s ankle. *Id.* at 65:1-24; *Photos*, HEIFETZ 3-4, attached hereto as **Ex. “6”**. APRN
20 Sithole failed to ensure that these orders were being followed and that her patient was
21 receiving proper care. More importantly, APRN Sithole does not believe it is her
22 responsibility to check and make sure her orders are being followed. *Sithole Dep.*, 31:5-
23 32:3, attached hereto as **Ex. “3”**. She also failed to ensure that her patient was

1 receiving the proper treatment and allowed an ACE bandage to be used in lieu of
2 compression stockings. *Spanish Hills Records*, 268 attached hereto as **Ex. “1”**.

3 Also, Dr. Baltar let APRN run wild with the treatment of her patient without
4 supervision. Dr. Baltar never saw Barry after his intake, and never checked to see how
5 he was doing, even after his wounds were discovered. *Baltar Dep.*, 125:7-23, attached
6 hereto as **Ex. “2”**; *See, e.g., Spanish Hills Records*, attached hereto as **Ex. “1”**. She
7 never supervised APRN Sithole and did not realize she was supposed to—in violation of
8 federal law and Spanish Hills’ policies and procedures. *Baltar Dep.*, 22:8-23:17
9 attached hereto as **Ex. “2”**; *Supervision Policy*, POLICIES AND PROCEDURES 4,
10 attached hereto as **Ex. “12”**. Still, Dr. Baltar rubber stamped APRN Sithole’s discharge
11 summary without any questions. *Baltar Dep.*, 125:7-23, attached hereto as **Ex. “2”**.

12 Moreover, these providers failed to communicate about anything with Barry’s
13 family. Barry sustained life changing injuries. And still these providers could not be
14 bothered to reach out to Barry’s family. This was in violation of federal law. This was
15 also a conscious disregard of Barry as these providers obviously did not care enough to
16 pick up the phone. *Sithole Dep.*, 130:12-15, attached hereto as **Ex. “3”**. *Baltar Dep.*,
17 118:22-119:5, attached hereto as **Ex. “2”**.

18 These providers failed to ensure their patient was getting basic necessities such
19 as bed pans and baths. *Barry Dep.*, 58:8-61:22, attached hereto as **Ex. “5”**. Yet, they let
20 other persons within Spanish Hills run wild with “treatment” of Barry. They allowed a
21 psychiatrist to prescribe unneeded medication, allowed the “wound care team” do treat
22 the wounds without asking any questions, and failed to ensure that Barry’s wounds
23 were properly documented. *Wound Documentation Policy*, 570-571, attached
24

hereto as Ex. “10”. *Sithole Dep.*, 148:16-24, attached hereto as Ex. “3”. Dr. Baltar could not be bothered to come to see her patient after these wounds were discovered, and APRN Sithole could not be bothered to treat Mr. Heifetz’s wounds or ask questions regarding what was going on with Barry. Neither of these providers cared.

Defendants conscious disregard ensured that Plaintiff would receive permanent and life changing injuries. On January 23, 2019, the staff of Spanish Hills discovered multiple pressure injuries on Barry. *Spanish Hills Records*, 228-29 attached hereto as Ex. “1”; The wounds were a deep tissue injury which means they did not form over night. *Photos, HEIFETZ 2*, attached hereto as Ex. “7”. Neither Baltar nor Sithole was aware of the development of the wounds for the days they were progressing. *Baltar Dep.*, 101-12-103:7, attached hereto as Ex. “2”.

In their motion, Defendants point to four “undisputed facts” which would entitle them to summary judgment. These facts, are highly disputed, and show that punitive damages are appropriate.

Defendant argues that the baseline care plan was created because an interdisciplinary care plan was approved by Dr. Baltar upon admission.

This is not true because, as noted above, neither provider knew they were responsible for the care plan. *Sithole Dep.*, 55:13-18, attached hereto as Ex. “3” Moreover, Dr. Baltar only saw Barry on January 15th. This bare-bones care plan was not completed until January 21st. a week after Dr. Baltar saw him. Thus, she certainly was not involved in the inadequate care plan. She did not care about the treatment of her patient. This was a conscious disregard of Barry.

Defendant argues that because Dr. Baltar ordered a pressure relieving mattress, she did her part in the prevention of pressure injuries.

Defendant ignores that Dr. Baltar did not order any type of offloading procedures, nor did she order Mr. Heifetz to be turned or repositioned despite the fact that he was at risk for the development of

1		pressure injuries. This was especially
2		important with Barry because he suffered
3		from neuropathy and had limited feeling
4		in his extremities. Neither Baltar nor
5		Sithole made any attempt to get Mr.
6		Heifetz's prior medical records to see what
7		he suffered from or to know how to
8		properly treat him. <i>Baltar Dep.</i> , 40:17-21,
9		attached hereto as Ex. "2" . <i>Sithole Dep.</i> ,
10		55:10-12, attached hereto as Ex. "3."
11		Neither Dr. Baltar or APRN Sithole noted
12		that Mr. Heifetz was immobile and needed
13		to be turned or repositioned. <i>Spanish Hills</i>
14		<i>Records</i> , 29 attached hereto as Ex. "1." ;
15		They argue this is a nursing function, but
16		concede that they could have created
17		orders on subject. <i>Baltar Dep.</i> , 74:1-22,
18		attached hereto as Ex. "2." <i>Sithole Dep.</i> ,
19		79:1-80:23, attached hereto as Ex. "3."
20		Neither Defendant ensured that their
21		patient was repositioned or turned. <i>Id.</i>
22	Defendant argues that the compression	Defendant ignores that Barry was
23	stockings were removed every 12 hours.	admitted to Spanish Hills with the
24		compression stockings on. <i>Barry Dep.</i> ,
		64:7-25, attached hereto as Ex."5." By the
		time of this order, the compression
		stockings had been on Barry for 2 days.
		<i>Id.</i> Despite what the record says, the
		evidence shows that nobody, not Dr.
		Baltar, not APRN Sithole, and not
		Spanish Hills staff bothered to remove
		them. <i>Id.</i> The stockings remained on
		Barry until a family friend came to
		remove them after noticing the
		compression stockings had rolled down
		and caused severe swelling in Barry's
		ankle. <i>Id.</i> at 65:1-24; <i>Photos</i> , HEIFETZ 3-
		4, attached hereto as Ex. "6."
	Defendant argues that because Nurse	Defendant ignores that this was the only
	Anderson created a Braden Assessment,	Braden Assessment of Barry despite the
	Barry was accurately assessed for skin	fact that he was high risk for pressure
	injuries.	injuries, and despite the fact that the law
		requires skin checks on a more regular

basis. Moreover, Barry was unable to move around on his own, and instead, was stuck in his bed unless he had assistance. His condition also made it to where he had limited feeling in his extremities. Defendants ignored these conditions and failed to order any sort of turning or repositioning of Barry. This was even despite the fact that the Braden Assessment identified Plaintiff as at risk. *Id.* at 55. This is likely because Defendants do not even understand the purpose of a skin assessment or what factors go into an assessment. What is really troubling is that APRN Sithole was a nurse and still has no clue as to how to perform a Braden Assessment. *Sithole Dep.*, 148:16-24, attached hereto as **Ex. “3.”**

As such, genuine issues of material fact preclude summary judgment.

C. A CLAIM FOR ELDER ABUSE IS PROPER BECAUSE DEFENDANTS’, AND EACH OF THEM, ABUSED AND NEGLECTED PLAINTIFF

Under NRS 41.1395, an action for damages for injury or loss suffered by older or vulnerable person from abuse, neglect or exploitation; double damages, attorney’s fees and costs, provides in relevant part: “if a [...]vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation, the person who caused the injury, death or loss is liable to the older person or vulnerable person for two times the actual damages incurred by the ...vulnerable person.”

The following definitions are applicable to this section:

(a) "Abuse" means willful and unjustified:

(1) Infliction of pain, injury or mental anguish; or

(2) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.

(c) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person, or who has voluntarily assumed responsibility for such a person's care, to provide food, shelter, clothing or services within the scope of the person's responsibility or obligation, which are necessary to maintain the physical or mental health of the older person or vulnerable person. For the purposes of this paragraph, a person voluntarily assumes responsibility to provide care for an older or vulnerable person only to the extent that the person has expressly acknowledged the person's responsibility to provide such care.

(d) "Older person" means a person who is 60 years of age or older.

(e) "Vulnerable person" means a person who:

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person; and

(2) Has a medical or psychological record of the impairment or is otherwise regarded as having the impairment.

NRS 41.1395

In the present case, genuine issues of material fact preclude summary judgment on Plaintiff's Elder Abuse claim. As an initial matter, Defendants cite to numerous cases outside of this jurisdiction that stand for the proposition that an elder abuse claim would be subsumed by professional negligence. Defendants ignore that is not the case in Nevada. First, there is nothing in the legislative history that the legislature intended to obliterate elder abuse with professional negligence. Second, the Nevada Supreme Court has held that an elder abuse claim could still stand. In *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC* the Nevada Supreme Court held:

We are not persuaded that requiring compliance with NRS 41A.071 eviscerates the protections of NRS 41.1395, Nevada's elder abuse statute. First, the record does not support an elder abuse claim here, where Nurse Dawson's actions were grounded in negligence, rather than in willful abuse or the failure to provide a service. *See* NRS 41.1395(4)(a) (defining abuse) and (4)(c) (defining neglect). *Moreover, this statute neither prevents application of the affidavit requirement in professional negligence cases*

Thus, according to *Curtis*, elder abuse can stand so long as it is compliant with NRS 41A.071. Plaintiff complied with the affidavit requirement here for his expert reports. *See, e.g., Bolhack Report*, p. 4-5, attached hereto as **Ex. “14”**. Moreover, a claim for elder abuse is proper because Defendants abused and neglect Barry, a man who was over the age of 60. This abuse included the deprivation of services such as a bath and bedpan. Defendants further neglected Plaintiff when they assumed the care of Plaintiff that were necessary to maintain the health of Barry, and failed to do so. This included the care plan issue, the compression stockings issue, the failure to communicate Plaintiff’s condition, and the failure to ensure Barry was getting the proper treatment and medication. Genuine issues of material fact preclude summary judgment on this claim.

Based upon the foregoing, Plaintiff respectfully requests that the foregoing Motion in Limine be granted in its entirety.

CLAGGETT & SYKES LAW FIRM

/s/ Shannon L. Wise
Shannon L. Wise, Esq.
Nevada Bar No. 014509
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December, 2021, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS SHANA MARIE BALTAR, DO AND MIRAM SITHOLE, APRN'S AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT** on the following person(s) by the following method(s) pursuant to N.R.C.P. 5(b) and N.E.F.C.R. 9:

Via E-Service

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d/b/a Spanish Hills Wellness Suites*

/s/ Jackie Abrego

An Employee of
CLAGGETT & SYKES LAW FIRM

EXHIBIT 1



Resident Face Sheet: BARRY HEIFETZ (Full Code)

Unit:	Unit 200	Preferred Name:	
Room/Bed:		Attending:	Shanna Marie Baltar - (702) 877-8600
Status:	Discharged	Email:	

Admit Date:	01/14/2019 20:39 (current)	Last Qualifying Hospital Stay:	
Admitted From:	Summerlin Hosp Med Ctr, 89144 - NV (current)	Referral Source:	
Discharged:	01/30/2019 15:00	Discharged To:	Southwest Home Health, 89118 - NV
Primary Discharge Diagnosis:		Discharge Reason:	
		Condition on Discharge:	

Primary Payer:	OptumCare MAdv - OC Focus Medicare	Birth Date:	02/17/1940
SSN:	127-30-9063	Age:	79
Medicare A #:	127309063A	Sex:	M
Medicare B #:		Marital Status:	Unknown
Medicaid #:		Mother's Maiden Name:	
MR#:	303759-02	Religion:	
Pharmacy:		Prev Occupation:	
Race:		Address:	2204 Madagascar Lane LAS VEGAS, NV 89117
Preferred Language:		County:	
Is Responsible for Self:	No	Phone:	
Smoking Status:	Unknown if ever smoked	Military Svc:	
Service Connected Disability & %:	No 0.00%	Veteran Elig (10-5588):	No
VA Claims Number:		Last Branch of Service:	
Service Number:		Last Branch of Service Dates:	-

Insurance Information:

Insurance	Group Name	Group #	Insured's ID #	Payer Address	Payer Phone
OptumCare MAdv - OC Focus Medicare			913005601		
OptumCare MAdv Pt B - OC Focus Medicare			913005601		

Advanced Directives:

Directive	Copy On File?	Notes
Full Code		

Allergies:	lisinopril
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Resident Face Sheet: BARRY HEIFETZ (Full Code)

Unit:	Unit 200	Preferred Name:	
Room/Bed:		Attending:	Shanna Marie Baltar - (702) 877-8600
Status:	Discharged	Email:	

Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint

Alerts:

Face Sheet Notes:

Contacts

Relationship	Name	Responsibilities	Call Order	Phone/Email	Address	Notes
Sister	Susan Heifetz	Emergency Contact Durable POA - Health Care Family Member Responsible	1	Primary (917) 796-5891	7803 Canoe Lane Las Vegas, NV 89145	
Resident	BARRY HEIFETZ		2	Primary (702) 308-1540	7803 Canoe Lane Las Vegas, NV 89145	
Daughter	Ms. Sharon Graziano	Emergency Contact	3	Primary (702) 371-1188	unknown unknown, NV unknown	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Admit Date: 01/14/2019 Sex: M Age: 79 Physician: Shanna Marie Baltar DO

Allergies: lisinopril

Diagnosis: Dementia in other diseases classified elsewhere without behavioral disturbance, Anxiety disorder, unspecified, Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, Constipation, unspecified, Disorder of kidney and ureter, unspecified, Dislocation of unspecified internal joint prosthesis, initial encounter, Vitamin deficiency, unspecified, Acute pain due to trauma, Unspecified open-angle glaucoma, stage unspecified, Essential (primary) hypertension, Hypothyroidism, unspecified, Other specified arthritis, other site, Aftercare following joint replacement surgery, Presence of right artificial hip joint

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Category: Urinary Incontinence Barry experiences bladder incontinence R/T limited mobility d/t L hip dislocation Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will maintain/improve current level of bladder continence. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Administer medications as ordered. Evaluate/record/report effectiveness and any adverse side effects. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Keep call light in reach. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	All
		Approach Start Date: 01/21/2019 Provide 1 assistance for toileting. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Nursing
		Approach Start Date: 01/21/2019 Provide incontinence care after each incontinent episode. Once A Day - PRN; PRN 1 Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Report any signs of skin breakdown (sore, tender, red, or broken areas). Once A Day - PRN; PRN 1	CNA, Licensed Nurse, Nursing

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Report signs of UTI (acute confusion, urgency, frequency, bladder spasms, nocturia, burning, pain/difficulty urinating, nausea, emesis, chills, fever, low back/flank pain, malaise, foul odor, concentrated urine, blood in urine). Once A Day - PRN; PRN 1	All, CNA, Licensed Nurse, Nursing
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Last Reviewed/Revised: 01/23/2019 13:28 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for pain/discomfort r/t L hip dislocation Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Goal Target Date: 04/21/2019 Barry will show no s/s pain/discomfort through next review. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Attempt non-pharmacological interventions Created: 01/23/2019 Created By: Queenie Ochoa, LPN	CNA, Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Check resident for level of pain utilizing numeric rating scale 0-10 or verbal descriptor scale(M)Mild, (Mo)Moderate, (S)Severe, (VS)Very Severe. (8AM - 2PM - 8PM Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Labwork/tests as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Medicate as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Monitor effectiveness of interventions and document Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Position for comfort as necessary Created: 01/23/2019 Created By: Queenie Ochoa, LPN	All
		Last Reviewed/Revised: 01/23/2019 13:26 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for adverse consequences R/T receiving psychotropic medication for treatment of Seroquel for anxiety Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will not exhibit signs of drug related side effects or adverse drug reaction through next review. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Assess resident's functional status prior to initiation of drug use to serve as a baseline. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Assess/record effectiveness of drug treatment. Monitor and report signs of sedation, anticholinergic and/or extrapyramidal symptoms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Assess/record effectiveness of drug treatment. Monitor and report signs of sedation, hypotension, or anticholinergic symptoms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Attempt a gradual dose reduction; monitor behaviors Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Physician, Social Service
		Approach Start Date: 01/21/2019 Document behaviors on behavior monitoring logs every shift Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse, Nursing
		Approach Start Date: 01/21/2019 Medication as ordered Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Licensed Nurse
		Approach Start Date: 01/21/2019 Monitor resident's mood and response to medication.	Licensed Nurse, Physician, Social Service

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Pharmacy consultant review monthly.	Pharmacy
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Quantitatively and objectively document the resident's mood.	Licensed Nurse, Physician, Social Service
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
		Approach Start Date: 01/21/2019 Try non-pharmacological interventions before initiating drug therapy.	Licensed Nurse, Nursing, Physician, Social Service
		Created: 01/23/2019 Created By: Queenie Ochoa, LPN	
Last Reviewed/Revised: 01/23/2019 13:25 Queenie Ochoa, LPN			
Problem Start Date: 01/21/2019 Barry is at risk for pressure ulcer due to friction and shear. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Intact skin without evidence of redness, irritation, maceration, or open areas. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Minimum of 2 people plus draw sheet to lift resident while in bed. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Skin assessment and inspection every shift with close attention to heels. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
Last Reviewed/Revised: 01/23/2019 13:22 Queenie Ochoa, LPN			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/21/2019 Barry is at risk for falls due to weakness and L hip dislocation. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Long Term Goal Target Date: 04/21/2019 Barry will be free of falls. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Approach Start Date: 01/21/2019 Assessment and treatment for postural/orthostatic hypotension. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Evaluate need for bed/chair alarms. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Implement exercise program that targets strength, gait and balance. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Increased staff supervision with intensity based on resident need. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Order comprehensive medication review by pharmacist, assess for polypharmacy and medications that increase the fall risk. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Approach Start Date: 01/21/2019 Provide individualized toileting interventions based on needs/patterns. Created: 01/23/2019 Created By: Queenie Ochoa, LPN	Nursing
		Last Reviewed/Revised: 01/23/2019 13:21 Queenie Ochoa, LPN	

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
<p>Problem Start Date: 01/21/2019</p> <p>Category: ADL Functional / Rehabilitation Potential</p> <p>Barry requires limited to extensive assist in bed mobility, transfer, walk in room, walk in corridor, locomotion, dress, eat, toilet, maintain personal hygiene.</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	<p>Long Term Goal Target Date: 01/21/2019</p> <p>Barry will improve/maintain daily functions in bed mobility, transfer, walking in room, walking in corridor, locomotion on unit, locomotion off unit, dressing, eating, toilet use, personal hygiene.</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	<p>Approach Start Date: 01/21/2019</p> <p>Do not rush the resident. Allow extra time to complete ADLs.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	All
		<p>Approach Start Date: 01/21/2019</p> <p>Follow PT/OT/ST recommendations.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Nursing, Occupational Therapy, Physical Therapy
		<p>Approach Start Date: 01/21/2019</p> <p>Have consistent approach amongst caregivers.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	All
		<p>Approach Start Date: 01/21/2019</p> <p>Monitor for presence of pain/intolerance during self care.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Licensed Nurse, Nursing
		<p>Approach Start Date: 01/21/2019</p> <p>Provide 1 assistance for ADLs.</p> <p>Once A Day - PRN; PRN 1</p> <p>Created: 01/23/2019 Created By: Queenie Ochoa, LPN</p>	CNA, Nursing
		<p>Approach Start Date: 01/21/2019</p> <p>Provide adequate rest periods between activities.</p> <p>Once A Day; 07:00</p> <p>Created: 01/23/2019</p>	Activities, CNA, Nursing

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
		Created By: Queenie Ochosa, LPN	
Last Reviewed/Revised: 01/23/2019 13:18 Queenie Ochosa, LPN			
Problem Start Date: 01/22/2019 Advanced Care Planning Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Long Term Goal Target Date: 04/22/2019 Resident will be informed of his/her right to complete advanced directives to direct his medical care and make his values and treatment goals known. Residents stated desires will be honored. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Approach Start Date: 01/22/2019 Physician notified of residents desires and any needed physicians order obtained. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Physician, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident has completed the following advanced directives () DNR () Living Will () Medical Power of Attorney () Financial Power of Attorney () Surrogate () Guardianship (x) Full code Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident will be informed of his/her right to complete advanced directives to direct his medical care and make his values and treatment goals known. Residents stated desires will be honored. Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
		Approach Start Date: 01/22/2019 Resident/responsible party will be informed of any changes in residents condition and benefits, risk and possible choices of treatments Created: 01/22/2019 Created By: LaToya Davis, Soc Serv	Nursing, Social Service, Social Services
Last Reviewed/Revised: 01/22/2019 19:34 LaToya Davis, Soc Serv			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/16/2019 Category: Nutritional Status Barry has dx of left hip dislocation, s/p recent THA. Hx of HTN, hypothyroidism, obesity. At risk for weight loss due to CBW, disease state, advanced age and increased needs due to therapy and healing. Obesity (NC-3.3) related to pt estimated needs as evidenced by CBW>IBWR, BMI = 35. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Long Term Goal Target Date: 04/21/2019 Barry will not have significant weight change by consuming 75% of meals over the next 90 days. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Approach Start Date: 01/16/2019 Current nutrition interventions meet pt protein energy needs based on current disease state and current body weight (CBW) Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary
		Approach Start Date: 01/16/2019 Monitor weight prn. Admit diet: Regular/regular consistency. Provide diet as ordered. Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary, Nursing, Physical Therapy, Restorative Nursing Assistant, Speech Therapy
		Approach Start Date: 01/16/2019 RD will monitor, consult prn Created: 01/16/2019 Created By: Stephen Saunders, Dietary	Dietary, Nursing
		Last Reviewed/Revised: 01/16/2019 12:34 Stephen Saunders, Dietary	
Problem Start Date: 01/16/2019 Category: Nutritional Status Mr. Heifetz was Assessed for Food Preferences Food Allergies: NONE Likes: Fish, Chicken, Beef, Pork, Eggs Dislikes: NONE Dairy Products: OK Diet: Regular Pt was introduced to Always Available Men Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Long Term Goal Target Date: 04/16/2019 Provide diet as ordered with resident food preferences as feasible. Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Approach Start Date: 01/16/2019 Will monitor patient to ensure dietary needs are being met. CSD will monitor patient as needed. RD will follow up. Flowsheet: Dietary Once between the 1st - 28th of the Month; Created: 01/16/2019 Created By: Jorge Arronte-Gomez, Diet Mgr	Dietary
Last Reviewed/Revised: 01/16/2019 11:07 Jorge Arronte-Gomez, Diet Mgr			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 01/01/2018 Category: Activities Barry prefers activities that identify with prior lifestyle. Edited: 01/21/2019 Edited By: Anita Marten	Short Term Goal Target Date: 02/01/2018 Barry will express satisfaction with daily routine and leisure activities. Edited: 01/21/2019 Edited By: Anita Marten	Approach Start Date: 01/01/2018 Allow Barry to express feelings and desires. He was provided a calendar of activities. Edited: 01/21/2019 Edited By: Anita Marten	Activities, All
Last Reviewed/Revised: 01/21/2019 13:48 Anita Marten			

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Problem Start Date: 12/26/2017 Resident has surgical wounds R hip and R upper thigh, and is at risk for further skin breakdown. Edited: 12/26/2017 Edited By: Corneisha Sewell, LPN	Long Term Goal Target Date: 03/25/2018 Resident's surgical wound will heal without complications (e.g., infection, hemorrhage, dehiscence, evisceration). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Approach Start Date: 12/26/2017 Assess location, size (length, width, and depth), presence/absence of granulation tissue and epithelization of surgical wound. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Handle gently and try to eliminate any environmental stimuli. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Nursing
		Approach Start Date: 12/26/2017 Observe and report signs of localized infection (e.g., localized pain, redness, swelling, tenderness, loss of function, heat at the infected area). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Observe and report signs of sepsis (fever, lassitude or malaise, change in mental status, tachycardia, hypotension, anorexia, nausea, vomiting, diarrhea, headache, lymph node tenderness/enlargement). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Report complications (e.g., hematoma, hemorrhage, purulent drainage, odorous drainage, sinus tracts, undermining, tunneling, necrotic tissue, dehiscence, evisceration). Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse
		Approach Start Date: 12/26/2017 Weekly skin check by licensed nurse. Record and report any new findings. Created: 12/26/2017 Created By: Corneisha Sewell, LPN	Licensed Nurse

Care Plan - HEIFETZ, BARRY (Full Code) MR # 303759-02

Next Care Conference: N/A

Problem	Goal	Approach	Discipline
Last Reviewed/Revised: 12/26/2017 16:02 Corneisha Sewell, LPN			

Physician Order Report: 01/14/2019 - 01/20/2019**Attending: Baltar, Shanna Marie (702) 877-8600****HEIFETZ, BARRY (Full Code)**

MR#: 303759-02	DOB: 02/17/1940	Age: 79	Sex: M
Room/Bed:	Unit: No Unit	Admit Date: 01/14/2019 20:39	
Alerts:	Allergies: lisinopril		
Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint			

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/14/2019 - 01/30/2019 (DC Date)		oxycodone - Schedule II tablet; 10 mg; amt: 1 tab; oral [DX: Dislocation of unspecified internal joint prosthesis, initial encounter] Every 4 Hours - PRN; PRN 1, PRN 2, PRN 3, PRN 4, PRN 5, PRN 6	Shanna Marie Baltar

Treatments flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/14/2019 - 01/30/2019 (DC Date)		Pressure Relieving Mattress Every Shift; 06:00 - 18:00, 18:00 - 06:00	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/14/2019 - 01/30/2019 (DC Date)		Vasculera (diosmin complex no.1) [OTC] tablet; 630 mg; amt: 1 tab; oral Once A Day; 09:00	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019 - 01/30/2019 (DC Date)		ADMIT TO: Spanish Hills Wellness Suites	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/15/2019 - 01/15/2019 (DC Date)		aspirin [OTC] tablet; 325 mg; amt: 1 tab; oral [DX: Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis] Twice A Day; 09:00, 21:00	Shanna Marie Baltar

Lab flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Lab	01/15/2019 - 01/15/2019		CBC w/Diff (H/H, RBC, Indices, WBC, Plt, Diff) (4500); Comp Metabolic Panel w/eGFR (944); Magnesium (6335); Once - One Time; 01:30	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019 - 01/30/2019 (DC Date)		CODE STATUS: FULL CODE	Shanna Marie Baltar

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019 - 01/30/2019 (DC Date)		CONSULT: PODIATRY, OPHTHAMOLOGY, DENTAL AS NEEDED	Shanna Marie Baltar

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Physician Order Report: 01/14/2019 - 01/20/2019**Attending: Baltar, Shanna Marie (702) 877-8600****HEIFETZ, BARRY (Full Code)**

MR#: 303759-02	DOB: 02/17/1940	Age: 79	Sex: M
Room/Bed:	Unit: No Unit	Admit Date: 01/14/2019 20:39	
Alerts:	Allergies: lisinopril		
Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint			

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
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Dietary flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/15/2019 (DC Date)	DIET/CONSISTENCY: CARDIAC DIET	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	DIET/CONSISTENCY: REGULAR DIET	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	DISCHARGE PLANS - YES	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/15/2019	01/15/2019 (DC Date)	Eliquis (apixaban) tablet; 2.5 mg; amt: 1; oral Twice A Day; 07:00, 15:00	Shanna Marie Baltar
Prescription	01/15/2019	01/30/2019 (DC Date)	Eliquis (apixaban) tablet; 2.5 mg; amt: 1; oral Twice A Day; 07:00, 19:00	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	I APPROVE OF INTERDISCIPLINARY PLAN OF CARE FOR THIS RESIDENT	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	MAY ADMINISTER INFLUENZA VACCINE ANNUALLY	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	MAY CRUSH AND ADMINISTER ALL ORAL MEDS TOGETHER	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	MAY CRUSH MEDICATIONS AS APPROPRIATE	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	MAY PARTICIPATE IN DAY TO DAY ACTIVITY/RECREATION PROGRAMS AS TOLERATED	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	MAY USE GENERIC EQUIVALENT UNLESS OTHERWISE STATED	Shanna Marie Baltar

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	OT EVALUATION AND TREATMENT	Shanna Marie Baltar

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Physician Order Report: 01/14/2019 - 01/20/2019**Attending: Baltar, Shanna Marie (702) 877-8600****HEIFETZ, BARRY (Full Code)**

MR#: 303759-02	DOB: 02/17/1940	Age: 79	Sex: M
Room/Bed:	Unit: No Unit	Admit Date: 01/14/2019 20:39	
Alerts:	Allergies: lisinopril		
Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint			

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	PT EVALUATION AND TREATMENT	Shanna Marie Baltar

Order Sets flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	REHABILITATION POTENTIAL - GOOD	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	RESIDENT HAS BEEN INFORMED OF MEDICAL CONDITION	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	RESIDENT IS ABLE TO UNDERSTAND OR EXERCISE THEIR RIGHTS AND RESPONSIBILITIES	Shanna Marie Baltar
General	01/15/2019	01/30/2019 (DC Date)	RESIDENT MAY PARTICIPATE IN SOCIAL ACTIVITIES AS TOLERATED	Shanna Marie Baltar

Appointment flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/30/2019 (DC Date)	SCHEDULE FOLLOW UP WITH ORTHO DR ALLEN -S/P LEFT THA 1/7/19. REPEAT LEFT HIP XR PRIOR TO FOLLOW UP. Other; Other	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/15/2019	01/30/2019 (DC Date)	sennosides-docusate sodium [OTC] tablet; 8.6-50 mg; amt: 1; oral Special Instructions: HOLD FOR LOOSE STOOLS Twice A Day; 07:00, 19:00	Shanna Marie Baltar

Wound Care flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/15/2019	01/15/2019	Wound Care Consult Once - One Time; 06:00 - 18:00	Shanna Marie Baltar

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/16/2019	01/30/2019 (DC Date)	Compression stockings on for 12 hours in AM, off for 12 hours at night. Twice A Day; 09:00, 21:00	Miriam S Sithole
Prescription	01/16/2019	01/30/2019 (DC Date)	DILT-XR (diltiazem hcl) capsule,ext.rel 24h degradable; 120 mg; amt: 1 tab; oral Once A Day; 09:00	Miriam S Sithole
Prescription	01/18/2019	01/30/2019 (DC Date)	folic acid [OTC] tablet; 1 mg; amt: 1mg; oral Once A Day; 07:00	Miriam S Sithole

Signatures

Phys . Sig.	Date:	Above Orders Noted by:	Date:
R.N. Review	Date:	Pharm Review	Date:

Physician Order Report: 01/14/2019 - 01/20/2019**Attending: Baltar, Shanna Marie (702) 877-8600****HEIFETZ, BARRY (Full Code)**

MR#: 303759-02	DOB: 02/17/1940	Age: 79	Sex: M
Room/Bed:	Unit: No Unit	Admit Date: 01/14/2019 20:39	
Alerts:	Allergies: lisinopril		
Diagnoses: F02.80 Dementia in other diseases classified elsewhere without behavioral disturbance, F41.9 Anxiety disorder, unspecified, I82.499 Acute embolism and thrombosis of other specified deep vein of unspecified lower extremity-prophylaxis, K59.00 Constipation, unspecified, N28.9 Disorder of kidney and ureter, unspecified, T84.029A Dislocation of unspecified internal joint prosthesis, initial encounter, E56.9 Vitamin deficiency, unspecified, G89.11 Acute pain due to trauma, H40.10X0 Unspecified open-angle glaucoma, stage unspecified, I10 Essential (primary) hypertension, E03.9 Hypothyroidism, unspecified, M13.88 Other specified arthritis, other site, Z47.1 Aftercare following joint replacement surgery, Z96.641 Presence of right artificial hip joint			

General flow sheet

Order Type	Start Date	End Date	Description	Ordered By
General	01/19/2019 - 01/19/2019		psych consult r/o Dementia, nsg/family noting signs of sundowning. Once - One Time; 17:30	Miriam S Sithole

Medications flow sheet

Order Type	Start Date	End Date	Description	Ordered By
Prescription	01/19/2019 - 01/19/2019 (DC Date)		quetiapine tablet; 25 mg; amt: 1; oral Special Instructions: as needed for sleep/anxiety [DX: Dementia in other diseases classified elsewhere without behavioral disturbance] At Bedtime - PRN; PRN 1	Anthony Quinn
Prescription	01/19/2019 - 01/30/2019 (DC Date)		quetiapine tablet; 25 mg; amt: 1; oral Special Instructions: as needed for sleep/anxiety Hold if systolic blood pressure is less than 100 or heart rate is less than 50 [DX: Dementia in other diseases classified elsewhere without behavioral disturbance] At Bedtime; 21:00	Anthony Quinn

SignaturesPhys .
Sig.

Date:

Above Orders
Noted by:

Date:

R.N.
Review

Date:

Pharm
Review

Date:

Observation Detail List Report: HEIFETZ, BARRY (Full Code) MR#: 303759-02

Possessions and valuables received.

Signature of Patient/Resident, or Responsible Party:

Date Signed:

Signature, title of staff completing this assessment

Date:

VITALS

Type	Value	Details	Date	Time	Taken By
------	-------	---------	------	------	----------

NOTES

Date	Progress Note	Discipline	Created By
------	---------------	------------	------------

Skin -- Braden Scale For Prediction of Pressure Sore Risk (Acuity)

OBSERVATION INFORMATION

Creator: Rachel Anderson LPN

Observation Date: 01/14/2019 22:06

Date Recorded: 01/14/2019 22:06

Completed Date: 01/14/2019 22:07

Completed By: Rachel Anderson LPN

DESCRIPTION

Braden Scale For Prediction

OBSERVATION DETAILS

SENSORY PERCEPTION

Residents ability to respond meaningfully to pressure-related discomfort.

- ☐ 1 - Completely Limited - Unresponsive (does not moan, flinch or grasp) to painful stimuli, due to diminished LOC or sedation. -OR- Limited ability to feel pain over most of body surface.
- ☐ 2 - Very Limited - Responds only to painful stimuli. Can't communicate discomfort except by moaning, or restlessness. -OR- Has sensory impairment that limits ability to feel pain/discomfort over half of body.
- ☐ 3 - Slightly Limited - Responds to verbal commands but can't always communicate discomfort or need to be turned. -OR- Has some sensory impairment that limits ability to feel pain/discomfort in 1-2 extremities.
- ☒ 4 - No Impairment - Responds to verbal commands. No sensory deficit limiting ability to feel or voice discomfort/pain.

MOISTURE

Degree to which resident's skin is exposed to moisture.

- ☐ 1 - Constantly Moist - Skin is kept moist almost constantly by perspiration, urine, etc. Dampness is detected every time resident is moved or turned.
- ☐ 2 - Very Moist - Skin is often but not always moist. Linen must be changed at least once a shift.
- ☒ 3 - Occasionally Moist - Skin is occasionally moist, requiring an extra linen change approximately once per day.
- ☐ 4 - Rarely Moist - Skin is usually dry; linen only requires changing at routine intervals.

ACTIVITY

Degree of resident's physical activity.

- ☐ 1 - Bedfast - Confined to bed all or most of time.
- ☒ 2 - Chairfast - Ability to walk severely limited or nonexistent. Can't bear own weight and/or must be assisted into chair or wheelchair.
- ☐ 3 - Walks Occasionally - Walks occasionally during day but for very short distances, with/without assist. Spends majority of each shift in bed or chair.
- ☐ 4 - Walks Frequently - Walks outside the room at least twice a day and inside room at least once every 2 hours during waking hours.

MOBILITY

Resident's ability to change and control body position.

- ☐ 1 - Completely Immobile - Does not make even slight changes in body or extremity position without assist.
- ☒ 2 - Very Limited - Make occasional slight changes in body or extremity position, but unable to make frequent or significant changes independently.
- ☐ 3 - Slightly Limited - Makes frequent, though slight, changes in body or extremity position independently.
- ☐ 4 - No Limitations - Makes major and frequent changes in position without assist.

NUTRITION

Unit:	Attending:	Shanna Marie Baltar	Status:	Discharged
Room/Bed:	MR #:	303759-02		

* Progress note has been edited

Italics: Notes marked in italics indicates a note has been marked invalid or is a history of the note edited.

Unit:	Attending:	Shanna Marie Baltar	Status:	Discharged
Room/Bed:	MR #:	303759-02		

* Progress note has been edited

Italics: Notes marked in italics indicates a note has been marked invalid or is a history of the note edited.

Spanish Hills Wellness Suites
5351 Montessori St.
Las Vegas, NV 89113
Phone (702)251-2200 Fax (702)251-2201

DISCHARGE SUMMARY

PATIENT NAME: Heifetz, Barry
PATIENT #: 303759
ADMISSION DATE: 01/14/2019
DISCHARGE DATE: 01/30/2019
ATTENDING PHYSICIAN: Shanna Marie Baltar, DO
DICTATING PHYSICIAN: Miriam S Sithole, APRN

DATE OF BIRTH: 02/17/1940

INSURANCE: OPTUMCARE

HISTORY OF PRESENT ILLNESS: This is a 78-year-old male who was initially hospitalized for a left hip arthroplasty with Dr. Allen on 01/07/2019. The patient was discharged home. Unfortunately the patient had an episode of two spontaneous left hip dislocations while at home. During the second episode, the patient was sent to the ER and then was seen by Ortho, who recommended an abductor brace. The patient was given the brace to be worn 24x7 until followup with Ortho. The patient was then stabilized and transferred to Rehab secondary to debility.

HOSPITAL ADMITTING DIAGNOSES:

1. Status post left hip arthroplasty status post x2 spontaneous left hip dislocation.
2. Debility.
3. Left hip pain.

PAST MEDICAL HISTORY:

1. Idiopathic neuropathy.
2. Hypertension.
3. History of glaucoma.
4. History of mild cognitive decline.
5. Insomnia.
6. Hypothyroidism.

DISCHARGE MEDICATIONS:

1. Vitamin D3 2000 units one capsule p.o. daily.
2. Multivits one tablet p.o. daily.
3. Diltiazem XR 120 mg one tab p.o. daily.
4. Colace 100 mg one tab twice daily.
5. Eliquis 2.5 mg one tab p.o. twice daily, last dose 02/13/2019.
6. Folic acid 1 mg p.o. daily.

DISCHARGE SUMMARY

EXHIBIT 2

Deposition of SHANNA MARIE BALTAR, DO

HEIFETZ v. SPRING VALLEY HEALTH CARE, LLC, et al.

Case No. A-20-808436-C

May 6, 2021

CONDENSED TRANSCRIPT AND KEY WORD INDEX

TURNER REPORTING & CAPTIONING SERVICES, INC.

7500 W. Lake Mead Blvd., Ste. 9246

Las Vegas, NV 89128

(702) 242-9263

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 BARRY HEIFETZ, an Individual,)
5 Plaintiff,)
6 vs.) Case No. A-20-808436-C
7) Dept. No. I
8)
9 SPRING VALLEY HEALTH CARE,)
10 LLC, a foreign)
11 limited-liability company,)
12 d/b/a SPANISH HILLS WELLNESS)
13 SUITES; SHANNA MARIE BALTAR,)
14 DO, an individual; MIRIAM)
15 SITHOLE, APRN, an individual;)
16 DOE DOCTOR I, an individual;)
17 DOE NURSE I, an individual;)
18 DOES I through X; ROE BUSINESS)
19 ENTITIES XI through XX,)
20 inclusive,)
21)
22 Defendants.)
23 _____)
24
25 VIDEO-RECORDED/VIDEOCONFERENCED DEPOSITION OF
SHANNA MARIE BALTAR, DO
Taken on Thursday, May 6, 2021
At 10:00 a.m.
(All attendees appearing by videoconference)
Reported By:
Vicki Chelst Turner, CCR 375, RMR, CRR, CRC

1 THE VIDEOGRAPHER: We are now on the record.
2 Today is May 6, 2021, and the time on the video
3 monitor is 10:00 a.m. This begins the video-recorded
4 deposition of Shanna Marie Baltar, DO. This
5 deposition is taking place via Zoom videoconferencing,
6 and the participants are at multiple locations.
7 This deposition has been ordered by
8 attorneys representing the plaintiff. We are here in
9 the matter of Barry Heifetz, Plaintiff, versus Spring
10 Valley Health Care, LLC, et al., Defendants. This
11 case is in District Court, Clark County, Nevada, Case
12 No. A-20-808436-C in Department No. 1.
13 My name is Timothy Hartmanszerbiec, court
14 video specialist for Certified Legal Videography, and
15 the court reporter is Vicki Turner for Turner
16 Reporting & Captioning Services.
17 The attorneys participating in this
18 proceeding acknowledge that the court reporter is not
19 physically present in the proceeding room with the
20 witness or counsel and that she will be reporting this
21 proceeding remotely using Zoom.
22 Counsel, if you agree to this remote
23 arrangement, please state your name and consent to the
24 agreement for the record, starting with noticing
25 counsel.

1 APPEARANCES:
2 For the Plaintiff: SHANNON L. WISE, ESQ.
3 CLAGGETT & SYKES LAW FIRM
4 4101 Meadows Lane
5 Suite 100
6 Las Vegas, Nevada 89107
7 For Defendants Shanna KATHERINE L. TURPEN, ESQ.
8 Marie Baltar, DO, and JOHN H. COTTON & ASSOCIATES
9 Miriam Sithole, APRN: 7900 West Sahara Avenue
10 Suite 200
11 Las Vegas, Nevada 89117
12 For Defendant Spring ROBERT D. ROURKE, ESQ.
13 Valley Health Care, ROURKE LAW FIRM
14 LLC d/b/a Spanish 10161 Park Run Drive
15 Hills Wellness Suites: Suite 150
16 Las Vegas, Nevada 89145
17 Also Present: TIMOTHY HARTMANSZERBIEC,
18 CERTIFIED LEGAL VIDEOGRAPHY
19
20 EXAMINATION
21 EXAMINATION BY PAGE
22 MS. WISE 4
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1 MS. WISE: Shannon Wise for Barry Heifetz, and I
2 agree.
3 MS. TURPEN: This is Katherine Turpen on behalf
4 of the defendant witness, Dr. Baltar, and Nurse
5 Practitioner Sithole. We agree.
6 MR. ROURKE: This is Robert Rourke. I agree.
7 THE VIDEOGRAPHER: Thank you.
8 The court stenographer will administer the
9 oath.
10 SHANNA MARIE BALTAR, DO,
11 was called as a witness by the Plaintiff and, having
12 been first duly sworn, testified as follows:
13 EXAMINATION
14 BY MS. WISE:
15 Q Good morning, Doctor. My name is Shannon.
16 I represent Mr. Heifetz. Thank you for being with us
17 today.
18 Can you please state your name and spell it
19 for the record?
20 A Sure. Shanna Marie Baltar. First name is
21 S-h-a-n-n-a. Then M-a-r-i-e. Last name B-a-l-t-a-r.
22 Q And, Dr. Baltar, have you ever testified
23 under oath before?
24 A I have.
25 Q Okay. About how many occasions?

Page 5

1 **A Once before.**

2 **Q** Okay. And was it in your capacity as a
3 doctor that you offered testimony?

4 **A I was a -- an intern in training, resident.**

5 **Q** Okay. And about how long ago was it?

6 **A 2016. Around 2016. I can't -- I'm not**
7 **absolutely sure on that year. 2016, '17.**

8 **Q** Okay. So it's been a while. So I want to
9 go over some ground rules so that all of us are on the
10 same page.

11 Deposition testimony is testimony under
12 oath. So the oath the court reporter just gave you is
13 the same oath you would take in a court of law in
14 front of a judge or a jury.

15 Do you understand that?

16 **A Yes.**

17 **Q** And the oath also carries with it the
18 obligation to testify truthfully, and if it is later
19 determined that you did not testify truthfully,
20 penalties of perjury can apply.

21 Do you understand that?

22 **A Yes.**

23 **Q** Now, it's super important over Zoom that you
24 understand all of my questions and hear all of my
25 questions. From time to time, I might ask a bad

Page 7

1 at it, and based on your education, your experience,
2 you could tell me an estimate.

3 If I were to ask you how long my desk is,
4 you don't even know if I'm sitting at a desk, what it
5 looks like. That would be a complete guess.

6 Do you understand the difference?

7 **A Yes.**

8 **Q** Also, as you notice, we have our court
9 reporter here taking down everything you say. Also,
10 we are over Zoom. Sometimes in -- in depositions we
11 get conversational. In conversation we say "uh-huh,"
12 "hu-uh," we nod, we shrug. If at any point that
13 happens, one of the attorneys might jump in and say,
14 "Is that a yes? Is that a no?" No one's trying to
15 trick you. We just are trying to get a clear record.

16 Also, from time to time your attorney or
17 Mr. Rourke might object to my questions, and that's
18 just fine. Just let them get their objection out
19 prior to answering so, again, we have a clear record
20 and nobody is talking over each other.

21 Did you review any documents to prepare for
22 today's deposition?

23 **A Yes.**

24 **Q** Okay. What did you review?

25 **A I reviewed the records that are here at the**

Page 6

1 question or my video might cut out. If that happens,
2 I want you to tell me to stop and rephrase or repeat
3 my question.

4 The reason that's important is if you answer
5 my question, I'm going to assume you understood my
6 question. And obviously, if we go to trial, we're
7 going to hold you to what you say here today.

8 Do you understand that?

9 **A Yes.**

10 **Q** Okay. Great.

11 Also, now, if you need to take a break at
12 any time, that's fine. We -- this is not an endurance
13 contest. So if you need to take a break, you can just
14 say, "Hey, let's take a break," and we'll go off the
15 record. All I ask is if I have a question pending,
16 you answer the question, and then we will go off the
17 record.

18 Also, I know we're talking about events that
19 occurred some time ago. You might not remember
20 everything exactly, and that's okay. But I am
21 entitled to your best estimate. Let me explain the
22 difference between an estimate and a guess so that
23 we're all on the same page.

24 If I were to ask you how long the table that
25 you're sitting at is, how long it is, you could look

Page 8

1 **attorney's office.**

2 **Q** Okay. And do you know what records those
3 are?

4 **A It included my notes and the discharge**
5 **summary. Those are the main ones that I've reviewed.**

6 **Q** And are these -- your notes and your
7 discharge summary, are those within the Spanish Hills
8 records?

9 **A Correct.**

10 **Q** And other than your attorney, did you speak
11 with anybody to prepare for today's deposition?

12 **A No.**

13 **Q** How long did you meet with your attorney to
14 prepare?

15 **A Maybe an hour or two yesterday. One prior**
16 **occasion around the original -- the original date --**
17 **deposition date before it was rescheduled.**

18 **Q** Okay. And how long was that meeting?

19 **A Roughly the same. An hour or so.**

20 **Q** Is there any reason you can't give your best
21 testimony today?

22 **A No.**

23 **Q** Are you under the influence of any
24 medications that would affect your ability to remember
25 things?

<p style="text-align: right;">Page 9</p> <p>1 A No.</p> <p>2 Q What's your date of birth, Doctor?</p> <p>3 A June 5, '84.</p> <p>4 Q And have you ever served in the military?</p> <p>5 A No.</p> <p>6 Q Have you ever been convicted of a felony?</p> <p>7 A No.</p> <p>8 Q What's your address?</p> <p>9 A 11202 Formosa Springs Court, Las Vegas,</p> <p>10 Nevada 89183.</p> <p>11 Q Do you have any plans to move within the</p> <p>12 next six months?</p> <p>13 A No.</p> <p>14 Q And how long have you been in Las Vegas?</p> <p>15 A Since 2018. I lived here previously as</p> <p>16 well.</p> <p>17 Q Okay. So can you give me a brief synopsis</p> <p>18 of your education.</p> <p>19 A I graduated from UC Davis undergrad,</p> <p>20 exercise biology, and then went to Cal State East Bay</p> <p>21 for a postdoc. And then to Touro University Nevada</p> <p>22 for medical school. And then internal medicine</p> <p>23 residency at Palmetto General Hospital in Miami -- in</p> <p>24 Hialeah, Florida, and then a year of geriatric</p> <p>25 medicine training, a fellowship, in Reno.</p>	<p style="text-align: right;">Page 11</p> <p>1 nothing -- it depends on what you mean by recent.</p> <p>2 Q Okay. That was probably a bad question.</p> <p>3 I'm going to go ahead and mark this as</p> <p>4 Exhibit 1.</p> <p>5 (Plaintiff's Exhibit 1 marked for</p> <p>6 identification.)</p> <p>7 Q (BY MS. WISE) Dr. Baltar, is there anything</p> <p>8 on this CV that is inaccurate? And I can scroll down.</p> <p>9 You just have to tell me.</p> <p>10 A Okay. To my recollection, when I put it</p> <p>11 together, I'm going to say no. But on review now, I'm</p> <p>12 also not seeing anything inaccurate or not current.</p> <p>13 Q Do you want me to continue to scroll down</p> <p>14 for you?</p> <p>15 A Sure.</p> <p>16 Q Okay.</p> <p>17 A So it is current.</p> <p>18 Q Great.</p> <p>19 So are you currently employed with United</p> <p>20 HealthCare Group/Optum?</p> <p>21 A Yes.</p> <p>22 Q Okay. And you've been there since August of</p> <p>23 2018?</p> <p>24 A Correct.</p> <p>25 Q Okay. What does your job duties entail as a</p>
<p style="text-align: right;">Page 10</p> <p>1 Q Okay. And -- and what year did you go to</p> <p>2 medical school? Or what year did you graduate medical</p> <p>3 school, rather?</p> <p>4 A 2014.</p> <p>5 Q Are you board certified?</p> <p>6 A Yes.</p> <p>7 Q And you said you had specialized training in</p> <p>8 geriatric medicine? Did I hear that correctly?</p> <p>9 A Correct.</p> <p>10 Q What does that term mean, generally entail?</p> <p>11 A We do some skilled nursing facility training</p> <p>12 at the VA and also outpatient clinic and -- no. And</p> <p>13 that's pretty much it. Those are the two settings</p> <p>14 that we primarily work in.</p> <p>15 Q All right. I'm going to attempt to share an</p> <p>16 exhibit, so let's just see if it works.</p> <p>17 Doctor, can you see my screen?</p> <p>18 A I can.</p> <p>19 Q Okay. And do you recognize this document?</p> <p>20 A Yes.</p> <p>21 Q And what is this document?</p> <p>22 A It's my CV.</p> <p>23 Q Okay. Have you had a chance to review your</p> <p>24 CV recently?</p> <p>25 A Within the last couple months, but</p>	<p style="text-align: right;">Page 12</p> <p>1 physician working for UnitedHealth Group?</p> <p>2 A So primarily we see Medicare Advantage</p> <p>3 patients in the post-acute setting. So that would</p> <p>4 include skilled nursing facilities, not -- not LTACs.</p> <p>5 We -- as an attending, I'll see new</p> <p>6 admissions. Sometimes I hand those admissions off to</p> <p>7 the nurse practitioner. Sometimes I hold on to the</p> <p>8 follow-ups myself. And we meet weekly to discuss</p> <p>9 current residents at that facility. And that is</p> <p>10 the -- those are the primary tasks that I am</p> <p>11 responsible for.</p> <p>12 Q Okay. And are you credentialed at these</p> <p>13 facilities?</p> <p>14 A Yes.</p> <p>15 Q Okay. So as a physician working for</p> <p>16 UnitedHealth Group or Optum, is there a certain number</p> <p>17 of facilities you work for? How does -- how does that</p> <p>18 work? How do you know what facilities you're going to</p> <p>19 go to?</p> <p>20 MS. TURPEN: I'll just make a form objection.</p> <p>21 Go ahead, Doctor.</p> <p>22 THE WITNESS: So our team, we are made up of two</p> <p>23 physicians and three nurse practitioners currently.</p> <p>24 We split patients at six different facilities across</p> <p>25 town. And this is currently. We -- between me and</p>

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1 the other physician, I am attending at three of them,
 2 but I cover for her three facilities on weekends every
 3 other weekend. And -- yeah, that's --
 4 Did I answer your question completely?
 5 Q (BY MS. WISE) Yes. I -- I do have some
 6 follow-up.
 7 So what is the name of the other physician
 8 in your group?
 9 A **Savita Chander.**
 10 Q You said there were three nurse
 11 practitioners?
 12 A **Currently, yes.**
 13 Q Okay. And what are the names of the nurse
 14 practitioners?
 15 A **Christina Reynoso, Ann Marie Mallory, and**
 16 **Stacy Lee Fried.**
 17 Q Okay. And at the time of this incident, was
 18 it the same composition within your group, which was
 19 January of 2019, or how was your group made up back in
 20 January of 2019?
 21 A **The same people, but also with Miriam**
 22 **Sithole.**
 23 Q So you had a fourth nurse practitioner then?
 24 A **Correct.**
 25 Q Okay. And you said that you see, I think

Page 14

1 you said, six facilities that you currently work
 2 within; is that correct?
 3 A **Yes.**
 4 Q What about in January 2019?
 5 A **I can't remember the number of facilities we**
 6 **had at that time.**
 7 Q Okay. Can you remember the names of -- at
 8 least most of the facilities or some of the facilities
 9 you worked at in January 2019?
 10 A **Yes.**
 11 Q Okay. What are those?
 12 A **Spanish Hills was one of them. Sage Creek**
 13 **Post-Acute. At the time it was called Spring**
 14 **Valley -- I'm going to say the current name because I**
 15 **can't remember the last one. But it's Transitional**
 16 **Care of Las Vegas. Oh, formally -- formerly Kindred**
 17 **Spring Valley. And Kindred Flamingo, I believe we**
 18 **were in that building at that time.**
 19 Q Now, prior to becoming a physician with
 20 Optum Group, you were in -- well, you were doing your
 21 fellowship; correct?
 22 A **Correct.**
 23 Q Okay. Are you aware of any letters of
 24 concern that may have been sent to the medical board
 25 regarding concerns about the medical care and

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1 treatment that you provided to a patient?
 2 A **No.**
 3 Q Do you -- so you did testify earlier that
 4 you are credentialed within each of the facilities you
 5 work at; correct?
 6 A **Correct.**
 7 Q Okay. So fair to say you are -- you hold
 8 privileges at those facilities, then.
 9 A **Yes.**
 10 Q Have you ever had privileges suspended or
 11 revoked?
 12 A **No.**
 13 Q I'm just trying to get my screen to work for
 14 me here. One moment.
 15 Does Spanish Hills pay you a salary?
 16 A **No.**
 17 Q When you work there, what do you wear?
 18 A **Usually business attire, business casual.**
 19 Q So you're not in like scrubs or anything.
 20 A **Sometimes I do come in scrubs.**
 21 Q Okay. And when you say "business casual,"
 22 can you kind of describe what do you mean by that?
 23 A **Arms covered, pants, dress shirt, dress**
 24 **pants.**
 25 Q And when you come in scrubs, do they have

Page 16

1 any identifying information on the scrubs that state
 2 like "Optum" or the name of the facilities?
 3 A **Not on my scrubs, but I wear a badge with**
 4 **"Optum" on it.**
 5 Q And what's your relationship with Southwest
 6 Medical?
 7 A **They're my employer.**
 8 Q Okay. So is it your understanding that
 9 UnitedHealth Group and Southwest Medical, then, are
 10 one and the same?
 11 A **Southwest Medical is under the umbrella of**
 12 **UnitedHealth Group.**
 13 Q Okay. What specifically does your badge
 14 say? Does it say "Optum" or does it say "Southwest
 15 Medical"?
 16 A **It says "Optum." I can't remember if it**
 17 **says "Southwest Medical" on it.**
 18 Q And when you first meet a patient, do you
 19 inform them that you work for Optum?
 20 A **Yes. I'll say Optum or Southwest Medical,**
 21 **which they're more familiar with.**
 22 Q Can you recall when you were first granted
 23 privileges at Spanish Hills?
 24 MS. TURPEN: Just form. As to, like, what year?
 25 Q (BY MS. WISE) Yes. What year?

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1 A I cannot remember the year that I was given
 2 privileges exactly.
 3 Q Okay. Do you get paid to be on call for
 4 Spanish Hills?
 5 A On nights --
 6 MS. TURPEN: Form.
 7 Go ahead.
 8 THE WITNESS: Nights --
 9 MR. ROURKE: Object to the form of the question
 10 as well.
 11 THE WITNESS: Nights and weekends we rotate call.
 12 So yes.
 13 Q (BY MS. WISE) So can you just generally
 14 kind of explain how the schedule works.
 15 A So nights and weekends are -- are alternated
 16 between all of the providers, both physicians and
 17 nurse practitioners. If I'm on call any given night,
 18 which is usually once a week, then I'll get any calls
 19 that come into the answering service that night.
 20 Weekends are alternated between me and the other
 21 physician for admissions.
 22 Q Okay. And do you have a set schedule as it
 23 pertains to each -- each facility?
 24 A No. It's variable.
 25 Q Okay. And who determines where you go and

Page 18

1 when?
 2 A Our supervisor -- supervising physician,
 3 Dr. Chander.
 4 Q Can you give me an average of how many times
 5 per week you are at Spanish Hills.
 6 MR. ROURKE: Object to form.
 7 MS. TURPEN: Yeah. Form as to what point in
 8 time.
 9 Q (BY MS. WISE) Currently.
 10 A Currently?
 11 Q Yes.
 12 A Once or twice a week for new admissions.
 13 Q And was that the same back in 2019?
 14 A No.
 15 Q Okay. And in 2019, how many times per week
 16 did you work at Spanish Hills?
 17 MR. ROURKE: Object to form.
 18 MS. TURPEN: Join.
 19 THE WITNESS: 2019, I believe we were not in
 20 Spanish Hills at that time.
 21 Q (BY MS. WISE) In January of 2019?
 22 A January -- at some point we -- our team
 23 moved out of Spanish Hills and got -- went into some
 24 other facilities. And then we came back recently.
 25 Q Okay. So let's talk about January of 2019.

Page 19

1 You worked at Spanish Hills at that time;
 2 correct?
 3 A Right.
 4 Q And can you estimate how many times per week
 5 you worked at Spanish Hills in January of 2019?
 6 MR. ROURKE: Again, object to the form.
 7 MS. TURPEN: Join.
 8 Go ahead, Doctor.
 9 THE WITNESS: Five days a week at that time.
 10 Q (BY MS. WISE) Okay. And what was your
 11 schedule?
 12 A It was variable, but generally, you'd come
 13 in at 8:00 or 9:00 a.m. and leave around 2:00 or
 14 3:00 p.m.
 15 Q In the time that you worked at Spanish Hills
 16 in January of '19, did Spanish Hills ever held -- hold
 17 any meetings pertaining to patient safety or patient
 18 care?
 19 MR. ROURKE: Object to the form.
 20 MS. TURPEN: Join.
 21 THE WITNESS: I don't know if any -- Spanish
 22 Hills conducted a meeting, but Optum ran a meeting
 23 once a week.
 24 Q (BY MS. WISE) Okay. And what types of
 25 things did you discuss at the Optum meeting?

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1 MS. TURPEN: I'm just going to make a -- an form
 2 and foundation objection here, Doctor, and I'm also
 3 going to caution her -- because I don't know what the
 4 nature of the meeting is she's referring to.
 5 So to the extent that this is any type of
 6 peer review or QA privileged type of proceeding, I
 7 will direct you not to answer. Otherwise, go ahead.
 8 THE WITNESS: Okay. For our interdisciplinary
 9 meetings once a week run by Optum, we talk about
 10 discharge planning and disposition of the current
 11 Optum residents.
 12 Q (BY MS. WISE) Okay. What do you mean by
 13 "discharge planning"?
 14 A Where the patient will be discharged when
 15 they are completed with their skilled services.
 16 Q Okay. So I just want to understand.
 17 So at these meetings, you're discussing
 18 specific patients that you are currently treating?
 19 A Correct.
 20 Q Okay. Is there a certain time and day each
 21 week that these meetings are held or is it variable?
 22 A It is the same time and date (sic) each
 23 week.
 24 Q And where are these meetings held?
 25 A In the conference room on site.

Page 21

1 Q On site of Optum?
 2 A No. At -- at Spanish Hills.
 3 Q Okay. And who attends the meetings?
 4 A The providers that -- the NP that's covering
 5 the patients there, myself, case management both for
 6 the facility and for Optum, the -- a representative
 7 from the physical therapy department, and sometimes
 8 the -- a representative from nursing, and our --
 9 sometimes our medical director as well for Optum.
 10 Q In January of 2019, are you aware of
 11 approximately, just an average, of how many physicians
 12 would be at Spanish Hills on any given day?
 13 MR. ROURKE: Object to the form of the question.
 14 THE WITNESS: I don't know how many.
 15 Q (BY MS. WISE) Do you know in January of
 16 2019 if there were different groups, like similar to
 17 yours, that also worked at Spanish Hills?
 18 A Yes.
 19 MR. ROURKE: Form.
 20 Q (BY MS. WISE) Do you have any idea how many
 21 additional groups were in January of 2019 at Spanish
 22 Hills?
 23 A I don't.
 24 MR. ROURKE: Again, form.
 25 MS. TURPEN: Join.

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1 Give us just a -- give us just a second,
 2 Doctor, so that Mr. Rourke can make an objection if he
 3 needs to and I can as well, and then -- and then go
 4 ahead and answer.
 5 Do you need her to repeat that, Shannon?
 6 MS. WISE: Yes, please.
 7 THE WITNESS: I don't.
 8 Q (BY MS. WISE) Okay. In January of 2019 or
 9 prior to January of 2019, did you ever receive
 10 training on Spanish Hills' policies and procedures?
 11 A No.
 12 Q Were you given a copy of Spanish Hills'
 13 policies and procedures?
 14 MR. ROURKE: Object to the form of the question.
 15 MS. TURPEN: Join.
 16 THE WITNESS: I don't recall.
 17 Q (BY MS. WISE) Did Optum ever provide you
 18 training on policies, procedures, or protocols that
 19 you were to follow?
 20 MS. TURPEN: Object to form and foundation.
 21 Go ahead.
 22 MR. ROURKE: Join.
 23 THE WITNESS: What -- policies and procedures
 24 regarding --
 25 Q (BY MS. WISE) Sure. I have a list for you.

Page 23

1 A Sure.
 2 Q So just generally were you ever provided any
 3 policies or procedures or protocols prior to January
 4 of 2019 that reference patient care?
 5 MS. TURPEN: Same objection.
 6 THE WITNESS: I couldn't tell you if it -- if
 7 that was given to me prior to January 2019.
 8 Q (BY MS. WISE) Have you seen any policies,
 9 procedures, or protocols related to patient care since
 10 January of 2019?
 11 MR. ROURKE: Object to form.
 12 MS. TURPEN: Join.
 13 THE WITNESS: I'm sure I have.
 14 Q (BY MS. WISE) As you sit here today, can
 15 you tell me the name of those policies, procedures, or
 16 protocols?
 17 A I cannot.
 18 Q Okay. Again, with compression stockings,
 19 have you received any policies or procedures or
 20 protocols relating to the use of compression stockings
 21 from Optum at any time during your employment?
 22 MS. TURPEN: Form and foundation.
 23 THE WITNESS: I have not. Sorry.
 24 Q (BY MS. WISE) I'm sorry, Doctor?
 25 A I have not.

Page 24

1 Q Thank you.
 2 Since your time working for Optum, have you
 3 received from Optum any policies, procedures, or
 4 protocols relating to pressure wound prevention?
 5 MS. TURPEN: Form. Foundation.
 6 MR. ROURKE: Join.
 7 THE WITNESS: I don't believe I have.
 8 Q (BY MS. WISE) Since your time working for
 9 Optum, have you received any policies or procedures or
 10 protocols relating to off-loading procedures?
 11 MS. TURPEN: Form. Foundation.
 12 MR. ROURKE: Object to form.
 13 THE WITNESS: I don't believe so.
 14 Q (BY MS. WISE) Doctor, are you responsible
 15 for creating any policies or procedures for Optum?
 16 MS. TURPEN: Form.
 17 THE WITNESS: No.
 18 Q (BY MS. WISE) How many patients are you
 19 responsible -- strike that.
 20 How many patients were you responsible
 21 during -- responsible for during any one shift at
 22 Spanish Hills in January of 2019?
 23 MR. ROURKE: Object to the form.
 24 MS. TURPEN: Form.
 25 THE WITNESS: I wouldn't -- I don't remember it

Page 25

1 right at the moment.
 2 Q (BY MS. WISE) Okay. Can you give me an
 3 average?
 4 MR. ROURKE: Same objection.
 5 MS. TURPEN: Join.
 6 THE WITNESS: Fifteen to 20 under my name that
 7 were split between Miriam and I.
 8 Q (BY MS. WISE) And what do you mean they
 9 were split between yourself and Miriam?
 10 A So I would see the admissions on the
 11 initial -- when the patient would initially get to the
 12 facility, and then some of them I would hand off to
 13 Miriam for follow-up, and some of them I would keep
 14 for myself to follow up until the time of discharge.
 15 Q And how would you decide which ones you
 16 would keep and which ones you would hand off to
 17 Miriam?
 18 A Sometimes that would just be based on which
 19 hall. For simplicity, we would split -- you know, she
 20 would keep one hall and I would keep the other.
 21 Q And by "hall," do you mean the location of
 22 the patient's room?
 23 A Correct.
 24 Q Okay. Is it true that you write the orders
 25 for the patient that Nurse Sithole is to follow? Is

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1 that nurses and other providers are following your
 2 treatment plan?
 3 MR. ROURKE: Object to form.
 4 MS. TURPEN: Form -- yeah. Form. Foundation.
 5 THE WITNESS: What is my -- what steps do I take
 6 in -- if I -- could you --
 7 MS. TURPEN: If you don't understand the
 8 question --
 9 THE WITNESS: Okay. Could you --
 10 MS. TURPEN: -- just let her know.
 11 THE WITNESS: Yeah.
 12 MS. TURPEN: She'll rephrase.
 13 THE WITNESS: Could you rephrase it?
 14 Q (BY MS. WISE) Sure.
 15 Do you have any role in overseeing nurses or
 16 other medical providers in making sure that they
 17 follow your treatment plan?
 18 MS. TURPEN: Form.
 19 MR. ROURKE: Join.
 20 THE WITNESS: Overseeing -- oh, sorry.
 21 Overseeing nurses, I know that is more of a
 22 director of nursing role.
 23 Q (BY MS. WISE) You're done talking?
 24 A I'm done, yeah.
 25 Q Okay. You looked like you had something to

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1 that how it works?
 2 MS. TURPEN: Form. Foundation.
 3 MR. ROURKE: Join.
 4 THE WITNESS: No.
 5 Q (BY MS. WISE) Okay. Is she responsible for
 6 writing her own orders when it comes to the patients
 7 that you delegate to her?
 8 A Correct.
 9 Q Are you responsible for creating the
 10 treatment plans of the patients that you are the
 11 attending for?
 12 MS. TURPEN: Form. Foundation.
 13 THE WITNESS: Not in every case.
 14 Q (BY MS. WISE) And when you do write an
 15 order, do you expect that these treatment plans are
 16 followed?
 17 MS. TURPEN: Form. Foundation.
 18 MR. ROURKE: Form.
 19 THE WITNESS: When you mention treatment plan, do
 20 you -- are you referring to the initial assessment and
 21 plan on admission?
 22 Q (BY MS. WISE) Yes.
 23 A I -- the intention when I put in an order,
 24 yes, is that they are carried out.
 25 Q What is your role, if any, in making sure

Page 28

1 say. I didn't want to interrupt you.
 2 What about as it pertains to the -- the
 3 practitioners on your -- in your group? So, like,
 4 let's say Miriam. Do you have any responsibility in
 5 making sure she's following your treatment plans?
 6 MS. TURPEN: Form.
 7 THE WITNESS: Our nurse practitioners are
 8 independent. They will sometimes come to me for
 9 questions, at which point we can review a case.
 10 Outside of that, no.
 11 Q (BY MS. WISE) Were you ever involved in
 12 education or training of nurses or any medical
 13 providers at Spanish Hills?
 14 A No.
 15 MR. ROURKE: Object to the form.
 16 Q (BY MS. WISE) What was your answer, Doctor?
 17 A No.
 18 Q Do you report to -- strike that.
 19 In January of 2019, did you report to anyone
 20 at Spanish Hills?
 21 MS. TURPEN: Form.
 22 MR. ROURKE: Form.
 23 THE WITNESS: No.
 24 Q (BY MS. WISE) Did you report to anybody at
 25 Optum?

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1 MS. TURPEN: Form.
 2 THE WITNESS: Yes.
 3 Q (BY MS. WISE) Okay. And who is that
 4 person?
 5 A So we have a physician supervisor,
 6 Dr. Chander, and then our medical director, Dr. Soni.
 7 Q You understand that we are here today to
 8 talk about a patient that you treated in January 2019;
 9 correct?
 10 A Yes.
 11 Q And his name was -- is Barry Heifetz;
 12 correct?
 13 A Yes.
 14 Q Do you have an independent recollection of
 15 Mr. Heifetz?
 16 A I do not.
 17 Q You did testify that you did review the
 18 medical records; correct?
 19 A Correct.
 20 Q I'll represent to you that the records show
 21 that he was admitted on January 14th of 2019.
 22 You were informed that day that he had been
 23 admitted into Spanish Hills; correct?
 24 MR. ROURKE: Object to the form.
 25 MS. TURPEN: Join.

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1 THE WITNESS: I -- I have no recollection of it.
 2 But yes, I'm sure I was informed if I saw him.
 3 Q (BY MS. WISE) Okay. Okay. What are your
 4 customs and -- what are the customs and practices of
 5 how you are informed that a patient is admitted that
 6 you will be attending?
 7 MS. TURPEN: Form.
 8 Go ahead.
 9 MR. ROURKE: I'll join on that one, too.
 10 THE WITNESS: It depends on the time of day that
 11 the patient arrives. If it's between 7:00 a.m. to
 12 7:00 p.m., then I am called to -- and notified that
 13 the patient arrived. If it happens after 7:00 p.m. to
 14 7:00 a.m., then the on-call provider is notified.
 15 Q (BY MS. WISE) Okay. How would a person
 16 know by looking at the medical records if you were
 17 notified on the 14th or not?
 18 MR. ROURKE: Object to form.
 19 MS. TURPEN: Join.
 20 THE WITNESS: I -- I don't know how the nurses
 21 would document, if they do. But I can't speak to
 22 that.
 23 Q (BY MS. WISE) Would you expect the nurses
 24 to document who they called and what conversations
 25 were had with the medical provider when a patient is

Page 31

1 admitted to Spanish Hills?
 2 MR. ROURKE: Object to form. Foundation.
 3 MS. TURPEN: Join.
 4 THE WITNESS: That's more of a nursing area that
 5 I -- I don't know what their expectations are as
 6 nurses, what they're supposed to document.
 7 Q (BY MS. WISE) As a doctor, is that
 8 something you expect to see in medical records that
 9 you are reviewing of a patient?
 10 MR. ROURKE: Object to the form. Foundation.
 11 MS. TURPEN: Join.
 12 THE WITNESS: I do -- I do often see the
 13 documentation that a patient was called in overnight
 14 or in the daytime if we do have a new admit, yes.
 15 Q (BY MS. WISE) And if it is something that's
 16 not documented, do you question why it is not
 17 documented?
 18 MR. ROURKE: Object to form. Foundation.
 19 MS. TURPEN: Form and foundation and scope.
 20 THE WITNESS: It -- I mean, it depends. I -- I
 21 don't -- it's not usually my area or place to oversee
 22 nursing, so I don't.
 23 Q (BY MS. WISE) Okay. I'm going to attempt
 24 to share another exhibit with you, so bear with me a
 25 second.

Page 32

1 Okay. I am going to mark this as Exhibit 2.
 2 For the record, these are Spanish Hills
 3 records. The Bates number on these are Spanish -- or
 4 SHWS1 through 500.
 5 (Plaintiff's Exhibit 2 marked for
 6 identification.)
 7 Q (BY MS. WISE) Doctor, you testified earlier
 8 that you reviewed some of the Spanish Hills medical
 9 records prior to today's deposition; correct?
 10 A Correct.
 11 Q Okay. I'm going to show you specific
 12 records, and we can discuss if those were records that
 13 you reviewed prior to today's deposition or not.
 14 Okay. This is Bates No. 86, and it looks
 15 like a progress note dated January 14th of 2019.
 16 Do you see that, Doctor?
 17 A Yes.
 18 Q Okay. It says here "Admitted patient from
 19 Summerlin Hospital"; is that correct?
 20 A Yes.
 21 Q Okay. And then it says "Notified
 22 Dr. Baltar."
 23 Do you see that?
 24 A Yes.
 25 Q Okay. So does this mean this would have

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1 been one of the calls that came directly to you?
 2 **A It's -- it's possible. Sometimes they call**
 3 **after hours and think that they are getting connected**
 4 **to me, but it end -- ends up being one of our on-call**
 5 **providers. But then I see in the morning that it --**
 6 **it will say my name, which often happens. So I'm not**
 7 **absolutely sure if I received that call.**
 8 Q Okay.
 9 **A It is possible.**
 10 Q Sorry.
 11 You don't have a recollection one way or
 12 another if you were called, though; correct?
 13 **A I do not.**
 14 Q Okay.
 15 MR. ROURKE: Shannon, I don't mean to interrupt,
 16 but do you have the Bates number on that particular
 17 document?
 18 MS. WISE: Yes. 86.
 19 MR. ROURKE: Thank you. I just couldn't see it
 20 on the screen.
 21 MS. WISE: Sorry. I -- I said it, but it must
 22 have --
 23 MR. ROURKE: I apologize. I didn't hear it, and
 24 I couldn't see it on the screen. I didn't want to
 25 interrupt your flow.

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1 MS. WISE: No, not a problem. I want you to know
 2 what I'm doing.
 3 Q Okay. Do you -- Doctor, do you know who
 4 this Carlyne Tiquia is?
 5 **A I do not.**
 6 Q Next we're going to move to Bates 85, also
 7 from January 14th.
 8 It says, "Resident arrived from Summerlin
 9 Hospital, admitted to Spanish Hills under the care of
 10 Dr. Shanna Marie Baltar ... to Room 204B in no acute
 11 distress."
 12 Do you -- do you see that?
 13 **A Yes.**
 14 Q Okay. And it -- it is noted there that he
 15 had a hip brace at that time; correct?
 16 **A Correct.**
 17 Q It says, "Day Nurse to Follow up with Body
 18 check and completion of consent."
 19 Do you see that?
 20 **A Yes.**
 21 Q Do you have an understanding of what that
 22 sentence means?
 23 **A If I -- it sounds like a skin assessment or**
 24 **a head-to-toe assessment of some kind.**
 25 Q Okay. Is -- is -- is this something that

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1 you ordered?
 2 **A No.**
 3 Q Okay. Now, do you have an understanding of
 4 who Rachel Anderson is?
 5 **A I do not.**
 6 Q Okay. Did you see Mr. Heifetz on that day?
 7 **A I saw him on the day that my H&P is dated.**
 8 **So I -- was that the 15th?**
 9 Q Would it be here?
 10 **A Yes. So I saw him (break in audio).**
 11 Q Okay. So you first saw him on the 15th.
 12 Do you know why you did not come and see him
 13 on the 14th?
 14 **A It -- it looks like the call was made close**
 15 **to midnight. So we usually don't see the patients at**
 16 **night. We would come in the following day.**
 17 Q Okay.
 18 **A That's pretty standard.**
 19 Q Okay. So here where it says "Date,"
 20 "1/15/2019," and then it says "11:08," that would be
 21 11:08 a.m.; correct?
 22 **A Correct.**
 23 Q What does "H&P Dictated" mean?
 24 **A It means that I called the dictation line**
 25 **and also completed a full history and physical note**

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1 **through the dictation service. It was typed out and**
 2 **printed.**
 3 Q Okay. And does that mean -- is that
 4 dictation note the language that starts with "A/P"?
 5 **A That --**
 6 MS. TURPEN: Object to form.
 7 THE WITNESS: So A/P is Assessment and Plan. I
 8 do that -- I type this in just as a courtesy to the
 9 nurse practitioner who is going to be following.
 10 Q (BY MS. WISE) So your dictation note is a
 11 separate note?
 12 **A It is a complete history and physical note**
 13 **that is scanned into the computer after I dictate it.**
 14 Q And when you create a dictation note, is
 15 that part of Spanish Hills' records or does that
 16 become part of Optum's records?
 17 **A It is a Spanish Hills record.**
 18 Q In reviewing the records for today's
 19 deposition, did you see that dictation note with -- in
 20 the records?
 21 **A Yes.**
 22 Q Okay. When you first saw -- strike that.
 23 Go ahead and explain what this dictation
 24 note here or this note that you created here means.
 25 What does --

<p style="text-align: right;">Page 37</p> <p>1 MS. TURPEN: And to be --</p> <p>2 Q (BY MS. WISE) What does --</p> <p>3 MS. TURPEN: To be clear, are you talking about</p> <p>4 the Bates No. 84? That dictation note?</p> <p>5 MS. WISE: Yes. Yeah, I'm -- I'm still asking</p> <p>6 the question.</p> <p>7 Q When it says "Left THA," what does that</p> <p>8 mean?</p> <p>9 A Left total hip arthroplasty.</p> <p>10 Q Okay. So at the time that you met with</p> <p>11 Mr. Heifetz, you are aware that he was in an abductor</p> <p>12 brace.</p> <p>13 A Yes.</p> <p>14 Q And when you note here "Schedule f/u with</p> <p>15 Dr Allen," when did you anticipate that that followup</p> <p>16 would occur?</p> <p>17 A Sometimes it's written in the discharge</p> <p>18 summary. Sometimes it's not. But a -- an order gets</p> <p>19 put into the system, and the schedulers generally try</p> <p>20 to schedule it within a week or two or when the</p> <p>21 orthopedic surgeon wants to see the patient for</p> <p>22 followup.</p> <p>23 Q Okay. What does "HTN" mean?</p> <p>24 A H -- oh, hypertension.</p> <p>25 Q And what did you mean by your note of</p>	<p style="text-align: right;">Page 39</p> <p>1 initial assessment, is driven by the reason for</p> <p>2 admission, which in this case is related to his recent</p> <p>3 left hip surgery.</p> <p>4 So I -- the History of Present Illness,</p> <p>5 which is the primary narrative on my history and</p> <p>6 physical, is going to be related to that hospital</p> <p>7 course and reason for skilled nursing facility stay.</p> <p>8 It also at the end of it includes any review</p> <p>9 of systems, which are any symptoms maybe that the</p> <p>10 patient is -- is complaining about at that time.</p> <p>11 And then it goes on towards more of a</p> <p>12 focused physical exam related to the reason for</p> <p>13 admission to the skilled nursing facility followed by</p> <p>14 the labs, if any, that are available at that time of</p> <p>15 evaluation, and then finally the Assessment and Plan,</p> <p>16 usually number one listed being the reason for skilled</p> <p>17 nursing facility stay.</p> <p>18 Q (BY MS. WISE) Okay. And when you said</p> <p>19 earlier that you had seen a history and physical</p> <p>20 within the records, is this the document you were</p> <p>21 referring to?</p> <p>22 A Yes.</p> <p>23 Q Okay.</p> <p>24 For the record, this is Bates 305 through</p> <p>25 307.</p>
<p style="text-align: right;">Page 38</p> <p>1 "Chronic pain/OA/Neuropathy"?</p> <p>2 A Chronic pain, osteoarthritis, and</p> <p>3 neuropathy.</p> <p>4 Q Can you tell from this note what areas of</p> <p>5 his body were affected by these symptoms?</p> <p>6 A I cannot.</p> <p>7 Q Okay. Now, when you first met with</p> <p>8 Mr. Heifetz, you did an evaluation; correct?</p> <p>9 A Correct.</p> <p>10 Q What did that evaluation entail?</p> <p>11 MS. TURPEN: Form.</p> <p>12 THE WITNESS: I could not tell you from the top</p> <p>13 of my head. But based on the record that -- based on</p> <p>14 my history and physical exam portion, I did note</p> <p>15 the -- that that abductor brace that he had on, that</p> <p>16 the -- I don't recall any pertinent positives at this</p> <p>17 time.</p> <p>18 Q (BY MS. WISE) Okay. Can you tell me what</p> <p>19 your custom and practice is when performing a patient</p> <p>20 evaluation?</p> <p>21 MS. TURPEN: Form.</p> <p>22 Are we talking about the history and</p> <p>23 physical on intake?</p> <p>24 MS. WISE: Yes.</p> <p>25 THE WITNESS: So a lot of my assessment, that</p>	<p style="text-align: right;">Page 40</p> <p>1 Okay. So you performed this history and</p> <p>2 physical examination on January 15th?</p> <p>3 A Correct.</p> <p>4 Q Okay. So here, History of Present Illness,</p> <p>5 can you explain for me the present illnesses that you</p> <p>6 had noted.</p> <p>7 A I noted hypertension, glaucoma,</p> <p>8 hypothyroidism, osteoarthritis, and prior hip</p> <p>9 surgeries that were taken from the hospital record at</p> <p>10 Summerlin.</p> <p>11 Q Okay. So upon admission, did -- you did</p> <p>12 review the Summerlin records?</p> <p>13 A Yes.</p> <p>14 Q Okay. Did you review any other records?</p> <p>15 A No. Not prior to this. I would generally</p> <p>16 review the discharge summary from the hospital.</p> <p>17 Q Okay. At any point prior to this</p> <p>18 evaluation, did you review Mr. Heifetz's Southwest</p> <p>19 Medical records that he had from his treatment with</p> <p>20 his primary care provider?</p> <p>21 A I did not.</p> <p>22 Q Do you know if you had access to those</p> <p>23 records prior to treating Mr. Heifetz?</p> <p>24 A Yes. We do have access to Southwest Medical</p> <p>25 EMR.</p>

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1 Q Did Mr. Heifetz inform you that Southwest
2 Medical was his primary care provider?

3 A He -- I don't know if he did, but I am
4 aware. Otherwise, he would have had a different
5 attending.

6 Q Okay. Is there any reason that you did not
7 review his Southwest Medical records prior to
8 treatment?

9 A Generally I won't. With new admissions, I
10 will review the hospital records since that contains
11 the most acute and pertinent information to their
12 skilled nursing facility stay.

13 Q Okay. And then here under Past Medical
14 History, you write "As stated."

15 Is that the medical history you obtained
16 directly from Mr. Heifetz?

17 A This is likely from -- as stated from the
18 hospital record, which I generally will confirm with
19 patients after I review that record.

20 Q Okay. And then on the next page, which is
21 Bates No. 306, it looks like you're conducting a
22 physical examination of Mr. Heifetz.

23 So you, you know, checked his -- his heart
24 rate; is that correct?

25 A Correct.

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1 different areas?

2 A I have seen a variety of different braces,
3 yes.

4 Q Did Mr. Heifetz have a brace on both sides
5 of his body or just one?

6 A Based on this documentation, only the left
7 lower extremity. But I'm not absolutely sure.

8 Q Okay. So nothing would have prevented you
9 from looking at his right leg; correct?

10 MS. TURPEN: Form.

11 THE WITNESS: From this documentation, I -- it --
12 there's no way of telling what was on the right lower
13 extremity. But yeah, I could just tell you about the
14 left.

15 Q (BY MS. WISE) You were aware that
16 Mr. Heifetz had vascular insufficiency; correct?

17 A Based on the records that I -- the note
18 review yesterday and -- and prior to that, I -- that
19 is the understanding, yes.

20 Q Okay. You are aware that he had neuropathy
21 as well; correct?

22 A Yes.

23 Q And based on your review of the records, is
24 it your understanding that he was clinically obese?

25 A I don't recall seeing that. Based on my

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1 Q And you would have listened to his lungs.

2 A Correct.

3 Q And you checked his abdomen?

4 A Yes.

5 Q Okay. And here where it says "Extremities,"
6 what would you -- what did you check?

7 A So based on this, it looks like I did a
8 general appearance assessment and also checked distal
9 pulses. Because he had the abductor brace on,
10 visual -- visually would be limited as far as the left
11 lower extremity. So what I've documented here looks
12 like this is mostly a visual assessment and distal
13 pulse check.

14 Q When you do a visual assessment, do you look
15 at the skin?

16 A Yes. What -- if there is an abductor brace
17 on, it's not likely that I'm removing it, though. I'm
18 going to look at the parts of the extremity that are
19 already exposed.

20 Q Okay. And can you explain for me what areas
21 an abductor brace would cover.

22 A So it's from the thigh down to the ankle is
23 what I've seen. I can't remember what his particular
24 brace looked like, though.

25 Q Okay. Have you seen other braces that cover

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1 note, I -- it doesn't look like I -- I mentioned that.

2 Q When you examined or evaluated Mr. Heifetz
3 on January 15th, were you aware that he was bed bound
4 at that time?

5 MS. TURPEN: Form.

6 THE WITNESS: I -- at that time --

7 MR. ROURKE: Form.

8 THE WITNESS: -- based on the notes, I'd have to
9 look at weight-bearing status. That would give me a
10 better idea. But -- but I can't recall.

11 Q (BY MS. WISE) Okay. And what do you mean
12 by "weight-bearing status"? What -- what -- what is
13 that?

14 A So after surgeries, orthopedic -- ortho
15 would have recommendations that range from weight
16 bearing as tolerated to nonweight bearing. So
17 depending on surgery's recommendations, that would
18 dictate what the patient's able to do outside of bed.

19 Q And would this be something that is within
20 the, like, Summerlin records or within the --

21 Dr. Allen, who performed the surgery, in his records?

22 A Likely from Summer- -- Summerlin records,
23 yes.

24 Q Okay. Is there a reason you did not note in
25 your history and physical examination Mr. Heifetz's

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1 vascular insufficiency, neuropathy?

2 **A It's not uncommon that some of the more**
3 **chronic comorbidities are not mentioned in the -- in**
4 **the history and physical because the -- the focus for**
5 **the history and physical is -- is related to the --**
6 **the reason for their rehab stay. So a lot of the**
7 **focus will be on Assessment No. 1.**

8 **If he's being treated with any medication,**
9 **I'll try and list that in the -- the subsequent**
10 **assessments. But yes, sometimes the -- the chronic**
11 **conditions will get left out, especially if it's not**
12 **written in the discharge summary from the hospital.**

13 **Q Okay. And I apologize. It does look like**
14 **neuropathy is noted in your initial assessment. So**
15 **just the vascular insufficiency.**

16 **Here on No. 3 it says, "The patient states**
17 **he has pretty" -- and then there's a blank -- "pain**
18 **tolerance."**

19 **Do you have any understanding of what that**
20 **blank should be?**

21 **A The blank is because when I was dictating**
22 **it, the person who was transcribing it couldn't**
23 **understand what I was saying or my phone probably cut**
24 **out, so they put a blank there. I couldn't tell you**
25 **what was supposed to be there, though. Trying to**

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1 **think back, I -- I don't remember.**

2 **Q Okay. And then the next page, which is**
3 **Bates 307, it has a signature and then your name;**
4 **correct?**

5 **A Correct.**

6 **Q Okay. Can you tell by looking at this**
7 **document what date you signed this document?**

8 **A The 15th it looks like.**

9 **Q Okay. And how can you tell that?**

10 **A That time stamp at the bottom.**

11 **Q Okay. Does the D stand for dictated?**

12 **A Oh, you know what? I'm sorry. Can I re- --**
13 **restate my answer here? So I dictated it on the 15th.**

14 **Q Okay.**

15 **A It was transcribed also on the 15th it looks**
16 **like, an hour later. When I signed it, I don't know.**
17 **So no, I cannot tell you when it was actually signed.**

18 **Q Okay. What is the custom and practice --**
19 **when you receive a transcribed, you know, history and**
20 **physical examination, what is your custom and practice**
21 **as to when -- how you review it, when you sign it?**

22 **A So once the facility receives it, they put**
23 **it in a folder with a number of other documents that I**
24 **need to sign. And that's when it -- it gets signed.**
25 **And it could be, you know -- the -- the number of days**

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1 **after can vary.**

2 **Q Okay. Now, when you see a patient at**
3 **Spanish Hills, are your notes part of Spanish Hills'**
4 **records or Optum's records or both?**

5 **MR. ROURKE: Object to form.**

6 **THE WITNESS: So it becomes --**

7 **MS. TURPEN: Join.**

8 **THE WITNESS: It becomes part of Spanish Hills'**
9 **records.**

10 **Q (BY MS. WISE) Okay. So the next document**
11 **we're going to look at is Spanish Hills records Bates**
12 **stamp 2.**

13 **Have you seen this document before, Doctor?**

14 **A I may have briefly skimmed it, but I -- I**
15 **don't remember. There are many that look like this,**
16 **so I'm not sure.**

17 **Q Okay. About -- a little bit down the page**
18 **it says "Diagnoses."**

19 **Do you see that?**

20 **A Where your cursor is? Yes.**

21 **Q Yes. Who is responsible for creating this**
22 **document?**

23 **A I don't know.**

24 **MR. ROURKE: Form.**

25 **MS. TURPEN: Join.**

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1 **Q (BY MS. WISE) Who is responsible for noting**
2 **a patient's diagnosis within the Spanish Hills**
3 **records?**

4 **MR. ROURKE: Same objection.**

5 **MS. TURPEN: Yeah. Form. Foundation. Join.**

6 **THE WITNESS: I don't really -- I don't**

7 **understand the question who is responsible for...**

8 **Q (BY MS. WISE) Let me rephrase it for you.**

9 **Let me rephrase it.**

10 **Are you responsible for diagnosing a patient**
11 **upon admission?**

12 **MS. TURPEN: Form. Foundation.**

13 **THE WITNESS: So yes and no. It -- diagnosis**
14 **often happens before they even come to the facility.**

15 **So what I document on the initial encounter is**
16 **often -- has already been diagnosed by another**
17 **provider before they got there. If they get -- become**
18 **diagnosed with something while on site, then it gets**
19 **added to the note. But what we're looking at now**
20 **looks like preexisting diagnoses.**

21 **Q (BY MS. WISE) Okay. And is there a way for**
22 **you to tell one way or another what was preexisting**
23 **and what was added?**

24 **MR. ROURKE: Object to form.**

25 **MS. TURPEN: Join.**

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1 THE WITNESS: It can be -- we can probably figure
 2 it out based on the timing of everything. This
 3 particular document looks like the face sheet, which
 4 means it was built before my encounter likely. So in
 5 this case, this was not -- none of these things were
 6 things that I have diagnosed myself.
 7 Q (BY MS. WISE) Okay. The next page is Bates
 8 stamp page 3.
 9 Here where it says Attending, Savita
 10 Chander, that's the supervisor that you discussed
 11 earlier; correct?
 12 A Yes. That -- yes --
 13 Q Is that correct?
 14 A So the attending is actually -- it's under
 15 my name, and then alternate is under her name, just...
 16 Q So it -- so it's -- it goes -- it says your
 17 name, attending, and then it has Dr. Chander; correct?
 18 A Correct.
 19 Q What does alternate mean?
 20 A It means she's the alternate physician --
 21 Q Okay.
 22 A -- if I were off on a given day.
 23 Q Okay. Do you have any understanding of what
 24 or who Tufail & Associates is?
 25 A I do not.

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1 MS. TURPEN: Form.
 2 Q (BY MS. WISE) You do not work for Tufail &
 3 Associates; correct?
 4 A No.
 5 Q Okay. Do you have an understanding of who
 6 Queenie Ochoa is?
 7 A No.
 8 Q That is not a nurse that works within your
 9 group; correct?
 10 A Correct.
 11 Q Okay. Okay, Doctor. Have you -- for the
 12 record, this is Bates 311 and 312.
 13 Have you seen this document before?
 14 A I have not looked at this one.
 15 Q Okay. Is -- is that your handwriting?
 16 A No. It does not look like it.
 17 Q Okay. I don't see a -- a signature on this.
 18 Is there any way that -- from you looking at
 19 this document that you're able to tell who filled out
 20 this document?
 21 A No.
 22 Q Okay. Is a Baseline Care Plan something
 23 that is created upon admission?
 24 MR. ROURKE: Object to form.
 25 MS. TURPEN: Join.

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1 THE WITNESS: Could you elaborate on the word
 2 "Baseline Care Plan"?
 3 Q (BY MS. WISE) Sure. The title of this
 4 document is entitled "Baseline Care Plan."
 5 I'm just trying to figure out if this is a
 6 form that is supposed to be used upon admission.
 7 MR. ROURKE: Object to form.
 8 MS. TURPEN: Form. Foundation. Scope.
 9 THE WITNESS: This isn't a form that our team
 10 uses, so I wouldn't be able to comment on it.
 11 Q (BY MS. WISE) Okay.
 12 MR. ROURKE: Shannon, can I jump in and ask a
 13 quick question of you?
 14 MS. WISE: Sure.
 15 MR. ROURKE: Is this a good time to take a quick
 16 break?
 17 MS. WISE: Absolutely.
 18 MR. ROURKE: All right. I don't -- I don't need
 19 to be long. Maybe five, ten minutes. I just need to
 20 take a -- you know, a short break.
 21 MS. WISE: Yeah. Let's take ten minutes, Doctor,
 22 so you can get up and stretch your legs.
 23 MR. ROURKE: Thank you.
 24 THE VIDEOGRAPHER: We're off the record at
 25 11:10 a.m.

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1 (Recess taken.)
 2 THE VIDEOGRAPHER: We're on the record at
 3 11:22 a.m.
 4 You may proceed.
 5 Q (BY MS. WISE) Hi, Doctor. You understand
 6 you're still under oath; correct?
 7 And you're muted.
 8 MS. TURPEN: Hi. We're ready when everyone else
 9 is.
 10 Q (BY MS. WISE) Okay. Doctor, you understand
 11 you're still under oath; correct?
 12 MS. TURPEN: Oh, Shannon, we can't hear you.
 13 MS. WISE: Interesting.
 14 MS. TURPEN: Oh, no, now I can hear you. You're
 15 good.
 16 MS. WISE: Can everybody else hear me?
 17 MR. ROURKE: Yes.
 18 MS. TURPEN: Yes. We're good. We're good.
 19 Q (BY MS. WISE) Okay. All right, Doctor.
 20 You understand you're still under oath; correct?
 21 A Yes.
 22 Q Now, when you evaluated Mr. Heifetz on
 23 January 15, you were aware he came in with compression
 24 stockings; correct?
 25 MS. TURPEN: Object to form.

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1 Go ahead.
 2 THE WITNESS: I am not aware of that.
 3 Q (BY MS. WISE) Okay. We had looked at your
 4 history and physical examination earlier, and I can go
 5 back to it if you'd like.
 6 But you did not note on that that he was
 7 wearing compression stockings; correct?
 8 A **Correct, I did not.**
 9 Q You did note that you did an evaluation of
 10 his extremities, though; correct?
 11 A **Yes.**
 12 Q Okay. If you evaluated his extremities,
 13 would you have noticed that he was wearing compression
 14 stockings?
 15 A **If he had some, yes.**
 16 Q Okay.
 17 Okay. For the record, this is Bates 31.
 18 Can you see this document --
 19 A **Yes.**
 20 Q -- Doctor? Okay.
 21 At the top here it says "Order,"
 22 "Frequency."
 23 You see that?
 24 A **Yes.**
 25 Q Okay. And it says, "Compression stockings

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1 on for 12 hours in AM, off for 12 hours at night."
 2 Do you see that?
 3 A **Yes.**
 4 Q Is this an order you created?
 5 A **I don't recall.**
 6 Q Okay. How would you know who -- if you
 7 created this order?
 8 A **I have not seen this screen. Our provider**
 9 **screen looks different from what I'm looking at here.**
 10 **So I am not sure based on this how I would be able to**
 11 **tell.**
 12 Q Okay. If you had seen a patient who was
 13 admitted with compression stockings, would that be
 14 something that you would continue to order throughout
 15 his stay at Spanish Hills?
 16 MS. TURPEN: Form.
 17 THE WITNESS: If the patient already had
 18 stockings, then I would likely not put in a new order
 19 because it has already been ordered previously. So
 20 no.
 21 Q (BY MS. WISE) If they were admitted with
 22 stockings and you said it had already been ordered,
 23 who would have ordered it? Are you talking about from
 24 the prior facility
 25 A **Correct. That's what -- if they came to the**

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1 **facility with the stockings from the hospital, then my**
 2 **assumption would be it was ordered in the hospital.**
 3 Q Okay. Looking at this order, are you able
 4 to tell one way or another if this was an order that
 5 was carried over from the hospital or if it was an
 6 order created within Spanish Hills?
 7 A **I would not be able to tell from this.**
 8 Q Okay. Is there a separate document that
 9 you're aware of that would explain who created the
 10 order?
 11 A **The -- on Matrix, which is the electronic**
 12 **medical record at Spanish Hills, there is a way to**
 13 **view who entered it. And you should be able to view**
 14 **who gave the verbal on the view that I'm accustomed to**
 15 **seeing, which is different from this one.**
 16 Q Based on this record, it looks like the
 17 order was entered on January 16th of 2019; correct?
 18 A **It appears so.**
 19 Q Okay. You evaluated Mr. Heifetz on
 20 January 15th; correct?
 21 A **Correct.**
 22 Q Did you ever reevaluate Mr. Heifetz after
 23 January 15, 2019?
 24 A **Not to my knowledge, no.**
 25 Q If you were the one who created this

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1 compression stocking order, would there be a reason
 2 that it would -- it was created the day after you saw
 3 Mr. Heifetz?
 4 MS. TURPEN: Form. Foundation.
 5 MR. ROURKE: Join.
 6 THE WITNESS: Not likely.
 7 Q (BY MS. WISE) Okay. Is your custom and
 8 practice to create orders at the time of seeing a
 9 patient?
 10 A **Typically the orders will occur after seeing**
 11 **the patient, yes.**
 12 Q Who is -- who can create orders at Spanish
 13 Hills? Is it just the attending physician, or is it
 14 other medical professionals?
 15 MS. TURPEN: Form. Foundation.
 16 MR. ROURKE: Join.
 17 THE WITNESS: Other medical professionals are
 18 capable of entering orders.
 19 Q (BY MS. WISE) Okay. So does that include
 20 practice nurses?
 21 MS. TURPEN: Form.
 22 MR. ROURKE: Form.
 23 MS. TURPEN: Do you mean advanced practice
 24 nurses?
 25 Q (BY MS. WISE) Yes.

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1 **A Yes.**
 2 MS. TURPEN: Object to form.
 3 THE WITNESS: Yes. Our NPs can enter orders.
 4 Q (BY MS. WISE) What is your understanding of
 5 the purpose of compression socks?
 6 **A In this particular case, for -- in reviewing**
 7 **the records, for lower extremity edema.**
 8 Q Okay. And what does that mean?
 9 **A It means swelling in the legs.**
 10 Q Have you ever ordered compression stockings
 11 for patients in the course of your career?
 12 **A Yes.**
 13 Q And when you do create an order, how often
 14 do you require that they be taken on and off?
 15 MS. TURPEN: Form. Foundation.
 16 THE WITNESS: It varies.
 17 MR. ROURKE: Same objection.
 18 Q (BY MS. WISE) It varies?
 19 **A Yes.**
 20 Q Based on what?
 21 **A Based on the patient's condition, situation,**
 22 **comfort.**
 23 Q Okay. Have you ever had a patient where you
 24 ordered compression stockings to be left on for more
 25 than 48 hours?

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1 **A I have --**
 2 MS. TURPEN: Form. Foundation.
 3 Go ahead.
 4 MR. ROURKE: Join.
 5 THE WITNESS: I -- I've not.
 6 Q (BY MS. WISE) Have you ever had a patient
 7 where you ordered compression stockings be left on
 8 more than 24 hours?
 9 MS. TURPEN: Form. Foundation.
 10 MR. ROURKE: Join.
 11 THE WITNESS: I have not.
 12 Q (BY MS. WISE) Have you ever had a patient
 13 where you ordered that compression stockings be left
 14 on for more than 12 hours?
 15 MS. TURPEN: Form. Foundation.
 16 THE WITNESS: I have not.
 17 Q (BY MS. WISE) Why -- in -- in -- in your
 18 experience of -- of ordering compression stockings,
 19 why do you order that they be removed?
 20 MS. TURPEN: Form. Foundation. Incomplete
 21 hypothetical.
 22 THE WITNESS: The benefit of compression hose
 23 have been during ambulation where swelling can be
 24 worse, while up and out of bed. So typically I will
 25 order for them to be worn while out of bed in the

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1 daytime when they're out with therapy.
 2 Q (BY MS. WISE) Do you agree that additional
 3 swelling can result if they are not removed?
 4 MS. TURPEN: Form. Foundation. Incomplete
 5 hypothetical.
 6 MR. ROURKE: Join.
 7 THE WITNESS: Additional swelling, I -- I
 8 don't -- I can't answer for that. Swelling happens as
 9 a result of usually preexisting conditions.
 10 MS. TURPEN: Shannon -- Shannon, I'm sorry to
 11 interrupt while there's not a question pending, but
 12 I'm -- I'm having battery issue. We could --
 13 MS. WISE: Okay.
 14 MS. TURPEN: -- stay on the record if you'd like,
 15 but I just need to get an extension cord to plug in
 16 this laptop.
 17 MS. WISE: Yeah. Take your time.
 18 MR. ROURKE: We're also having an audio issue on
 19 my end. It's crackling and popping. I just don't
 20 know where it's coming from. It may be her battery
 21 issue. I don't know.
 22 MS. WISE: Yeah.
 23 MR. ROURKE: Are you hearing it, Shannon?
 24 MS. WISE: I heard it. I wasn't sure if the
 25 doctor was answering or if there was a delay, but I

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1 did hear some crackling and popping.
 2 MR. ROURKE: Okay. I just didn't -- I didn't
 3 know if anybody else heard it other than me.
 4 MS. WISE: The joy of Zoom.
 5 THE VIDEOGRAPHER: Let's go off the record at
 6 11:33 a.m.
 7 MS. WISE: Okay.
 8 (Recess taken.)
 9 THE VIDEOGRAPHER: We're on the record at 10 --
 10 11:35 a.m. You may proceed.
 11 Q (BY MS. WISE) Okay, Doctor. In the --
 12 before we went off the record, we were talking about
 13 the times that you ordered compression stockings for
 14 patients; correct?
 15 **A Correct.**
 16 Q And in the times that you've ordered
 17 compression stockings for patients, why did you order
 18 that they be removed?
 19 MS. TURPEN: Form. Foundation. Incomplete
 20 hypothetical.
 21 Go ahead.
 22 MR. ROURKE: Join.
 23 THE WITNESS: I -- generally with any kind of
 24 treatment order, I don't implement anything that
 25 would -- I would minimize the length of time that it's

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1 implemented. There are things that have a benefit for
 2 a particular period and serve no benefit after that
 3 period.
 4 So depending on the -- the situation, as I
 5 was saying earlier, I would order the stockings for a
 6 specific event, such as ambulation, and then have the
 7 patient, while they're laying in bed, just elevate
 8 their legs, which is as effective, while supine
 9 overnight.
 10 Q (BY MS. WISE) Are you aware of any risks
 11 associated with leaving compression stockings on for
 12 an extended period of time?
 13 MS. TURPEN: Form. Foundation.
 14 THE WITNESS: I would imagine that any -- just
 15 as, you know, leaving anything on for extended periods
 16 of time would, you know -- would have some maybe --
 17 would -- I don't really know what I'm trying to say
 18 here -- build -- how you'd have bacteria and so forth,
 19 just like leaving clothes on for an extended period of
 20 time. So those things are often removed in the
 21 evenings.
 22 Q (BY MS. WISE) Would you agree that one
 23 reason to remove compression stockings would be to
 24 check the skin integrity underneath?
 25 MS. TURPEN: Form, foundation, and scope.

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1 THE WITNESS: Sure.
 2 Q (BY MS. WISE) Are you familiar with the
 3 Spanish Hills charts as we have on screen for you?
 4 A Am I familiar with this representation of
 5 the chart are you asking me?
 6 Q Yes.
 7 A I'm -- I'm not.
 8 Q Okay. When you view the chart on your end,
 9 here where it says time and then the day and then we
 10 have these X's and initials, is this what you would
 11 see when you look at your -- when you view the records
 12 on your end?
 13 A No.
 14 MR. ROURKE: Objection to the form of the
 15 question. I -- I just want to make sure I understand
 16 the question.
 17 Are you asking about when she sees it on the
 18 computer at this facility versus the PDF printout?
 19 MS. WISE: Correct.
 20 MR. ROURKE: Thank you. Sorry.
 21 THE WITNESS: Yes. So on my view in the
 22 facility, I would not see this chart.
 23 Q (BY MS. WISE) Okay. Okay. Do you have any
 24 understanding -- you see we have a few X's under
 25 Monday the 14th, the 15th, and then we have one under

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1 the 16th?
 2 A Yes.
 3 Q Do you have any understanding of what the X
 4 represents?
 5 A I would be guessing.
 6 MR. ROURKE: Form. Foundation.
 7 MS. TURPEN: Join.
 8 Again, Doctor, give it just a -- a beat
 9 between your answer so --
 10 THE WITNESS: Okay.
 11 MS. TURPEN: -- objections can be made.
 12 THE WITNESS: Okay.
 13 Q (BY MS. WISE) Do you have any understanding
 14 of what these letters and numbers represent?
 15 MR. ROURKE: Same objections.
 16 MS. TURPEN: Join.
 17 THE WITNESS: Again, it would be an assumption.
 18 Q (BY MS. WISE) Okay. What would that
 19 assumption be?
 20 MR. ROURKE: Same objections.
 21 MS. TURPEN: Join.
 22 THE WITNESS: I would be guessing that they are
 23 initials.
 24 Q (BY MS. WISE) Okay. And you said you would
 25 be assuming what the X's meant.

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1 What would that assumption be?
 2 MS. TURPEN: Form. Misstates testimony. She
 3 said she didn't know.
 4 MR. ROURKE: Join.
 5 THE WITNESS: I would assume that the X's are
 6 that -- whatever medication or treatment has not been
 7 administered during those times.
 8 Q (BY MS. WISE) So assuming your assumptions
 9 are correct, this chart would show that the
 10 compression socks were not removed Monday, Tuesday,
 11 and then they were removed Wednesday night.
 12 MR. ROURKE: Object to the form of the question.
 13 Foundation. Speculation.
 14 MS. TURPEN: Yeah. Join. And also misstates
 15 testimony.
 16 MR. ROURKE: Join.
 17 THE WITNESS: That would not be my assumption.
 18 My assumption would be that they were not applied
 19 until Wednesday the 16th at 2100.
 20 Q (BY MS. WISE) Based on your review of the
 21 records, did you see at any point where someone
 22 removed Mr. Heifetz's pressure stockings upon
 23 admission on the 14th?
 24 A I do not recall.
 25 MR. ROURKE: Object to form.

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1 MS. TURPEN: Join.
 2 Q (BY MS. WISE) Assuming Mr. Heifetz was
 3 admitted with compression stockings and that they were
 4 not removed until the 16th, as a physician, would you
 5 believe that to be below the standard of care?
 6 MR. ROURKE: Object to the form of the question.
 7 THE WITNESS: Yes.
 8 MS. TURPEN: Form. Foundation and also scope.
 9 THE WITNESS: Could you -- did you say if he
 10 arrived -- I'm sorry. Could you repeat the question?
 11 I...
 12 Q (BY MS. WISE) Sure.
 13 Assuming Mr. Heifetz arrived on the 14th
 14 with compression stockings on and they were not
 15 removed until the 16th when we have that initial RA10,
 16 based on your experience as a doctor, do you believe
 17 that to be below the standard of care?
 18 MR. ROURKE: Object to the form. Incomplete
 19 hypothetical. Calls for speculation. Assumes facts
 20 not in evidence.
 21 MS. TURPEN: And join in those objections, and
 22 also exceeds the scope as to this witness, and form as
 23 to whose standard of care.
 24 THE WITNESS: Yeah, I -- I think that every
 25 scenario is different. I would have to know the exact

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1 details of a given case and the reasons behind another
 2 provider's decision. I can't speak to every case to
 3 answer that question fully.
 4 Q (BY MS. WISE) Okay. And when you say
 5 "case," what do you mean by that?
 6 **A Every patient being different, every**
 7 **provider's decision being driven by different**
 8 **comorbidities or reasons that I can't anticipate every**
 9 **scenario.**
 10 Q Now, in Mr. Heifetz's case, assuming he was
 11 admitted with compression stockings on the 14th and
 12 the first notation is that they were removed the 16th,
 13 do you believe that was below the standard of care?
 14 MS. TURPEN: Same objections.
 15 MR. ROURKE: Yeah. Same objections.
 16 MS. TURPEN: And asked and answered.
 17 THE WITNESS: I personally would not -- I mean,
 18 it depends on the assessment that happens in the
 19 facility. As was mentioned earlier, the skin
 20 assessments, which did occur. So though unlikely,
 21 I -- I would think that the duration of time is
 22 excessive.
 23 Q (BY MS. WISE) Okay. The next one we're
 24 going to examine is Bates 35.
 25 Okay. At the top here we just have an order

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1 for "Pressure Relieving Mattress."
 2 Do you see that?
 3 **A Yes.**
 4 Q Do you -- looking at this, can you tell
 5 who -- who created this order?
 6 **A I'm not sure.**
 7 Q Do you know if you created this order?
 8 **A I am not able to confirm that.**
 9 Q Okay. Have you ordered pressure-relieving
 10 mattresses for patients in the past?
 11 **A Yes.**
 12 Q What's the purpose of a pressure-relieving
 13 mattress?
 14 **A To relieve the pressure on higher risk**
 15 **regions of the body that are subject to pressure**
 16 **injury.**
 17 Q Then also we have an order on Bates stamp
 18 36. Again, at the top we have an order that says
 19 "Wound Care Consult."
 20 Do you see that?
 21 **A Yeah.**
 22 Q Based on this order, can you tell if you
 23 ordered this?
 24 **A I am not absolutely sure.**
 25 Q And is there any way to tell who ordered

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1 this?
 2 **A Not on this view.**
 3 Q Okay. Do you know one way or another if
 4 you -- you performed the wound care consultation on
 5 Mr. Heifetz?
 6 MS. TURPEN: Form.
 7 THE WITNESS: Are you asking whether I put the
 8 consult order in?
 9 Q (BY MS. WISE) No. Whether you actually
 10 performed the consultation.
 11 **A No.**
 12 MS. TURPEN: Just -- I'm going to make a form
 13 objection. I think we have a double negative going
 14 there, Shannon. If you could reask it.
 15 MR. ROURKE: I would join that.
 16 MS. WISE: Okay. Sorry. Sometimes I ask a bad
 17 question.
 18 MR. ROURKE: We all do.
 19 Q (BY MS. WISE) Doctor, are you responsible
 20 for performing wound care consultations at Spanish
 21 Hills?
 22 **A No.**
 23 Q Based on your knowledge, do you know who is
 24 responsible for -- for performing the wound care
 25 consultations?

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1 MR. ROURKE: Object to form.
 2 MS. TURPEN: Join.
 3 THE WITNESS: At this time, I don't know who was
 4 responsible for this -- performing this consult.
 5 Q (BY MS. WISE) Okay. Is it generally
 6 someone on your group that performs the consult, or is
 7 it someone separate from your group?
 8 A Someone separate.
 9 Q Have you ever ordered a wound care
 10 consultation for a patient at Spanish Hills?
 11 A Yes.
 12 Q What's the purpose of a wound care
 13 consultation?
 14 MS. TURPEN: Form.
 15 Go ahead.
 16 THE WITNESS: The wound care consult is if after
 17 the nursing assessment of wounds, there is an
 18 indication for wound care, the wound care team to
 19 continue following.
 20 Q (BY MS. WISE) I'm sorry. You kind of broke
 21 up.
 22 Can you repeat that?
 23 A If on the initial nursing skin assessment,
 24 if there's an indication for wound care to continue
 25 following, then the consult is put in.

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1 Q Okay. And can you tell me what type of
 2 things would be present on a skin assessment for wound
 3 care to continue following?
 4 MS. TURPEN: Form. Incomplete hypothetical.
 5 MR. ROURKE: Join.
 6 THE WITNESS: That's a -- it's a question with a
 7 broad answer. And one example would be a
 8 postoperative wound, a -- an unhealing wound or wounds
 9 related to chronic conditions.
 10 Q (BY MS. WISE) So in Mr. Heifetz's case,
 11 it's possible that this consultation was ordered due
 12 to his hip replacement surgery; is that correct?
 13 MR. ROURKE: Object to the form.
 14 MS. TURPEN: Form. Calls for speculation.
 15 THE WITNESS: That is a possibility.
 16 Q (BY MS. WISE) Okay. And is the wound care
 17 consultation a separate form?
 18 A It --
 19 MS. TURPEN: Form. Form as to the question.
 20 THE WITNESS: Right. I -- I'm not sure what you
 21 mean by "form."
 22 Do you mean a separate order from --
 23 Q (BY MS. WISE) I'm asking is there like a
 24 specific document that says, you know, wound care
 25 consultation that the nurse would fill out?

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1 MR. ROURKE: Object to the form.
 2 MS. TURPEN: Form and as to scope.
 3 THE WITNESS: Not that I'm aware of.
 4 Q (BY MS. WISE) Okay. And for all these
 5 questions, I'm just asking for your personal
 6 knowledge. Obviously, I am aware that you are not a
 7 representative of Spanish Hills. Just in your -- in
 8 working as a physician there.
 9 Okay. Would you agree that Mr. Heifetz was
 10 at risk for pressure injuries because he suffered from
 11 neuropathy, vascular insufficiency, was wearing
 12 compression stockings, and he was obese?
 13 MS. TURPEN: Form. Foundation.
 14 THE WITNESS: A patient with the conditions that
 15 you mentioned is at risk for developing wounds.
 16 Q (BY MS. WISE) Do you have an understanding
 17 of why a wound care consultation would only be ordered
 18 once per week?
 19 MS. TURPEN: Form. Incomplete hypothetical.
 20 MR. ROURKE: Join.
 21 THE WITNESS: My understanding is that the
 22 consult is ordered once in the duration of the stay
 23 because the consult is only the initial visit, and the
 24 subsequent visits are considered follow-ups.
 25 Q (BY MS. WISE) Okay. Okay. This is also

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1 122.
 2 Do you see halfway on the page where it says
 3 "Order," "Weekly Skin Check by Licensed Nurse"?
 4 A Yes.
 5 Q Is there any way to tell from looking at
 6 this order if this is something that you ordered?
 7 A No.
 8 Q Are you able to tell who ordered this?
 9 A I am not.
 10 Q Okay. What's the purpose of a skin check?
 11 MS. TURPEN: Form. Foundation.
 12 THE WITNESS: To assess for new or developed
 13 wounds.
 14 Q (BY MS. WISE) As a physician at Spanish
 15 Hills, have you ever performed a skin check on a
 16 patient?
 17 A I can't --
 18 MS. TURPEN: Form.
 19 Go ahead.
 20 THE WITNESS: I can't recall a specific incident,
 21 but I generally will -- I generally know that the
 22 facility will do a head-to-toe skin assessment. If
 23 I'm in the room at the same time, then I would be a
 24 part of that. Most of the time, I'm not.
 25 Q (BY MS. WISE) What do you mean by

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1 "head-to-toe skin assessment"?
 2 **A It's standard practice at skilled nursing**
 3 **facilities on admission.**
 4 Q Okay. And what physically happens?
 5 **A That is more of a nursing -- skilled nursing**
 6 **facility process that I'm not often a part of.**
 7 Q Okay.
 8 **A So I don't know the steps involved in -- in**
 9 **their -- or their procedure.**
 10 Q What did you mean when you said head-to-toe
 11 skin assessment?
 12 **A Literally that. The patient's clothes**
 13 **are -- are removed, and the patient is examined head**
 14 **to toe.**
 15 Q Would you agree that a skin check should be
 16 a head-to-toe assessment of a patient?
 17 MS. TURPEN: Form and foundation. Incomplete
 18 hypothetical.
 19 THE WITNESS: Yes.
 20 Q (BY MS. WISE) Okay. When you reviewed the
 21 records, did you come across any results of this
 22 weekly skin check that was performed on the 21st?
 23 MS. TURPEN: Form.
 24 MR. ROURKE: Join.
 25 THE WITNESS: I don't recall.

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1 Q (BY MS. WISE) When I say the word
 2 "off-loading procedures," what's your understanding of
 3 off-loading procedures?
 4 **A It's another procedure that is part of the**
 5 **skilled nursing facility I'm not typically involved**
 6 **in. But it's -- yeah. I see it on initial orders**
 7 **when care is involved.**
 8 Q Okay. So you said that you're not usually
 9 involved in.
 10 Does that mean that you don't generally
 11 create orders for off-loading procedures?
 12 **A Not generally, no, I don't. But what I**
 13 **meant by -- when I said that was I'm not the one**
 14 **performing these off-loading procedures myself.**
 15 Q Okay. Do you have a custom and practice as
 16 to when you generally would order off-loading
 17 procedures?
 18 MS. TURPEN: Form.
 19 THE WITNESS: If the patient is coming in for
 20 wounds specifically, they've been hospitalized for
 21 that, my radar would -- would be on for pressure sores
 22 and off-loading procedures, as you mentioned.
 23 Q (BY MS. WISE) Okay. Are off-loading
 24 procedures something that you have to order or is it
 25 something that you expect to be done from the

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1 facility?
 2 MS. TURPEN: Form. Foundation. Incomplete
 3 hypothetical.
 4 MR. ROURKE: Join.
 5 Q (BY MS. WISE) Sorry. People are banging on
 6 my door and window.
 7 **A So both. Sometimes the orders will come in**
 8 **from the hospital. You know, again, if -- if a**
 9 **patient was hospitalized specifically for something**
 10 **related to wounds and pressure sores, they might come**
 11 **with those orders already.**
 12 Q Okay.
 13 **A Oftentimes the facilities are good about**
 14 **implementing those when they do their assessment and**
 15 **see that a patient is -- requires it. And I'll see**
 16 **that. By the time that I see them, their orders are**
 17 **already in the computer.**
 18 Q Do you believe off-loading procedures should
 19 be performed with patients who come to the facility
 20 with wounds only or should they be used to prevent
 21 wounds?
 22 MS. TURPEN: Form and foundation, incomplete
 23 hypothetical, and scope.
 24 MR. ROURKE: Join all those.
 25 THE WITNESS: Both scenarios are -- are

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1 applicable. So they can be used to prevent and be
 2 used for people who already have existing wounds.
 3 Q (BY MS. WISE) Would you agree that
 4 off-loading procedures should be performed with a
 5 patient who is high risk for developing pressure
 6 sores?
 7 MS. TURPEN: Form. Foundation. Incomplete
 8 hypothetical --
 9 MR. ROURKE: Join.
 10 MS. TURPEN: -- and scope.
 11 THE WITNESS: Yes.
 12 MR. ROURKE: Sorry. I didn't mean to interrupt
 13 there. I join in all of Katherine's.
 14 Q (BY MS. WISE) Doctor, based on your
 15 experience, what do off-loading procedures entail?
 16 MS. TURPEN: Form. Foundation. Scope.
 17 MR. ROURKE: Join.
 18 THE WITNESS: Again, it's typically a nursing
 19 function. But repositioning the patient would be
 20 among -- among them.
 21 Q (BY MS. WISE) What do you mean by
 22 repositioning a patient?
 23 **A Repositioning the patient, you know, however**
 24 **many hours as indicated. Moving them from one**
 25 **position to another to distribute the pressure on a**

<p style="text-align: right;">Page 77</p> <p>1 given site.</p> <p>2 Q Would you agree that off-loading procedures</p> <p>3 should be performed at least every two hours?</p> <p>4 MS. TURPEN: Form, foundation, incomplete</p> <p>5 hypothetical, and scope.</p> <p>6 MR. ROURKE: Join.</p> <p>7 THE WITNESS: Every scenario is different. For</p> <p>8 some people, two hours could be more -- too excessive.</p> <p>9 Q (BY MS. WISE) When evaluating a patient,</p> <p>10 how -- what factors would you take into account when</p> <p>11 determining how often off-loading procedures should be</p> <p>12 performed?</p> <p>13 MS. TURPEN: Form, foundation, incomplete</p> <p>14 hypothetical, and scope.</p> <p>15 MR. ROURKE: Join.</p> <p>16 THE WITNESS: For me, I would have to consider</p> <p>17 patient comfort, especially in somebody who had a</p> <p>18 recent surgery. And moving can be -- can induce too</p> <p>19 much pain would be one factor that I'd consider in</p> <p>20 determining the -- the frequency of repositioning.</p> <p>21 Q (BY MS. WISE) Okay. Do you know one way or</p> <p>22 another if you ordered off-loading procedures for</p> <p>23 Mr. Heifetz?</p> <p>24 A I don't recall.</p> <p>25 Q Do you believe that off-loading procedures</p>	<p style="text-align: right;">Page 79</p> <p>1 A Yes.</p> <p>2 Q Are you familiar with the term "Norton</p> <p>3 Scale"?</p> <p>4 A Yes.</p> <p>5 Q Do you know if Spanish Hills uses either the</p> <p>6 Braden or Norton Scale?</p> <p>7 A I believe it's Braden, but I'm not</p> <p>8 absolutely sure.</p> <p>9 Q Is the Braden assessment something that the</p> <p>10 doctor performs or would that be something that the</p> <p>11 nursing staff performs?</p> <p>12 A That is a nursing function.</p> <p>13 Q Have you ever seen a Braden assessment on a</p> <p>14 patient at Spanish Hills?</p> <p>15 MS. TURPEN: Form.</p> <p>16 MR. ROURKE: Join.</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q (BY MS. WISE) Okay. And the Braden</p> <p>19 assessment is a separate document; correct?</p> <p>20 A That's correct.</p> <p>21 Q Okay. What does a Braden assessment</p> <p>22 require?</p> <p>23 MS. TURPEN: Form, foundation, and scope.</p> <p>24 THE WITNESS: It's -- again, it's a nursing</p> <p>25 function, so I would not be able to tell you off the</p>
<p style="text-align: right;">Page 78</p> <p>1 should have been performed on Mr. Heifetz due to his</p> <p>2 risks of developing pressure injuries?</p> <p>3 MS. TURPEN: Form, foundation, and scope.</p> <p>4 MR. ROURKE: Join.</p> <p>5 THE WITNESS: Based on my original documentation,</p> <p>6 that would not have been on my radar.</p> <p>7 Q (BY MS. WISE) Why wouldn't it have been on</p> <p>8 your radar?</p> <p>9 A The patient was admitted for a recent</p> <p>10 surgery, and my initial H&P will generally focus on</p> <p>11 the acute reason for admission and reason for the</p> <p>12 stay. Anything chronic after -- you know, may or may</p> <p>13 not be mentioned. But that -- that's my reason for</p> <p>14 that not being on the radar, is because the initial</p> <p>15 complaint and reason for admission was the hip -- the</p> <p>16 right hip.</p> <p>17 Q Do you agree that risk assessment skills</p> <p>18 should be used in evaluating patients to determine</p> <p>19 their risk for pressure injuries?</p> <p>20 MS. TURPEN: Form. Foundation. Scope.</p> <p>21 MR. ROURKE: Join.</p> <p>22 THE WITNESS: Yeah. My understanding is that</p> <p>23 facilities do use a scale for that.</p> <p>24 Q (BY MS. WISE) Do you know -- are you</p> <p>25 familiar with the term "Braden Scale"?</p>	<p style="text-align: right;">Page 80</p> <p>1 top of my head what components are on that form. It's</p> <p>2 not something I typically use myself.</p> <p>3 Q (BY MS. WISE) Okay. Have you ever</p> <p>4 performed a Braden assessment of a patient?</p> <p>5 A I have not.</p> <p>6 Q Have you ever had a nurse ask you for</p> <p>7 assistance in determining a patient's risk factor for</p> <p>8 developing pressure injuries based on their Braden</p> <p>9 Scale assessment?</p> <p>10 MS. TURPEN: Form. Foundation.</p> <p>11 MR. ROURKE: Join.</p> <p>12 THE WITNESS: I have not.</p> <p>13 Q (BY MS. WISE) I think you answered this,</p> <p>14 but you did not perform a Braden assessment on</p> <p>15 Mr. Heifetz; correct?</p> <p>16 A Correct.</p> <p>17 Q Would you have expected one be performed by</p> <p>18 the nursing staff?</p> <p>19 MR. ROURKE: Object to form. Foundation.</p> <p>20 Speculation.</p> <p>21 MS. TURPEN: Join.</p> <p>22 THE WITNESS: Typically, yes.</p> <p>23 Q (BY MS. WISE) Okay. Do you believe that a</p> <p>24 Braden assessment should be performed without an order</p> <p>25 from the attending physician?</p>

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1 MS. TURPEN: Form, foundation, incomplete
 2 hypothetical, and scope.
 3 MR. ROURKE: Join.
 4 THE WITNESS: Typically they are -- they are
 5 performed without an order from me.
 6 Q (BY MS. WISE) And do you have an
 7 understanding of how often a Braden assessment should
 8 be performed?
 9 MS. TURPEN: Scope.
 10 THE WITNESS: I do not.
 11 Q (BY MS. WISE) Do you believe that failure
 12 to perform a Braden assessment in, let's say, a 2-week
 13 stay would fall below the standard of care?
 14 MR. ROURKE: Object to form. Foundation.
 15 Speculation.
 16 MS. TURPEN: Join. And also scope.
 17 MR. ROURKE: Join.
 18 THE WITNESS: I would not be able to comment on
 19 that.
 20 Q (BY MS. WISE) And why not?
 21 **A I think that the duration of two weeks is --**
 22 **to say that is -- falls below the standard is not**
 23 **something I can agree with at this time.**
 24 Q Is there a certain time frame that you would
 25 say it must be performed before it falls below the

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1 MR. ROURKE: Join.
 2 THE WITNESS: So people with vascular
 3 insufficiency, when we're talking about veins, is
 4 actually separate. The wounds associated with that
 5 are separate from pressure wounds. It's a different
 6 type of physiology. So no.
 7 Q (BY MS. WISE) Okay. What about neuropathy?
 8 **A Neuropathy also is attributed to different**
 9 **comorbidities. So it would be hard to say. It**
 10 **depends on what the cause of the neuropathy is.**
 11 Q Okay. Do you have an understanding of the
 12 cause of Mr. Heifetz's neuropathy?
 13 **A Based on the medical records from the**
 14 **hospital and what I documented from that, it's not**
 15 **clear.**
 16 Q Did you have an understanding when you
 17 treated Mr. Heifetz that he had limited to no feeling
 18 in his feet and legs?
 19 **A I can't recall.**
 20 Q Would you agree that a patient who has
 21 limited feeling in their feet and legs, off-loading
 22 procedures must be performed in those areas because a
 23 patient cannot feel those areas?
 24 MR. ROURKE: Object to the form.
 25 MS. TURPEN: Object to form.

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1 standard of care?
 2 **A No.**
 3 MR. ROURKE: Same objections.
 4 MS. TURPEN: Join.
 5 Q (BY MS. WISE) You were aware of
 6 Mr. Heifetz's neuropathy; right?
 7 **A Yes.**
 8 Q Based on your experience, what are some
 9 symptoms of neuropathy?
 10 **A Numbness and tingling in the extremities**
 11 **generally.**
 12 Q And based on your experience, what are some
 13 symptoms of vascular insufficiency?
 14 **A Lower extremity swelling.**
 15 Q With the symptoms of neuropathy, you would
 16 agree that it's common for a patient to not have full
 17 feeling in an area; is that correct?
 18 MS. TURPEN: Form.
 19 THE WITNESS: That can happen.
 20 Q (BY MS. WISE) Would you agree that
 21 off-loading procedures are even more important in
 22 patients that have vascular insufficiency and
 23 neuropathy?
 24 MS. TURPEN: Form, foundation, incomplete
 25 hypothetical, and scope.

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1 MR. ROURKE: Go ahead, Katherine.
 2 MS. TURPEN: Form, foundation, incomplete
 3 hypothetical, and scope.
 4 MR. ROURKE: Join.
 5 THE WITNESS: Yeah. Again, the pathophysiology
 6 of a pressure sore is going to be different than the
 7 cause of neuropathy. So I -- yeah.
 8 Q (BY MS. WISE) For the record, we're going
 9 to turn to Bates 46.
 10 And do you see where it says "Focused
 11 Observation," Doctor?
 12 **A Yes.**
 13 Q Okay. Do you have any understanding of what
 14 a focused observation is?
 15 **A This is not a form that I've seen or used,**
 16 **but I can -- yeah, it would be a guess.**
 17 Q Okay. Do you have any type of observations
 18 within the records you review at Spanish Hills on your
 19 system?
 20 MR. ROURKE: Object to the form of the question.
 21 THE WITNESS: Could you rephrase that question,
 22 please?
 23 Q (BY MS. WISE) Sure.
 24 So if you're treating a patient and a nurse
 25 is doing observations of the patient, is that

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1 something you look for within your records while
 2 treating a patient?
 3 **A I'm not usually looking for it, no.**
 4 **Q** Okay. So you do not have any understanding
 5 of what a focused observation should entail, then; is
 6 that correct?
 7 **A That's correct.**
 8 **Q** Okay. And I don't know if I asked you this,
 9 but you don't know who Ms. Rachel Anderson is.
 10 That's correct; right?
 11 **A Yes.**
 12 **Q** So it looks like an observation was
 13 completed on the 15th in the late evening.
 14 Does -- does that look accurate?
 15 **A It appears so.**
 16 **Q** Okay. So this would have been after you
 17 evaluated Mr. Heifetz.
 18 **A Yes.**
 19 **Q** Okay. Have you ever been present when a
 20 nurse was doing an observation of a patient?
 21 **MR. ROURKE:** Object to the form.
 22 **THE WITNESS:** Yes.
 23 **Q (BY MS. WISE)** Okay. Generally, what types
 24 of things are the nurses looking at?
 25 **MR. ROURKE:** Again, object to the form.

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1 Foundation --
 2 **MS. TURPEN:** Form --
 3 **MR. ROURKE:** -- speculation.
 4 **MS. TURPEN:** -- foundation, calls for
 5 speculation, and scope.
 6 **THE WITNESS:** I -- yeah, it's outside of my
 7 scope. It's a nursing function that's dictated by
 8 their training, so I -- I wouldn't be able to answer
 9 that.
 10 **Q (BY MS. WISE)** Okay. Fair enough.
 11 Down on this observation where it says --
 12 48, and it says "Skin," do you have any understanding
 13 of what a nurse is looking at when they perform this
 14 part of the observation?
 15 **MS. TURPEN:** Same objections. This is outside
 16 the scope of the doctor.
 17 **MR. ROURKE:** Same objections by me as well.
 18 **THE WITNESS:** What was the last thing you said?
 19 Sorry.
 20 **Q (BY MS. WISE)** And this -- this is based on
 21 what you know. I asked what you know.
 22 **A Okay. Yeah. I -- I don't know much about**
 23 **what they're trained to do during this assessment, so**
 24 **I can't speak on that.**
 25 **Q** Okay. And for the nurses that -- when you

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1 say this is for the nurses, are you talking, you know,
 2 the advanced practice nurses on your team, or are you
 3 differentiating those nurses from like LPNs?
 4 **A So this form is not used by the nurse**
 5 **practitioners on our team.**
 6 **Q** Okay. So this is Bates 29.
 7 Do you see where it says "General flow
 8 sheet," Doctor?
 9 **A Yes.**
 10 **Q** Okay. And it says -- this says it was
 11 ordered by Miriam Sithole; is that correct?
 12 **A Yes.**
 13 **Q** And so she is the advanced practice nurse
 14 that's part of your group; correct?
 15 **A Correct.**
 16 **Q** And here it says a psych consult was
 17 ordered.
 18 Do you see that?
 19 **A Yes.**
 20 **Q** Okay. After your initial evaluation of
 21 Mr. Heifetz, how did you determine that Miriam was
 22 going to take over his care?
 23 **MS. TURPEN:** Form.
 24 **THE WITNESS:** Usually we decide based on the
 25 location in the building.

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1 **Q (BY MS. WISE)** When Ms. Sithole is ordering
 2 a consult such as psychiatric consults, is that
 3 something that she is required to run by you as the
 4 attending physician?
 5 **MS. TURPEN:** Form.
 6 **THE WITNESS:** No.
 7 **Q (BY MS. WISE)** Do you have an understanding
 8 one way or another as to why Ms. Sithole ordered a
 9 psychiatric consult for Mr. Heifetz?
 10 **A Outside of the reasoning stated on this**
 11 **order, no.**
 12 **Q** When a psychiatric consult is ordered like
 13 the one that was ordered in Mr. Heifetz's situation,
 14 do you explain the medications that are being --
 15 strike that.
 16 So in Mr. Heifetz's case, it looks like
 17 Dr. Quinn had ordered that Mr. Heifetz be put on
 18 Seroquel.
 19 Do you have any knowledge of that?
 20 **A Just from seeing this record.**
 21 **Q** When -- did you explain the risk of Seroquel
 22 to Mr. Heifetz?
 23 **MS. TURPEN:** Form. Foundation.
 24 **THE WITNESS:** I didn't put this order in, so no,
 25 I was not the one to explain the risks.

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1 Q (BY MS. WISE) Okay. Whose responsibility
2 is it to explain the risks of a medication? Is it the
3 doctor creating the order, or is it the attending
4 physician?
5 MS. TURPEN: Form. Incomplete hypothetical.
6 THE WITNESS: The provider putting in the order.
7 Q (BY MS. WISE) Okay. All right. Now we're
8 going to move to Bates 141.
9 Do you see this -- this document, Doctor?
10 A Yes.
11 Q And it says "Minimum Data Set" at the top.
12 A Yes.
13 Q Have you ever seen this document or a
14 document like this before?
15 A I'm familiar with MDS, but I have never used
16 this form before.
17 Q Okay. And when you say you're familiar with
18 MDS, what do you mean?
19 A I know that it's utilized in skilled nursing
20 facilities.
21 Q And who is responsible for creating the
22 records? Is it the attending physician?
23 MS. TURPEN: Form.
24 MR. ROURKE: Join.
25 MS. TURPEN: Misstates testimony.

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1 Go ahead.
2 THE WITNESS: Who is responsible for creating
3 which record?
4 Q (BY MS. WISE) The -- for filling out the
5 MDS.
6 A No. The providers do not fill this out.
7 Q Okay. Do you have an understanding of who
8 is responsible for filling out this form?
9 A I know it's a facility function, but I'm not
10 absolutely sure.
11 Q Up at the top where it says "Identifier," do
12 you know what that number means?
13 A No.
14 Q Okay. Now we're on Bates 173.
15 Do you see where it says -- sorry -- it says
16 "M0100. Determination of Pressure Ulcer/Injury Risk"?
17 A Yes.
18 Q Under A when it says, "Resident has a
19 pressure ulcer/injury," would you expect that to be
20 marked if a patient has a pressure ulcer that had
21 formed?
22 MR. ROURKE: Object --
23 MS. TURPEN: Yeah, object -- object to form.
24 Calls for speculation and scope.
25 MR. ROURKE: Join.

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1 THE WITNESS: I would assume so.
2 Q (BY MS. WISE) Here where it says "Clinical
3 assessment," do you have any understanding of what
4 clinical assessment means?
5 MS. TURPEN: Same objections.
6 THE WITNESS: On this form, I -- I'm not sure
7 what it includes.
8 Q (BY MS. WISE) Here where it says "Formal
9 assessment instrument/tool ... (Braden, Norton, or
10 other)," do you know whether any of these skin
11 assessment tools were used in Mr. Heifetz's case?
12 A I don't know.
13 Q Have you seen any document that would --
14 that would reference the Braden assessment or the
15 Norton assessment or a skin assessment being -- being
16 done on Mr. Heifetz?
17 MR. ROURKE: Object to the form of the question.
18 MS. TURPEN: Join.
19 THE WITNESS: Not that I can recall.
20 Q (BY MS. WISE) Okay. Okay. Now we're at
21 Bates 185. Line 16 says "Pressure Ulcer."
22 Do you see that?
23 A Yes.
24 Q Okay. Do you see over here where it says
25 "See PU CAA worksheet"?

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1 A Yes.
2 Q Do you have any understanding of what that
3 document is?
4 A I do not.
5 MR. ROURKE: While you're looking, can I ask a
6 question? Are we able to take a break around 12:30?
7 MS. WISE: Sure. So I don't have a ton left. I
8 was going to ask you guys. Do you want to take a
9 lunch, or do you want to just take a break and then
10 continue?
11 MS. TURPEN: I mean, can you reasonably -- I know
12 it's sort of a loaded question, Shannon, but can you
13 reasonably estimate for us what you mean by not much?
14 MS. WISE: I would estimate another hour or so.
15 MS. TURPEN: Then I would prefer a break and to
16 keep moving because the doctor does have other things
17 to do today.
18 MR. ROURKE: That's -- I -- I only need a
19 10-minute or 15-minute break at 12:30.
20 MS. WISE: Do you want to -- do you want to take
21 it now or 12:30?
22 MR. ROURKE: I got to do it at 12:30 because it's
23 a scheduled call amongst a couple people.
24 MS. WISE: Okay. Yeah. We can -- we can go off
25 the record for like 15 or 20 minutes, whatever, just

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1 so you have a couple extra minutes to buffer at 12:30.
 2 THE VIDEOGRAPHER: So we're going off now or
 3 continuing?
 4 MS. WISE: Continuing.
 5 THE VIDEOGRAPHER: Thank you.
 6 Q (BY MS. WISE) Okay, Doctor. So this,
 7 again, for the record, is page 208. It says "CAA 16.
 8 Pressure Ulcer" at the top. And then it says
 9 "Worksheet Start Date 01/21/2019."
 10 Have you ever seen this document before?
 11 A I have not.
 12 Q Do you have any understanding as to the
 13 purpose of this document?
 14 A I -- not -- I'm not clear on it, no.
 15 Q Okay. Okay. So this is Bates 230. We have
 16 a note here that -- 1/21/2019 at 14:42.
 17 Do you see that?
 18 A Yes.
 19 Q Here where it says "No new skin issues, will
 20 continue to monitor," do you have any understanding of
 21 what is meant by that note?
 22 A I can't really conclude anything because of
 23 the word "new," which really opens it up to anything.
 24 Q Do you know who this licensed nurse is, this
 25 LPN?

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1 A I do not.
 2 Q Generally, when you're at Spanish Hills, do
 3 you interact with the nursing staff there?
 4 MS. TURPEN: Form.
 5 THE WITNESS: Yes.
 6 Q (BY MS. WISE) Do you generally interact
 7 with the same nurses on your patients, or is it kind
 8 of just different random nurses?
 9 MS. TURPEN: Form.
 10 THE WITNESS: They -- they rotate a lot. So it's
 11 not always the same. Sometimes it is.
 12 Q (BY MS. WISE) Above that, there's a note on
 13 the 22nd at 11:20.
 14 Do you see that?
 15 A Yes.
 16 Q It says, "Patient has edema to lower left
 17 extremity."
 18 Do you have an understanding of what that
 19 means?
 20 A Yes.
 21 Q And what does that mean?
 22 A That he has swelling in his left leg.
 23 Q And it says "Miriam NP."
 24 Does that mean nurse practitioner?
 25 A Correct.

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1 Q And is that Ms. Sithole?
 2 A Correct.
 3 Q Okay. And so based on my understanding of
 4 this record, it looks like Ms. Sithole ordered an
 5 ultrasound to his left leg; correct?
 6 A Yes.
 7 Q And he was diagnosed with an edema?
 8 A It's a physical exam finding.
 9 Q Were you notified at this time of this
 10 change in condition of Mr. Heifetz?
 11 A Not likely.
 12 Q Okay. Why not?
 13 MS. TURPEN: Calls for speculation.
 14 THE WITNESS: When I hand off care to the nurse
 15 practitioner, they continue on with the care
 16 independently unless they have any questions.
 17 Q (BY MS. WISE) Okay. Do you recall if
 18 Ms. Sithole ever came to you with questions pertaining
 19 to Mr. Heifetz's care?
 20 A I don't recall.
 21 Q Okay.
 22 MR. ROURKE: Shannon, is this a good spot to take
 23 that break?
 24 MS. WISE: Sure.
 25 MR. ROURKE: And I -- my -- my inclination is if

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1 it's going to be another hour with you, would anybody
 2 object to like a 20-minute break or a 22 --
 3 MS. WISE: No.
 4 MR. ROURKE: -- 25-minute break --
 5 MS. WISE: Do you -- do you --
 6 MR. ROURKE: -- so I could grab something real
 7 quick?
 8 MS. WISE: Sorry. Yeah, we can do 25. I can --
 9 I'll even do 30. Whatever's easier for you guys.
 10 MR. ROURKE: Why don't we just do one o'clock,
 11 then. We'll just reconvene at one o'clock.
 12 Is that okay with everybody, including
 13 Mr. Videographer, Madam Court Reporter?
 14 THE VIDEOGRAPHER: Yes.
 15 MS. TURPEN: Resuming at one o'clock is fine.
 16 THE VIDEOGRAPHER: Yes.
 17 MR. ROURKE: Thank you.
 18 MS. WISE: Thanks.
 19 THE VIDEOGRAPHER: We're off the record at
 20 12:27 p.m.
 21 (Recess taken.)
 22 THE VIDEOGRAPHER: We're on the record at
 23 1:01 p.m.
 24 You may proceed.
 25 Q (BY MS. WISE) Hi, Doctor. You understand

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1 you're still under oath; correct?
 2 **A Correct.**
 3 Q Okay. I'm going to share still Exhibit 2
 4 with you, Bates 15.
 5 Can you see this document?
 6 **A Yes.**
 7 Q Okay. So at the bottom here on this bottom
 8 section, it says "Problem Start Date: 01/21 ... Barry
 9 is at risk for pressure ulcer due to friction and
 10 shear."
 11 Do you see that?
 12 **A Yes.**
 13 Q Do you have any understanding of what that
 14 statement means?
 15 **A Yes.**
 16 Q Okay. And can you explain that for me?
 17 **A This LPN believes he is at risk for pressure**
 18 **ulcer but does -- and says that it's due to this**
 19 **friction, but doesn't specify what's causing it.**
 20 Q Okay. And if it says -- it says created
 21 1/23, problem start date, 1/21.
 22 Do you have any understanding of what those
 23 dates would reference?
 24 **A I do not.**
 25 Q And right here where it says "Long Term Goal

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1 Target Date: 04/21/19," and there's a statement here,
 2 "Intact skin without evidence of redness, irritation,
 3 maceration, or open areas," is this section designed
 4 to be what the ultimate goal is, or do you know?
 5 MS. TURPEN: Form. Speculation.
 6 MR. ROURKE: Join.
 7 THE WITNESS: I don't know for sure.
 8 Q (BY MS. WISE) Have you ever seen this
 9 document before?
 10 **A I have not.**
 11 Q Okay. When you review orders for a patient
 12 on your computer at the facility, does it look like
 13 this?
 14 **A No, it doesn't.**
 15 Q Okay. So over here when it says "Approach
 16 Start Date: 01/21/19" and it says "Minimum of 2
 17 people plus draw sheet to lift resident while in bed,"
 18 do you have an understanding of what that statement
 19 means?
 20 **A That the patient had two people assist him**
 21 **to lift him.**
 22 Q Is that something that occurred, or is that
 23 an order of what this nurse is requesting? Do you
 24 know?
 25 MS. TURPEN: Form. Calls for speculation.

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1 MR. ROURKE: Join.
 2 THE WITNESS: I'm not sure.
 3 Q (BY MS. WISE) Okay. Looking at -- if you
 4 were to look at this document and it says that it was
 5 created on 1/23/19, would you assume that this
 6 document was entered into the system on January 23rd
 7 of 2019?
 8 **A That would be my assumption, yes.**
 9 Q Would you assume that the risk for pressure
 10 ulcer began on January 21st?
 11 MS. TURPEN: Form, foundation, calls for
 12 speculation, and scope.
 13 MR. ROURKE: Join.
 14 THE WITNESS: That would be the assumption.
 15 Q (BY MS. WISE) Okay. Okay. We're going to
 16 return to Bates No. 230, back to January 22nd of 2019.
 17 Do you see that note?
 18 **A Yes.**
 19 Q Okay. And this note, it looks like, was
 20 created by Advanced Practice Nurse Miriam Sithole;
 21 correct?
 22 **A Correct.**
 23 Q Okay. Do you -- can you look at this note
 24 and have an understanding of what Nurse Sithole meant
 25 by this note?

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1 MS. TURPEN: Form. Calls for speculation.
 2 THE WITNESS: What part of the note did you want
 3 me to focus on?
 4 Q (BY MS. WISE) Sure. At the very beginning
 5 it has an "S."
 6 Do you know what that means?
 7 **A Subjective.**
 8 Q Okay. And so it says, "Patient seen for
 9 skilled follow-up visit"?
 10 **A Yes.**
 11 Q Okay. "Patient was noted with increased
 12 edema to LLE."
 13 What is LLE?
 14 **A Left lower extremity.**
 15 Q And then it says, "Patient denies NP pain at
 16 this time."
 17 What's NP?
 18 **A I would be guessing. I'm not sure.**
 19 Q Okay. And down under A/P -- what does that
 20 stand for again?
 21 **A Assessment and Plan.**
 22 Q Okay. And so Nurse Sithole noted that
 23 Mr. Heifetz had neuropathy; correct?
 24 **A Correct.**
 25 Q Do you have an understanding of what she

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1 meant by "stable"?

2 **A I'm not certain.**

3 Q There's not like a specific dictionary word

4 that you would use at -- within the Spanish Hills

5 record that means certain things?

6 MS. TURPEN: Form.

7 THE WITNESS: Not for this condition.

8 Q (BY MS. WISE) Okay. So that would be

9 something that would be subjective to Ms. Sithole;

10 correct?

11 **A Correct.**

12 Q Okay. So now we're going to move to 229.

13 This is for the 23rd at 18:20. The note was -- it

14 says it was created by Javier Canan.

15 Do you know who that is?

16 **A I do not.**

17 Q It says, "Spoke to Dr. Shanna regarding

18 resident heels with new orders given noted carried

19 out. Resident aware."

20 Do you see that note?

21 **A Yes.**

22 Q Do you recall having a conversation about

23 Mr. Heifetz's heels?

24 **A I do not.**

25 Q Do you know when you were first alerted of

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1 you have expected from the nursing staff as far as

2 informing you?

3 MR. ROURKE: Object to the form of the question.

4 MS. TURPEN: Join.

5 THE WITNESS: Usually probably what Javier did,

6 called and -- and notified me, and then made a -- a

7 brief note just like this one we're looking at here.

8 Q (BY MS. WISE) Would you expect the nursing

9 staff to notify you on the date that they first

10 noticed the sores?

11 MR. ROURKE: Object to the form of the question.

12 MS. TURPEN: Yeah. Form. Calls for speculation.

13 Incomplete hypothetical.

14 THE WITNESS: Usually, yes.

15 Q (BY MS. WISE) You don't know one way or the

16 other what date you were actually contacted, though;

17 right?

18 **A I do not.**

19 Q Is it fair to assume that if it was noted on

20 the 23rd, that it likely occurred on the 23rd?

21 MR. ROURKE: Object to the form of the question.

22 MS. TURPEN: Form as to what occurred on the

23 23rd.

24 The call?

25 MS. WISE: Yes.

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1 Mr. Heifetz's sores?

2 MS. TURPEN: Form.

3 THE WITNESS: I do not.

4 Q (BY MS. WISE) Do you know when

5 Mr. Heifetz's sores were first discovered?

6 MS. TURPEN: Form.

7 THE WITNESS: No.

8 Q (BY MS. WISE) Do you expect the nursing

9 staff at Spanish Hills to convey a change in a

10 resident's -- or a patient's condition with you?

11 MR. ROURKE: Object to the form.

12 MS. TURPEN: Form. Incomplete hypothetical.

13 MR. ROURKE: Join.

14 THE WITNESS: Generally, yes.

15 Q (BY MS. WISE) Would pressure sores

16 constitute a change of condition?

17 MR. ROURKE: Object to the form of the question.

18 It's an incomplete hypothetical.

19 MS. TURPEN: Join.

20 THE WITNESS: Pressure sores develop usually not

21 overnight. So -- bless you -- it's hard to say when

22 a -- if it's a change in condition, usually that

23 refers to something acute. Overnight changes.

24 Q (BY MS. WISE) Okay. Assuming that these

25 sores were in fact discovered on the 21st, what would

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1 THE WITNESS: I would assume so.

2 Q (BY MS. WISE) Do you know if you saw

3 Mr. Heifetz after receiving the call that he had

4 developed some pressure wounds?

5 **A I do not believe so.**

6 Q At the time of the fall, do you know if you

7 were sent any photographs of the severity of the

8 wounds?

9 **A I don't recall.**

10 Q Do you recall ever seeing the photographs of

11 Mr. Heifetz's wounds?

12 **A No.**

13 Q So it says "with new orders given noted."

14 Do you know what that sentence means?

15 **A I can base it on -- on prior calls related**

16 **to -- similar to this.**

17 Q Okay.

18 **A Usually the wound care nurses will call and**

19 **let us know what their plan is, and I say, "Thank you**

20 **for letting me know," and then that's -- they carry**

21 **out their plan.**

22 Q Is there a reason that they contacted you

23 versus Nurse Sithole?

24 MS. TURPEN: Form. Calls for speculation.

25 MR. ROURKE: Join.

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1 THE WITNESS: It depends on who the answering
2 service connects them to.

3 Q (BY MS. WISE) So are you aware of any
4 policies that require the attending physician to be
5 notified --

6 A No.

7 Q -- in circumstances like this?

8 Okay. When you first evaluated Mr. Heifetz
9 on the 15th, were you aware that he needed assistance
10 in mobilization?

11 A Typically the reason for a skilled nursing
12 facility stay is for function. So I would assume so,
13 yes.

14 Q Were you aware that he was unable to
15 reposition himself in the bed due to his brace?

16 MR. ROURKE: Objection to the form of the
17 question.

18 MS. TURPEN: Join.

19 THE WITNESS: At the time of the initial
20 evaluation, oftentimes the initial assessment by
21 therapy has not been performed yet. I don't know that
22 for sure, whether it had already been performed by the
23 time I saw him.

24 Q (BY MS. WISE) If it had been performed, is
25 that something that you would expect to be notified of

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1 testified earlier about the -- you said something
2 about pressure sores not -- them taking some time to
3 evolve. I can't remember your exact testimony.

4 Do you -- do you -- do you recall the
5 testimony I'm talking about?

6 A Correct. Yes, I recall.

7 Q Based on your experience, can you give me an
8 idea of how long it takes for pressure sores to form?

9 MS. TURPEN: Form, foundation, incomplete
10 hypothetical, and scope. Also calls for speculation.

11 MR. ROURKE: Join in all of those.

12 Katherine, I'm going to try and keep my
13 objections to after yours, but I'm not sure when
14 you're done.

15 MS. TURPEN: Understood. Thanks, Rob.

16 THE WITNESS: Duration is variable, depending on
17 the patient.

18 Q (BY MS. WISE) Are you able to say the
19 soonest that you've ever seen a pressure sore develop?

20 MS. TURPEN: Same objections.

21 MR. ROURKE: Join.

22 THE WITNESS: I am unable to name a time frame.

23 Q (BY MS. WISE) Would you agree that pressure
24 sores generally get worse over time without
25 intervention?

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1 at the time of your initial evaluation?

2 A It's not uncommon that I'm notified after
3 the evaluation as opposed to before.

4 Q You have an understanding of what a pressure
5 sore is; correct?

6 A Correct.

7 Q As a doctor, you've treated pressure sores
8 before; correct?

9 A I'm not a wound care specialist, so I don't
10 treat the pressure sores myself. I usually do get the
11 appropriate specialist on board, however.

12 Q Okay. You've had patients that have
13 developed pressure sores or have seen patients that
14 have developed pressure sores in your course of a
15 doctor; correct?

16 A Correct.

17 Q What is your understanding as to what causes
18 pressure sores?

19 MS. TURPEN: Form, incomplete hypothetical, calls
20 for speculation, and scope.

21 MR. ROURKE: Sorry. I'll join in all of them.

22 THE WITNESS: So it's a -- usually a combination
23 of various things related to the patient's medical
24 history, mobility, nutrition to name a few.

25 Q (BY MS. WISE) Okay. And you -- you

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1 MS. TURPEN: Same objections.

2 MR. ROURKE: Join.

3 THE WITNESS: I would agree.

4 Q (BY MS. WISE) Would you agree that if there
5 are wounds developing, it requires medical staff to
6 document the wounds?

7 MS. TURPEN: Form. Foundation. Specifically as
8 to what's intended by medical staff. Calls for
9 speculation and scope. Incomplete hypothetical.

10 MR. ROURKE: Join in them all.

11 THE WITNESS: Could you repeat the question
12 again? Sorry.

13 Q (BY MS. WISE) Sure. Let's say -- we'll --
14 we'll make this more specific.

15 Would you agree that if you had a patient,
16 you would expect to see documentation of their wounds
17 developing?

18 MS. TURPEN: Same objections.

19 MR. ROURKE: Join.

20 THE WITNESS: As appropriate with the
21 assessments, yes.

22 Q (BY MS. WISE) Would you also agree that
23 it's important that wounds are properly evaluated for
24 treatment?

25 MS. TURPEN: Form, incomplete hypothetical, and

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1 scope.
 2 MR. ROURKE: Join.
 3 THE WITNESS: Could you elaborate on "properly
 4 evaluated"?
 5 Q (BY MS. WISE) Sure.
 6 Would you agree that they must be looked at
 7 and documented during the course of their development?
 8 MS. TURPEN: Form, foundation, incomplete
 9 hypothetical, and scope.
 10 MR. ROURKE: Join.
 11 THE WITNESS: Once the wounds have been
 12 identified, yes.
 13 Q (BY MS. WISE) Did you expect the medical
 14 staff at Spanish Hills to check for wounds on
 15 Mr. Heifetz at least once per shift?
 16 MS. TURPEN: Foundation and form. Again,
 17 specifically as to what's intended by medical staff as
 18 opposed to nursing staff. And incomplete
 19 hypothetical.
 20 MR. ROURKE: Join.
 21 THE WITNESS: So the -- my -- the expectation
 22 on -- on my end after my initial evaluation was
 23 primarily related to the initial reason for admission,
 24 which was his left hip arthroplasty. So again, it
 25 wasn't on my radar at that time. So to answer your

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1 correct?
 2 MS. TURPEN: Form. Foundation. Incomplete
 3 hypothetical.
 4 MR. ROURKE: Join.
 5 MS. TURPEN: Calls for speculation.
 6 THE WITNESS: I can't answer yes to every case.
 7 Q (BY MS. WISE) Okay. As your experience as
 8 a doctor, have you ever seen a situation where a
 9 skin -- a skin breakdown has gone untreated?
 10 MS. TURPEN: Form.
 11 THE WITNESS: I can't say that I can recall a
 12 situation where that's happened.
 13 Q (BY MS. WISE) In a situation where that
 14 would happen, in your education and experience as a
 15 doctor, is it your testimony that infections cannot
 16 occur?
 17 MS. TURPEN: Form. Foundation. Misstates
 18 testimony. Incomplete hypothetical.
 19 THE WITNESS: In the -- with skin breakdown,
 20 infection does not always occur, even in the absence
 21 of intervention.
 22 Q (BY MS. WISE) But it can occur; correct?
 23 MS. TURPEN: Same objections.
 24 THE WITNESS: Correct. It can occur.
 25 MS. WISE: I'm going to mark this as Exhibit 3.

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1 question, no.
 2 Q (BY MS. WISE) Would you have expected to be
 3 notified earlier if -- strike that.
 4 When the redness or inflammation of the skin
 5 occurs, do you expect the nursing staff at Spanish
 6 Hills to notify you that a patient has developed
 7 redness or irritation of the skin?
 8 MS. TURPEN: Form, incomplete hypothetical, and
 9 scope.
 10 MR. ROURKE: Join in all those, and it also
 11 assumes facts not in evidence.
 12 THE WITNESS: If any new finding was -- was
 13 noticed, then usually a provider -- the provider
 14 following is notified.
 15 Q (BY MS. WISE) Okay. You agree that a skin
 16 breakdown is a change of condition?
 17 A A skin -- skin breakdown is --
 18 MR. ROURKE: Hold on, Doctor.
 19 Object to the form of the question. It's an
 20 incomplete hypothetical.
 21 MS. TURPEN: Join.
 22 THE WITNESS: A skin breakdown is a finding
 23 typically communicated, yes.
 24 Q (BY MS. WISE) If skin does break down in a
 25 patient and it goes untreated, it can cause infection;

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1 The Bates is 560 through 561.
 2 (Plaintiff's Exhibit 3 marked for
 3 identification.)
 4 Q (BY MS. WISE) Doctor, have you ever seen
 5 this document before?
 6 A I have not.
 7 Q Okay. I'll represent to you this was a
 8 document produced by Spanish Hills.
 9 So just so that we're clear, you've never
 10 received training on this particular document;
 11 correct?
 12 A Correct.
 13 Q Okay. Under "Procedures," it says,
 14 "Evaluate the pressure ulcer initially for location,
 15 stage ... size ... sinus tracts."
 16 Do you see that, that No. 1?
 17 A Yes.
 18 Q Is this your understanding of what should
 19 occur with a patient that has developed pressure
 20 injuries?
 21 MR. ROURKE: Go ahead, Katherine, and I'll object
 22 after you.
 23 MS. TURPEN: Form, foundation, scope, calls for
 24 speculation, and also misstates testimony.
 25 MR. ROURKE: I'll join in that.

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1 THE WITNESS: So I've -- I've never been privy to
 2 nursing protocols regarding pressure ulcers. So -- so
 3 I -- I don't know.
 4 Q (BY MS. WISE) Okay. So you do not know one
 5 way or another if these procedures were followed in
 6 Mr. Heifetz's case.
 7 A I do not.
 8 Q As a physician, are you familiar with the
 9 stages of a pressure ulcer?
 10 A Venous pressure ulcers, I am familiar with
 11 it, yes.
 12 Q Are you aware that they are frequently given
 13 a Stage 1, 2, 3, 4, or unstageable rating?
 14 A Yes.
 15 Q Okay. You -- I -- I think I asked you this,
 16 and I'm sorry if I already did, but you did not see
 17 Mr. Heifetz after his pressure wounds developed;
 18 correct?
 19 A Correct.
 20 Q You did not see photographs of Mr. Heifetz's
 21 pressure wounds either; correct?
 22 A Correct.
 23 Q Okay. When you were contacted about
 24 Mr. Heifetz's pressure wounds, were you given an idea
 25 of what stage his wounds were in?

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1 A Not that I can recall.
 2 Q Okay. Would you expect to have been given
 3 what stage his wounds were in?
 4 MR. ROURKE: Object to the form of the question.
 5 MS. TURPEN: Join.
 6 MR. ROURKE: Calls for speculation and also
 7 mischaracterizes her prior testimony.
 8 MS. TURPEN: Join.
 9 THE WITNESS: If applicable, yes.
 10 Q (BY MS. WISE) Okay. And what do you mean
 11 "if applicable"?
 12 A Staging refers specifically to the venous
 13 insufficiency ulcers as opposed to the pressure sores.
 14 Q Okay. And -- and explain that for me.
 15 A It's just the -- the way the classification
 16 works. So venous insufficiency ulcers will tend to
 17 pop up on certain areas of the legs. So those are
 18 classified by the stages that you mentioned. Whereas
 19 pressure sores pop up on areas where pressure is
 20 applied and doesn't follow the same characterization.
 21 Q Okay. I'm going to share this document.
 22 For the record, this is 562 through 565.
 23 Doctor, have you ever seen this document
 24 before?
 25 A I have not.

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1 Q Okay. So fair to say you did not receive
 2 training from Spanish Hills on this document; correct?
 3 A That's correct.
 4 Q Okay. Now, the subject of this says
 5 "Staging of Pressure Ulcers"; correct?
 6 A Correct.
 7 Q Okay. If we scroll down, it gives us
 8 different stages of pressure ulcers.
 9 Do you see that?
 10 A Correct.
 11 Q So earlier, just a moment ago when you were
 12 talking about the staging of pressure wounds, you said
 13 that they did not apply to pressure ulcers.
 14 Was that your testimony?
 15 MS. TURPEN: Form. Misstates testimony.
 16 MR. ROURKE: Join.
 17 THE WITNESS: The stages of -- the stages do not
 18 apply to venous insufficiency ulcers.
 19 Is that what I said? Yeah.
 20 Q (BY MS. WISE) So is -- is it your testimony
 21 that the stages do apply to pressure ulcers?
 22 A Pressure ulcers, correct.
 23 Q And it is your understanding that
 24 Mr. Heifetz had pressure ulcers?
 25 A My understanding was that he had both.

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1 Q Okay. How did you come to have that
 2 understanding?
 3 A Only after review of the records for this
 4 deposition.
 5 Q Okay. Can you recall where in your -- where
 6 in the records that you recall seeing that it was both
 7 wounds?
 8 A I cannot recall offhand.
 9 Q We're going to go back to Exhibit 2,
 10 Bates 124.
 11 And so it looks like we have a Wound Care
 12 Administration History.
 13 Have you ever seen this document before,
 14 Doctor?
 15 A I don't believe so. Not outside of the
 16 review of records for this deposition.
 17 Q Okay. Is there any way to tell who created
 18 these orders?
 19 A Off of this view, no.
 20 Q Okay. Do you know if you created these
 21 orders?
 22 A I don't believe so.
 23 Q Okay. Would you expect that the person that
 24 created these orders would have evaluated the wounds
 25 prior to creating these orders?

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1 MS. TURPEN: Form. Foundation.
 2 MR. ROURKE: Join.
 3 MS. TURPEN: And scope.
 4 THE WITNESS: I would assume so, given detail.
 5 Q (BY MS. WISE) In your review of the
 6 records, did you see any records noting the location,
 7 size, shape, odor, characteristics of the wounds?
 8 **A I can't recall offhand.**
 9 Q Okay. Have you ever seen documents that
 10 described Mr. Heifetz's wounds?
 11 **A Yes.**
 12 Q Okay. And what were those documents called?
 13 **A I don't know what they were called.**
 14 Q Okay. Is there a specific document that
 15 Spanish Hills utilizes that you've seen that notes the
 16 location by shape, odor, characteristics of a wound?
 17 **A I don't --**
 18 MS. TURPEN: Form.
 19 THE WITNESS: I don't know the name of the forms
 20 that they use for that reason.
 21 Q (BY MS. WISE) Have you ever seen wounds
 22 (sic) that are used for that reason?
 23 MR. ROURKE: Object to the form of the question.
 24 MS. TURPEN: Join.
 25 THE WITNESS: Could you repeat? Have I seen?

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1 Q (BY MS. WISE) Have you ever seen documents
 2 that are used for that reason?
 3 **A Yes.**
 4 Q In your review of Mr. Heifetz's records, do
 5 you recall seeing that document?
 6 **A Vaguely.**
 7 Q I'm going to share another document with
 8 you. It is Bates 570 to 571.
 9 Doctor, have you ever seen this -- this
 10 policy and procedure before?
 11 **A No.**
 12 Q I'll represent to you this was produced to
 13 us by Spanish Hills.
 14 And on the second page, which is 571, it has
 15 a wound documentation chart.
 16 Do you see this chart?
 17 **A Yes.**
 18 Q Have you ever seen a document that looks
 19 like this before?
 20 **A Similar.**
 21 Q Have you ever seen a document that looks
 22 like this as it pertained to Mr. Heifetz?
 23 **A No, I have not.**
 24 MR. ROURKE: Object to the form of the question.
 25 MS. TURPEN: Join.

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1 Q (BY MS. WISE) Sorry, Doctor. What was your
 2 answer?
 3 **A I have not.**
 4 Q Do you know one way or the other whether
 5 these documents -- this document was created?
 6 MS. TURPEN: Form.
 7 MR. ROURKE: Form of the question.
 8 THE WITNESS: I do not.
 9 Q (BY MS. WISE) Do you believe that failure
 10 to document a wound is below the standard of care?
 11 MR. ROURKE: Object to the form of the question.
 12 THE WITNESS: Yeah.
 13 MS. TURPEN: Form, foundation, incomplete
 14 hypothetical, and scope.
 15 MR. ROURKE: I'll join in all of those. It's
 16 also an incomplete hypothetical.
 17 THE WITNESS: Right. I -- I think that the
 18 severity of the wound would have to play a role in
 19 that -- answering that question as well.
 20 Q (BY MS. WISE) Okay. I'm not sure if I
 21 asked you this, but as you sit here today, do you know
 22 the severity of Mr. Heifetz's wounds?
 23 **A I do not.**
 24 Q Would you agree that dressings should be
 25 changed as soon as they are soiled from a pressure

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1 ulcer?
 2 MS. TURPEN: Form, foundation, incomplete
 3 hypothetical, and scope.
 4 MR. ROURKE: Join in all of those. It's also --
 5 I think that's it. You got it.
 6 THE WITNESS: Without any direct wound care
 7 training, I -- I think generally, yes.
 8 Q (BY MS. WISE) How often do you believe a
 9 patient should be evaluated to determine if their
 10 dressings are soiled?
 11 MS. TURPEN: Form, foundation, incomplete
 12 hypothetical, and scope as to this witness.
 13 MR. ROURKE: Join.
 14 THE WITNESS: Usually the dressings are evaluated
 15 daily.
 16 Q (BY MS. WISE) If Mr. Heifetz's wounds were
 17 at a Stage 4, would that have changed your treatment
 18 of him?
 19 MS. TURPEN: Form. Foundation. Incomplete
 20 hypothetical.
 21 MR. ROURKE: Join.
 22 THE WITNESS: So my -- my treatment ended after
 23 the first encounter. So for me, no.
 24 Q (BY MS. WISE) If the nurse that called you
 25 had told you that the wounds were Stage 4, would that

<p style="text-align: right;">Page 121</p> <p>1 have been cause for you to come and intervene?</p> <p>2 MR. ROURKE: Object to the form -- go ahead.</p> <p>3 MS. TURPEN: Form. Foundation.</p> <p>4 Form. Foundation. Incomplete hypothetical.</p> <p>5 Calls for speculation.</p> <p>6 MR. ROURKE: Also assumes facts not in evidence.</p> <p>7 Join in all of those other objections.</p> <p>8 THE WITNESS: The extent of my intervention would</p> <p>9 be to simply ensure that a wound care specialist was</p> <p>10 following and that the consult was done. After that</p> <p>11 point, I defer treatment to the wound care specialist.</p> <p>12 Q (BY MS. WISE) Is a wound care specialist</p> <p>13 generally a doctor or a nurse, or do you know?</p> <p>14 A Generally, it is both a wound care nurse and</p> <p>15 a physician as well.</p> <p>16 Q Do you recall seeing any records that</p> <p>17 identify the name of the wound care specialist that</p> <p>18 treated Mr. Heifetz?</p> <p>19 A I do not recall the names.</p> <p>20 Q When you order a wound care consultation, do</p> <p>21 you expect that that is performed by a wound care</p> <p>22 specialist?</p> <p>23 A Correct.</p> <p>24 Q And is a wound care consultation a separate</p> <p>25 document that is filled out that is inputted within</p>	<p style="text-align: right;">Page 123</p> <p>1 standing orders?</p> <p>2 MS. TURPEN: Form and scope.</p> <p>3 THE WITNESS: Change the standing orders before I</p> <p>4 see the patient, or do you mean after I see the</p> <p>5 patient?</p> <p>6 Q (BY MS. WISE) Anytime at Spanish Hills.</p> <p>7 For instance, do you have the authority to</p> <p>8 change the standing order?</p> <p>9 A Yes.</p> <p>10 Q Okay. Do you know if Ms. Sithole has the</p> <p>11 authority to change the standing order?</p> <p>12 A Yes.</p> <p>13 Q So I'll represent to you that based on my</p> <p>14 review of the records, it looks like Mr. Heifetz had</p> <p>15 developed the wounds, and he continued with physical</p> <p>16 therapy.</p> <p>17 Did you notice that when you reviewed the</p> <p>18 records?</p> <p>19 A That he developed the wounds during physical</p> <p>20 therapy?</p> <p>21 Q No. That he had the wounds and then still</p> <p>22 continued with his physical therapy treatment.</p> <p>23 MR. ROURKE: Object to the form of the question.</p> <p>24 MS. TURPEN: Join.</p> <p>25 THE WITNESS: That is my understanding.</p>
<p style="text-align: right;">Page 122</p> <p>1 the records so that you can go back and review it?</p> <p>2 MS. TURPEN: Form and scope.</p> <p>3 MR. ROURKE: Join.</p> <p>4 THE WITNESS: Are you referring to the consult</p> <p>5 notes written by the specialist?</p> <p>6 Q (BY MS. WISE) Either the notes or a</p> <p>7 separate, like, wound care document. I'm just trying</p> <p>8 to figure out what's out there.</p> <p>9 A So usually there -- there will be a wound</p> <p>10 care consult note that goes into the chart at some</p> <p>11 point after that initial evaluation.</p> <p>12 Q Now, during the time that Mr. Heifetz was at</p> <p>13 Spanish Hills, he was also undergoing physical</p> <p>14 therapy; correct?</p> <p>15 A Correct.</p> <p>16 Q Is that something that is ordered by you, or</p> <p>17 is that something that was ordered by Dr. Allen or</p> <p>18 someone prior to him attending Spanish Hills? Do you</p> <p>19 know?</p> <p>20 A Usually with every admission, there are</p> <p>21 standing orders that get put in even before I see the</p> <p>22 patient because it's the requirement for skilled</p> <p>23 nursing facility admission. So therapy is one of</p> <p>24 those standing orders.</p> <p>25 Q Who has the authority to change those</p>	<p style="text-align: right;">Page 124</p> <p>1 Q (BY MS. WISE) Do you take issue with the</p> <p>2 fact that Mr. Heifetz was walking on his wounds</p> <p>3 despite how severe they were?</p> <p>4 MS. TURPEN: Form. Foundation.</p> <p>5 MR. ROURKE: Join.</p> <p>6 MS. TURPEN: And scope.</p> <p>7 THE WITNESS: I have just become aware of the</p> <p>8 severity of his wounds just in preparation of this</p> <p>9 deposition.</p> <p>10 Q (BY MS. WISE) Okay. If you had been made</p> <p>11 aware of the severity of Mr. Heifetz's wounds, do you</p> <p>12 believe that you would have intervened to stop him</p> <p>13 from doing physical therapy?</p> <p>14 MR. ROURKE: Object to the form of the question.</p> <p>15 Assumes facts not in evidence.</p> <p>16 MS. TURPEN: Join.</p> <p>17 MR. ROURKE: Incomplete hypothetical.</p> <p>18 MS. TURPEN: And I join in those and also</p> <p>19 speculation.</p> <p>20 THE WITNESS: I -- not necessarily. It would</p> <p>21 depend on the evaluation.</p> <p>22 Q (BY MS. WISE) What do you mean "it would</p> <p>23 depend on the evaluation"?</p> <p>24 A To elaborate, there are a lot of factors</p> <p>25 that play into whether to hold therapy, especially</p>

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1 when functional decline is also an issue. So weighing
 2 the risk versus the benefit of holding therapy,
 3 patient comfort, how much worse could we -- the
 4 location of the wounds, how much worse can we make it
 5 by continuing therapy, and what level of therapy we're
 6 actually continuing.
 7 Q Okay. Now, he was discharged on the 30th, I
 8 believe -- let me get to your discharge summary.
 9 Okay. For the record -- and I don't know --
 10 this is still from the Spanish Hills records, so
 11 Bates 268 through 271.
 12 Doctor, have you seen this document before?
 13 A Yes.
 14 Q Okay. Did you create this document?
 15 A I did not.
 16 Q Okay. Do you know who created this
 17 document?
 18 A Miriam.
 19 Q Okay.
 20 A (Inaudible.)
 21 Q Okay. Did you see Mr. Heifetz prior to his
 22 discharge?
 23 A Other than the initial encounter, no.
 24 Q Okay. So down here on "Course of Rehab
 25 Stay" -- I'm going to try to highlight it for you --

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1 it says, "The patient with multiple lesions to
 2 bilateral left lower extremities calf area."
 3 Do you see this area?
 4 A Yes.
 5 Q Okay. So before that the sentence says,
 6 "The patient was also followed up closely by wound
 7 care secondary to lesions due to chronic vascular
 8 insufficiency."
 9 Do you see that?
 10 A Yes.
 11 Q Is -- earlier when you stated that he had
 12 both wounds, is this where you gained understanding of
 13 wounds being created by the vascular insufficiency?
 14 A This was likely where I became aware of
 15 that, yes.
 16 Q Okay. But you do not know one way or the
 17 other whether the wounds Mr. Heifetz had were created
 18 by the vascular insufficiency or whether they were all
 19 pressure injuries; correct?
 20 MR. ROURKE: Object to the form.
 21 MS. TURPEN: Form.
 22 THE WITNESS: So you can typically figure out
 23 what the cause is based on the location of the wounds.
 24 Q (BY MS. WISE) Okay. And so if they're on
 25 the patient's heels, what does that tell you?

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1 MR. ROURKE: Same objections.
 2 MS. TURPEN: Join. Form and scope.
 3 THE WITNESS: Likely pressure.
 4 Q (BY MS. WISE) Okay. What about the back of
 5 a patient's calf?
 6 MR. ROURKE: Same objections.
 7 MS. TURPEN: Join.
 8 THE WITNESS: Likely venous.
 9 Q (BY MS. WISE) Okay. When she notes that
 10 patient was followed up closely by wound care, do you
 11 have an understanding of what that means?
 12 A No, I don't.
 13 Q Okay. A little lower it says the patient
 14 was continued on an ACE wrap as his lower extremities
 15 were too edematous for compression stockings.
 16 Do you see that?
 17 Are you reading, Doctor? Or are you frozen?
 18 MR. ROURKE: I think we lost them.
 19 MS. WISE: Okay.
 20 THE VIDEOGRAPHER: Shall we go off the record?
 21 MS. WISE: Sure. We can go off while they --
 22 THE VIDEOGRAPHER: We're off the record at
 23 1:48 p.m.
 24 (Recess taken.)
 25 THE VIDEOGRAPHER: We're on the record at

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1 1:49 p.m.
 2 You may proceed.
 3 Q (BY MS. WISE) All right, Doctor, I'm going
 4 to ask my last question again since we lost you.
 5 Here, lower on the bottom it says, "The
 6 patient was continued on ACE wrap."
 7 Do you see that sentence?
 8 A Yes.
 9 Q Okay. Have you ever ordered an ACE wrap to
 10 be used in lieu of compression stockings?
 11 A In -- yes.
 12 Q Okay. Are you aware of any medical
 13 treatises that allow to use ACE wrap instead of
 14 compression stockings?
 15 MS. TURPEN: Form. Foundation.
 16 THE WITNESS: It's not an ideal alternative, but
 17 for patient comfort and sometimes per request, that is
 18 used as an alternative to compression stockings.
 19 Q (BY MS. WISE) Okay. What do you mean by
 20 "patient comfort"? What's -- what goes into play to
 21 make that determination?
 22 A So I can only speak to a different example.
 23 Patients that have -- live alone and have a hard time
 24 putting the compression hose on themselves, which is
 25 pretty difficult some -- for even people that are very

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1 functional. And also those that just don't want to
2 wear them. It's the -- an alternative that can be
3 used for those scenarios.

4 Q Okay. And it looks like here Nurse Sithole
5 noted that an ACE wrap was used with Mr. Heifetz
6 because he was too swollen for compression stockings.

7 Is that your understanding?

8 MR. ROURKE: Object to the form of the question.

9 MS. TURPEN: Join.

10 THE WITNESS: Based on her wording, that's what
11 it appears to be.

12 Q (BY MS. WISE) Okay. All right. At the
13 third and second to the last sentence she says,
14 "Overall course of rehab stay was uneventful."

15 Do you have an understanding what she meant
16 by that?

17 MS. TURPEN: Form. Calls for speculation.

18 THE WITNESS: My understanding is no acute events
19 occurred during the stay.

20 Q (BY MS. WISE) What would qualify as an
21 acute event?

22 A Her meaning I can't speak to. But my -- my
23 own would be something that would warrant
24 rehospitalization, like a heart attack or stroke.

25 Q Okay. So if you were to write that, would

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1 name.

2 And then is that your signature below it?

3 A It is.

4 Q Okay. What role do you have in reviewing or
5 altering a discharge order such as this one?

6 A I don't typically alter them. I actually --

7 MR. ROURKE: Hold up one second, Doctor. Hold up
8 one second.

9 I'm going to object to the form of the
10 question. I think you --

11 MS. TURPEN: Join.

12 MR. ROURKE: -- misspoke, Counsel.

13 MS. TURPEN: Join.

14 Go ahead, Doctor.

15 THE WITNESS: So we are -- I -- so there is no
16 expectation to alter any of the discharge summaries.

17 In fact, many of the facilities do -- that we are
18 credentialed at do not require a signature by me. Our
19 licensure does not require a signature by me on -- for
20 our APRN's notes.

21 Spanish Hills did have an extra line for me
22 to sign, so I would, you know, briefly review it and
23 sign discharge summaries by our APRNs.

24 Q (BY MS. WISE) Okay. Was there ever a
25 situation where you reviewed a discharge summary and

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1 pressure sores constitute as an event?

2 MS. TURPEN: Form. Foundation. Speculation.

3 MR. ROURKE: Join.

4 THE WITNESS: I may not use the same wording, but
5 I might elaborate more.

6 Q (BY MS. WISE) Okay. Do you believe
7 pressure sores are an acute event?

8 MR. ROURKE: Object to the form. Foundation.
9 Speculation. It's an incomplete hypothetical.

10 MS. TURPEN: Join. And scope.

11 THE WITNESS: I do not.

12 Q (BY MS. WISE) When you -- while Mr. Heifetz
13 was at Spanish Hills, you never communicated with
14 anybody in his family; right?

15 A Not that I can recall.

16 Q Okay. And you also did not create a
17 treatment plan for Mr. Heifetz to follow once he left
18 Spanish Hills; correct?

19 A That is correct.

20 Q Okay. And that's because you -- you had
21 handed him off as a patient; is that correct?

22 A Correct.

23 Q Okay. Now, at the bottom of the summary, it
24 looks like we have a signature. I'm going to assume
25 it was for Ms. Sithole because it's signed above her

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1 you questioned language within the summary?

2 MS. TURPEN: Form. Foundation.

3 THE WITNESS: Not that I can recall.

4 Q (BY MS. WISE) After Mr. Heifetz was
5 discharged from Spanish Hills, did you ever speak with
6 him or anyone in his family after that?

7 A Not that I can recall.

8 Q After Mr. Heifetz was discharged from
9 Spanish Hills, did you ever attend any meetings at
10 Spanish Hills as to Mr. Heifetz's incident?

11 A Not that I can recall.

12 MS. TURPEN: Form. Foundation.

13 Go ahead.

14 MR. ROURKE: Join.

15 Q (BY MS. WISE) What was your answer?

16 A Not that I -- not that I can recall.

17 Q Do you know if anyone was reprimanded as a
18 result of Mr. Heifetz's treatment?

19 MS. TURPEN: Form. Foundation.

20 THE WITNESS: Not that I'm aware of.

21 Q (BY MS. WISE) You testified earlier that
22 you had 15 to 20 patients back -- at Spanish Hills
23 back in January of 2019.

24 Do you remember that testimony?

25 A Yes.

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1 Q Was that 15 to 20 that you then split with
 2 Nurse Sithole or 15 or 20 that you had on your own?
 3 A **That was an estimation, and we would usually**
 4 **split those -- that number.**
 5 Q Okay. I understand you can't give me an
 6 exact because it changes every day. I just wanted to
 7 know if it was more like 40 or more like 20. Okay.
 8 On a scale of 1 to 10, how important is
 9 patient safety?
 10 MR. ROURKE: Object to the form of the question.
 11 MS. TURPEN: Yeah. Form. Foundation.
 12 Incomplete hypothetical. Calls for speculation.
 13 THE WITNESS: Ten.
 14 Q (BY MS. WISE) Do you think Mr. Heifetz's
 15 pressure sores could have been prevented?
 16 MS. TURPEN: Form, foundation, calls for
 17 speculation, and scope.
 18 THE WITNESS: I don't think there's any way for
 19 me to answer that for sure.
 20 Q (BY MS. WISE) Why not?
 21 A **Because a lot of factors play a role in the**
 22 **development of pressure sores.**
 23 Q Would you agree that most pressure sores are
 24 preventable?
 25 MR. ROURKE: Object to the form.

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1 MS. TURPEN: Form, foundation, incomplete
 2 hypothetical, speculation, and scope.
 3 THE WITNESS: I don't know the answer to that.
 4 Q (BY MS. WISE) Do you believe that
 5 interventions can generally be done to help prevent
 6 pressure sores?
 7 MR. ROURKE: Going to object --
 8 MS. TURPEN: Form, foundation, incomplete
 9 hypothetical, and scope.
 10 MR. ROURKE: Join.
 11 THE WITNESS: To help prevention? Yes.
 12 Q (BY MS. WISE) Do you blame Mr. Heifetz for
 13 developing pressure sores?
 14 MS. TURPEN: Form. Foundation.
 15 THE WITNESS: I -- no, I do not.
 16 Q (BY MS. WISE) Based on your experience
 17 working with elderly patients in rehab --
 18 rehabilitation facilities, would you agree that
 19 pressure sores are a risk that the facility must be
 20 aware of?
 21 MS. TURPEN: Form, foundation, incomplete
 22 hypothetical, calls for speculation, and also scope.
 23 MR. ROURKE: Join.
 24 THE WITNESS: Pressure sores are a risk for --
 25 for what?

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1 Q (BY MS. WISE) For developing pressure sores
 2 in rehabilitation facilities.
 3 MS. TURPEN: Same objections.
 4 MR. ROURKE: Same objections.
 5 THE WITNESS: Yes.
 6 Q (BY MS. WISE) We're almost done, Doctor.
 7 Okay. Can you see this document, Doctor?
 8 A **Yes.**
 9 Q Okay. And this is your answers to Plaintiff
 10 Barry Heifetz's interrogatories.
 11 You've seen these questions before; correct?
 12 A **Correct.**
 13 Q And did you answer these questions?
 14 A **Yes.**
 15 Q Okay. I have just a couple questions about
 16 your responses.
 17 Okay. Number 4, you say here, "Our company
 18 standard is attending physician performs the history
 19 and physical and hands off the patient to the nurse
 20 practitioner to continue to follow."
 21 Do you see that sentence?
 22 A **Yes.**
 23 Q Is that a written standard?
 24 A **I --**
 25 MS. TURPEN: Form.

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1 THE WITNESS: I haven't seen it myself. It's
 2 what's been verbally told to us by our supervisors.
 3 Q (BY MS. WISE) Okay. And that's an Optum
 4 company standard; right?
 5 A **Correct.**
 6 Q Okay. And do you know one way or another if
 7 Spanish Hills has a similar standard?
 8 MR. ROURKE: Object to the form. Foundation.
 9 Speculation.
 10 MS. TURPEN: Join.
 11 Join.
 12 MR. ROURKE: Assumes facts not in evidence.
 13 Q (BY MS. WISE) And only if you know.
 14 A **I do not.**
 15 Q Okay. Then we have No.8 where we ask you to
 16 describe in detail procedures, tests, and treatments
 17 of plaintiff.
 18 Based on your review of the records since
 19 you created these responses, have -- has your
 20 recollection been refreshed as to your procedures,
 21 tests, and treatments of Mr. Heifetz?
 22 MS. TURPEN: Form.
 23 THE WITNESS: It didn't induce any actual
 24 memories, but I am more informed about the case after
 25 later reviews following these answers.

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1 Q (BY MS. WISE) Okay. And so -- and I think
2 I have it from your testimony today, but the only
3 treatment and test you -- you performed of Mr. Heifetz
4 was the initial evaluation on January 15th; is that
5 correct?

6 A **That's correct.**

7 Q The same for 17. We asked you to identify
8 the name of every person who -- with whom you
9 consulted regarding the treatment of Mr. Heifetz, and
10 you stated that you weren't certain at the -- that
11 time.

12 Now that you've reviewed the records, do you
13 have an understanding if you consulted with anybody
14 regarding Mr. Heifetz's treatment?

15 MR. ROURKE: Object to the form of the question.
16 Mischaracterizes previous testimony.

17 MS. TURPEN: Join.

18 THE WITNESS: I am aware that at one point in
19 time wound care was consulted. Whether or not I put
20 that initial order, I'm still uncertain.

21 MS. WISE: Okay, Doctor. I'm just going to
22 review my notes.

23 I'm going to go ahead and pass you to
24 Mr. Rourke.

25 EXAMINATION

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1 BY MR. ROURKE:

2 Q Good morning, Doctor. My name is Robert
3 Rourke. I represent Spanish Hills Wellness Suites. I
4 don't have much as all. I just wanted to clarify a
5 couple things.

6 Early on in your testimony, you were asked
7 about whether or not you received any compensation
8 directly from Spanish Hills Wellness Suites.

9 I believe I heard your answer to be none;
10 correct?

11 A **None. No. I've never been.**

12 Q Later you were asked about were you -- did
13 you receive compensation for when you worked overtime
14 or you worked weekends.

15 Do you recall that testimony?

16 A **Yes.**

17 Q And I may have misheard you. Please clarify
18 me if I did.

19 I -- I -- I thought I heard you say that you
20 received compensation from Spanish Hills in response
21 to a question for the overtime.

22 A **No. No. Not from -- not from Spanish
23 Hills. I got no compensation from Spanish Hills.
24 From Optum, they -- I get compensated for those extra
25 on-call days.**

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1 Q Okay. And that's what I thought the answer
2 was, but I think you were asked whether or not you
3 received compensation for that time by Spanish Hills.
4 I think you were referring to that you received it
5 from Optum, but I think you agreed to yes, you did.
6 And I just wanted to clarify.

7 So the record's absolutely clear, you've
8 never received any compensation whatsoever for any
9 services at Spanish Hills; correct?

10 A **That is correct.**

11 Q And you're not a Spanish Hill employee, are
12 you?

13 A **No, I'm not.**

14 Q And you never have been a Spanish Hill
15 employee; is that correct?

16 A **That's correct.**

17 Q Okay. Do you have any criticisms of the
18 staff at Spanish Hills regarding the care and
19 treatment they rendered to Mr. Heifetz?

20 A **I do not.**

21 Q And I take it, then, at the time of trial
22 you will not be rendering any opinions as it relates
23 to any of the care and treatment rendered by the staff
24 at Spanish Hills, correct, to Mr. Heifetz?

25 A **Correct.**

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1 MR. ROURKE: Okay. That's all I have. Thank
2 you.

3 MS. TURPEN: Shannon, do you have follow-up?

4 MS. WISE: I do not.

5 MS. TURPEN: All right. Ms. Court Reporter, we
6 are going to read and sign.

7 THE REPORTER: Okay. Thank you.

8 MR. ROURKE: And I would like a copy, an e-tran,
9 please. I don't know that I need all the exhibits
10 because they were Bates stamped in this case, so I
11 don't need the exhibits, but I do need the transcript.
12 I do not need a video.

13 MS. TURPEN: We do not need a video either, just
14 the transcript.

15 THE VIDEOGRAPHER: Thank you.

16 Then this concludes today's video-recorded
17 testimony of Shanna Marie Baltar, DO. The time is
18 2:07 p.m. We're off the record.

19 (The deposition was concluded at
20 2:07 p.m.)
21
22
23
24
25

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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE

3
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16
17 I, SHANNA MARIE BALTAR, DO, deponent herein,
do hereby certify and declare under penalty of perjury
18 the within and foregoing transcription to be my
testimony in said action, that I have read, corrected,
19 and do hereby affix my signature to said transcript
this _____ day of _____, 2021.

20
21
22
23
24 SHANNA MARIE BALTAR, DO
Deponent
25

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

) ss:

3 COUNTY OF CLARK)

4 I, Vicki Turner, a certified court reporter in
5 Clark County, State of Nevada, do hereby certify:
6 That I reported the taking of the deposition of the
7 witness, SHANNA MARIE BALTAR, DO, commencing on
8 May 6, 2021, at 10:00 a.m.

9 That prior to being examined, the witness was by me
10 first duly sworn to testify to the truth, the whole
11 truth, and nothing but the truth.

12 That I thereafter transcribed my said shorthand
13 notes into typewriting and that the typewritten
14 transcript of said deposition is a complete, true, and
15 accurate transcription of shorthand notes taken down
16 at said time.

17 I further certify that I am not a relative or
18 employee of an attorney or counsel of any of the
19 parties, nor a relative or employee of any attorney or
20 counsel involved in said action, nor a person
21 financially interested in the action.

22 IN WITNESS WHEREOF, I have hereunto my hand in
23 my office in the County of Clark, State of Nevada,
24 this 17th day of May 2021.

25 Vicki Turner



EXHIBIT 3

Deposition of MIRIAM SITHOLE, APRN

HEIFETZ v. SPRING VALLEY HEALTH CARE, LLC, et al.

Case No. A-20-808436-C

May 14, 2021

CONDENSED TRANSCRIPT AND KEY WORD INDEX

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<p style="text-align: right;">Page 1</p> <p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3</p> <p>4 BARRY HEIFETZ, an)</p> <p>5 individual,)</p> <p>6 Plaintiff,)</p> <p>7 vs.) No. A-20-808436-C</p> <p>8) Dept. No. XXI</p> <p>9 SPRING VALLEY HEALTH)</p> <p>10 CARE, LLC, a foreign)</p> <p>11 limited liability)</p> <p>12 company, d/b/a SPANISH)</p> <p>13 HILLS WELLNESS SUITES:)</p> <p>14 SHANNA MARIE BALTAR, DO;)</p> <p>15 an individual, MIRIAM)</p> <p>16 SITHOLE, APRN; an)</p> <p>17 individual; DOE DOCTOR)</p> <p>18 I, an individual; DOE)</p> <p>19 NURSE I, an individual:)</p> <p>20 DOES I through X; ROE)</p> <p>21 BUSINESS ENTITIES XI)</p> <p>22 through XX, inclusive,)</p> <p>23)</p> <p>24 Defendants.)</p> <p>25</p> <p>VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF MIRIAM SITHOLE, APRN</p> <p>Taken on Friday, May 14, 2021 By a Certified Court Reporter At 11:02 a.m. (All attendees appearing by videoconference.)</p> <p>Reported By: Cindy Huebner, CCR 806</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 INDEX OF EXAMINATIONS</p> <p>3 EXAMINATIONS PAGE</p> <p>4 BY MS. WISE 6</p> <p>5 BY MR. ROURKE 180</p> <p>6 BY MS. WISE 182</p> <p>7</p> <p>8 INDEX OF EXHIBITS</p> <p>9</p> <p>10 NO. DESCRIPTION PAGE</p> <p>11 Exhibit 1. CV 4</p> <p>12 Exhibit 2. Spanish Hills Records, 4</p> <p>13 SHWS000001-500</p> <p>14 Exhibit 3. Photos, HEIFETZ000003-27 and 4</p> <p>15 HEIFETZ002774-2780</p> <p>16 Exhibit 4. Written discovery 4</p> <p>17</p> <p>18</p> <p>19 INFORMATION TO BE PROVIDED</p> <p>20 None</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiffs:</p> <p>4</p> <p>5 SHANNON WISE, ESQ. and</p> <p>6 JENNIFER MORALES, ESQ.</p> <p>7 Claggett & Sykes Law Firm</p> <p>8 4101 Meadows Lane</p> <p>9 Suite 100</p> <p>10 Las Vegas, NV 89107</p> <p>11</p> <p>12 For the Defendants Shanna Marie Baltar, DO and Miriam</p> <p>13 Sithole, APRN:</p> <p>14</p> <p>15 KATHERINE TURPEN, ESQ.</p> <p>16 John H. Cotton & Associates</p> <p>17 7900 West Sahara Avenue</p> <p>18 Suite 200</p> <p>19 Las Vegas, NV 89117</p> <p>20</p> <p>21 For the Defendant Spring Valley Health Care, LLC</p> <p>22 d/b/a Spanish Hills Wellness Suites:</p> <p>23</p> <p>24 ROBERT ROURKE, ESQ.</p> <p>25 Rourke Law Firm</p> <p>10161 Park Run Drive</p> <p>Suite 150</p> <p>Las Vegas, NV 89145</p> <p>ALSO PRESENT:</p> <p>TIMOTHY HARTMANSZERBIEC, Certified Legal Videography</p>	<p style="text-align: right;">Page 4</p> <p>1 (Deposition Exhibits 1-4</p> <p>2 premarked.)</p> <p>3 VIDEOGRAPHER: We are now on the</p> <p>4 record. Today is May 14, 2021, and the time on</p> <p>5 the video monitor is 11:02 a.m. This begins</p> <p>6 the video-recorded deposition of Miriam</p> <p>7 Sithole, APRN. This deposition is taking place</p> <p>8 via Zoom videoconferencing and the participants</p> <p>9 are at multiple locations. This deposition has</p> <p>10 been ordered by attorneys representing the</p> <p>11 plaintiff.</p> <p>12 We are here in the matter of Barry</p> <p>13 Heifetz, plaintiff, versus Spring Valley</p> <p>14 Healthcare, LLC, et al., defendants. This case</p> <p>15 is in District Court Clark County, Nevada, Case</p> <p>16 Number A-20-808436-C in Department Number 1.</p> <p>17 My name is Timothy Hartmanszerbiec,</p> <p>18 court video specialist, for Certified Legal</p> <p>19 Videography, and the court reporter is Cindy</p> <p>20 Huebner for Turner Reporting & Captioning</p> <p>21 Services.</p> <p>22 The attorneys participating in this</p> <p>23 proceeding acknowledge that the court reporter</p> <p>24 is not physically present in the proceeding</p> <p>25 room with the witness or counsel and she will</p>

<p style="text-align: right;">Page 5</p> <p>1 be administering the oath and reporting this 2 proceeding remotely using Zoom. 3 Counsel, if you agree to this remote 4 arrangement, please state your name and consent 5 to the agreement for the record starting with 6 noticing counsel. 7 MS. WISE: Shannon Wise for Barry 8 Heifetz, and I agree. 9 MS. TURPEN: Good morning. This is 10 Katherine Turpen on behalf of the defendant 11 witness, Nurse Sithole, and also Dr. Baltar, 12 and we agree. 13 MR. ROURKE: This is Robert Rourke 14 for Spanish Hills Wellness Suites, and we 15 agree. 16 VIDEOGRAPHER: Thank you. The court 17 stenographer will administer the oath. 18 (Witness sworn.) 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 7</p> <p>1 A. No. 2 Q. Okay. I am going to go over some 3 ground rules with you so that we are all on the 4 same page. 5 Deposition testimony is testimony 6 under oath. The oath the court reporter just 7 gave you is the same oath that you would take 8 in a court of law in front of a judge or a 9 jury. Do you understand that? 10 A. Yes. 11 Q. Okay. So the oath also carries with 12 it the obligation to testify truthfully and if 13 it is later determined that you did not testify 14 truthfully, penalties of perjury could you 15 apply. Do you understand that? 16 A. Yes. 17 Q. Now, from time to time, I might ask a 18 bad question, you might not understand me, or 19 my video might cut out. If any of those things 20 happen, I want you to say, hey, can you please 21 stop, and ask me to either repeat or rephrase 22 my question. The reason that's important is 23 because if you answer my question, I am going 24 to assume that you understood my question and 25 later on if we go to court or any kind of</p>
<p style="text-align: right;">Page 6</p> <p>1 WHEREUPON: 2 MIRIAM SITHOLE, APRN 3 having been first duly sworn, was 4 examined and testified as follows: 5 6 EXAMINATION 7 BY MS. WISE: 8 Q. Good morning, and thank you for being 9 with us on this Friday. I will try to be as 10 quick as we probably can so you can start your 11 weekend. 12 Can you please state your name and 13 spell it for the record? 14 A. My name is Miriam Susan Sithole. 15 Q. And can you spell that? 16 A. Miriam, M-I-R-I-A-M; Susan, 17 S-U-S-A-N; Sithole, S-I-T-H-O-L-E. 18 Q. And as we go through this deposition 19 process, how do you prefer that I address you? 20 Do you want me to call you Nurse Sithole? 21 Would you prefer Miriam? Do you have a 22 preference? 23 A. Miriam is fine. 24 Q. Okay, Miriam. Have you ever 25 testified under oath before?</p>	<p style="text-align: right;">Page 8</p> <p>1 hearings, we are going to attempt to hold you 2 to what you say here today. Do you understand 3 that? 4 A. Yes. 5 (Enter Ms. Morales.) 6 BY MS. WISE: 7 Q. Also, we -- if you need to take a 8 break at any time, that's fine. Just let me 9 know and we will go off the record. All I ask 10 is that if I have a question pending, you 11 answer my question prior to us taking a break. 12 Do you understand that? 13 A. Yes. 14 Q. Also, we are going to be talking 15 about events that occurred some time ago. I 16 understand you might not remember everything 17 exactly, and that's okay. But I am entitled to 18 your best estimate. So let me explain the 19 classic difference of an estimate versus a 20 guess so that we are all on the same page. 21 If I was to ask you how long the 22 table you are sitting in front of is, based on 23 your education and experience, you could give 24 me an estimate. If I were to ask you how long 25 my table is, you would have no idea because you</p>

<p style="text-align: right;">Page 9</p> <p>1 are not here and you have never seen it. You 2 don't even know if I am sitting at a table. 3 That would be a complete guess. 4 Do you understand the difference? 5 A. Yes. 6 Q. Okay, great. So if you personally 7 saw something or heard something or experienced 8 something, I am entitled to your best estimate. 9 Also, as you noticed, we have a court 10 reporter here taking down everything you say. 11 Also we are on Zoom, which adds another wrinkle 12 into things, and you have been doing a great 13 job so far. But it's very important to give 14 audible, verbal responses. Sometimes 15 depositions can become conversational and in 16 everyday conversation, we say uh-huh, uh-uh, we 17 shrug, we nod, it's really hard to get a 18 complete record. 19 So at any point if any of the 20 attorneys present say is that a yes or is that 21 a no, we are not trying to trick you. We are 22 just trying to get a clear record. Do you 23 understand that? 24 A. Yes, I do. 25 Q. Also, there might be some objections</p>	<p style="text-align: right;">Page 11</p> <p>1 speak with anybody to prepare for today's 2 deposition? 3 A. No, I did not. 4 Q. And I don't want to know anything 5 that you discussed with your attorney, but did 6 you meet with your attorney to prepare for 7 today's deposition? 8 A. Not in person. We had telephone 9 conversations. 10 Q. And how long was each of those 11 conversations? 12 A. Maybe an hour, an hour and a half. 13 Q. And how many conversations were 14 there? 15 A. Total of three. 16 Q. Miriam, is there any reason you can't 17 give your best testimony today? 18 A. No. 19 Q. Are you under the influence of any 20 medication that affects your memory? 21 A. No. 22 Q. What's your date of birth? 23 A. January 7, 1960. 24 Q. Have you ever served in the military? 25 A. No.</p>
<p style="text-align: right;">Page 10</p> <p>1 placed to my questions. All I ask is that you 2 let one of the other attorneys present lodge 3 their objection prior to answering, again, so 4 that we get a clear record. Do you understand 5 that? 6 A. Yes. 7 Q. Miriam, did you review any documents 8 in preparation for today's deposition? 9 A. Yes, I did. 10 Q. Can you tell me what you reviewed? 11 A. Just the case and the issues 12 pertaining to the case prior to 2019, like 13 June 2019 when the patient was in the facility. 14 Q. Okay. And so did you mean like 15 medical records? 16 A. Some medical records, yes. 17 Q. Okay. And what else did you review? 18 A. Notes, my notes. 19 Q. And are your notes part of the 20 medical records? 21 A. Yes. 22 Q. Is there anything else you reviewed? 23 A. That's about it. Medical records and 24 patient's chart and my discharge summary. 25 Q. Other than your attorney, did you</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Have you ever been convicted of a 2 felony? 3 A. No. 4 Q. What's your current address? 5 A. 18 Debra, D-E-B-R-A, Lane, L-A-N-E, 6 Framingham, F-R-A-M-I-N-G-H-A-M, Massachusetts. 7 Q. What's the zip code there? 8 A. 01701. 9 Q. How long have you been in 10 Massachusetts? 11 A. Twenty-two years. 12 Q. At some point, you lived in Las Vegas 13 though, correct? 14 A. Yes, that's right. Yeah. 15 Q. When did you live in Las Vegas? 16 A. From May of 2016 to December of 2020. 17 Q. Do you have any plans to move within 18 the next six months? 19 A. No. 20 Q. Can you give me a synopsis of your 21 education? 22 A. I am a Registered Nurse and I have a 23 Master's in Nursing. 24 Q. And where did you obtain your 25 Master's in Nursing?</p>

<p style="text-align: right;">Page 13</p> <p>1 A. Northeastern University in Boston, 2 Massachusetts. 3 Q. And when did you obtain that? 4 A. 2009, May 2009. 5 Q. Okay. And where did you attend 6 undergrad? 7 A. Framingham State College, Boston, 8 Massachusetts. 9 Q. What year did you graduate? 10 A. 1995. 11 Q. And I believe I saw somewhere you are 12 board certified, correct? 13 A. Yes. 14 Q. And when did you obtain that 15 certification? 16 A. October of 2009. 17 Q. And was that in Massachusetts? 18 A. That's a general board. It's a 19 general nursing board, so it's not just 20 specific to the state. 21 Q. Did you obtain it while you were in 22 Massachusetts? 23 A. Yes. 24 Q. And how often do you have to test for 25 the board certification?</p>	<p style="text-align: right;">Page 15</p> <p>1 was still working there. 2 Q. Okay. Are you currently employed? 3 A. I am working part time with CVS COVID 4 testing. 5 Q. And how long have you been doing 6 that? 7 A. Since April. I took some time off 8 after I finished my contract. 9 Q. Do you hold privileges anywhere 10 currently? 11 A. No. 12 Q. And so on the last page here, we have 13 your education. That's all correct; is that 14 correct? 15 A. Yes. 16 Q. Now, prior to working at CVS, where 17 did you work? 18 A. I was working for United Healthcare. 19 Q. And is that the same or different 20 than Southwest Medical? 21 A. It's the same. United Health is the 22 corporate and then the subgroups, so Optum 23 falls under that group. 24 Q. Okay. And is Southwest Medical the 25 same as Optum?</p>
<p style="text-align: right;">Page 14</p> <p>1 A. Every five years. 2 Q. So if you took the initial test in 3 2009, you took it again in 2014? 4 A. 2014, yes. 5 Q. And again in 2019? 6 A. 2019, yes. 7 Q. Okay, Miriam, can you see my screen? 8 A. Yes. 9 Q. For the record, this is the CV that 10 was produced in this case, and I am going to 11 attach it as Exhibit 1. 12 A. Uh-huh. 13 Q. Miriam, have you seen this document 14 before? 15 A. Yes. 16 Q. What is this document? 17 A. It's my resume. 18 Q. And looking at this first page, are 19 there any changes that you would make to this 20 document? 21 A. No. 22 Q. You are currently still at 23 UnitedHealth Group? 24 A. No. I left in 2020, so I'm back in 25 Massachusetts. So this one, I sent it while I</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Optum, yes. 2 Q. Okay. And I know I put it down, but 3 you worked there from 2016 until 2020? 4 A. Yes. 2020, yes. 5 Q. Have you ever had privileges 6 suspended or revoked at any facility that you 7 worked for? 8 A. No. 9 Q. Have you ever been reprimanded in 10 your role as a nurse? 11 A. No. 12 Q. Tell me about your relationship with 13 Spanish Hills. 14 MS. TURPEN: Form. 15 MR. ROURKE: Join. 16 MS. TURPEN: You can go ahead, 17 Miriam. 18 THE WITNESS: I was a provider. I 19 came into the facility as a mid-level provider. 20 I have no relationship with them. 21 BY MS. WISE: 22 Q. Okay. So as a provider, you were not 23 employed by them directly, correct? 24 A. Yes. 25 Q. Okay. And did you have a contract</p>

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1 with them directly?
 2 MR. ROURKE: Object to the form.
 3 MS. TURPEN: Yes, form.
 4 THE WITNESS: Through my company.
 5 BY MS. WISE:
 6 Q. Okay. Were you paid a salary while
 7 providing care at Spanish Hills?
 8 A. **Through my company.**
 9 Q. Not from Spanish Hills directly
 10 though, correct?
 11 A. **Yes.**
 12 Q. When you were working at Spanish
 13 Hills -- actually, strike that.
 14 You worked for Southwest Medical from
 15 2016 to 2020, correct?
 16 A. **Yes.**
 17 Q. How often did you work at Spanish
 18 Hills within that time?
 19 A. **We would go in maybe three days a**
 20 **week or four days a week, depending on the need**
 21 **because we had several other buildings we**
 22 **covered as well.**
 23 Q. Okay. When did you first begin
 24 providing services at Spanish Hills?
 25 A. **I can't recall, but I think it was**

Page 19

1 Kindred as well?
 2 A. **Yes. Just distribute our time as**
 3 **independent providers. If we had new**
 4 **admissions at one facility, that would take**
 5 **your time more, so you use your discretion**
 6 **where to spend your time whether to go to**
 7 **Spanish Hills. If there were no calls or they**
 8 **didn't need you that much, then you go to a**
 9 **facility that needed you. So we used our**
 10 **discretion on where we were to go on a**
 11 **particular day, on any particular given day.**
 12 Q. Okay. And did you also use your
 13 discretion on what days and hours you worked
 14 per week?
 15 A. **No. We were required to be to do the**
 16 **full eight hours but spread it as needed.**
 17 Q. So is that eight hours five days per
 18 week?
 19 A. **Yes.**
 20 Q. And do you recall what your specific
 21 schedule was, let's say, in January of 2019?
 22 A. **I don't recall.**
 23 Q. Do you know if you worked days or
 24 evenings?
 25 A. **We worked days and then we had call**

Page 18

1 **beginning of 2018.**
 2 Q. And at that time, you were there
 3 three to four days a week?
 4 A. **Yes, three to four days a week.**
 5 Q. Okay. Do you know how it was
 6 determined whether you were to be there three
 7 or four days per week?
 8 A. **It was our -- usually we did labs**
 9 **that will determine when we go to review them**
 10 **or if we are on call and they wanted you to**
 11 **cover on a patient that they have questions**
 12 **with, then we would visit because those were**
 13 **as-needed visits.**
 14 Q. And what other facilities did you
 15 provide care at during that time?
 16 A. **We had -- the one in what do you call**
 17 **it? The one in Henderson, Sage Creek and**
 18 **Kindred Spring Valley.**
 19 Q. And how many days per week were you
 20 at Sage Creek?
 21 A. **Like I said, it depends on the need,**
 22 **so there wasn't specific days. It was our**
 23 **discretion to go where we think the patients**
 24 **needed our visit.**
 25 Q. Okay. And is that the same for

Page 20

1 **overnight. We never had evenings. It was the**
 2 **whole day and we had call overnight.**
 3 Q. Okay. Now, in January of 2019, were
 4 you still working at Spanish Hills three or
 5 four days per week?
 6 A. **Yes.**
 7 Q. And you said you have call overnight,
 8 correct?
 9 A. **Yes.**
 10 Q. What does that entail?
 11 A. **If necessary an agent needs to call**
 12 **for whatever they need, there was somebody on**
 13 **call, we covered them 24/7 so that meant**
 14 **somebody had to be on call overnight to take**
 15 **those calls.**
 16 Q. In January of 2019, how often were
 17 you on call?
 18 A. **Once -- one day a week and then over**
 19 **the weekend is once every month.**
 20 Q. Now, when you worked at Spanish Hills
 21 when you physically worked in the facility,
 22 what did you wear when you worked in the
 23 facility?
 24 A. **We had lab coats, white lab coats**
 25 **that had our company logo and full name and**

<p style="text-align: right;">Page 21</p> <p>1 credentials.</p> <p>2 Q. So when you say company logo, which</p> <p>3 company logo was presented?</p> <p>4 A. The Optum. The Optum logo.</p> <p>5 Q. When you first meet a patient, do you</p> <p>6 inform them that you work for Southwest Medical</p> <p>7 or Optum?</p> <p>8 A. Yes.</p> <p>9 Q. How long did you work at Spanish</p> <p>10 Hills, like when did you cease working within</p> <p>11 that facility?</p> <p>12 A. I don't recall --</p> <p>13 MS. TURPEN: Form.</p> <p>14 THE WITNESS: I don't recall the</p> <p>15 actual dates, but we left, I think, 2020</p> <p>16 because we moved to a different facility. It</p> <p>17 wasn't me leaving the facility but we left as a</p> <p>18 group.</p> <p>19 BY MS. WISE:</p> <p>20 Q. Okay. In the time that you were</p> <p>21 providing care to patients at Spanish Hills,</p> <p>22 were you ever a part of any meetings pertaining</p> <p>23 to patient safety or patient care?</p> <p>24 MS. TURPEN: Form.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Can you explain for me how</p> <p>3 your group was set up back in January of 2019?</p> <p>4 MS. TURPEN: Form.</p> <p>5 Go ahead, Miriam.</p> <p>6 THE WITNESS: We had a group of five</p> <p>7 providers and two MDs.</p> <p>8 BY MS. WISE:</p> <p>9 Q. Okay. And what were the name of the</p> <p>10 two MDs?</p> <p>11 A. Dr. Chander and Dr. Baltar.</p> <p>12 Q. And I am assuming you are one of the</p> <p>13 other three providers, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And in addition to Dr. Chander,</p> <p>16 Dr. Baltar, and yourself, who else was part of</p> <p>17 your group?</p> <p>18 A. At that time, it was Ann Marie</p> <p>19 Mallory and Stacy Leifried.</p> <p>20 Q. And do you know what Stacy and</p> <p>21 Mallory did for patients? Were they RN's as</p> <p>22 well or...</p> <p>23 A. Mid-level providers.</p> <p>24 Q. Back in January of 2019, how many</p> <p>25 patients were you responsible for while</p>
<p style="text-align: right;">Page 22</p> <p>1 MR. ROURKE: Join.</p> <p>2 BY MS. WISE:</p> <p>3 Q. In the time you were providing care</p> <p>4 at Spanish Hills, did you ever receive training</p> <p>5 on Spanish Hills' policies and procedures?</p> <p>6 A. No.</p> <p>7 MR. ROURKE: Object to the form.</p> <p>8 MS. TURPEN: Join.</p> <p>9 Miriam, just give us a quick second</p> <p>10 between Shannon's questions and your answers so</p> <p>11 that we can get their objection on and then you</p> <p>12 can go ahead and answer the question.</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MS. WISE:</p> <p>15 Q. In the time that you were providing</p> <p>16 care at Spanish Hills, were you ever given a</p> <p>17 copy of Spanish Hills' policies and procedures?</p> <p>18 MR. ROURKE: Object to the form.</p> <p>19 MS. TURPEN: Join.</p> <p>20 BY MS. WISE:</p> <p>21 Q. Go ahead, Miriam.</p> <p>22 A. No.</p> <p>23 Q. You mentioned something about your</p> <p>24 group, your group had left Spanish Hills. Do</p> <p>25 you remember saying that?</p>	<p style="text-align: right;">Page 24</p> <p>1 providing care at Spanish Hills?</p> <p>2 MS. TURPEN: Form.</p> <p>3 THE WITNESS: The number depending on</p> <p>4 the census, so I have no recollection of</p> <p>5 specific numbers.</p> <p>6 BY MS. WISE:</p> <p>7 Q. Okay. Was it closer to ten or closer</p> <p>8 to a hundred?</p> <p>9 MS. TURPEN: Form.</p> <p>10 THE WITNESS: I can't give you a</p> <p>11 specific because it ranged depending on the</p> <p>12 census. Maybe from 15 to 20.</p> <p>13 BY MS. WISE:</p> <p>14 Q. Okay. And that was just while</p> <p>15 working while providing care at Spanish Hills,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did you provide -- did you</p> <p>19 have the same number of patients at Kindred and</p> <p>20 Sage Creek?</p> <p>21 A. I can't recall specific numbers, but</p> <p>22 like I said, the census varied from facility to</p> <p>23 facility.</p> <p>24 Q. Right. But would you say was there a</p> <p>25 huge discrepancy between the amount of patients</p>

<p style="text-align: right;">Page 25</p> <p>1 you had while at Spanish Hills versus the other 2 two facilities? 3 A. No big discrepancy. 4 MS. TURPEN: Form. 5 THE WITNESS: Sorry. 6 MS. WISE: Go ahead, Miriam. 7 THE WITNESS: No big discrepancy. 8 BY MS. WISE: 9 Q. So I want to make sure I am 10 100 percent clear. So on a day, it could be 11 possible that based on the census that you 12 could have a total of 60 patients amongst the 13 three facilities; is that correct? 14 MS. TURPEN: Form. Foundation. 15 Incomplete hypothetical. 16 MR. ROURKE: Join. 17 BY MS. WISE: 18 Q. And I am asking for, you know, based 19 on your knowledge, experience of being a 20 provider in those facilities. 21 MS. TURPEN: Same objections. 22 MR. ROURKE: Join. 23 MS. TURPEN: Go ahead, Miriam. 24 THE WITNESS: It's not possible to 25 be -- that's why initially I say you would go</p>	<p style="text-align: right;">Page 27</p> <p>1 any given day amongst the three facilities? 2 MS. TURPEN: Form. 3 THE WITNESS: Maybe 10, 15. 10, 15 4 patients. 5 BY MS. WISE: 6 Q. Is that per facility? 7 A. No. Throughout. 8 Q. Okay. And are you saying you saw -- 9 is that 10 to 15 that you physically saw in a 10 day? 11 A. No. It's maybe issues that you 12 addressed in a day. 13 Q. Issues that you addressed? 14 A. Yeah. Because some of them will be 15 by call. 16 Q. Okay. So like if something was going 17 on with a patient at a different facility, 18 there could be a call placed to you that you 19 would need to address. Is that what you mean? 20 A. Yes. 21 Q. Okay. Were there ever situations 22 where you had a patient that you were 23 responsible for their care but you did not 24 treat them or deal with an issue for them in a 25 day?</p>
<p style="text-align: right;">Page 26</p> <p>1 to a facility depending on the need, so there 2 is no way you would be having 60 patients on a 3 specific day because you were using your 4 discretion on where you needed to be and whom 5 you needed to see, so. 6 BY MS. WISE: 7 Q. Okay, right. So you are not seeing 8 60 patients in a day. That's what you are 9 saying, right? 10 A. Yes. 11 Q. Could you be the primary provider for 12 60 patients? I am asking you to estimate here 13 based on, you know, your education and 14 experience. Back in January of 2019, could you 15 have a total of 60 patients that you were the 16 primary provider for? 17 MS. TURPEN: Form. Foundation. 18 Incomplete hypothetical. Asked and answered. 19 MR. ROURKE: I will join. 20 THE WITNESS: No. 21 BY MS. WISE: 22 Q. No? 23 A. Not a total of 60 individuals. 24 Q. Okay. Can you estimate for me the 25 maximum number of patients you've ever had on</p>	<p style="text-align: right;">Page 28</p> <p>1 A. No. 2 MS. TURPEN: Form. Just a minute, 3 Miriam. 4 THE WITNESS: Sorry. 5 MS. TURPEN: You are doing fine. Let 6 me make my objection. 7 THE WITNESS: Sorry. 8 MS. TURPEN: Form. Foundation. 9 Go ahead. 10 THE WITNESS: No. 11 BY MS. WISE: 12 Q. Okay. And we will get into this a 13 little more as we go on, but then is it your 14 testimony that each patient you were 15 responsible for providing care, you saw every 16 day back in January of 2019? 17 MS. TURPEN: Form. Foundation. 18 Mischaracterizes testimony. Go ahead. Asked 19 and answered also. 20 THE WITNESS: Can you repeat the 21 question, please? 22 BY MS. WISE: 23 Q. Sure. 24 Back in 2019, is it your testimony 25 that every patient you were responsible for</p>

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1 providing care for, that you saw them or
 2 treated them in some manner?
 3 MS. TURPEN: Same objections.
 4 MR. ROURKE: I will join.
 5 THE WITNESS: I can't attest to you
 6 seeing every one in person. Like I said,
 7 depending on where I was. If I was physically
 8 in the building, I would see them. If it was a
 9 call, then I would attend to the call.
 10 BY MS. WISE:
 11 Q. Right. So I am not trying to trick
 12 you. I am not understanding.
 13 So let me ask you this. I know you
 14 said that it depends upon, you know, where you
 15 were going, it was your discretion to go to
 16 different facilities, right?
 17 A. Yes.
 18 MS. TURPEN: Form.
 19 BY MS. WISE:
 20 Q. Were there certain days that you said
 21 okay, I am going to make Monday and Tuesday my
 22 Spanish Hills days?
 23 MS. TURPEN: Form.
 24 MR. ROURKE: Join.
 25 THE WITNESS: Sometimes. Like I

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1 said, depending on what I felt like the need.
 2 BY MS. WISE:
 3 Q. So you did not have certain days at
 4 certain facilities?
 5 A. No. It varied, depending on the need
 6 of the different facilities.
 7 Q. Were there -- was there ever a
 8 situation while you were working at Spanish
 9 Hills maybe that you had a patient that you
 10 were responsible for at Sage Creek that you did
 11 not see in a day because you were working at
 12 Spanish Hills?
 13 MS. TURPEN: Form. Foundation.
 14 Incomplete hypothetical. Asked and answered.
 15 MR. ROURKE: Join.
 16 THE WITNESS: I don't recall.
 17 BY MS. WISE:
 18 Q. Did you go to every -- strike that.
 19 When you were working for the three
 20 facilities, did you attend all three facilities
 21 every single day?
 22 A. No.
 23 Q. Were you in any way responsible for
 24 oversight of the nurses at Spanish Hills back
 25 in January of 2019?

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1 MR. ROURKE: Object to the form.
 2 MS. TURPEN: Join.
 3 THE WITNESS: No.
 4 BY MS. WISE:
 5 Q. When you write an order for the care
 6 of one of your patients, do you expect that
 7 your treatment plans are followed?
 8 A. They follow the order.
 9 Q. Do you expect that your orders are
 10 followed?
 11 A. Yes.
 12 Q. Did you have any type of role in
 13 making sure that the nurses at Spanish Hills
 14 were following your orders?
 15 MR. ROURKE: I didn't hear that
 16 complete question. I'm sorry. Could you
 17 restate that?
 18 MS. WISE: Sure. I will try to
 19 restate it. I don't remember what I said, but.
 20 BY MS. WISE:
 21 Q. Back in January of 2019, did you have
 22 any role in making sure that the staff at
 23 Spanish Hills were following your treatment
 24 plan?
 25 MR. ROURKE: Object to the form.

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1 MS. TURPEN: Join.
 2 THE WITNESS: That was not my role as
 3 a mid-level provider.
 4 BY MS. WISE:
 5 Q. Can you just generally tell me what
 6 your role was at Spanish Hills?
 7 A. As indicated on my CV, we were
 8 following chronic -- the admitted patients
 9 followed what they were admitted for and making
 10 sure we see them do the rehab, because it was a
 11 rehab facility.
 12 Q. And you testified earlier you know
 13 Dr. Baltar, correct?
 14 A. Yes.
 15 Q. What is your relationship with
 16 Dr. Baltar -- or what was your relationship
 17 with Dr. Baltar in January of 2019?
 18 A. She was the attending immediate
 19 supervisor.
 20 Q. Was she required to oversee you back
 21 in 2019?
 22 A. She was my supervisor.
 23 Q. Does that mean that orders that you
 24 created had to be discussed with her?
 25 MS. TURPEN: Form.

<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. WISE:</p> <p>3 Q. No, okay.</p> <p>4 Do you ever recall a time having</p> <p>5 meetings with her regarding a patient's plan of</p> <p>6 care?</p> <p>7 A. No.</p> <p>8 Q. Do you ever recall having meetings</p> <p>9 with anyone regarding a patient's plan of care?</p> <p>10 MS. TURPEN: Form.</p> <p>11 THE WITNESS: No. Sorry.</p> <p>12 MS. TURPEN: It's okay, Miriam. Just</p> <p>13 give us just a beat. You are doing fine.</p> <p>14 THE WITNESS: I am not sure when you</p> <p>15 are coming in when you are talking.</p> <p>16 MS. TURPEN: It's the challenge of us</p> <p>17 all being on Zoom. It's all right.</p> <p>18 BY MS. WISE:</p> <p>19 Q. And I think your answer was no,</p> <p>20 correct, Miriam?</p> <p>21 A. Yes.</p> <p>22 Q. Were you ever involved in the</p> <p>23 education or training of the medical staff at</p> <p>24 Spanish Hills?</p> <p>25 MS. TURPEN: Form as to medical</p>	<p style="text-align: right;">Page 35</p> <p>1 BY MS. WISE:</p> <p>2 Q. As a provider at Spanish Hills, did</p> <p>3 you have an understanding of the chain of</p> <p>4 command that the medical staff was to follow at</p> <p>5 Spanish Hills?</p> <p>6 MS. TURPEN: Form.</p> <p>7 MR. ROURKE: Join.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MS. WISE:</p> <p>10 Q. Okay. While working at Spanish</p> <p>11 Hills, did you report to anyone?</p> <p>12 MS. TURPEN: Form.</p> <p>13 BY MS. WISE:</p> <p>14 Q. Within Spanish Hills. I'm sorry.</p> <p>15 That was a bad question.</p> <p>16 While working at Spanish Hills, did</p> <p>17 you report to anyone that worked for Spanish</p> <p>18 Hills?</p> <p>19 A. No.</p> <p>20 MR. ROURKE: Object to the form.</p> <p>21 MS. TURPEN: Join.</p> <p>22 BY MS. WISE:</p> <p>23 Q. What about at Southwest Medical? I</p> <p>24 know you said you had Dr. Baltar as a</p> <p>25 supervisor. Did you report to her?</p>
<p style="text-align: right;">Page 34</p> <p>1 staff.</p> <p>2 MR. ROURKE: I will join in the form</p> <p>3 of the question.</p> <p>4 BY MS. WISE:</p> <p>5 Q. And do you understand what I mean</p> <p>6 when I say medical staff, Miriam?</p> <p>7 A. No.</p> <p>8 Q. So let's say mid-level providers,</p> <p>9 lower-level providers, other nurses, CNAs,</p> <p>10 LPNs, techs. That's what I mean when I say</p> <p>11 medical staff, okay?</p> <p>12 A. No.</p> <p>13 Q. No, you weren't involved in the</p> <p>14 training?</p> <p>15 A. No.</p> <p>16 Q. Sorry. It got confusing there.</p> <p>17 Now, you said that it wasn't part of</p> <p>18 your role to make sure that your treatment</p> <p>19 plans were followed, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who was responsible for</p> <p>22 making sure your treatment plans were followed?</p> <p>23 MS. TURPEN: Form.</p> <p>24 MR. ROURKE: I will join in the form.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Collaborating physician. I</p> <p>2 collaborated with her.</p> <p>3 Q. Okay. Did you have to -- you know,</p> <p>4 let's say something happened and you were going</p> <p>5 to be reprimanded, would that be done by</p> <p>6 Dr. Baltar or someone else?</p> <p>7 MS. TURPEN: Form. Foundation.</p> <p>8 Incomplete hypothetical. Calls for</p> <p>9 speculation.</p> <p>10 BY MS. WISE:</p> <p>11 Q. Go ahead, Miriam.</p> <p>12 A. No.</p> <p>13 Q. So my question was essentially who</p> <p>14 was your supervisor at Southwest Medical?</p> <p>15 A. Dr. Baltar was immediate because she</p> <p>16 was in the facility. She was admitting. And</p> <p>17 then we had Dr. Chander who was our manager.</p> <p>18 Q. Okay. And what is your understanding</p> <p>19 of supervision, the supervision that was</p> <p>20 required by Dr. Baltar, Dr. Chander?</p> <p>21 MS. TURPEN: Form. Foundation.</p> <p>22 Incomplete hypothetical.</p> <p>23 BY MS. WISE:</p> <p>24 Q. And I am asking for your</p> <p>25 understanding. So if you have one, please tell</p>

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1 me your understanding.
 2 **A. There's collaborative physicians in**
 3 **case you wanted to run something by them or**
 4 **they have -- whatever the company wanted us to**
 5 **do as provide -- as mid-level providers, that**
 6 **would come through them because they were the**
 7 **supervisors.**
 8 Q. Okay. So you said you collaborate
 9 with her. So do you have an understanding one
 10 way or another if she is supposed to oversee
 11 your day-to-day interactions with patients?
 12 MS. TURPEN: Form. Foundation.
 13 Go ahead, Miriam.
 14 THE WITNESS: No.
 15 BY MS. WISE:
 16 Q. Okay. As a nurse practitioner, what
 17 level, if any, of supervision is necessary?
 18 MS. TURPEN: Form. Incomplete
 19 hypothetical.
 20 MR. ROURKE: Join.
 21 THE WITNESS: Supervision in terms of
 22 collaboration on issues.
 23 BY MS. WISE:
 24 Q. Okay. What do you mean by that?
 25 **A. Running like if you need an opinion**

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1 **on certain things or if you need questions on**
 2 **certain issues that you might not be -- you**
 3 **just need somebody to give you a second opinion**
 4 **regarding the care of patient and you.**
 5 Q. So it's if you need help or have
 6 questions or want a second set of eyes on a
 7 patient, correct?
 8 **A. Yes.**
 9 Q. It's not a situation where the doctor
 10 is overseeing every move you make?
 11 MS. TURPEN: Form. Go ahead.
 12 THE WITNESS: Yes.
 13 BY MS. WISE:
 14 Q. Yes, it's not a situation where
 15 you -- the doctor is overseeing every move you
 16 make?
 17 **A. Yes.**
 18 Q. Okay. Did you ever -- were you
 19 required to give a patient chart to Dr. Baltar,
 20 Dr. Chander to review?
 21 MS. TURPEN: Form.
 22 THE WITNESS: No.
 23 BY MS. WISE:
 24 Q. Okay. We are here to discuss
 25 Mr. Barry Heifetz. Are you aware of that?

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1 **A. Yes.**
 2 Q. Do you have an independent
 3 recollection of Mr. Heifetz?
 4 **A. It has been a while, so I don't have**
 5 **specific knowledge of him because I have seen**
 6 **so many patients. It's been a while, so.**
 7 Q. Fair enough.
 8 So you did review the medical records
 9 prior to today's deposition, correct?
 10 **A. Yes.**
 11 Q. Okay. I will represent to you that
 12 based on the records, it looks like he was
 13 admitted January 14, 2019. Is that your
 14 understanding?
 15 **A. Yes.**
 16 Q. Were you informed on January 14, 2019
 17 that Mr. Heifetz had been admitted?
 18 **A. Can you ask again your question,**
 19 **please?**
 20 Q. Sure.
 21 Were you informed on January 14, 2019
 22 that Mr. Heifetz had been admitted to Spanish
 23 Hills?
 24 **A. That he had been admitted to Spanish**
 25 **Hills?**

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1 Q. Yes.
 2 **A. The way it works is whoever was on**
 3 **call when the patient was admitted will call**
 4 **the answering service that we are having a new**
 5 **admission. So I don't know if I was the one on**
 6 **call on that particular date.**
 7 Q. Okay. Now, I will represent to you
 8 that Dr. Baltar first saw Mr. Heifetz the next
 9 day on January 15th. Do you have any reason to
 10 dispute that?
 11 **A. No.**
 12 Q. And Dr. Baltar also testified that
 13 she transferred Mr. Heifetz's care to you. Any
 14 reason to dispute that?
 15 MS. TURPEN: Form.
 16 THE WITNESS: No.
 17 BY MS. WISE:
 18 Q. Okay. So the way that if I
 19 understand Dr. Baltar's testimony correctly,
 20 she said that when a patient was admitted, she
 21 would take the patient in, do an initial
 22 evaluation, and then split the patients usually
 23 based on the location of the patient's room.
 24 Is that your understanding as well?
 25 MS. TURPEN: Form.

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1 THE WITNESS: Yes.
 2 BY MS. WISE:
 3 Q. Do you have any knowledge directly of
 4 why Mr. Heifetz's care was transferred to you?
 5 A. As you just said depending on the
 6 census, she will split the assignment so it
 7 could have been the reason why he was on my
 8 census.
 9 Q. But you are not aware of any like
 10 special issue that would have been the reason
 11 why his care was transferred to you, correct?
 12 MS. TURPEN: Form.
 13 THE WITNESS: Not to my knowledge.
 14 BY MS. WISE:
 15 Q. When a patient is first transferred
 16 to you from Dr. Baltar, how are you informed
 17 that you are taking over the care of the
 18 patient?
 19 A. She goes -- we just report to the
 20 facility and they give us new admissions and we
 21 are following them. Like I say, they are split
 22 so she will say Mr. So and So came in yesterday
 23 and you are taking over, so I go over and I
 24 review his chart and the admitting H & P which
 25 was done by the admitting provider.

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1 Q. You said you reviewed the
 2 admitting -- I'm sorry, you broke up. What did
 3 you say?
 4 A. I would follow up with whatever the
 5 admitting provider is noted on admission.
 6 Q. Okay. Do you know if you reviewed
 7 Mr. Heifetz's chart upon taking over his care?
 8 MS. TURPEN: Form.
 9 THE WITNESS: Yes, I did.
 10 BY MS. WISE:
 11 Q. Do you have an independent
 12 recollection of that?
 13 A. What do you mean independent?
 14 Q. Do you remember reviewing his chart?
 15 A. Yes, I did.
 16 Q. And as you sit here today, you
 17 remember reviewing the chart?
 18 A. Yes.
 19 Q. Do you recall what day you reviewed
 20 the chart?
 21 MS. TURPEN: Form.
 22 Go ahead, Miriam.
 23 THE WITNESS: I saw him on the 16th,
 24 January 16th.
 25 ///

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1 BY MS. WISE:
 2 Q. What is your custom and practice? Do
 3 you generally review the chart immediately
 4 prior to seeing a patient?
 5 MS. TURPEN: Form. Foundation.
 6 BY MS. WISE:
 7 Q. And I am asking your custom and
 8 practice, if you have one.
 9 A. We review the chart so we know what
 10 the patient is admitted with.
 11 Q. And do you have an independent
 12 recollection of reviewing the documentation
 13 from the admitting providers in Mr. Heifetz's
 14 case?
 15 MS. TURPEN: Form as to "admitting."
 16 BY MS. WISE:
 17 Q. And I am using admitting in the way
 18 you used admitting a couple minutes ago.
 19 A. No.
 20 Q. Do you know as you sit here today
 21 what that documentation from the admitting
 22 provider stated?
 23 MS. TURPEN: Form.
 24 THE WITNESS: Not to my recollection.
 25 ///

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1 BY MS. WISE:
 2 Q. When you first see a patient that was
 3 admitted into a facility two days prior, what
 4 types of assessments would you have expected to
 5 have been performed on the patient?
 6 MS. TURPEN: Foundation.
 7 THE WITNESS: Whatever the protocol
 8 for the people that had seen the patient prior
 9 to me, I would expect that's what they follow.
 10 BY MS. WISE:
 11 Q. Okay. What do you mean by protocol?
 12 A. What is the general way of admitting
 13 a patient and making sure that they are passed
 14 on to the next provider.
 15 Q. Okay. And I'm not a nurse and I'm
 16 not a doctor, so I don't know what the general
 17 way of admitting a patient should entail. Can
 18 you give me some examples?
 19 MS. TURPEN: Form. Foundation.
 20 THE WITNESS: The nurses in the
 21 facility will admit the patient, notify the
 22 providers we have a new admission, and then
 23 they do the assessments and follow medications,
 24 reviews from the discharging hospital.
 25 BY MS. WISE:

<p style="text-align: right;">Page 45</p> <p>1 Q. And you said they do the assessments. 2 What assessments do they perform or what 3 assessments would you expect them to perform? 4 MS. TURPEN: Form, foundation, and 5 scope. 6 MR. ROURKE: Join in all. 7 THE WITNESS: It wasn't my role to 8 know what the nurses were doing, but I assume 9 they were following the protocol on the 10 admissions because that was not my role. I 11 wasn't part of the facility staff. 12 BY MS. WISE: 13 Q. So in January of 2019, did Spanish 14 Hills have a specific protocol for admissions? 15 MR. ROURKE: Object to the form. 16 MS. TURPEN: Join. 17 THE WITNESS: I would assume if they 18 were admitting patients. 19 BY MS. WISE: 20 Q. Okay. Is it a document that you have 21 ever seen? 22 A. No. 23 Q. Okay. So you are just assuming that 24 Spanish Hills had a protocol that nurses were 25 following prior to you taking over the care of</p>	<p style="text-align: right;">Page 47</p> <p>1 taking over care? 2 MR. ROURKE: Object to the form. 3 MS. TURPEN: Join. 4 THE WITNESS: Like I mentioned 5 before, it's -- my understanding as a provider, 6 I would go in and do things that are pertaining 7 to my role, and whatever the nurses were 8 assigned to do hopefully would have been 9 addressed. 10 BY MS. WISE: 11 Q. Okay. So you first saw Mr. Heifetz 12 on the 16th, correct? 13 A. Yes. 14 Q. Okay. I am going to pull up the 15 chart now so that you can kind of explain for 16 me some of your -- some of the things you put 17 in there just because I don't understand them, 18 so I am going to get to it for you. 19 Okay, Miriam. Can you see my screen? 20 A. Yes. 21 Q. Okay. For the record, this is the 22 Spanish Hills medical record. We are going to 23 attach the entire bulk of them as Exhibit 2. 24 This specific page is Bates 83. Up 25 here on the side, it says January 16, 2019,</p>
<p style="text-align: right;">Page 46</p> <p>1 a patient; is that correct? 2 MR. ROURKE: Object to the form. 3 MS. TURPEN: Join. 4 THE WITNESS: It's my understanding 5 that they have different ways of admitting a 6 patient as described through their roles in a 7 rehab facility. 8 BY MS. WISE: 9 Q. Let's talk about a patient who 10 arrived bedbound because he had a hip 11 replacement surgery. Would you have expected a 12 skin check to have been performed on the 13 patient? 14 MR. ROURKE: Object to the form. 15 MS. TURPEN: Join and scope. 16 Go ahead, Miriam. 17 THE WITNESS: Like I mentioned, I 18 wasn't in that role. I was coming in as a 19 provider so I am not versed on the issues on 20 how to take care of the admissions. 21 BY MS. WISE: 22 Q. Fair enough. 23 As a provider taking over the care of 24 a patient, did you have an expectation that 25 certain assessments are performed prior to you</p>	<p style="text-align: right;">Page 48</p> <p>1 17:24. Do you see that? 2 A. January 16, 2019? 3 Q. Yes. 4 And then on the side, it says created 5 by, and it says Miriam Sithole. Do you see 6 that? 7 A. Yes. 8 Q. Okay. Go ahead and read for me this 9 entry, this progress note. 10 A. This is a 78-year-old male seen for 11 initial skilled visit. Patient initially 12 hospitalized for left total hip arthroplasty 13 with Dr. Allen on 1/7/2019. Patient was 14 discharged home. Unfortunately, patient had 15 times two spontaneous left hip dislocations. 16 During the second episode, patient was given an 17 adaptive brace to be worn 24/7. Patient was 18 medically stabilized and then transferred to 19 rehab. Patient denies chest pain, shortness of 20 breath, fever, or chills. 21 Q. And then below that, those are his 22 vitals where it starts with "O", correct? 23 A. Yes. 24 Q. What does A/P mean? 25 A. A/P?</p>

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1 Q. Right here.
 2 **A. Oh, assessment and plan.**
 3 Q. Okay. Go ahead and read me what your
 4 assessment and plan was.
 5 **A. Status post left hip total hip**
 6 **arthroplasty on 1/7/19 by Dr. Allen. Pain**
 7 **management, Eliquis until 2/18/18. Physical**
 8 **therapy, occupational therapy, followup with**
 9 **ortho as scheduled. Neuropathy, which was part**
 10 **of his chronic medications, stable on**
 11 **gabapentin, which he was taking for the**
 12 **neuropathy. Hypertension, patient continued**
 13 **with the medications, Diltiazem and Losartan**
 14 **and then history of glaucoma. Patient was on**
 15 **latanoprost eye drops and seeks ambulation**
 16 **dysfunction. PT, OT is indicated.**
 17 Q. What does ambulation dysfunction
 18 mean?
 19 **A. It means he had decreased mobility**
 20 **secondary to the left hip arthroplasty.**
 21 Q. Okay. Does that mean that he was
 22 unable to get out of his bed on his own?
 23 MS. TURPEN: Form.
 24 MR. ROURKE: Join.
 25 THE WITNESS: Not necessarily. It's

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1 just an indication that he didn't have a full
 2 function of his extremities but it doesn't
 3 indicate the degree. This is just to
 4 acknowledge that he had some.
 5 BY MS. WISE:
 6 Q. Okay. And at the top where you said
 7 male seen for initial skilled visit, what does
 8 initial skilled visit mean?
 9 **A. Initial means I am following up the**
 10 **admission.**
 11 Q. Okay. So when you created this note,
 12 you physically spoke with Mr. Heifetz, correct?
 13 **A. Yes.**
 14 Q. Okay. Did you do an evaluation of
 15 Mr. Heifetz?
 16 **A. Yes.**
 17 Q. Do you recall what that evaluation
 18 entailed?
 19 **A. Going through his medications, going**
 20 **through because he was alert and oriented so I**
 21 **asked him of any pain or if he was having any**
 22 **issues since admission that needed to be**
 23 **addressed.**
 24 Q. Okay. Do you recall what he said to
 25 you, if anything, when you asked him if he had

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1 any issues upon admission that needed to be
 2 addressed?
 3 **A. Not to my recollection.**
 4 Q. When you evaluated Mr. Heifetz, did
 5 you do a physical examination of him?
 6 **A. Yes, I did.**
 7 Q. Okay. Did you look at his
 8 extremities?
 9 **A. Yes, I did.**
 10 Q. And was that all of his extremities?
 11 **A. Yes.**
 12 Q. When you do an evaluation of a
 13 patient, do you check the skin for breakdown?
 14 MS. TURPEN: Form.
 15 THE WITNESS: Yes, we do -- yes, I
 16 did. Sorry.
 17 BY MS. WISE:
 18 Q. Okay. When you evaluated
 19 Mr. Heifetz, were you aware that he had
 20 vascular insufficiency?
 21 **A. You could see with the skin, you**
 22 **could tell with the skin and he was on**
 23 **medication for vascular insufficiency.**
 24 Q. Okay. And what is your custom and
 25 practice as to noting checking a client's -- a

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1 patient's extremities? Is that something that
 2 you note in your progress note or is it just
 3 something that you perform?
 4 MS. TURPEN: Form.
 5 THE WITNESS: We perform.
 6 BY MS. WISE:
 7 Q. You what?
 8 **A. I perform. I checked the**
 9 **extremities.**
 10 Q. Okay. And do you note that anywhere
 11 in your progress note?
 12 **A. If it's indicated, if there is**
 13 **anything significant.**
 14 Q. Okay. And so the note that I showed
 15 you on Page 83 that is on your screen, would
 16 that be the place that you would notice any
 17 significant issues with the extremities?
 18 **A. I did put it in my assessment in**
 19 **my -- if you look where it says extremities,**
 20 **adaptive brace noted to left hip without**
 21 **extremity was diagnosis.**
 22 Q. Okay. Did you determine how far
 23 Mr. Heifetz could ambulate on his own at this
 24 initial visit?
 25 MS. TURPEN: Object to form.

<p style="text-align: right;">Page 53</p> <p>1 THE WITNESS: That is not what we do</p> <p>2 in an assessment.</p> <p>3 BY MS. WISE:</p> <p>4 Q. Okay.</p> <p>5 A. That is for PT and OT to assess and</p> <p>6 determine.</p> <p>7 Q. And PT, I'm assuming, stands for</p> <p>8 physical therapy?</p> <p>9 A. Sorry. Physical therapy and</p> <p>10 occupational therapy. Sorry.</p> <p>11 Q. Okay. And so it's their role in</p> <p>12 determining how far a patient can ambulate?</p> <p>13 A. Yes.</p> <p>14 Q. And we are going to move to Bates 305</p> <p>15 to 307. Miriam, I will represent to you this</p> <p>16 is the history and physical performed by</p> <p>17 Dr. Baltar on the 15th. Have you ever seen</p> <p>18 this document?</p> <p>19 A. Yes.</p> <p>20 Q. Is this one of the documents you</p> <p>21 reviewed prior to first evaluating Mr. Heifetz?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any conversations with</p> <p>24 Dr. Baltar about Mr. Heifetz?</p> <p>25 A. Not pertaining to the document, but</p>	<p style="text-align: right;">Page 55</p> <p>1 BY MS. WISE:</p> <p>2 Q. So you are assigned to a patient then</p> <p>3 based on their --</p> <p>4 A. Insurance.</p> <p>5 Q. Okay.</p> <p>6 MR. ROURKE: Object to the form.</p> <p>7 Go ahead.</p> <p>8 MS. TURPEN: Join.</p> <p>9 BY MS. WISE:</p> <p>10 Q. Do you have access to a patient's</p> <p>11 primary care Southwest Medical records?</p> <p>12 A. No.</p> <p>13 Q. Who is responsible for creating a</p> <p>14 patient's baseline care plan?</p> <p>15 MS. TURPEN: Form and scope.</p> <p>16 MR. ROURKE: Join.</p> <p>17 THE WITNESS: The facility nursing</p> <p>18 staff.</p> <p>19 BY MS. WISE:</p> <p>20 Q. So that's not your responsibility,</p> <p>21 correct?</p> <p>22 MR. ROURKE: Object to the form.</p> <p>23 MS. TURPEN: Join.</p> <p>24 THE WITNESS: Yes.</p> <p>25 ///</p>
<p style="text-align: right;">Page 54</p> <p>1 he is a new admission and is coming in with a</p> <p>2 right hip arthroplasty, dislocation.</p> <p>3 Q. Okay. So did Dr. Baltar tell you</p> <p>4 anything about Mr. Heifetz's condition?</p> <p>5 A. Not that --</p> <p>6 MS. TURPEN: Form.</p> <p>7 THE WITNESS: -- I recall.</p> <p>8 BY MS. WISE:</p> <p>9 Q. Okay. Were you aware that</p> <p>10 Mr. Heifetz's primary care provider was</p> <p>11 Southwest Medical?</p> <p>12 MS. TURPEN: Form.</p> <p>13 THE WITNESS: Can you rephrase that</p> <p>14 question? I don't understand.</p> <p>15 BY MS. WISE:</p> <p>16 Q. Sure, absolutely.</p> <p>17 So when you first met Mr. Heifetz,</p> <p>18 did anybody tell you that his primary care</p> <p>19 provider outside of the facility was also</p> <p>20 employed by Southwest Medical?</p> <p>21 MS. TURPEN: Form. Foundation.</p> <p>22 THE WITNESS: All patients that we</p> <p>23 are seeing if they are under our care, they</p> <p>24 were under the Optum insurance, so.</p> <p>25 ///</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MS. WISE:</p> <p>2 Q. Is that something that should be</p> <p>3 performed prior to you taking over the care of</p> <p>4 a patient?</p> <p>5 MS. TURPEN: Form, foundation, and</p> <p>6 scope as to this witness.</p> <p>7 MR. ROURKE: Join.</p> <p>8 THE WITNESS: Company policy, like I</p> <p>9 said earlier, they determine what -- how they</p> <p>10 follow out. They do the admissions, so it's</p> <p>11 not under my scope.</p> <p>12 BY MS. WISE:</p> <p>13 Q. Okay. Fair enough.</p> <p>14 I am just trying to figure out is</p> <p>15 that -- based on your treatment of a patient at</p> <p>16 Spanish Hills and many patients at Spanish</p> <p>17 Hills, is the baseline care plan something that</p> <p>18 you review when you first take over a patient's</p> <p>19 care or is it generally something that is</p> <p>20 created after?</p> <p>21 MR. ROURKE: Object to the form.</p> <p>22 MS. TURPEN: Form.</p> <p>23 THE WITNESS: I'm not sure at what</p> <p>24 point they do the care plan because I never</p> <p>25 look at them because -- yeah.</p>

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1 BY MS. WISE:
 2 Q. Okay. I will go back to Exhibit 2
 3 and this is Bates 311.
 4 Okay, Miriam, so can you see this
 5 document on my screen?
 6 A. Uh-huh, yes.
 7 Q. So have you ever seen this document
 8 before?
 9 A. No.
 10 Q. Okay. So this is not something that
 11 you reviewed at any point during your treatment
 12 of Mr. Heifetz; is that correct?
 13 A. Yes.
 14 Q. Have you ever been responsible for
 15 creating a baseline care plan for a patient?
 16 MS. TURPEN: Form. Foundation.
 17 Scope.
 18 THE WITNESS: No. We don't do care
 19 plans for patients.
 20 MS. WISE: Okay. I know we have been
 21 going about an hour. Is everybody good? Does
 22 anybody want a break?
 23 MS. TURPEN: We are good.
 24 Miriam, are you all right.
 25 THE WITNESS: I'm good. Thank you.

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1 MR. ROURKE: I could use maybe just a
 2 three-minute break, if that's okay.
 3 MS. TURPEN: Okay, Rob.
 4 MS. WISE: That is why I was asking.
 5 MR. ROURKE: I am going to hold off
 6 the reason why.
 7 MS. TURPEN: Okay, Miriam, you can
 8 mute your computer for a few minutes and we
 9 will start again in about three, five minutes.
 10 MS. WISE: Yeah, get up, stretch your
 11 legs, you know.
 12 MS. TURPEN: Go ahead and put it on
 13 mute.
 14 VIDEOGRAPHER: We are off the record
 15 at 12:07 p.m.
 16 (Recess taken from 12:07 p.m. to
 17 12:21 p.m.)
 18 VIDEOGRAPHER: We are on the record
 19 at 12:21 p.m. You may proceed.
 20 BY MS. WISE:
 21 Q. Miriam, when you first evaluated
 22 Mr. Heifetz on the 16th, you said that you
 23 checked his extremities. Do you remember that
 24 testimony?
 25 A. Yes, ma'am.

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1 Q. Did you notice if he had any kind of
 2 sores on his legs at the time of that
 3 evaluation?
 4 A. Not that I recall.
 5 Q. If he did have sores on his legs at
 6 the time of the evaluation, is that something
 7 you would have noted in your progress note?
 8 A. If it was significant.
 9 Q. Okay. And what does significant mean
 10 to you?
 11 A. Like something that needed to be
 12 addressed by wound care.
 13 Q. Okay. So it's fair to say that since
 14 there was nothing in that note that stated he
 15 had sores that needed to be addressed by wound
 16 care, there was nothing significant in your
 17 eyes existing, correct?
 18 MS. TURPEN: Form.
 19 Go ahead, Miriam.
 20 THE WITNESS: Except for the surgical
 21 incision that he had come with that we -- that
 22 we indicated for wound consult.
 23 BY MS. WISE:
 24 Q. Great. Thank you for that
 25 clarification.

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1 Now, when you evaluated Mr. Heifetz,
 2 you knew that he came in with compression
 3 stockings, correct?
 4 MS. TURPEN: Form. Foundation.
 5 MR. ROURKE: Join.
 6 THE WITNESS: Not that I know. Not
 7 that I recall.
 8 BY MS. WISE:
 9 Q. When you evaluated Mr. Heifetz, he
 10 was wearing compression stockings, correct?
 11 MS. TURPEN: Form. Foundation.
 12 MR. ROURKE: Same objections.
 13 THE WITNESS: Not that I recall.
 14 BY MS. WISE:
 15 Q. You ordered compression stockings for
 16 him though, correct?
 17 A. Yes.
 18 Q. Why did you order compression
 19 stockings?
 20 A. Because I -- when I looked at the
 21 bottom of the feet, there was some edema.
 22 Q. And what do you mean by edema?
 23 A. Some swelling.
 24 Q. What is your understanding of the
 25 purpose of compression socks?

<p style="text-align: right;">Page 61</p> <p>1 MS. TURPEN: Form.</p> <p>2 THE WITNESS: They are what we use</p> <p>3 to -- instead of using medicine, we use that</p> <p>4 for reducing -- to help reduce swelling.</p> <p>5 BY MS. WISE:</p> <p>6 Q. Okay. Now I want to show you the</p> <p>7 order just so you know what I am talking about.</p> <p>8 For the record, this is Bates 31.</p> <p>9 So up at the top there, it says</p> <p>10 physician, Shanna Marie Baltar. Do you see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. And then it says order, compression</p> <p>14 stockings on for 12 hours in a.m. and off for</p> <p>15 12 hours at night. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And you created this order, correct?</p> <p>18 A. That's a different document. This is</p> <p>19 a printout. It doesn't reflect the one that we</p> <p>20 use, but.</p> <p>21 Q. Okay.</p> <p>22 A. This is a --</p> <p>23 Q. That's fair enough. Let me -- is</p> <p>24 this -- and for the record, this is Bates 28.</p> <p>25 Is this the document that you are accustomed to</p>	<p style="text-align: right;">Page 63</p> <p>1 Go ahead.</p> <p>2 THE WITNESS: Yeah. Yeah, that's my</p> <p>3 order, uh-huh.</p> <p>4 BY MS. WISE:</p> <p>5 Q. Why did you order that they be</p> <p>6 removed every 12 hours?</p> <p>7 A. For compression stockings, they are</p> <p>8 only useful when the patient is out of bed and</p> <p>9 ambulating so that is during the day so it</p> <p>10 specifies 12 hours during the day. At night</p> <p>11 when they are in bed, there is no significant</p> <p>12 value once they are in bed.</p> <p>13 Q. Okay. What can happen if the</p> <p>14 pressure -- I'm sorry. Strike that.</p> <p>15 What could happen if compression</p> <p>16 stockings are not removed?</p> <p>17 MR. ROURKE: Objection.</p> <p>18 MS. TURPEN: Form. Foundation.</p> <p>19 Incomplete hypothetical.</p> <p>20 MR. ROURKE: Join.</p> <p>21 THE WITNESS: I can't speculate on</p> <p>22 what happens because the order states it is</p> <p>23 supposed to be removed, so.</p> <p>24 BY MS. WISE:</p> <p>25 Q. Okay. So based on your experience as</p>
<p style="text-align: right;">Page 62</p> <p>1 seeing?</p> <p>2 A. No. It doesn't come this way because</p> <p>3 this is not an order. This is a physician</p> <p>4 order report, so these are all different orders</p> <p>5 that have been ordered for the patient. It</p> <p>6 doesn't look the same as the one we use that</p> <p>7 comes on the screen when we are making an</p> <p>8 order.</p> <p>9 Q. Okay. Do you see where at the bottom</p> <p>10 it says medication flow sheet?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. And then it says general,</p> <p>13 start January 16, 2019, end date January 30,</p> <p>14 2019?</p> <p>15 A. Yes.</p> <p>16 Q. Description is the compression</p> <p>17 stockings?</p> <p>18 A. Yes.</p> <p>19 Q. And it says ordered by, and that's</p> <p>20 your name, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So any reason to dispute that</p> <p>23 you were the provider that ordered these</p> <p>24 compression stockings, correct?</p> <p>25 MS. TURPEN: Form.</p>	<p style="text-align: right;">Page 64</p> <p>1 a nurse, would you agree that swelling could</p> <p>2 occur if compression socks are not removed</p> <p>3 within 12 hours or after 12 hours?</p> <p>4 MS. TURPEN: Form. Foundation.</p> <p>5 Incomplete hypothetical.</p> <p>6 MR. ROURKE: Join.</p> <p>7 THE WITNESS: I put in the orders.</p> <p>8 As a provider, I can't speculate on the scope</p> <p>9 for when they are not removed by nursing.</p> <p>10 BY MS. WISE:</p> <p>11 Q. Okay. Would you agree that one</p> <p>12 reason to remove compression stockings would be</p> <p>13 to check the skin integrity underneath the</p> <p>14 stockings?</p> <p>15 MS. TURPEN: Form. Foundation.</p> <p>16 Incomplete hypothetical.</p> <p>17 MR. ROURKE: Join.</p> <p>18 THE WITNESS: As indicated, the</p> <p>19 benefit of the compression stockings is not</p> <p>20 necessary when they are -- after 12 hours when</p> <p>21 they are in bed.</p> <p>22 BY MS. WISE:</p> <p>23 Q. Okay. So it's then your testimony</p> <p>24 that it's not beneficial to remove them to</p> <p>25 check the skin integrity underneath?</p>

<p style="text-align: right;">Page 65</p> <p>1 MS. TURPEN: Form. Foundation. 2 Mischaracterizes testimony. 3 THE WITNESS: I'm just explaining the 4 reason for my order for on 12 hours and off 12 5 hours at night. 6 BY MS. WISE: 7 Q. So my question is a little different. 8 I am not asking why you ordered it. I am 9 asking why there -- what could happen if they 10 are not done. 11 So what can happen if compression 12 socks are not removed? Based on your 13 experience as a nurse, what have you seen? 14 MS. TURPEN: Form. Foundation. 15 Incomplete hypothetical. Calls for 16 speculation. 17 THE WITNESS: I haven't been a nurse 18 for a long time on the floor, so I can't give 19 you specifics of things that I haven't 20 experienced with the compression stockings. 21 BY MS. WISE: 22 Q. Did you learn anything about 23 compression stockings while you were getting 24 your master's or your undergrad? 25 MS. TURPEN: Form.</p>	<p style="text-align: right;">Page 67</p> <p>1 pertains to having the stockings not removed. 2 Q. Okay. Fair enough. Fair enough. 3 Are you familiar with the Spanish 4 Hills charts? 5 MR. ROURKE: Object to the form. 6 MS. TURPEN: Join. 7 THE WITNESS: I think that's broad. 8 What do you mean by charts? 9 BY MS. WISE: 10 Q. Okay. Actually, you know what, 11 strike that. 12 Let's get into specifics because I 13 know you said on the last one that it looked a 14 little different. But we are going to go back 15 to it. 16 A. Uh-huh. 17 Q. I forgot what page we were on. 18 Okay. For the record, we are back on 19 Page 31. And at the top, we have that order 20 for compression stockings. Do you see that, 21 Miriam? 22 A. Yes. 23 Q. Okay. Are you familiar with this way 24 of charting within the Spanish Hills records? 25 A. No.</p>
<p style="text-align: right;">Page 66</p> <p>1 THE WITNESS: We learned on why we 2 order them and why we use them in the morning 3 and not at night for cardiac or edema emphasis. 4 BY MS. WISE: 5 Q. So based on your education, training 6 and experience, do you have an understanding of 7 what could happen to a patient if compression 8 stockings are not removed? 9 MS. TURPEN: Form. Foundation. 10 Incomplete hypothetical. 11 THE WITNESS: I've not experienced it 12 all. I understand the -- what could happen. 13 Because I haven't experienced it, so I can't 14 give you what could happen. I can't attest to 15 that. 16 BY MS. WISE: 17 Q. Okay. So then it's your testimony 18 that you don't have an understanding of what 19 could happen if they are not removed; is that 20 correct? 21 MS. TURPEN: Form. 22 BY MS. WISE: 23 Q. You could go ahead, Miriam. 24 A. I can't attest to something that I 25 haven't experienced or not with -- as it</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. ROURKE: Object to form. 2 BY MS. WISE: 3 Q. Now, when you saw and evaluated 4 Mr. Heifetz on the 16th, you did not remove any 5 compression stockings from him, correct? 6 MS. TURPEN: Form. 7 THE WITNESS: That's not my scope of 8 practice to remove them. I didn't see any need 9 to remove what I didn't see. 10 BY MS. WISE: 11 Q. Okay. So it's fair to say then if 12 it's not in your scope of practice, it's 13 probably fair to say that at no point you 14 removed compression stockings from Mr. Heifetz, 15 correct? 16 MS. TURPEN: Form. 17 THE WITNESS: No, I did not remove 18 any stockings. 19 BY MS. WISE: 20 Q. Okay. So up at the top of your order 21 where we have it says time 9 and then 21, 22 Monday, Tuesday, Wednesday, Thursday, Friday, 23 Saturday, Sunday, do you see that? 24 A. Yes. 25 Q. Do you have any understanding of what</p>

<p style="text-align: right;">Page 69</p> <p>1 the Xs represent?</p> <p>2 MR. ROURKE: Object to form.</p> <p>3 MS. TURPEN: Join.</p> <p>4 THE WITNESS: No. That's a nursing</p> <p>5 chart, so I can't deduce that information if I</p> <p>6 am not trained to know what that means.</p> <p>7 BY MS. WISE:</p> <p>8 Q. Okay. Fair enough.</p> <p>9 So then you probably also don't have</p> <p>10 an understanding of what the letters and</p> <p>11 numbers mean on the remaining part of the</p> <p>12 chart, like here, correct?</p> <p>13 A. Yes.</p> <p>14 MS. TURPEN: Form. Foundation.</p> <p>15 MR. ROURKE: Join.</p> <p>16 BY MS. WISE:</p> <p>17 Q. At any point during your treatment of</p> <p>18 Mr. Heifetz, did you watch any of the medical</p> <p>19 staff at Spanish Hills remove or put on the</p> <p>20 pressure socks on Mr. Heifetz?</p> <p>21 MS. TURPEN: Form. Scope.</p> <p>22 MR. ROURKE: Join.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MS. WISE:</p> <p>25 Q. So it's fair to say you can't say one</p>	<p style="text-align: right;">Page 71</p> <p>1 MS. TURPEN: Form. Foundation.</p> <p>2 Incomplete hypothetical and scope as to this</p> <p>3 witness.</p> <p>4 MR. ROURKE: Join in all of those and</p> <p>5 also assumes facts not in evidence,</p> <p>6 argumentative.</p> <p>7 MS. TURPEN: Join.</p> <p>8 BY MS. WISE:</p> <p>9 Q. Did you answer, Miriam?</p> <p>10 A. It wasn't in my scope. They were not</p> <p>11 under my direct supervision so I wouldn't know.</p> <p>12 Q. But you would expect them to follow</p> <p>13 your orders, correct?</p> <p>14 MR. ROURKE: I will object to the</p> <p>15 form.</p> <p>16 MS. TURPEN: Form. Asked and</p> <p>17 answered.</p> <p>18 Go ahead, Miriam, you can answer</p> <p>19 again.</p> <p>20 THE WITNESS: They would follow the</p> <p>21 orders as expected if the order is put in to</p> <p>22 follow the orders.</p> <p>23 BY MS. WISE:</p> <p>24 Q. And if they didn't follow the orders,</p> <p>25 would you have a problem with that?</p>
<p style="text-align: right;">Page 70</p> <p>1 way or another whether that order was actually</p> <p>2 followed, correct?</p> <p>3 MR. ROURKE: Object to the form of</p> <p>4 the question.</p> <p>5 MS. TURPEN: Join. Form.</p> <p>6 Foundation.</p> <p>7 BY MS. WISE:</p> <p>8 Q. Did you answer, Miriam? If you did,</p> <p>9 I didn't hear you. I'm sorry.</p> <p>10 A. Oh, no.</p> <p>11 Q. And I think you told me earlier, but</p> <p>12 you would expect when you would create an</p> <p>13 order, the staff at Spanish Hills would follow</p> <p>14 the order, correct?</p> <p>15 MS. TURPEN: Form. Asked and</p> <p>16 answered.</p> <p>17 MR. ROURKE: Join.</p> <p>18 THE WITNESS: I would think they</p> <p>19 would follow the orders. When you give the</p> <p>20 order, it's followed.</p> <p>21 BY MS. WISE:</p> <p>22 Q. Assuming this order was not followed</p> <p>23 the way you wrote it, would you find that to be</p> <p>24 a breach in the standard of care based on your</p> <p>25 education, training, and experience as a nurse?</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. ROURKE: Object to the form.</p> <p>2 Incomplete hypothetical. Assumes facts not in</p> <p>3 evidence. Argumentative.</p> <p>4 MS. TURPEN: Join.</p> <p>5 THE WITNESS: Like I mentioned, it</p> <p>6 wasn't in my scope to follow the necessary note</p> <p>7 under my direct supervision.</p> <p>8 BY MS. WISE:</p> <p>9 Q. Right. But Mr. Heifetz was your</p> <p>10 patient, correct?</p> <p>11 MS. TURPEN: Form.</p> <p>12 THE WITNESS: Yes. He was not my</p> <p>13 only patient. I had patients so I would assume</p> <p>14 they were doing the same for Mr. Heifetz as</p> <p>15 they did for every other patient that I had in</p> <p>16 the facility.</p> <p>17 BY MS. WISE:</p> <p>18 Q. Okay. So that would include</p> <p>19 following your orders that you create, right,</p> <p>20 that you would expect that to occur?</p> <p>21 MS. TURPEN: Form.</p> <p>22 MR. ROURKE: I will join. Asked and</p> <p>23 answered multiple times.</p> <p>24 MS. TURPEN: Join.</p> <p>25 THE WITNESS: We put in the orders</p>

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1 for them to follow.
 2 BY MS. WISE:
 3 Q. If a nurse wasn't following your
 4 orders and you caught her not following your
 5 orders, what would you do?
 6 MR. ROURKE: Object to the form.
 7 MS. TURPEN: Form. Foundation.
 8 Incomplete hypothetical.
 9 MR. ROURKE: Join.
 10 MS. TURPEN: Assumes facts. Scope.
 11 MR. ROURKE: Join in all of those as
 12 well.
 13 Sorry. I didn't mean to cut you off,
 14 Kathy.
 15 MS. TURPEN: It's okay. Thank you.
 16 THE WITNESS: Like I said, I can't
 17 attest to that because I didn't experience it.
 18 They were not under my direct supervision.
 19 BY MS. WISE:
 20 Q. So if a nurse wasn't following the
 21 orders you created for your patient, you would
 22 do nothing?
 23 MS. TURPEN: Form. Foundation.
 24 Mischaracterizes testimony. Argumentative.
 25 MR. ROURKE: Join on them all.

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1 THE WITNESS: My scope was to put in
 2 the orders. In nursing, follow the protocol is
 3 their job description.
 4 BY MS. WISE:
 5 Q. Right. But you told me earlier it's
 6 not your job to make sure they are following
 7 orders, right?
 8 MS. TURPEN: Form. Mischaracterizes
 9 testimony.
 10 BY MS. WISE:
 11 Q. If I'm misstating your testimony,
 12 please tell me. Is it your responsibility to
 13 make sure that the nurses are following your
 14 orders?
 15 **A. I said my -- I was in the facility as**
 16 **a mid-level provider. I put the orders. The**
 17 **nurses follow the job descriptions as to**
 18 **addressing the orders.**
 19 Q. And if a nurse is not following an
 20 order, it's not your job to reprimand them,
 21 correct?
 22 MR. ROURKE: Objection to form.
 23 Foundation. Speculation. Incomplete
 24 hypothetical. Assumes facts not in evidence.
 25 Also --

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1 MS. TURPEN: Join. Join in all of
 2 those.
 3 THE WITNESS: This is not under my
 4 direct supervision so there would be no reason
 5 for me to address it with the nurses.
 6 BY MS. WISE:
 7 Q. Do you have an understanding of why a
 8 wound care consult was ordered by Dr. Baltar
 9 for Barry Heifetz?
 10 **A. My understanding is he came in with a**
 11 **surgical incision so that's the reason she**
 12 **ordered the wound care, follow up on the**
 13 **surgical incision.**
 14 Q. Did you perform the wound care
 15 consultation?
 16 MS. TURPEN: Form.
 17 THE WITNESS: What do you mean by me
 18 performing?
 19 BY MS. WISE:
 20 Q. So Dr. Baltar ordered a wound care
 21 consult, correct?
 22 **A. Yes.**
 23 Q. I am just trying to figure out if
 24 it's your responsibility to do or if it's
 25 somebody else's?

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1 MS. TURPEN: Form.
 2 Go ahead, Miriam.
 3 THE WITNESS: I'm not a wound care
 4 consult specialist. So if he put in an order,
 5 it was required for a specialist to do that.
 6 BY MS. WISE:
 7 Q. Okay. So it's not a function of --
 8 I'm so sorry. It's not a function that you are
 9 responsible for. It's a separate provider,
 10 correct?
 11 **A. A wound care specialist means that**
 12 **somebody has been trained to deal with wounds.**
 13 Q. Okay. So it's fair to say you have
 14 no idea what a wound care consultation would
 15 entail then, correct?
 16 MS. TURPEN: Form. Foundation.
 17 MR. ROURKE: Join.
 18 THE WITNESS: When she put in an
 19 order for a wound consult, that's the end of
 20 it. The wound care would take it from there.
 21 Whatever they do is beyond my scope or my
 22 supervision.
 23 BY MS. WISE:
 24 Q. Fair enough. That is what I was
 25 trying to figure out.

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1 Okay. I am going to show you this
 2 screen next. It's Bates number is 122. Down
 3 at the bottom, it says order weekly skin check
 4 by licensed nurse. Do you see that order,
 5 Miriam?
 6 **A. Uh-huh.**
 7 MS. TURPEN: Miriam, is that a yes?
 8 THE WITNESS: Sorry, sorry. Weekly
 9 skin check, yes, I see.
 10 BY MS. WISE:
 11 Q. Okay. So did you order this weekly
 12 skin check by a licensed nurse?
 13 **A. Going back to the same thing. This**
 14 **is a facility document so it has nothing to do**
 15 **with the mid-level providers.**
 16 Q. Okay. So it's fair to say if the
 17 records show that it was only performed twice
 18 during Mr. Heifetz's stay, you would have no
 19 knowledge of that, correct?
 20 MR. ROURKE: Object to the form.
 21 Incomplete hypothetical. Argumentative.
 22 Assumes facts not in evidence.
 23 MS. TURPEN: Join.
 24 MR. ROURKE: Speculation.
 25 THE WITNESS: It's not the form that

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1 Q. What is your custom and practice in
 2 ordering offloading procedures for a patient?
 3 MS. TURPEN: Form. Foundation.
 4 Incomplete hypothetical. Scope.
 5 THE WITNESS: I don't remember
 6 putting a specific order for offloading.
 7 BY MS. WISE:
 8 Q. You mean for Mr. Heifetz?
 9 **A. For patients in general.**
 10 Q. Okay. Would you expect offloading
 11 procedures to be performed on patients without
 12 an order?
 13 MR. ROURKE: Object to the form of
 14 the question. Incomplete hypothetical. Calls
 15 for speculation.
 16 MS. TURPEN: Join.
 17 THE WITNESS: I can't speculate on
 18 what I didn't experience, so I'm not sure.
 19 BY MS. WISE:
 20 Q. So I just want to make sure I am
 21 clear. So as far as Mr. Heifetz, you did not
 22 order any offloading procedures for him,
 23 correct?
 24 MS. TURPEN: Form.
 25 THE WITNESS: Not that I recall.

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1 I'll use for any of my papers as a mid-level
 2 provider so I --
 3 BY MS. WISE:
 4 Q. Okay. As a mid-level provider, are
 5 these skin checks something you look at or
 6 review of your patients?
 7 MS. TURPEN: Form.
 8 THE WITNESS: No. We don't use this
 9 form at all.
 10 BY MS. WISE:
 11 Q. Okay. When I say the word
 12 "offloading," do you have an understanding of
 13 what I am talking about?
 14 **A. Yes.**
 15 Q. Okay. What is your understanding of
 16 offloading procedures?
 17 **A. Not procedures per se, but the word**
 18 **itself.**
 19 Q. Okay.
 20 **A. Because --**
 21 Q. I'm sorry. Go ahead.
 22 **A. It depends on the situation because**
 23 **offloading is a broad statement.**
 24 Q. Okay. What does it mean to you?
 25 **A. Offloading would be relief, settled.**

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1 BY MS. WISE:
 2 Q. If it's something that you would have
 3 ordered, would you have created a note?
 4 MS. TURPEN: Form. Foundation.
 5 THE WITNESS: Like I said, it
 6 depends. If -- mostly to the department to put
 7 that offloading depending on what they
 8 wanted -- what system they wanted to be
 9 offloaded.
 10 BY MS. WISE:
 11 Q. Okay. So in Mr. Heifetz's situation,
 12 did you believe offloading procedures were
 13 necessary for him?
 14 MS. TURPEN: Form. Foundation.
 15 THE WITNESS: It's a long time ago,
 16 so I'm not exactly sure if it was needed at
 17 that time. So I'm not sure if I put in an
 18 order for that.
 19 BY MS. WISE:
 20 Q. Based on the review of the records,
 21 did you see any note that you created ordering
 22 offloading procedures for Mr. Heifetz?
 23 **A. Not that I recall.**
 24 Q. If you created an order, you would
 25 expected to have shown up within Spanish Hills'

<p style="text-align: right;">Page 81</p> <p>1 records, correct?</p> <p>2 A. Yes.</p> <p>3 Q. What do offloading procedures entail</p> <p>4 generally for a patient who is unable to</p> <p>5 ambulate out of a bed after a hip replacement</p> <p>6 surgery?</p> <p>7 MS. TURPEN: Form, foundation,</p> <p>8 incomplete hypothetical, and scope as to this</p> <p>9 witness.</p> <p>10 MR. ROURKE: Join, and I'll add</p> <p>11 speculation.</p> <p>12 MS. TURPEN: Join.</p> <p>13 MS. WISE: Okay. The proper</p> <p>14 objections are form and foundation. Speaking</p> <p>15 objections aren't proper. We don't need them</p> <p>16 every time.</p> <p>17 MS. TURPEN: Well, these are not</p> <p>18 speaking objections. I am allowed to make my</p> <p>19 record. And objections go beyond form and</p> <p>20 foundation, so I will maintain my objections</p> <p>21 and my joinders.</p> <p>22 MS. WISE: Go ahead, Miriam.</p> <p>23 THE WITNESS: Can you rephrase the</p> <p>24 question, because I am not getting the last</p> <p>25 part of your question?</p>	<p style="text-align: right;">Page 83</p> <p>1 time because he had a brace.</p> <p>2 BY MS. WISE:</p> <p>3 Q. Okay. So I'm sorry. I just want to</p> <p>4 make sure I understand what you just said.</p> <p>5 So are you saying that the offloading</p> <p>6 procedures were not necessary because he had a</p> <p>7 brace?</p> <p>8 A. No, no, no. I am just saying I can't</p> <p>9 recall exactly his situation at that time, but</p> <p>10 I know he had a brace.</p> <p>11 Q. Okay. Right. Okay. So -- but I am</p> <p>12 not speaking directly of Mr. Heifetz, but a</p> <p>13 patient in his condition, do you believe</p> <p>14 offloading procedures are necessary or would be</p> <p>15 necessary for a patient in his condition?</p> <p>16 MS. TURPEN: Same objections and</p> <p>17 asked and answered.</p> <p>18 MR. ROURKE: I will join in both of</p> <p>19 those.</p> <p>20 THE WITNESS: Like I mentioned</p> <p>21 earlier, when patients come in, it is whatever</p> <p>22 the admitting protocol for the facility, then</p> <p>23 they will go ahead and put the order as if to</p> <p>24 see it is necessary --</p> <p>25 BY MS. WISE:</p>
<p style="text-align: right;">Page 82</p> <p>1 BY MS. WISE:</p> <p>2 Q. Sure.</p> <p>3 You said you have an understanding of</p> <p>4 what offloading procedures entail, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What do offloading procedures</p> <p>7 entail?</p> <p>8 A. I said offloading term. The term</p> <p>9 offloading.</p> <p>10 Q. Go ahead.</p> <p>11 A. That would depend on the individual.</p> <p>12 Is it auto or is it wound care, whatever the</p> <p>13 individual thinks is necessary for the patient</p> <p>14 to need that offloading order.</p> <p>15 Q. Okay. So let's say a patient like</p> <p>16 Mr. Heifetz who came in with a hip replacement</p> <p>17 and is unable to ambulate out of his bed on his</p> <p>18 own, do you believe offloading procedures would</p> <p>19 be necessary?</p> <p>20 MS. TURPEN: Same objections.</p> <p>21 MR. ROURKE: Join.</p> <p>22 THE WITNESS: They understand that</p> <p>23 precautions that they put, not necessarily just</p> <p>24 specific offloading, so I'm not sure specific</p> <p>25 for Mr. Heifetz if that was indicated at that</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay.</p> <p>2 A. -- is it necessary.</p> <p>3 Q. Okay. So then -- I just want to make</p> <p>4 sure I am understanding.</p> <p>5 So that would be something that would</p> <p>6 be done from Spanish Hills when he was</p> <p>7 admitted. That's not an order you create; is</p> <p>8 that correct?</p> <p>9 MR. ROURKE: Object to the form.</p> <p>10 Foundation. Speculation. Mischaracterizes</p> <p>11 testimony.</p> <p>12 MS. TURPEN: Join.</p> <p>13 Go ahead, Miriam.</p> <p>14 THE WITNESS: I didn't create it</p> <p>15 because it is part of the admitting when they</p> <p>16 do it so I didn't create it, so I am not</p> <p>17 sure -- because I am not part of the admitting</p> <p>18 nurse who was doing the admissions, would do</p> <p>19 the admissions in general.</p> <p>20 BY MS. WISE:</p> <p>21 Q. Okay. So offloading procedures for a</p> <p>22 patient who is unable to ambulate, would that</p> <p>23 include lifting his heels off of the bed?</p> <p>24 MS. TURPEN: Form. Foundation.</p> <p>25 Incomplete hypothetical. Scope.</p>

<p style="text-align: right;">Page 85</p> <p>1 MR. ROURKE: Join.</p> <p>2 THE WITNESS: I think it just boils</p> <p>3 down to what I say that whatever the nurse who</p> <p>4 is doing the assessment would indicate what</p> <p>5 they think would be a good -- with the care</p> <p>6 plan for the patient. During the care plan,</p> <p>7 then they would enlist what they think the</p> <p>8 patient needs for rehab.</p> <p>9 BY MS. WISE:</p> <p>10 Q. Okay. Did you think that Mr. Heifetz</p> <p>11 needed offloading performed on him at Spanish</p> <p>12 Hills?</p> <p>13 A. If I --</p> <p>14 MS. TURPEN: Form.</p> <p>15 I'm sorry, Miriam. Give me just -- I</p> <p>16 know it is difficult when we are all on Zoom.</p> <p>17 Give me just a second.</p> <p>18 THE WITNESS: Sorry.</p> <p>19 MS. TURPEN: That's okay. Form.</p> <p>20 Foundation. Scope.</p> <p>21 Go ahead.</p> <p>22 MR. ROURKE: Join.</p> <p>23 THE WITNESS: I think I'll just</p> <p>24 retell it what I say that the admitting nurses</p> <p>25 will follow the protocol on what they think the</p>	<p style="text-align: right;">Page 87</p> <p>1 the treatment of a patient, do</p> <p>2 you expect the medical staff to</p> <p>3 communicate with you change in</p> <p>4 conditions of your patients?")</p> <p>5 MR. ROURKE: It will be the same</p> <p>6 objections.</p> <p>7 MS. TURPEN: Join.</p> <p>8 THE WITNESS: Nursing would do --</p> <p>9 report change in conditions.</p> <p>10 BY MS. WISE:</p> <p>11 Q. To you, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you agree that risk assessment</p> <p>14 scales must be used in evaluating a risk for</p> <p>15 pressure injury?</p> <p>16 MR. ROURKE: Object to the form of</p> <p>17 the question.</p> <p>18 MS. TURPEN: Form and scope.</p> <p>19 THE WITNESS: I didn't give access to</p> <p>20 risk -- I don't know the risk assessment form</p> <p>21 that you are talking about, so.</p> <p>22 BY MS. WISE:</p> <p>23 Q. Okay. Let me ask you this. Are you</p> <p>24 familiar with the Braden Scale?</p> <p>25 A. No, not in my scope of practice. We</p>
<p style="text-align: right;">Page 86</p> <p>1 care plan should have for each individual</p> <p>2 patient.</p> <p>3 BY MS. WISE:</p> <p>4 Q. Okay. When you are responsible for</p> <p>5 the treatment of a patient, do you expect the</p> <p>6 medical staff to communicate with you change in</p> <p>7 conditions of your patients?</p> <p>8 MR. ROURKE: Object to the form of</p> <p>9 the question.</p> <p>10 MS. TURPEN: Form. Foundation.</p> <p>11 Specifically as to medical staff.</p> <p>12 MS. WISE: We went over medical staff</p> <p>13 earlier, you know, CNA, nurses, techs.</p> <p>14 MS. TURPEN: Respectfully, that's</p> <p>15 nursing staff.</p> <p>16 MR. ROURKE: I agree.</p> <p>17 MS. WISE: I could say nursing staff</p> <p>18 if that makes you guys more comfortable.</p> <p>19 MS. TURPEN: Yes.</p> <p>20 THE WITNESS: What was your question</p> <p>21 again? Sorry.</p> <p>22 MS. WISE: Can you read back my</p> <p>23 question?</p> <p>24 (Record read as follows:</p> <p>25 "Q. When you are responsible for</p>	<p style="text-align: right;">Page 88</p> <p>1 don't use that tool.</p> <p>2 Q. Okay. So you have never seen a</p> <p>3 Braden Scale assessment?</p> <p>4 MR. ROURKE: Form.</p> <p>5 THE WITNESS: Not in Spanish Hills I</p> <p>6 didn't see any Braden Scale.</p> <p>7 BY MS. WISE:</p> <p>8 Q. Okay. Have you ever seen a Braden</p> <p>9 Scale assessment?</p> <p>10 A. Not to my recollection, but I have</p> <p>11 heard. But I have never seen the form itself.</p> <p>12 Q. Okay. So you have heard of it. What</p> <p>13 have you heard?</p> <p>14 A. It's one of the tools the nurses use</p> <p>15 for skin assessments.</p> <p>16 Q. I'm pretty sure I know the answer to</p> <p>17 this, but this is not something that you</p> <p>18 perform. You don't do the Braden Scale</p> <p>19 assessment, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who at Spanish Hills</p> <p>22 would have been responsible for performing a</p> <p>23 Braden Scale assessment on Mr. Heifetz?</p> <p>24 MR. ROURKE: Object to the form.</p> <p>25 THE WITNESS: No.</p>

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1 BY MS. WISE:

2 Q. Do you know how often a Braden Scale
3 assessment should have been performed?

4 MS. TURPEN: Same objections.

5 THE WITNESS: No.

6 BY MS. WISE:

7 Q. Do you have any understanding of what
8 a Braden assessment requires?

9 MS. TURPEN: Same objections.

10 THE WITNESS: No.

11 BY MS. WISE:

12 Q. I don't know if I just asked you
13 this. So you don't have an understanding of
14 how often a Braden Scale assessment should be
15 performed, correct?

16 A. Yes.

17 Q. With Mr. Heifetz, you were aware he
18 had vascular insufficiency, right?

19 A. Yes.

20 Q. Okay. And from your experience, what
21 are some symptoms of vascular insufficiency?

22 A. **Generally if they have poor**
23 **circulation to the lower extremities and they**
24 **are susceptible to skin changes because of the**
25 **insufficiency of --**

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1 Q. What do you -- I'm so sorry. Go
2 ahead and finish what you are saying.

3 A. **Because they are not having enough**
4 **blood circulation. That is why it is**
5 **insufficiency, because the veins are**
6 **compromised.**

7 Q. Okay. Thank you for that.

8 What do you mean by skin changes?

9 You said they are susceptible to skin changes?

10 A. **It's not the same. When you are not**
11 **having enough blood, your skin changes because**
12 **it is not getting enough nutrition.**

13 Q. Okay. Were you aware that
14 Mr. Heifetz suffered from neuropathy?

15 A. **He was on gabapentin for neuropathy.**

16 Q. Okay. And based on your experience,
17 what are some symptoms of neuropathy?

18 A. **Generalized numbness and tingling to**
19 **the lower extremities.**

20 Q. So it's fair to say it's common for a
21 patient with neuropathy to not feel anything,
22 correct?

23 MR. ROURKE: Object to the form of
24 the question.

25 MS. TURPEN: Join and incomplete

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1 hypothetical.

2 THE WITNESS: Every patient is
3 different. And it could be the same diagnosis,
4 but they don't all have the same response. So
5 I can't give you a specific pertaining to his
6 condition because -- yeah, because it's
7 different for every individual.

8 BY MS. WISE:

9 Q. Okay. Have you ever had a patient
10 that suffered from neuropathy say that he has
11 no feeling in his legs and feet or limited
12 feeling?

13 A. **I have treated different patients**
14 **and, like I say, everybody comes in with a**
15 **different symptom, but it could be numbness or**
16 **tingling or -- that's what I have experienced.**

17 Q. Okay. Were you aware that

18 Mr. Heifetz was clinically obese?

19 A. **Clinically obese? What do you mean**
20 **by that?**

21 Q. That he suffered from obesity. I
22 mean, that was something that was noted in the
23 records. Do you remember seeing that?

24 A. **Specifically documenting that he was**
25 **obese, is that what you mean?**

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1 Q. Yeah. Do you recall seeing that in
2 the records?

3 A. **I don't recall.**

4 Q. Would you agree that offloading
5 procedures are more important in patients with
6 vascular insufficiency, neuropathy, obesity
7 that are unable to ambulate on their own?

8 MS. TURPEN: Form. Foundation.

9 Scope. Incomplete hypothetical.

10 MR. ROURKE: Join.

11 THE WITNESS: I think it's overall
12 clinical judgment and assessment on the needs
13 that how we can't just paint a broad picture on
14 people that are obese and have neuropathy are
15 highly susceptible to that.

16 BY MS. WISE:

17 Q. You said they are highly susceptible
18 to that?

19 A. **No. I say if I say they are, then**
20 **it's just painting a broad picture on them,**
21 **but.**

22 Q. So a patient that has all of those
23 symptoms, do you think they are at a higher
24 risk than patients without those symptoms to
25 develop pressure ulcers?

<p style="text-align: right;">Page 93</p> <p>1 MS. TURPEN: Form. Foundation. 2 Incomplete hypothetical. Scope. 3 MR. ROURKE: Join. 4 THE WITNESS: I can't because I am 5 not a specialist to know what comorbidity that 6 you have that would lead to make you 7 susceptible to being a high risk. That would 8 be the specialty that they know. I am not 9 specialized in all of those comorbidities. 10 BY MS. WISE: 11 Q. As a nurse that treats patients, if 12 you had a patient that suffered from neuropathy 13 that had limited feeling in his legs and feet, 14 would you agree that skin checks should be 15 performed on the patient? 16 MS. TURPEN: Form. Foundation. 17 Incomplete hypothetical. Scope. 18 MR. ROURKE: Join. 19 THE WITNESS: Skin facilities go with 20 the protocol. That's why when you showed me 21 that form for the skin assessment, it's a 22 facility protocol so they do skin assessments 23 protocol and it is not part of the scope for us 24 to be -- that's why I said that form I wasn't 25 aware. I don't know it because we don't use</p>	<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: I can't speculate on 2 that because it -- 3 BY MS. WISE: 4 Q. Because what? 5 A. It was chronic. Those things were 6 chronic. It wasn't something that was acute 7 when we admitted him. 8 Q. Okay. So looking back on 9 Mr. Heifetz's chart, and you are aware that he 10 was unable to ambulate, have high vascular 11 insufficiency and neuropathy, do you believe 12 that Spanish Hills should have performed 13 offloading procedures to prevent pressure 14 ulcers? 15 MR. ROURKE: Object to the form of 16 the question. 17 MS. TURPEN: Form and scope. 18 THE WITNESS: I can't attest to what 19 Spanish Hills would say because they were not 20 under my supervision and I don't know their 21 protocol. 22 BY MS. WISE: 23 Q. So as the treater responsible for 24 Mr. Heifetz's care, you did not -- you do not 25 believe that it was important for anyone to</p>
<p style="text-align: right;">Page 94</p> <p>1 that tool. 2 BY MS. WISE: 3 Q. So it's not something you order? 4 A. No. 5 MR. ROURKE: Object to the form. 6 MS. TURPEN: Join. 7 THE WITNESS: No. 8 BY MS. WISE: 9 Q. Do you agree that Mr. Heifetz was at 10 a higher risk for pressure injuries because he 11 was unable to ambulate, suffer from neuropathy 12 and vascular insufficiency? 13 MS. TURPEN: Form, foundation, and 14 scope. 15 MR. ROURKE: Join. 16 THE WITNESS: Like I said, each 17 patient is different so I can't specifically 18 just pinpoint his susceptibility. 19 BY MS. WISE: 20 Q. Right. Each patient is different, 21 but I'm asking for Mr. Heifetz who was your 22 patient. Do you believe he was at a higher 23 risk? 24 MS. TURPEN: Same objections. 25 MR. ROURKE: Join.</p>	<p style="text-align: right;">Page 96</p> <p>1 perform offloading procedures; is that correct? 2 MS. TURPEN: Form. Foundation. 3 Argumentative. Mischaracterizes testimony. 4 MR. ROURKE: Join. 5 THE WITNESS: I just indicated that 6 they did the admissions and their role in what 7 they are supposed to do, so I wasn't in direct 8 charge of what they were doing. So I won't 9 speculate on what they were supposed to do and 10 what the nurse was supposed to do depending on 11 the condition of the patient. 12 BY MS. WISE: 13 Q. Right. And I understand that. My 14 question is a little different. I mean, you 15 were the one who was responsible for 16 Mr. Heifetz's care, correct? 17 MS. TURPEN: Form. Foundation. 18 THE WITNESS: Yes. 19 BY MS. WISE: 20 Q. And at the end of the day if 21 something was happening to your patient, you 22 would want to be informed of that, correct? 23 A. If they did inform me, I would, but. 24 Q. I'm sorry. You cut off there. If 25 they did inform you, what?</p>

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1 **A. I said they will inform me if**
 2 **anything occurred, but I did not get any**
 3 **information from the nurses of what had**
 4 **occurred.**

5 Q. Okay. And so is -- let me ask you
 6 this. Is pressure sore prevention something
 7 you want for your patients?

8 MR. ROURKE: Object to the form of
 9 the question.

10 MS. TURPEN: Join.

11 THE WITNESS: Why would I want it if
 12 there was no -- when I didn't have any -- the
 13 nurses did not inform me of the need for that.

14 BY MS. WISE:

15 Q. Okay. So then it's up to the nurses
 16 to determine if any interventions are warranted
 17 for pressure sore preventions?

18 MS. TURPEN: Form. Foundation.
 19 Mischaracterizes testimony.

20 Go ahead.

21 MR. ROURKE: And scope.

22 THE WITNESS: That goes back to that
 23 care plan. They produced a care plan that is
 24 part of the skilled rehab protocol.

25 ///

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1 As Mr. Heifetz's treating provider,
 2 did you have any responsibility to order
 3 offloading procedures?

4 **A. It's part of the care plan. So I**
 5 **would expect if we were administering the**
 6 **assessment if they deemed it necessary, then**
 7 **they would have put it in the care plan.**

8 Q. Right. And so you are not
 9 responsible for creating the care plan, right?

10 **A. Yeah. We don't have access to the**
 11 **care plan. It's part of the facility**
 12 **documentation.**

13 Q. Okay. So then is it then your
 14 testimony that it's not your responsibility to
 15 order offloading procedures?

16 MS. TURPEN: Form. Foundation.
 17 Asked and answered.

18 THE WITNESS: I'm just saying it's a
 19 care plan that is the facility and the
 20 nursing's responsibility. It is part of the
 21 care plan.

22 BY MS. WISE:

23 Q. So it's the nursing's responsibility,
 24 not yours, correct?

25 MR. ROURKE: Object to the form of

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1 BY MS. WISE:

2 Q. As you sit here today, do you know
 3 one way or another if offloading procedures
 4 were ever performed on Mr. Heifetz while at
 5 Spanish Hills?

6 **A. I can't recall.**

7 Q. So it's fair to say you do not know
 8 one way or another if the procedures were ever
 9 performed on him, correct?

10 MR. ROURKE: Object to the form of
 11 the question.

12 MS. TURPEN: Join, and asked and
 13 answered.

14 THE WITNESS: I have no recollection
 15 at this time.

16 BY MS. WISE:

17 Q. As the treating provider of
 18 Mr. Heifetz, did you have any responsibility to
 19 order or ensure offloading procedures were
 20 implemented?

21 MS. TURPEN: Form. Foundation.

22 THE WITNESS: Come again? Can you
 23 rephrase it?

24 BY MS. WISE:

25 Q. Sure.

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1 the question.

2 THE WITNESS: To create the document
 3 for that particular care plan if it's
 4 indicated.

5 BY MS. WISE:

6 Q. Right. I'm not talking about the
 7 care plan now. I am asking about the
 8 offloading procedures.

9 I just want to know, is it ever your
 10 responsibility to order offloading procedures?

11 **A. Offloading procedures -- offloading**
 12 **procedures are part of the care plan.**

13 Q. So then the answer to that would be
 14 no?

15 **A. No, in terms of that they are there**
 16 **to be a part of the care plan, the nursing care**
 17 **plan.**

18 Q. Okay. And so is it -- as the
 19 treating provider, is it also true then that
 20 you are not responsible for making sure that
 21 the nurses implement offloading procedures?

22 MR. ROURKE: Object to the form.

23 THE WITNESS: They are not under my
 24 direct supervision so whatever the facility
 25 deems as a job description for the different

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1 nurses and they are responsible for following
2 those orders.
3 BY MS. WISE:
4 Q. So as Mr. Heifetz's treating
5 provider, you did not have a responsibility one
6 way or another in making sure that offloading
7 procedures were implemented, true?

8 MS. TURPEN: Form. Foundation.

9 MR. ROURKE: Object to the form.

10 THE WITNESS: It's a facility
11 procedure that they do. Like the skin
12 assessments, the care plans, they follow that
13 whatever they put under the care plan, they
14 follow that as indicated in the care plan.

15 BY MS. WISE:

16 Q. So, again, that's not your
17 responsibility, correct?

18 A. Yes.

19 Q. Okay. So I am going to show you --
20 do you have an independent recollection as you
21 sit here today -- so you saw Mr. Heifetz on the
22 16th. How often did you see Mr. Heifetz after
23 that initial visit?

24 A. I have no clear recollection. Like I
25 said, depending on what was needed for the

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1 time has elapsed and I am not sure what the
2 other issues were going on with him, so that
3 would determine on when I would see him or
4 would see him.

5 Q. Okay. Fair enough.

6 Okay. So I am going to show you the
7 Bates number on this one is 42. Okay. At the
8 top, it says Observation Detail List Report.
9 Do you see that, Miriam?

10 A. Yes.

11 Q. And halfway down, it says Focused
12 Observation. Do you see that, right here?

13 A. Yes.

14 Q. And then it says it was created by a
15 Sheryl Coke?

16 A. Yes.

17 Q. Do you know who Sheryl Coke is?

18 A. No.

19 Q. Okay. Have you ever seen an
20 observation detail of your patient or a focused
21 observation of your patient rather?

22 A. This is not -- this is a nursing tool
23 so we never use -- they are with the patient on
24 a -- daily so they use this observation tool
25 because they are with the patients, but that is

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1 patient or what I was following up on him, so I
2 don't have a clear recollection of when and how
3 many times I saw him.

4 Q. Okay. Fair enough.

5 Tell me your custom and practice.
6 How often -- I mean, do you generally just see
7 a patient when an issue arises or do you make a
8 stop at a patient daily? Is it somewhere in
9 between? I am just trying to get an idea of
10 your process.

11 MS. TURPEN: Form.

12 THE WITNESS: As I indicated at the
13 beginning of the thing, I said we were going to
14 a facility at our discretion two or three times
15 a week. So if I am in the facility and I see
16 him on Monday, if there is nothing going on on
17 Wednesday, I might see him on Friday. If there
18 is something going on on Tuesday even I saw him
19 on Monday, then I have to see him because there
20 is something going on, but they are called
21 episodic visits.

22 BY MS. WISE:

23 Q. Okay.

24 A. So I can't specifically say I would
25 see him Monday, Wednesday, and Friday because

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1 not a form that we use.

2 Q. Okay. So then it's fair to say this
3 is not a form you would review in your
4 treatment of a patient?

5 A. No.

6 Q. Okay. So on the next page, which is
7 Bates Number 43 down here, we have "Skin." If
8 a nurse noted an issue with a patient's skin,
9 do you know one way or another if that is to be
10 noted on this observation?

11 A. I don't know the tool, so I'm not
12 sure. I don't know. I have never used -- I
13 have never seen the tool itself in how they are
14 supposed to respond to it.

15 Q. Okay. If a nurse at Spanish Hills
16 were to have noticed, let's say, sores starting
17 to form on Mr. Heifetz, would you have expected
18 that to be communicated to you?

19 MR. ROURKE: Object to the form.
20 Foundation. Speculation.

21 MS. TURPEN: Join.

22 THE WITNESS: Depending on what they
23 see and depending on if they needed me to
24 evaluate it, they might communicate it to me,
25 but usually it's what they see in the document.

<p style="text-align: right;">Page 105</p> <p>1 BY MS. WISE: 2 Q. Okay. So would you expect that nurse 3 document sores if they see sores on a patient? 4 MR. ROURKE: Same objection. Form. 5 MS. TURPEN: Join. 6 MR. ROURKE: Incomplete hypothetical. 7 Speculation. 8 MS. TURPEN: Join. 9 THE WITNESS: I would think the 10 nurses would document what they see when they 11 do an assessment as the form requires. 12 BY MS. WISE: 13 Q. And would you expect a nurse to 14 document the formation of sores for you to see 15 later when you re-visit the patient? 16 MR. ROURKE: Object to the form. 17 MS. TURPEN: Form. Incomplete 18 hypothetical. 19 MR. ROURKE: Join. 20 THE WITNESS: Are you using that form 21 or reporting? 22 BY MS. WISE: 23 Q. Yeah. Just reporting to you or 24 noting in the chart. 25 A. I don't know the nursing procedure on</p>	<p style="text-align: right;">Page 107</p> <p>1 I can't put when exactly, but it's difficult to 2 come up with when they do that, but they would 3 inform me if they needed my input. 4 BY MS. WISE: 5 Q. Okay. I'm going to bring you to 6 Bates 29. 7 Okay. And can you see this Physician 8 Order Report, Miriam? 9 A. Yes. 10 Q. Okay. So you see halfway down is a 11 General Flow Sheet? 12 A. Yes. 13 Q. Okay. Do you see where it says 14 "Description, psych consult"? 15 A. Yes. 16 Q. That was ordered by you, correct? 17 A. Yes. 18 Q. Why did you order a psych consult? 19 A. To my recollection, the nurses had 20 reported that Mr. Heifetz was having some 21 confusion, especially at night. 22 Q. As you sit here today, can you recall 23 Mr. Heifetz having any issues with confusion? 24 MS. TURPEN: Form. 25 MR. ROURKE: Join.</p>
<p style="text-align: right;">Page 106</p> <p>1 the reporting of that. But if it is something 2 that needed to be addressed, they would follow 3 it up with me. 4 Q. Okay. And does something that needs 5 to be addressed based on this -- does that vary 6 based on severity? 7 MR. ROURKE: Object to the form. 8 MS. TURPEN: Join. 9 THE WITNESS: I think that to be on 10 their training on what -- because severities is 11 subjective. What is severe to you might not be 12 severe to someone, so I can't use that as a 13 judgment for them to notify the provider. So 14 they have their protocol that they have to 15 follow what they need to report to the 16 providers. 17 BY MS. WISE: 18 Q. Okay. When would you expect a nurse 19 to come to you, let's say, if your patient had 20 sores, at what point would you expect a nurse 21 to call you? 22 MS. TURPEN: Form and incomplete 23 hypothetical. 24 MR. ROURKE: Join. 25 THE WITNESS: I can't put the time.</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: This is on the 19th, so 2 this is episodic things. When I visited him, 3 it didn't happen. So the nurses did not bring 4 it to my attention that on this particular date 5 that he was having some confusion, so this -- 6 yeah. 7 BY MS. WISE: 8 Q. Okay. So then you order the consult 9 and Dr. Quinn came and did the consult, 10 correct? 11 A. Yes. 12 Q. And it looks like he ordered some 13 prescriptions? 14 A. I did not order prescription. 15 Q. Dr. Quinn did, correct, or it says 16 "Description" down on the second set of boxes? 17 A. Yes. 18 Q. Okay. Whose responsibility -- strike 19 that. 20 Is it your responsibility to explain 21 the medications with a patient or would that 22 have been Dr. Quinn's responsibility? 23 MS. TURPEN: Form. 24 THE WITNESS: If it's a special 25 medication that he was seen by psych, so who</p>

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1 orders the medication, it is his responsibility
 2 because that is not my area of specialty.
 3 BY MS. WISE:
 4 Q. Okay. Fair enough.
 5 And, again, we are going to go to
 6 Bates 37 and we are at another focused
 7 observation and this one was conducted on
 8 January 20th. Do you see that?
 9 **A. Yes.**
 10 Q. Do you know who Adora Laus De Leon
 11 is?
 12 **A. Not to my recollection, no.**
 13 Q. Okay. And I know this is not a form
 14 that you generally use, but here where we have
 15 under "Skin," it says there were no alterations
 16 in skin. Do you see that?
 17 **A. I see it.**
 18 Q. Okay. At this point, do you know
 19 whether you were informed of any changes or
 20 breakdown with Mr. Heifetz's skin?
 21 **A. I don't recall that information.**
 22 Q. Okay. If you were informed, is there
 23 someplace you would have noted that?
 24 **A. If a way, there could be -- there**
 25 **would be a place to indicate that.**

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1 Q. And would that be in your progress
 2 note or do you know where that would be
 3 located?
 4 **A. It would be in the progress note,**
 5 **depending on the -- depending on the situation**
 6 **whatever the nurses if they needed me to know**
 7 **about that.**
 8 Q. Okay. We are going to go to Bates
 9 141. Do you see at the top where it says
 10 Minimum Data Set (MDS)?
 11 **A. Uh-huh, yes.**
 12 Q. Are you familiar with this document?
 13 **A. No.**
 14 Q. So it's fair to say you do not fill
 15 this document out, correct?
 16 **A. No.**
 17 Q. So here on Bates 173 where it says
 18 "M" and "Check all that apply," do you see
 19 that?
 20 **A. Yes.**
 21 Q. So you are not familiar -- you have
 22 never seen this document before, correct?
 23 **A. No.**
 24 Q. Okay. And then we will move to
 25 Page 185. Miriam, have you ever seen this

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1 document before?
 2 **A. No. We don't use this tool.**
 3 Q. Okay. There was one more I messed up
 4 and forgot to show you. Sorry.
 5 Okay, Miriam. Now we are going to
 6 move to Page 208. Up at the top, it says CAA
 7 Detail Report. Do you see that document?
 8 **A. Yes.**
 9 Q. Do you have any understanding of what
 10 CAA Detail Report stands for?
 11 **A. No.**
 12 Q. Have you ever seen this document
 13 before?
 14 **A. No.**
 15 Q. So it's fair to say this is not a
 16 document you are responsible for creating?
 17 **A. We don't create it. I don't have**
 18 **this tool.**
 19 Q. So it's fair to say you don't have an
 20 understanding of the purpose of this document?
 21 **A. Yes.**
 22 Q. I am going to show you Bates 230 and
 23 it's a progress note created by you on
 24 January 22nd. Do you see that note right in
 25 the middle, Miriam?

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1 **A. Yes.**
 2 Q. Okay. And you created this note,
 3 right?
 4 **A. Uh-huh, yes.**
 5 Q. Can you read this note for me?
 6 **A. Patient seen for skilled follow-up**
 7 **visit. Patient was noted with increased edema**
 8 **to the left lower extremity. Patient denies, I**
 9 **think it's pain at this time.**
 10 Q. And then again, this "O" section is
 11 the vitals, right?
 12 **A. Yeah, yes.**
 13 Q. And then the "A/P" is the assessment
 14 and plan?
 15 **A. Yes.**
 16 Q. Now, below that, there is an order
 17 created by an Erin, LPN. Do you see that?
 18 **A. Yes.**
 19 Q. Okay. And it says, patient has edema
 20 to lower left extremity. Miriam in facility
 21 seen and examined patient with new orders. Do
 22 you see that?
 23 **A. Yes.**
 24 Q. So this Miriam is you?
 25 **A. Yes.**

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1 Q. Okay. Can you tell me why you saw
2 the patient on January 22nd?

3 **A. Episodic visit and noted the**
4 **lower-extremity edema, so that's why I put it**
5 **in the assessment and plan.**

6 Q. Okay. And so why did you order an
7 ultrasound?

8 **A. It's standard practice if somebody is**
9 **noted with edema to the lower extremity if they**
10 **are on compression stockings and still have**
11 **edema, we do an ultrasound just to rule out the**
12 **development of deep vein thrombosis.**

13 Q. Okay. At this point, you reviewed --
14 I'm sorry. Strike that.

15 At this time when you evaluated
16 Mr. Heifetz, you checked his lower extremities,
17 correct?

18 **A. Yes.**

19 Q. And that included his legs and feet?

20 **A. Yes.**

21 Q. Did you -- and you didn't note any
22 sores on his legs or feet at that time; is that
23 correct?

24 MS. TURPEN: Form. Foundation.

25 THE WITNESS: Not that I recall.

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1 Do you have any knowledge of who this
2 Queenie Ochoa is?

3 **A. No.**

4 Q. Do you have an understanding of what
5 this note means?

6 **A. It's a clinical note so it is part of**
7 **the care plan, so I don't use it so I don't**
8 **understand the use and implication.**

9 Q. Okay. Okay. So the note says that
10 Barry was at risk for pressure ulcer due to
11 friction and shear. Do you disagree with that
12 statement?

13 **A. It's a nursing tool, so whatever we**
14 **are looking at is beyond my scope of practice.**
15 **That is what they use, yeah.**

16 Q. So as Barry's treating provider who
17 is responsible for his care, do you disagree
18 that he is at risk for pressure ulcers?

19 MS. TURPEN: Form. Foundation.
20 Asked and answered.

21 THE WITNESS: It's going back, again,
22 to what I say that the nurses will form the
23 care plan and it is to them to follow the
24 protocol on what they need to put in that care
25 plan to take care of the patient.

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1 BY MS. WISE:

2 Q. How did the result of the ultrasounds
3 change your assessment or plan of Mr. Heifetz's
4 care?

5 MS. TURPEN: Form.

6 THE WITNESS: It didn't change
7 because when I got the results, he was negative
8 and he was already on Eliquis, so there was no
9 clinical indication to change any care.

10 BY MS. WISE:

11 Q. Okay. Miriam, if you need to take a
12 break at any time again, you just let me know.
13 Okay?

14 **A. Thank you. I'm good.**

15 Q. Okay. So now I am going to show you
16 Page 15, Bates 15. Do you see the bottom box
17 here, it says, Problem start date, January 21,
18 2019, and it says, Barry is at risk for
19 pressure ulcer due to friction and shear?

20 **A. Yes.**

21 Q. Did you create this note?

22 **A. No.**

23 Q. It says it was created by a Queenie,
24 do you see that? Maybe I could fix whatever I
25 just did.

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1 BY MS. WISE:

2 Q. Right. My question is a little
3 different though. It's simple. Do you agree
4 with the statement or not?

5 **A. Which statement?**

6 Q. Barry is at risk for pressure ulcer
7 due to friction and shear.

8 **A. If whoever was generating the**
9 **document attest to that, then it's suffice to**
10 **say that that is what they determined.**

11 Q. Right. I am not asking what somebody
12 else agreed with because you don't know what
13 somebody else agreed with. I am asking what
14 you agreed with.

15 Do you agree that Barry was at risk
16 for pressure ulcer due to friction and shear on
17 January 21, 2019?

18 **A. From that statement, yes.**

19 Q. And you gave me a qualifier, "from
20 that statement." Why do you need "from that
21 statement"?

22 **A. Because it's generated by -- a skin**
23 **assessment by the nursing. The nurse was**
24 **generating the information on the care plan.**

25 Q. Okay. So if the nurse had noted that

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1 she believed Barry was at risk, do you have any
 2 reason to dispute that?
 3 MS. TURPEN: Form.
 4 THE WITNESS: No.
 5 BY MS. WISE:
 6 Q. Okay. So down here, it says it was
 7 created on January 23, 2019. Do you see that?
 8 A. Yes.
 9 Q. Do you have any understanding of why
 10 it says it was created January 23rd but then it
 11 says the problem start date was January 21st?
 12 MS. TURPEN: Form.
 13 THE WITNESS: I wouldn't -- I don't
 14 know.
 15 BY MS. WISE:
 16 Q. During your treatment of Mr. Heifetz,
 17 did you ever formulate an opinion that he was
 18 at risk for pressure ulcers?
 19 MS. TURPEN: Form.
 20 THE WITNESS: No. Not that I know.
 21 Like what do you mean form an opinion?
 22 BY MS. WISE:
 23 Q. Did you ever feel one way or the
 24 other during your treatment of Mr. Heifetz that
 25 he was at risk for pressure ulcers?

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1 MS. TURPEN: Same objection.
 2 THE WITNESS: Not that I recall.
 3 BY MS. WISE:
 4 Q. You are aware that at some point,
 5 pressure ulcers were discovered on Mr. Heifetz,
 6 correct?
 7 A. Yes.
 8 Q. Do you recall when you were first
 9 notified of the sores?
 10 MR. ROURKE: I am just going to
 11 object to the form of the questions.
 12 MS. TURPEN: Join.
 13 THE WITNESS: I don't have the
 14 specifics on that.
 15 BY MS. WISE:
 16 Q. Do you recall who notified you of the
 17 pressure sores?
 18 MR. ROURKE: Object to the form of
 19 the question.
 20 THE WITNESS: No, I don't recall.
 21 BY MS. WISE:
 22 Q. At any point during your treatment of
 23 Mr. Heifetz, do you know if you ever spoke with
 24 any members of his family?
 25 A. Not that I recall. It's been a long

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1 time. I don't remember.
 2 Q. If you did, is that something you
 3 would have noted?
 4 A. If there was anything significant
 5 pertaining to the patient.
 6 Q. Every time you visited Mr. Heifetz's
 7 room and spoke with him, did you create a
 8 progress note?
 9 A. Not necessarily.
 10 Q. Okay. Can you give me examples of
 11 what times you would have created it and not
 12 created it and the reasons?
 13 A. Like I mentioned before, it's usually
 14 when we see the patients, it would be episodic
 15 visits or if it's review of labs, then we will
 16 see the patient. But if I'm just in the
 17 facility and the patient stops me and just asks
 18 a question that I cannot understand, then there
 19 is no need for me to document it.
 20 Q. Okay. Okay. Now I am going to show
 21 you another note. It's on Bates 229.
 22 January 23rd. It is created by Javier. You
 23 see that one right in the middle?
 24 A. Yes.
 25 Q. Okay. And then there is note right

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1 below it that was created by you, correct?
 2 A. Yes.
 3 Q. So just go ahead and skim your note.
 4 I am not going to have you read it for me. But
 5 do you note anywhere in this note that
 6 Mr. Heifetz had pressure ulcers?
 7 A. Not at this time because I think
 8 wound care was following the patient.
 9 Q. Okay. Okay. So what do you mean
 10 by -- I don't understand your statement. Can
 11 you explain it for me?
 12 A. Because Dr. Baltar had already put an
 13 order for wound care to follow, so when they
 14 were following, they would have seen maybe the
 15 development of the wounds and continued taking
 16 care of the wounds because they are the wound
 17 specialist.
 18 Q. Okay. Okay. So by the time you saw
 19 Mr. Heifetz on the day, Dr. Baltar was notified
 20 of the wounds?
 21 A. It says on the note created he spoke
 22 to Dr. Shanna and he was given orders, so.
 23 Q. Right, right. So that looks like
 24 that was at 18:20, right?
 25 A. Uh-huh.

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1 Q. Okay. So then below that, that was
2 like 20 minutes prior you saw Mr. Heifetz,
3 right?

4 A. Yes.

5 Q. Okay. So down here on Number 3, you
6 say "LLE lesions."

7 A. Yes.

8 Q. What does that mean?

9 A. **Left lower extremity lesion, which**
10 **means the opening -- wound openings.**

11 Q. Okay.

12 A. **So I clarified secondary to vascular**
13 **insufficiency, wound care to continue to**
14 **manage.**

15 Q. Okay. What's two out of two vascular
16 insufficiency?

17 A. **Secondary to vascular insufficiency.**

18 Q. So did you create that note with the
19 understanding that the sores were caused by the
20 vascular insufficiency?

21 A. **Usually that's it because he had the**
22 **lesions -- like I said earlier, when you have**
23 **chronic vascular insufficiency, your skin is --**
24 **changes color because you are not getting**
25 **enough circulation, so that's why I knew that**

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1 **the lower extremities would be a result of his**
2 **poor circulation.**

3 Q. Okay. So wounds that occur from --
4 strike that.

5 Wounds that occur from vascular
6 insufficiency, are those different than
7 pressure ulcers or are they the same thing?

8 A. **They are different.**

9 Q. Okay. And so when you wrote this
10 note, it was your understanding that the wounds
11 were caused by vascular insufficiency?

12 A. **The ones on the left lower extremity.**

13 Q. On the left lower extremity.

14 Were there additional -- when you say
15 left lower extremity, what body part are you
16 talking about? Are you just talking about a
17 calf? Are you talking about a foot? Are you
18 talking about the whole thing?

19 A. **The calf area.**

20 Q. Okay. So based on this note, did he
21 have sores anywhere else?

22 MS. TURPEN: Form.

23 THE WITNESS: Not that I noted.

24 BY MS. WISE:

25 Q. Do you know one way or the other if

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1 he had sores anywhere else or do you have an
2 independent recollection of that?

3 MS. TURPEN: Form.

4 THE WITNESS: The leg was dressed so
5 I wouldn't know specific areas where they were
6 because the wound care did the dressings.

7 BY MS. WISE:

8 Q. Okay. So the wound care had already
9 saw Mr. Heifetz at this point?

10 A. **I'm not sure about the schedule, but**
11 **when I saw -- I see him, the wounds were**
12 **dressed because he was already under wound care**
13 **management.**

14 MS. WISE: Okay. Okay. All right.

15 Let's take a quick ten-minute break so I could
16 get some more water because my voice is
17 cracking and then we will try to finish up
18 quickly. Okay, Miriam?

19 THE WITNESS: Okay.

20 VIDEOGRAPHER: We are off the record
21 at 1:40 p.m.

22 (Recess taken from 1:41 p.m. to
23 1:54 p.m.)

24 VIDEOGRAPHER: We are on the record
25 at 1:54 p.m. You may proceed.

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1 BY MS. WISE:

2 Q. Miriam, when you treated Barry, did
3 you ever see his sores?

4 A. **I treated him in the time they were**
5 **putting the dressings. I didn't see most of it**
6 **because it was covered with the dressings.**

7 Q. Okay. I am going to show you a
8 photo. This is Heifetz 4. Do you see this --
9 can you see this picture, Miriam?

10 A. Yes.

11 Q. Okay. Do you recall looking at
12 Mr. Heifetz's leg at any point?

13 A. **During the assessment.**

14 Q. Okay. When you ordered the
15 ultrasound, it was because there was swelling,
16 correct?

17 A. Yes.

18 Q. Okay. Is the swelling -- where was
19 the swelling located?

20 A. **In the ankle and the foot. In the**
21 **lower extremity.**

22 Q. Okay. So we see a photo here. Is
23 this the swelling that you had noted which
24 caused you to order an ultrasound?

25 A. **I can't deduce from this specific**

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1 **photo because I don't know when it was taken.**
 2 **Was it prior to my assessment or after?**

3 Q. Okay. Was the swelling similar to
 4 the swelling you see in this photo when you
 5 ordered an ultrasound?

6 **A. From the ankle, it seems slightly,**
 7 **yeah, slightly the same.**

8 Q. Okay. Also I am going to show you
 9 Heifetz 3. Do you see that photo?

10 **A. Uh-huh, yes.**

11 Q. Was the swelling similar to what we
 12 see in this photo when you ordered the
 13 ultrasound?

14 MS. TURPEN: Form.

15 THE WITNESS: I can't recall the
 16 specifics, but it was like I indicated around
 17 the ankle area, swollen around the ankle area.

18 BY MS. WISE:

19 Q. Did you determine a cause of the
 20 swelling?

21 **A. I used my clinical judgment because I**
 22 **can't determine that I used my clinical**
 23 **judgment, that's why I ordered the ultrasound**
 24 **to rule out.**

25 Q. Okay. To rule out a blood clot,

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1 Q. When you evaluated Mr. Heifetz or
 2 helped change his dressing as you stated
 3 earlier or was around for the changing of his
 4 dressing, you noted that you had seen his sores
 5 on his lower extremities, correct?

6 **A. I said I saw the surgical incision.**

7 Q. Oh, you saw a surgical incision?

8 **A. Yes.**

9 Q. I'm sorry. Okay. You saw the
 10 surgical incision from the hip replacement?

11 **A. Yes.**

12 Q. Once the pressure sores were
 13 discovered, you told me earlier that you saw
 14 Mr. Heifetz's sores.

15 **A. Yes, I saw the sores, but most of**
 16 **them were covered with the dressing.**

17 Q. Okay. Okay. So you made a
 18 determination that some of the sores were
 19 secondary to the vascular insufficiency,
 20 correct?

21 **A. I said usually --**

22 MR. ROURKE: Sorry, Doctor. Object
 23 to the form. Mischaracterizes her prior
 24 testimony.

25 MS. TURPEN: Join.

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1 right?

2 **A. To rule out DVT, deep vein**
 3 **thrombosis.**

4 Q. Okay. Now, there's some red marks on
 5 what looks to be his ankle. Do you see that?

6 **A. From the picture, I don't see the**
 7 **color.**

8 Q. Right in this area, do you see the
 9 marks in this area?

10 **A. Yeah. It's difficult to tell the**
 11 **color. I'm not sure. I can't.**

12 Q. Did you make a determination during
 13 the treatment of Mr. Heifetz as to what caused
 14 these marks on his body?

15 MS. TURPEN: Object to form.
 16 Foundation.

17 THE WITNESS: No. Like I said, when
 18 I looked at the leg, I just used my clinical
 19 judgment that there was swelling but -- and he
 20 had chronic venous insufficiency, so.

21 BY MS. WISE:

22 Q. Okay. Now I am going to show you, I
 23 think this is Heifetz 5. Do you see this
 24 photo?

25 **A. Yes.**

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1 THE WITNESS: I said it's because of
 2 his venous insufficiency. He -- like he had
 3 the disposition for the lesions.

4 BY MS. WISE:

5 Q. Okay. What sore were you referencing
 6 or sores were you referencing when you stated
 7 that it was secondary to the vascular
 8 insufficiency?

9 **A. The one on the shin. The one on the**
 10 **shin area, which he had the dressing on.**

11 Q. Now, I am showing you a picture of a
 12 sore on his heel and the back of his, I guess,
 13 ankle. Do you see the sores?

14 **A. Yes.**

15 Q. Did you ever see these sores on
 16 Mr. Heifetz during your treatment of him at the
 17 facility?

18 MR. ROURKE: I am going to pose an
 19 objection. Form, foundation, speculation, and
 20 a mischaracterization of the evidence. The
 21 date on that picture is --

22 MS. TURPEN: Join, and also asked and
 23 answered.

24 BY MS. WISE:

25 Q. What was your answer because I had

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1 not asked it before? What did you say, Miriam?
 2 **A. No. Because they were being treated**
 3 **by the wound care. So anytime I went for**
 4 **assessment, they had the dressing on so I**
 5 **didn't visualize him.**

6 Q. Based on your education and
 7 experience as a nurse, if a patient presents
 8 with sores on their heel like this, would you
 9 say that they are secondary to vascular
 10 insufficiency or are they more likely than not
 11 caused by pressure sores?

12 MR. ROURKE: Object to the form of
 13 the question.

14 MS. TURPEN: Join. Incomplete
 15 hypothetical.

16 THE WITNESS: I can't -- that's why
 17 there was a wound consult to determine and
 18 follow up on it is indicated they would make
 19 the decision whether it was a pressure sore or
 20 generalized because of his chronic venous
 21 insufficiency.

22 BY MS. WISE:

23 Q. Go ahead. I'm sorry.

24 **A. The wound doctor would create the**
 25 **treatment depending on what the -- they**

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1 MR. ROURKE: Join.

2 THE WITNESS: Just the basic
 3 understanding that is created by an extremity
 4 under pressure.

5 BY MS. WISE:

6 Q. What's your understanding?

7 **A. That the extremity, whatever area has**
 8 **been -- is exposed to too much pressure can**
 9 **develop -- the patient can develop an ulcer, a**
 10 **pressure ulcer.**

11 Q. And I know you said it is not your
 12 area, but have you ever treated a pressure sore
 13 before?

14 **A. No.**

15 Q. Based on your education and
 16 experience, you would agree that it takes time
 17 for a pressure ulcer to form, correct?

18 MR. ROURKE: Object to the form of
 19 the question.

20 MS. TURPEN: Form, foundation,
 21 incomplete hypothetical, and scope.

22 MR. ROURKE: Join in all of those as
 23 well as mine.

24 Are you able to hear me?

25 VIDEOGRAPHER: Yes.

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1 **determined is the specialty --**

2 Q. So is it -- I'm so sorry. I thought
 3 you were done.

4 **A. No, that's okay.**
 5 **-- for the wounds.**

6 Q. So is it your testimony that it's up
 7 to the wound care doctor to determine the cause
 8 of the sores?

9 **A. Yes, because they are the specialty.**
 10 **Definitely.**

11 Q. So it's fair to say you don't know
 12 one way or the other whether Mr. Heifetz's
 13 sores were caused by pressure ulcers or his
 14 vascular insufficiency, right?

15 MS. TURPEN: Form. Foundation.
 16 Mischaracterizes her prior testimony.

17 Go ahead, Miriam.

18 THE WITNESS: I won't speculate on
 19 the cause because that's why we were leaving
 20 everything for the wound specialist to manage,
 21 to treatment and manage the wounds.

22 BY MS. WISE:

23 Q. Do you have an understanding of what
 24 a pressure sore is?

25 MS. TURPEN: Form.

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1 MR. ROURKE: Okay. I just wanted to
 2 make sure.

3 BY MS. WISE:

4 Q. Did you answer the question, Miriam?

5 **A. I think the wounds, we can say it**
 6 **depends on the individual. Some patients are**
 7 **high risk and others are not so I can't put a**
 8 **specific note on that --**

9 Q. Is a -- I'm sorry.

10 Is a patient at a higher risk, does
 11 that mean their sores are more likely to form
 12 quicker or --

13 MS. TURPEN: Form. Foundation.
 14 Incomplete hypothetical. Scope.

15 MR. ROURKE: Join.

16 BY MS. WISE:

17 Q. What do you mean by that statement?

18 **A. I don't know how fast or how slow**
 19 **they develop, the individual.**

20 Q. Would you agree that if pressure
 21 sores are left untreated, they would generally
 22 get worse over time?

23 MR. ROURKE: Object to the form.
 24 Foundation. Speculation. It is an incomplete
 25 hypothetical.

<p style="text-align: right;">Page 133</p> <p>1 MS. TURPEN: Join.</p> <p>2 THE WITNESS: Information that I have</p> <p>3 not treated any pressure sores. So I am not</p> <p>4 sure if I can give you the right assessment as</p> <p>5 to if they are left untreated or not what's the</p> <p>6 result.</p> <p>7 BY MS. WISE:</p> <p>8 Q. Would you agree that if wounds are</p> <p>9 developing, they should be documented in the</p> <p>10 medical record?</p> <p>11 MS. TURPEN: Form. Foundation.</p> <p>12 Scope.</p> <p>13 MR. ROURKE: I will join in those,</p> <p>14 but I didn't hear the full question, so.</p> <p>15 MS. WISE: Do you want me to repeat</p> <p>16 the question?</p> <p>17 THE WITNESS: Yes, please.</p> <p>18 BY MS. WISE:</p> <p>19 Q. Okay. You would agree that if wounds</p> <p>20 are developing, they should be documented in</p> <p>21 the medical records, correct?</p> <p>22 MR. ROURKE: Same objections.</p> <p>23 MS. TURPEN: Join.</p> <p>24 THE WITNESS: I think protocol should</p> <p>25 be followed on treatment or any treatments that</p>	<p style="text-align: right;">Page 135</p> <p>1 the question.</p> <p>2 MS. TURPEN: Join. Asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I can't speak for -- I</p> <p>5 was documenting on my behalf, but I can't speak</p> <p>6 for people's practices and documentation style.</p> <p>7 BY MS. WISE:</p> <p>8 Q. Now, you are the doctor responsible</p> <p>9 for Barry Heifetz's care, so do you think it</p> <p>10 would have been helpful to you if the staff at</p> <p>11 Spanish Hills had noted things like developing</p> <p>12 pressure ulcers in the chart?</p> <p>13 MR. ROURKE: Object to the form.</p> <p>14 Objection. Incomplete hypothetical, calls for</p> <p>15 speculation, argumentative, and assumes facts</p> <p>16 not in evidence.</p> <p>17 MS. TURPEN: Join.</p> <p>18 THE WITNESS: I can't -- I can't say</p> <p>19 either way because they are documenting a</p> <p>20 separate chart and we do our documentation</p> <p>21 separately because of our different roles.</p> <p>22 BY MS. WISE:</p> <p>23 Q. Okay. So when they note something in</p> <p>24 their chart, it's not something you look at?</p> <p>25 MR. ROURKE: Object to the form.</p>
<p style="text-align: right;">Page 134</p> <p>1 arise for patients under their care plan, what</p> <p>2 is developed in the care plan.</p> <p>3 BY MS. WISE:</p> <p>4 Q. Okay. So protocols, do you believe</p> <p>5 protocols should include noting developing</p> <p>6 pressure wounds in a patient's chart?</p> <p>7 MS. TURPEN: Form and foundation and</p> <p>8 scope.</p> <p>9 THE WITNESS: Like I say, I don't</p> <p>10 develop the tools that they use to monitor and</p> <p>11 assess, so I can't attest to what information</p> <p>12 should be put in there because I am not</p> <p>13 familiar with the documentation on how they</p> <p>14 generate that information.</p> <p>15 BY MS. WISE:</p> <p>16 Q. Right. But when you first saw Barry</p> <p>17 and you saw that he had some sores, you noted</p> <p>18 it in your chart, right?</p> <p>19 A. Because that was what I saw, but</p> <p>20 if -- that is what I saw on my assessment.</p> <p>21 Q. So would you expect other providers</p> <p>22 to do what you did and note things in the chart</p> <p>23 if they saw pressure sores developing? Would</p> <p>24 you expect them to note that?</p> <p>25 MR. ROURKE: Object to the form of</p>	<p style="text-align: right;">Page 136</p> <p>1 MS. TURPEN: Go ahead, Rob.</p> <p>2 MR. ROURKE: Object to the form of</p> <p>3 the question.</p> <p>4 MS. TURPEN: Yes. Join and</p> <p>5 mischaracterizes testimony.</p> <p>6 THE WITNESS: I just said the forms</p> <p>7 that they use for documentation, we don't</p> <p>8 access them because they are not our -- they</p> <p>9 are not the tools that we use.</p> <p>10 BY MS. WISE:</p> <p>11 Q. So how does a nurse at Spanish Hills</p> <p>12 communicate a patient's condition with you?</p> <p>13 MR. ROURKE: Object to the form of</p> <p>14 the question.</p> <p>15 MS. TURPEN: Join.</p> <p>16 THE WITNESS: Sometimes they would</p> <p>17 communicate verbally if I am available or if I</p> <p>18 am on call, they would use an answering</p> <p>19 service.</p> <p>20 BY MS. WISE:</p> <p>21 Q. So it is never when they evaluate a</p> <p>22 patient, it is never an issue where they put it</p> <p>23 in the chart for you to see later?</p> <p>24 MS. TURPEN: Form.</p> <p>25 MR. ROURKE: Join.</p>

<p style="text-align: right;">Page 137</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. WISE:</p> <p>3 Q. Do you know if any of the nursing</p> <p>4 staff or staff in general at Spanish Hills ever</p> <p>5 communicated with you about Mr. Heifetz?</p> <p>6 MR. ROURKE: Object to the form of</p> <p>7 the question.</p> <p>8 MS. TURPEN: Join.</p> <p>9 THE WITNESS: They'll communicate</p> <p>10 whatever I address is what they will</p> <p>11 communicate to me.</p> <p>12 BY MS. WISE:</p> <p>13 Q. And did they communicate anything</p> <p>14 with you?</p> <p>15 MR. ROURKE: Object to the form of</p> <p>16 the question.</p> <p>17 MS. TURPEN: Join.</p> <p>18 THE WITNESS: It's evident with my</p> <p>19 note they did communicate about the -- and I</p> <p>20 just did, so.</p> <p>21 BY MS. WISE:</p> <p>22 Q. And after your review of the records,</p> <p>23 is that your only understanding of the only --</p> <p>24 strike that.</p> <p>25 Based on your review of the records,</p>	<p style="text-align: right;">Page 139</p> <p>1 those times.</p> <p>2 A. Since 2019, there wouldn't</p> <p>3 communications that I recall off the top of my</p> <p>4 head which exactly they communicated, and I've</p> <p>5 seen so many patients at that time -- exactly</p> <p>6 not specific for Mr. Heifetz. So if he was my</p> <p>7 patient or if there was anything, I would</p> <p>8 communicate, but I can't think of any specific.</p> <p>9 Q. Now, I know it is not your job to</p> <p>10 check for wounds forming, but would you expect</p> <p>11 the staff at Spanish Hills to check your</p> <p>12 patient when they are doing their evaluations</p> <p>13 for developing wounds?</p> <p>14 MR. ROURKE: Object to the form of</p> <p>15 the question, argumentative, assumes facts not</p> <p>16 in evidence, mischaracterizes prior testimony.</p> <p>17 MS. TURPEN: Join.</p> <p>18 THE WITNESS: I would assume they</p> <p>19 follow the care plan and use it as indicated.</p> <p>20 That was what they found they would follow</p> <p>21 that. Like I said, I don't have access to</p> <p>22 their care plan in what the -- the skin</p> <p>23 assessments.</p> <p>24 BY MS. WISE:</p> <p>25 Q. So if their care plan did not include</p>
<p style="text-align: right;">Page 138</p> <p>1 is that the only time the nursing staff or the</p> <p>2 staff in general communicated with you</p> <p>3 regarding Mr. Heifetz?</p> <p>4 MR. ROURKE: Object to the form of</p> <p>5 the question.</p> <p>6 MS. TURPEN: Join.</p> <p>7 Go ahead, Rob. Sorry.</p> <p>8 MR. ROURKE: It mischaracterizes her</p> <p>9 prior testimony, assumes facts not in evidence,</p> <p>10 and argumentative.</p> <p>11 But go ahead.</p> <p>12 MS. WISE: It is not -- asking her</p> <p>13 question.</p> <p>14 MR. ROURKE: Well, she has already</p> <p>15 testified that she wrote about the lower left</p> <p>16 extremity issue, so you omitted that in your</p> <p>17 question. So it was a misleading question.</p> <p>18 That's what I am saying. I am staying on my</p> <p>19 objections.</p> <p>20 BY MS. WISE:</p> <p>21 Q. Tell me -- just tell -- I am not</p> <p>22 trying to trick you, Miriam. I just want to</p> <p>23 know every time one of the nurses said, hey,</p> <p>24 Miriam, there is an issue with Mr. Heifetz that</p> <p>25 I want to tell you about. I just want to know</p>	<p style="text-align: right;">Page 140</p> <p>1 checking for wounds, you don't have an issue</p> <p>2 with that?</p> <p>3 MR. ROURKE: Object to the form of</p> <p>4 the question.</p> <p>5 MS. TURPEN: Join. Argumentative.</p> <p>6 THE WITNESS: I'm not responsible for</p> <p>7 the document because we don't use that tool, so</p> <p>8 I've no reason for me to argue whether the skin</p> <p>9 assessment is in there or not. If that was the</p> <p>10 tool that was given to them, then they use it</p> <p>11 according to what is indicated. So I can't say</p> <p>12 put this into the tool which I don't use and I</p> <p>13 have no control over.</p> <p>14 BY MS. WISE:</p> <p>15 Q. I am not asking you about this care</p> <p>16 plan. You keep going back to that, but my</p> <p>17 question had nothing to do with that. So my</p> <p>18 question is different.</p> <p>19 I just want to know what you</p> <p>20 expect -- he is your patient, so is it just</p> <p>21 okay for nurses to not check the skin of your</p> <p>22 patient or would you want --</p> <p>23 MR. ROURKE: Sorry. I thought you</p> <p>24 were done.</p> <p>25 MS. WISE: Go ahead.</p>

<p style="text-align: right;">Page 141</p> <p>1 MR. ROURKE: Are you done with your 2 question? I'm sorry. 3 MS. WISE: Yeah, go ahead. 4 MR. ROURKE: Object to the form of 5 the question, argumentative, assumes facts not 6 in evidence, it's an incomplete hypothetical on 7 top of that, and mischaracterizes her prior 8 testimony. 9 MS. TURPEN: Join. 10 THE WITNESS: From my understanding, 11 you are saying is it okay for them not to do 12 the skin assessment? 13 BY MS. WISE: 14 Q. Or check the skin in general. The 15 skin assessment probably has an actual 16 procedure attached to it. That is not what I 17 am asking. 18 I am asking do you want nurses to be 19 checking your patient's skin when they are in 20 their bed? 21 MR. ROURKE: Same objection. 22 MS. TURPEN: Join. 23 THE WITNESS: Going back to the same 24 thing that nurses have their own job 25 description so -- and they are not under my</p>	<p style="text-align: right;">Page 143</p> <p>1 MR. ROURKE: Object to the form of 2 the question. Same objections. 3 MS. TURPEN: Join. 4 THE WITNESS: I would expect them to 5 follow the protocol on skin assessment on all 6 patients as indicated. 7 BY MS. WISE: 8 Q. Is there a certain number of -- 9 strike that. 10 How often do you want your patient's 11 skin to be assessed? Let's say a patient who 12 does have vascular insufficiency, neuropathy, 13 and can't ambulate on their own, how often do 14 you want somebody going in and checking their 15 skin? 16 MS. TURPEN: Form and incomplete 17 hypothetical. Calls for speculation. 18 MR. ROURKE: Join. 19 THE WITNESS: As far as I understand 20 the protocol is they have their times assigned 21 and they follow the protocol. So it's not me 22 coming in and wanting what I want for the 23 patients. It's what they follow for all of the 24 patients. How many times they do the skin 25 assessment is part of the facility assignments.</p>
<p style="text-align: right;">Page 142</p> <p>1 direct supervision, so my understanding would 2 be they would follow what is part of the job 3 description, if it's skin assessment or if it's 4 wound treatment. 5 BY MS. WISE: 6 Q. So if that's not part of their job 7 description, then -- and it is not getting a 8 skin assessment or your patient's skin is not 9 being checked, you don't have an issue with 10 that? 11 MR. ROURKE: Object to the form of 12 the question. Assumes facts not in evidence. 13 Argumentative. 14 MS. TURPEN: Join. 15 MR. ROURKE: Mischaracterizes prior 16 testimony. 17 MS. TURPEN: Join. 18 THE WITNESS: I don't think it's 19 anything to do about me having an issue. It's 20 people following the protocol in their job 21 description. 22 BY MS. WISE: 23 Q. And you expect people who are putting 24 hands on your patient would follow their job 25 protocols and descriptions though, correct?</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MS. WISE: 2 Q. So you don't have a specific time 3 frame that you require it to be done on your 4 patients? 5 A. No. 6 Q. We talked a little bit earlier about 7 when -- like the severity of things and nursing 8 staff or staff in general communicating to you, 9 and we were saying it's hard to quantify 10 severity. Do you remember that testimony? 11 A. Yes. 12 Q. Okay. If medical staff identified 13 redness or inflammation on one of your 14 patient's skin, is that something you would 15 want communicated to you? 16 MR. ROURKE: Object to the form of 17 the question. 18 MS. TURPEN: Join. 19 THE WITNESS: Yeah. Like I say, it's 20 a nursing judgment. If it's a -- I mean, 21 there's degrees of everything. You can't just 22 see something red and communicate to me. 23 Sometimes they use their judgment, and they 24 have treatment nurses to look at that. So 25 depending on the severity or whatever they look</p>

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1 at, they will communicate some issues and some
2 of the issues they will follow their protocol.

3 BY MS. WISE:

4 Q. Okay. How about like skin breakdown,
5 is that something you would expect that they
6 would communicate with you?

7 MR. ROURKE: Object to the form of
8 the question. Incomplete hypothetical.

9 THE WITNESS: It's the same thing.
10 Skin breakdown, skin redness. It's you follow
11 the protocol and where indicated they would.

12 I'm not a wound specialist, so the
13 wound wouldn't necessarily address it with me.
14 They would maybe followup with the wound
15 treatment nurses and the wound doctor because I
16 don't -- I'm not a wound specialist.

17 BY MS. WISE:

18 Q. Do you have an understanding of why
19 the staff at Spanish Hills contacted Dr. Baltar
20 instead of you when Mr. Heifetz's sores were
21 first noted?

22 **A. Depending on the time. Sometimes she**
23 **was on call or I was not available. So just**
24 **because she was not in the facility, we covered**
25 **the patients as a group but I was responsible**

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1 **for him, so it could have been she was not on**
2 **call -- she was on call or I was not available.**

3 Q. Okay. But it is not a situation
4 where patient changes are communicated all to
5 Director Baltar -- I'm sorry, Dr. Baltar. You
6 are responsible for the patient. So if you are
7 available or in the building, you would expect
8 it to come to you, correct?

9 **A. Yes.**

10 Q. Okay. Would you agree that if a
11 patient's skin breaks down and it goes
12 untreated, it can cause infection?

13 MR. ROURKE: Object to the form of
14 the question. Incomplete hypothetical. Calls
15 for speculation. Lacks foundation.

16 MS. TURPEN: Join.

17 THE WITNESS: I think it's an
18 overgeneralization that every wound causes
19 infections, so I can't attest to that because
20 infection comes in different forms, so I can't,
21 yeah.

22 BY MS. WISE:

23 Q. My question wasn't does every one
24 cause infection. I said, can it? Can that be
25 one thing that happens if a sore goes

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1 untreated, can it get infected?

2 MR. ROURKE: Objection.

3 MS. TURPEN: Same objections. Join.

4 THE WITNESS: It can.

5 BY MS. WISE:

6 Q. Okay. I am going to show you
7 Page 124. Okay. Can you see this document,
8 Miriam?

9 **A. Hello?**

10 Q. Can you hear me?

11 **A. Yes, I can. Yeah.**

12 Q. Can you see this document?

13 **A. On top? Yes, I can.**

14 Q. Yeah, okay. So it looks like this is
15 the orders created regarding Mr. Heifetz's
16 sores. Does that appear to be correct?

17 **A. I didn't create -- sorry.**

18 MR. ROURKE: Go ahead. Sorry.

19 THE WITNESS: I didn't create the
20 document, so I don't know how it was generated.

21 BY MS. WISE:

22 Q. Okay. That's fair. Did you create
23 the orders for Mr. Heifetz's heels or was that
24 something done by the wound care doctor?

25 MR. ROURKE: Object to the form of

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1 the question.

2 MS. TURPEN: Join.

3 THE WITNESS: It was -- I didn't
4 create the order myself.

5 BY MS. WISE:

6 Q. Okay. So under this order where it
7 says, DTI left heel cleanse, do you have any
8 understanding of what that means?

9 **A. No. I didn't create the order so I**
10 **don't know exactly what they meant by DTI.**

11 Q. Okay. Do you know the name of the
12 person who created the orders?

13 **A. I don't because it's a form that I**
14 **don't use so I'm not sure where it shows the**
15 **name of who created it.**

16 Q. Okay. Now, you didn't create any
17 notes or records noting the location, size,
18 shape, odor, characteristics of Mr. Heifetz's
19 wounds, correct?

20 **A. Yes.**

21 Q. Have you ever seen records that note
22 the size, shape, location, odor, or
23 characteristics of Mr. Heifetz's wounds?

24 **A. No.**

25 MR. ROURKE: Object to the form of

<p style="text-align: right;">Page 149</p> <p>1 the question.</p> <p>2 MS. TURPEN: Join.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. WISE:</p> <p>5 Q. Now, if a patient has pressure sores</p> <p>6 and the dressing becomes soiled, would you</p> <p>7 agree that they should be changed immediately?</p> <p>8 MR. ROURKE: Object to the form of</p> <p>9 the question.</p> <p>10 MS. TURPEN: Join, and incomplete</p> <p>11 hypothetical.</p> <p>12 THE WITNESS: Since I was not</p> <p>13 treating the wounds and I wasn't the wound-care</p> <p>14 MD, they should have protocols on how they deal</p> <p>15 with the dressing wounds coming on and off.</p> <p>16 BY MS. WISE:</p> <p>17 Q. So you don't have an opinion one way</p> <p>18 or another as to how often dressing should be</p> <p>19 changed; is that correct?</p> <p>20 MR. ROURKE: Same objections.</p> <p>21 Incomplete --</p> <p>22 MS. TURPEN: Join.</p> <p>23 THE WITNESS: It all comes under the</p> <p>24 treatment and care plan of the wound care team</p> <p>25 because they are managing and treating the</p>	<p style="text-align: right;">Page 151</p> <p>1 BY MS. WISE:</p> <p>2 Q. Okay. During the time that</p> <p>3 Mr. Heifetz was at Spanish Hills, he was also</p> <p>4 undergoing physical therapy, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Who ordered the physical therapy?</p> <p>7 A. It's ordered on admission.</p> <p>8 Q. So does that mean that that would</p> <p>9 have been something that was ordered by</p> <p>10 Summerlin Hospital, which is the place he came</p> <p>11 from?</p> <p>12 MR. ROURKE: Object to the form of</p> <p>13 the question.</p> <p>14 MS. TURPEN: Join.</p> <p>15 THE WITNESS: Summerlin Hospital has</p> <p>16 no jurisdiction on what happens in the skilled</p> <p>17 facility. Skilled facilities have their own</p> <p>18 care plan and the patient was coming for rehab,</p> <p>19 so obviously the facility, the admitting doctor</p> <p>20 ordered physical therapy and that's what he's</p> <p>21 coming into the facility for.</p> <p>22 BY MS. WISE:</p> <p>23 Q. Okay. So that was kind of my</p> <p>24 question. Physical therapy was not ordered by</p> <p>25 you, correct?</p>
<p style="text-align: right;">Page 150</p> <p>1 wound.</p> <p>2 BY MS. WISE:</p> <p>3 Q. So you don't have an opinion</p> <p>4 regarding whether the wound care team properly</p> <p>5 changed the dressings; is that correct?</p> <p>6 A. I don't think I can form an opinion</p> <p>7 on an area that I am not treating and</p> <p>8 specialized in and giving them instructions on</p> <p>9 what to do if I'm not responsible for that part</p> <p>10 of the care plan.</p> <p>11 Q. I'm sorry. I think you told me</p> <p>12 you've never treated a pressure ulcer before,</p> <p>13 correct?</p> <p>14 MR. ROURKE: Objection. Asked and</p> <p>15 answered.</p> <p>16 MS. TURPEN: Join.</p> <p>17 THE WITNESS: Not as -- on my role as</p> <p>18 a mid-level provider.</p> <p>19 BY MS. WISE:</p> <p>20 Q. So are you aware of the different</p> <p>21 phases of a pressure ulcer?</p> <p>22 MS. TURPEN: Form.</p> <p>23 MR. ROURKE: Join.</p> <p>24 THE WITNESS: That's a specialty, so</p> <p>25 I won't know the different stages.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. No.</p> <p>2 Q. Okay. So it could have been ordered</p> <p>3 by Spanish Hills or even Dr. Baltar?</p> <p>4 MR. ROURKE: Object to the form of</p> <p>5 the question. Mischaracterizes her testimony</p> <p>6 right there and asked and answered.</p> <p>7 MS. TURPEN: Join.</p> <p>8 MS. WISE: I don't know how it</p> <p>9 mischaracterizes her testimony when she said it</p> <p>10 could have been done at the care plan which she</p> <p>11 keeps referencing, which is Spanish Hills, or</p> <p>12 the physician who originally evaluated, which</p> <p>13 was Dr. Baltar.</p> <p>14 MR. ROURKE: At least I didn't hear</p> <p>15 the term care plan when she said it would have</p> <p>16 been ordered by the admitting doctor.</p> <p>17 MS. WISE: No, she didn't. She also</p> <p>18 meant the care plan.</p> <p>19 BY MS. WISE:</p> <p>20 Q. So that's my question. Would it have</p> <p>21 been Dr. Baltar? Would it have been somebody</p> <p>22 at Spanish Hills, do you know?</p> <p>23 MR. ROURKE: I will object to the</p> <p>24 form.</p> <p>25 Go ahead. I'm sorry, Shannon. I</p>

<p style="text-align: right;">Page 153</p> <p>1 didn't mean to get short with you. I didn't 2 think you were done. 3 MS. WISE: Okay. 4 MR. ROURKE: Please finish so I can 5 object. 6 MS. WISE: Don't object. That was 7 the question. I just want to know. 8 MR. ROURKE: Okay. Then I guess I 9 will interpose my objection. Assumes facts not 10 in evidence. Mischaracterizes the testimony. 11 Asked and answered. 12 MS. TURPEN: Join. 13 MR. ROURKE: And I will object to the 14 form as well. 15 MS. TURPEN: Join. 16 THE WITNESS: It would have been 17 ordered by Admitting Physician Dr. Baltar. 18 It's standard. 19 BY MS. WISE: 20 Q. What do you mean standard? 21 A. Because she saw the patient first so 22 she ordered things that the patient needs to be 23 taken care of in the rehab. 24 Q. Okay. After Mr. Heifetz's wounds 25 were discovered, who would have been</p>	<p style="text-align: right;">Page 155</p> <p>1 clinical indication in physical therapy and 2 rehab. If they think the patient cannot do the 3 therapy, then they can address it. But I don't 4 recall any incidents where that would be the 5 reason for him to have his care plan changed as 6 far as physical therapy is concerned. 7 BY MS. WISE: 8 Q. Okay. Once Mr. Heifetz's wounds were 9 discovered, was he able to ambulate on those 10 wounds? 11 MR. ROURKE: Object to the form of 12 the question. 13 MS. TURPEN: Join. 14 THE WITNESS: I will hope we did 15 review the physical therapy and occupational 16 notes to indicate if there was any lapse in 17 therapy, but I can't attest to that because 18 that's a different department. 19 BY MS. WISE: 20 Q. At any time during the treatment of 21 Mr. Heifetz, do you recall if you communicated 22 with Dr. Baltar regarding his care? 23 A. Not that I recall. 24 Q. If you had communicated with 25 Dr. Baltar about his care, would that be</p>
<p style="text-align: right;">Page 154</p> <p>1 responsible for changing the physical therapy 2 treatment plan? Would that be something you 3 could perform or would that only be Dr. Baltar 4 since she created the order? 5 MS. TURPEN: Form. Foundation. 6 THE WITNESS: Can you clarify your 7 question because I don't understand the change 8 with PT, physical therapy? 9 BY MS. WISE: 10 Q. Okay. That's fair. 11 So after Mr. Heifetz's wounds were 12 discovered, he was still undergoing physical 13 therapy, correct? 14 MR. ROURKE: Object to the form of 15 the question. 16 MS. TURPEN: Join. 17 THE WITNESS: My understanding, he 18 was waiting for physical therapy. 19 BY MS. WISE: 20 Q. And did you ever change his physical 21 therapy treatment plan while he was at Spanish 22 Hills? 23 MS. TURPEN: Form. Foundation. 24 Scope. 25 THE WITNESS: No. There was no</p>	<p style="text-align: right;">Page 156</p> <p>1 something that would be noted in the medical 2 records? 3 MS. TURPEN: Form. 4 THE WITNESS: I did [sic] communicate 5 with her so I don't see what information could 6 have been documented if I had any communication 7 with her regarding specifically Mr. Hoffman -- 8 the patient. 9 BY MS. WISE: 10 Q. Heifetz. 11 So you just said you don't remember 12 communicating with her and then just right now, 13 you said, I did communicate with her. 14 A. I said I did not communicate with 15 Dr. Baltar. 16 Q. Okay. I'm so sorry. I misunderstood 17 you. Okay. Okay. So now we are coming to the 18 end. 19 All right. I am going to show you 20 Page 268. Do you see this page, Miriam? 21 A. Yes. 22 Q. So it says Discharge Summary on the 23 top, right? 24 A. Yes. 25 Q. What is your understanding of this</p>

<p style="text-align: right;">Page 157</p> <p>1 document?</p> <p>2 A. That's the one we create upon</p> <p>3 discharge, when patient is getting discharged</p> <p>4 to home or to a place of final destination.</p> <p>5 Q. Okay. So it says, discharge date,</p> <p>6 January 30, 2019. So that's the date he left</p> <p>7 Spanish Hills; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then it says, attending physician</p> <p>10 is Dr. Baltar. Dictating physician, it has</p> <p>11 your name. Does that mean you are the person</p> <p>12 that created this document?</p> <p>13 A. Yes.</p> <p>14 Q. Did you create this document with the</p> <p>15 assistance of Dr. Baltar?</p> <p>16 MS. TURPEN: Form.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. WISE:</p> <p>19 Q. Okay. So here you note, I am going</p> <p>20 to try to highlight it and hope you can see it,</p> <p>21 it says, the patient was also followed up</p> <p>22 closely by wound care secondary to lesions due</p> <p>23 to chronic vascular insufficiency. Do you see</p> <p>24 that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 159</p> <p>1 Are pressure ulcers secondary to the</p> <p>2 vascular insufficiency?</p> <p>3 A. No.</p> <p>4 MS. TURPEN: Form. Foundation.</p> <p>5 MR. ROURKE: Join.</p> <p>6 BY MS. WISE:</p> <p>7 Q. At the time you created this report,</p> <p>8 you don't know that there were separate</p> <p>9 pressure ulcers, correct?</p> <p>10 MR. ROURKE: Object to the form of</p> <p>11 the question. Assumes facts not in evidence.</p> <p>12 Argumentative. Incomplete testimony.</p> <p>13 MS. TURPEN: Join.</p> <p>14 THE WITNESS: Not to my recollection.</p> <p>15 BY MS. WISE:</p> <p>16 Q. So as you sit here today, is it your</p> <p>17 testimony that all of Mr. Heifetz's sores were</p> <p>18 caused by vascular insufficiency?</p> <p>19 MS. TURPEN: Form. Foundation.</p> <p>20 Misstates prior testimony.</p> <p>21 Go ahead.</p> <p>22 MR. ROURKE: Asked and answered, too.</p> <p>23 MS. TURPEN: Yes, asked and answered.</p> <p>24 THE WITNESS: I did specifically say</p> <p>25 all so I cannot attest to having documented</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. So here, are you just referencing the</p> <p>2 wounds that you could see that were created by</p> <p>3 the vascular insufficiency?</p> <p>4 MR. ROURKE: Object to the form of</p> <p>5 the question.</p> <p>6 MS. TURPEN: Join.</p> <p>7 THE WITNESS: I was referencing to</p> <p>8 the wounds that were being dressed by the wound</p> <p>9 care.</p> <p>10 BY MS. WISE:</p> <p>11 Q. Okay. So the way I read this, are</p> <p>12 you saying that all of the wounds that were</p> <p>13 being addressed by wound care were created by</p> <p>14 the vascular insufficiency?</p> <p>15 MS. TURPEN: Form. Foundation.</p> <p>16 Misstates prior testimony.</p> <p>17 THE WITNESS: I was saying the</p> <p>18 dressings that I was seeing were secondary to</p> <p>19 the -- the lesions were secondary to the</p> <p>20 vascular insufficiency.</p> <p>21 BY MS. WISE:</p> <p>22 Q. When you say secondary to, does that</p> <p>23 mean the same thing as caused by?</p> <p>24 A. Related to.</p> <p>25 Q. Related to, okay.</p>	<p style="text-align: right;">Page 160</p> <p>1 that all.</p> <p>2 BY MS. WISE:</p> <p>3 Q. Okay. At the time of trial, are you</p> <p>4 going to offer opinions that all of</p> <p>5 Mr. Heifetz's wounds were caused by vascular</p> <p>6 insufficiency?</p> <p>7 MS. TURPEN: Form. Foundation.</p> <p>8 Mischaracterizes prior testimony.</p> <p>9 THE WITNESS: I cannot attest to that</p> <p>10 because I am not specialized in that area.</p> <p>11 BY MS. WISE:</p> <p>12 Q. Okay. So at the time of trial, you</p> <p>13 are not going to offer opinions one way or the</p> <p>14 other whether all of them were caused by</p> <p>15 vascular insufficiency; is that correct?</p> <p>16 MS. TURPEN: Form, foundation, and</p> <p>17 mischaracterizes her prior testimony.</p> <p>18 MR. ROURKE: I am going to join.</p> <p>19 BY MS. WISE:</p> <p>20 Q. Go ahead, Miriam.</p> <p>21 A. No, I wouldn't attest one way or the</p> <p>22 other because --</p> <p>23 Q. Now, a little bit down here, it says</p> <p>24 the patient was continued on ACE wrap for his</p> <p>25 lower extremities. Do you see that?</p>

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1 A. Yes.

2 Q. Who created the order for ACE wrap in
3 lieu of compression stockings?

4 MR. ROURKE: Object to the form of
5 the question.

6 MS. TURPEN: Join.

7 THE WITNESS: I don't have specifics
8 on who created, but wound care if they were not
9 able to use the compression stockings. I am
10 not sure who created the document.

11 BY MS. WISE:

12 Q. So just so that I am aware, this
13 would not have been something that was created
14 by you, correct?

15 MR. ROURKE: Object to the form of
16 the question.

17 MS. TURPEN: Join.

18 THE WITNESS: I don't recall creating
19 the document.

20 BY MS. WISE:

21 Q. I'm sorry. Not the document. But
22 creating that order to use --

23 A. Yeah. I don't recall.

24 MR. ROURKE: Again, object to the
25 form of the question.

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1 treatment.

2 BY MS. WISE:

3 Q. So at the time of trial, are you
4 going to offer opinions one way or the other
5 regarding the use of ACE bandages?

6 MR. ROURKE: Object to the form of
7 the question.

8 MS. TURPEN: Yeah, join. Form.
9 Foundation.

10 THE WITNESS: No opinion because I
11 don't have the specialty in use of the ACE
12 wraps.

13 BY MS. WISE:

14 Q. Now, on the second to last sentence,
15 you say, overall, course of rehab stay was
16 uneventful. What does uneventful mean?

17 A. It usually means the patient didn't
18 have to maybe go back to the hospital because
19 his condition worsened. It means his course of
20 rehab stayed within the course of the 14 days
21 that is allocated for rehab.

22 Q. Okay. Now, when Mr. Heifetz left
23 Spanish Hills, did you create a treatment plan
24 for him to follow?

25 MS. TURPEN: Form.

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1 MS. TURPEN: Join.

2 MR. ROURKE: Assumes facts not in
3 evidence.

4 Go ahead.

5 BY MS. WISE:

6 Q. Miriam, have you ever used the use of
7 ACE bandages in place of compression stockings
8 for any patient you had ever treated?

9 MS. TURPEN: Form. Foundation.

10 MR. ROURKE: Yeah, object to the
11 form. Foundation.

12 BY MS. WISE:

13 Q. I am asking you based on patients
14 you've treated so you have the foundation to
15 answer this question.

16 A. I've not ordered them specifically
17 for wounds so I'm not sure of your question.
18 Is it just for particular for Mr. Heifetz or in
19 general?

20 Q. In general. Any patient you've ever
21 put your hands on, had you used ACE bandages
22 instead of compression socks?

23 MS. TURPEN: Same objections.

24 THE WITNESS: No. Because it's part
25 of the wound care assessment, wound care

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1 THE WITNESS: I did not create a
2 treatment form. We don't create treatment
3 forms for people that are leaving to go to the
4 community. We make an order for home health to
5 follow them in the community and that was put
6 in for him to be followed by wound care in the
7 community.

8 BY MS. WISE:

9 Q. Okay. And so at the end of this
10 discharge summary, we have a signature that --
11 you have your name and signature and then
12 Dr. Baltar's name and a signature. Do you see
13 that?

14 A. Yes.

15 Q. Okay. So you already testified that
16 you created this document. So you signed off
17 on it because you are the one who dictated it,
18 correct?

19 A. Yes.

20 Q. Did you go over Mr. Heifetz's
21 discharge with Dr. Baltar?

22 MS. TURPEN: Form.

23 THE WITNESS: No.

24 BY MS. WISE:

25 Q. Do you know -- strike that.

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1 Do you provide the discharge summary
 2 of a patient to Dr. Baltar?
 3 MS. TURPEN: Form.
 4 THE WITNESS: No, no.
 5 BY MS. WISE:
 6 Q. Do you know how Dr. Baltar attained
 7 your discharge summaries of patients?
 8 **A. It's standard -- when I sign it,**
 9 **she's the attending MD. Her name is on the**
 10 **form so that's why there's two separate**
 11 **signatures. At some point, she will get them**
 12 **on the clipboard and sign them off.**
 13 Q. All right. That was my question.
 14 After Mr. Heifetz left Spanish Hills,
 15 do you ever recall attending any meetings about
 16 his care or his development of pressure wounds?
 17 MR. ROURKE: Object to the form of
 18 the question.
 19 MS. TURPEN: Join.
 20 THE WITNESS: No. No meetings after
 21 his discharge.
 22 BY MS. WISE:
 23 Q. Were you reprimanded in any way for
 24 the care of Mr. Heifetz?
 25 MR. ROURKE: Same objection. Form.

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1 MS. TURPEN: Join.
 2 THE WITNESS: What was your question
 3 again?
 4 BY MS. WISE:
 5 Q. Sure.
 6 Were you reprimanded in any way for
 7 Mr. Heifetz's care?
 8 **A. No.**
 9 Q. Do you know if anybody else was
 10 reprimanded?
 11 **A. No.**
 12 MR. ROURKE: Same objections.
 13 THE WITNESS: That I am aware.
 14 BY MS. WISE:
 15 Q. On a scale of one to ten, how
 16 important is patient safety to you?
 17 MS. TURPEN: Form.
 18 MR. ROURKE: Join.
 19 THE WITNESS: Patient safety is the
 20 same across the board for every patient
 21 regardless so it's our priority, so.
 22 BY MS. WISE:
 23 Q. I'm not asking if one patient is more
 24 important than the other. Is patient safety
 25 important to you?

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1 **A. Yes.**
 2 MS. TURPEN: Form.
 3 THE WITNESS: In general.
 4 BY MS. WISE:
 5 Q. How important is it?
 6 **A. It's important, but I can't --**
 7 MS. TURPEN: Form. Foundation.
 8 BY MS. WISE:
 9 Q. I'm sorry, Miriam. Finish what you
 10 were saying.
 11 **A. It's important.**
 12 Q. Do you believe there was anything you
 13 could have done to prevent Mr. Heifetz from
 14 developing pressure sores?
 15 MS. TURPEN: Form. Foundation.
 16 Incomplete hypothetical. Calls for
 17 speculation.
 18 MR. ROURKE: Join.
 19 THE WITNESS: I don't recall anything
 20 that we didn't do that we followed that was
 21 part of the care plan.
 22 BY MS. WISE:
 23 Q. So you don't think there's anything
 24 that you could have done differently to prevent
 25 his pressure sores?

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1 MS. TURPEN: Form. Foundation. Same
 2 objections as before.
 3 THE WITNESS: Follow the care plan as
 4 generated, so I'm not sure.
 5 BY MS. WISE:
 6 Q. When you say care plan, what do you
 7 mean? Because you have been telling me all day
 8 that you don't follow the care plan that is
 9 created by Spanish Hills. Are you talking
 10 about a separate care plan?
 11 MS. TURPEN: Form. Foundation.
 12 Argumentative. Mischaracterizes her testimony.
 13 Go ahead, Miriam.
 14 THE WITNESS: No. I was responding
 15 to what you say that I could have done
 16 differently.
 17 BY MS. WISE:
 18 Q. Okay. And what was that?
 19 **A. That is what I was saying, that I**
 20 **don't have anything that I would have done**
 21 **differently given what we followed with his**
 22 **care from my perspective. Spanish Hills has**
 23 **their own perspective and their own protocol,**
 24 **so those are two different entities.**
 25 Q. And do you believe there's anything

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1 that Spanish Hills could have done differently
 2 to prevent Mr. Heifetz's pressure injuries?
 3 MR. ROURKE: Object to the form of
 4 the question.
 5 MS. TURPEN: Join.
 6 THE WITNESS: I can't speak for
 7 Spanish Hills because they were not under my
 8 supervision or my jurisdiction.
 9 BY MS. WISE:
 10 Q. So at the time of trial, you would
 11 agree that you are not going to offer any
 12 opinions regarding the treatment and care
 13 provided by Spanish Hills; is that correct?
 14 A. Yes.
 15 Q. Do you believe Mr. Heifetz's sores
 16 could have been prevented?
 17 MS. TURPEN: Form. Foundation.
 18 Asked and answered. Scope.
 19 THE WITNESS: I can attest to the
 20 care that I gave him, and I cannot say
 21 otherwise -- one way or the other if it could
 22 have been prevented.
 23 BY MS. WISE:
 24 Q. Okay. Would you agree that most
 25 pressure sores are preventable?

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1 MS. TURPEN: Form and foundation.
 2 Incomplete hypothetical. Scope.
 3 MR. ROURKE: Join in all of those.
 4 THE WITNESS: It's the same thing. I
 5 can't talk about ulcers because I don't
 6 specialize in the treatment and management of
 7 ulcers so I can't give an opinion whether they
 8 are preventable or not.
 9 BY MS. WISE:
 10 Q. Have you ever treated a patient who
 11 had his heels lifted up off the bed?
 12 MR. ROURKE: Object to the form of
 13 the question.
 14 MS. TURPEN: Join.
 15 THE WITNESS: I don't treat ulcers so
 16 I'm not sure exactly what you mean because
 17 that's not my scope of practice to treat the
 18 ulcers on a patient with elevated feet.
 19 Maybe I don't understand the
 20 question.
 21 BY MS. WISE:
 22 Q. Okay. Let me try again.
 23 Have you ever had a patient that you
 24 went into their room and they had a pillow
 25 under their calf with their heels lifted up off

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1 the bed?
 2 A. And you mean that constitutes
 3 treatment? When I see a patient with a pillow,
 4 does that constitute treatment?
 5 MS. TURPEN: I am going to make a
 6 form objection. It is clear she is confused.
 7 BY MS. WISE:
 8 Q. Yeah. So have you ever seen -- have
 9 you ever had a patient that offloading
 10 procedures were being performed on your patient
 11 while you were treating your patient for a
 12 different reason?
 13 MS. TURPEN: Form.
 14 THE WITNESS: How would I tell that
 15 the pillow is there for offloading because
 16 there are many different uses of types of
 17 offloading?
 18 BY MS. WISE:
 19 Q. Okay. Fair enough.
 20 So the use of a pillow under the calf
 21 is one form of offloading procedures then?
 22 A. That's what -- from what you say,
 23 that you -- you find the patient with the feet
 24 elevated?
 25 Q. Right. This is a different question.

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1 Is putting a pillow under a patient's
 2 calf a form of offloading procedure?
 3 MS. TURPEN: Form.
 4 THE WITNESS: They use pillows for
 5 different types of care, so it could be one of
 6 those, but it's not the sole use of offloading.
 7 BY MS. WISE:
 8 Q. Okay. So you said they use pillows
 9 for different types of care. So tell me what's
 10 going through your mind. What things are you
 11 thinking about why you can't answer my
 12 question?
 13 A. I'm thinking because you presented it
 14 as I find the patient with a pillow on their
 15 feet, so that's what comes into my mind.
 16 Q. Okay. Forget that question. We have
 17 a new question, okay? Brand new.
 18 Offloading procedure. Is one form of
 19 offloading procedure, you said there were
 20 numerous forms, right? Is one form and one way
 21 to create an offloading procedure to put a
 22 pillow under a patient's calf so that their
 23 heel is not on the ground or on the bed?
 24 MS. TURPEN: Form.
 25 MR. ROURKE: Join.

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1 THE WITNESS: Some wound-care
 2 doctor -- nurses would use that as a form of
 3 offloading.
 4 BY MS. WISE:
 5 Q. Do you have an opinion of how often
 6 offloading procedures should be performed?
 7 MS. TURPEN: Form and foundation and
 8 scope.
 9 MR. ROURKE: Join.
 10 THE WITNESS: I don't make the order
 11 for the offloading so I wouldn't put an opinion
 12 as to when they -- how they are supposed to
 13 handle the frequency.
 14 BY MS. WISE:
 15 Q. You are a registered nurse, right?
 16 MS. TURPEN: Form.
 17 BY MS. WISE:
 18 Q. Right?
 19 A. Yes --
 20 Q. And you have been --
 21 MS. TURPEN: I don't think she
 22 finished her answer.
 23 BY MS. WISE:
 24 Q. Sorry, Miriam. Go ahead.
 25 A. Yes. But for this role, I was coming

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1 in as a mid-level provider so that doesn't
 2 translate.
 3 Q. I'm not asking in this role. I'm
 4 asking in your education and experience, the
 5 purpose of -- I get to go all the way back and
 6 ask everything you know, not just in your care
 7 of Mr. Heifetz.
 8 So I am looking at your resume that
 9 we have shown as Exhibit 1, and you have been
 10 a -- you were a Certified Nursing Assistant
 11 back in 1994, right?
 12 A. Yes.
 13 Q. Okay. And you have been an RN since
 14 1999?
 15 A. Yes.
 16 Q. So have you ever performed offloading
 17 procedures on any patient in the last 30 years?
 18 A. If indicated and given the
 19 instructions by the providers.
 20 Q. Okay. So was that a yes?
 21 A. Yes.
 22 Q. And what kind of things did you do to
 23 prevent pressure ulcers on heels? What type of
 24 offloading procedures did you perform?
 25 MS. TURPEN: Form. Foundation.

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1 THE WITNESS: That's a while ago, so
 2 I can't recall exactly. But the one example
 3 that I give you was the pillow.
 4 BY MS. WISE:
 5 Q. Okay. Do you think that a
 6 79-year-old person that's bedbound is
 7 vulnerable?
 8 MR. ROURKE: Object to the form of
 9 the question.
 10 MS. TURPEN: Yeah, form. Foundation.
 11 Scope as to legal conclusion.
 12 THE WITNESS: I think any patient
 13 regardless of their age who is in rehab is
 14 susceptible to being vulnerable at some point.
 15 BY MS. WISE:
 16 Q. Do you blame Mr. Heifetz for the
 17 pressure sores?
 18 A. No.
 19 Q. You have worked in rehabilitation
 20 facilities for some time, at least since 2016,
 21 correct?
 22 A. Yes.
 23 Q. Would you agree that pressure sores
 24 are a risk in rehab facilities such as Spanish
 25 Hills?

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1 MS. TURPEN: Form, foundation, and
 2 incomplete hypothetical.
 3 MR. ROURKE: Join.
 4 THE WITNESS: I think, like I said,
 5 all individuals while they are in rehab are not
 6 in their best form. Anybody is susceptible to
 7 the formation of ulcers.
 8 BY MS. WISE:
 9 Q. Okay, Miriam. I am going to show you
 10 some documents about questions that you
 11 answered. This says it is Defendant Miriam
 12 Sithole, APRN's Answers to Plaintiff Barry
 13 Heifetz's Interrogatories. Do you see that
 14 document?
 15 A. Yes.
 16 Q. You have seen these questions before,
 17 correct?
 18 A. Yes.
 19 Q. I am going to ask you specifically
 20 about some of the questions that you didn't
 21 have knowledge of at the time of answering
 22 this. But now that we have had a chance to
 23 dive into it, I want to see if you have
 24 anything to add or any changes.
 25 Interrogatory Number 6 here asks that

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1 if you contend that any entries in plaintiff's
 2 medical records from any of his providers or
 3 facilities that he treated with are incorrect,
 4 please identify which entries are incorrect and
 5 describe in detail what are incorrect about the
 6 entries. Do you see that question?
 7 **A. Yes.**
 8 **Q.** Here, your answer is I cannot recall
 9 the specifics at this time, and then you point
 10 us to the documents. Do you see that answer?
 11 **A. Yes.**
 12 **Q.** Based on your review of all of the
 13 records that you reviewed with counsel in
 14 preparation for today's deposition and
 15 everything we have been through, do you believe
 16 that anything that you have reviewed was
 17 incorrect?
 18 **MS. TURPEN:** I will just make a form
 19 objection.
 20 Go ahead, Miriam.
 21 **THE WITNESS:** I cannot recall any
 22 records that are incorrect.
 23 **BY MS. WISE:**
 24 **Q.** Okay. On Number 8, we were asking,
 25 you know, procedures and tests and treatments

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1 of plaintiff which gave rise to his injuries.
 2 I'm paraphrasing, and I will let you go ahead
 3 and read it. And then your answer is
 4 objection, none of my treatment gave rise to
 5 plaintiff's injuries.
 6 What do you mean by that statement?
 7 **A. That I provided -- what I provided**
 8 **was indicated for management of and it wasn't**
 9 **provided for causing injury to the patient.**
 10 **Q.** So are you saying that -- I didn't
 11 understand that answer at all. Could you
 12 explain that for me?
 13 **A. What I am saying for I ordered the**
 14 **treatments and were not responsible for the**
 15 **injury of or what happened to the patient, for**
 16 **the care of the patient.**
 17 **Q.** Okay. So I think you are saying that
 18 you don't believe that your treatment of Barry
 19 caused his injuries. Is that what you are
 20 saying?
 21 **A. Yes.**
 22 **Q.** And then there is a: However, I
 23 provided plaintiff with compression socks. Why
 24 did you have that statement in there as a
 25 "however"?

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1 **A. Because that was the treatment that I**
 2 **gave, treatment of the swelling.**
 3 **Q.** Of the edema, okay.
 4 I am going to also show you 11. We
 5 were asking about any policies or procedures or
 6 guidelines, all of that that were followed for
 7 wound care prevention, and I will let you go
 8 ahead and read that.
 9 And your answer, I understand, is
 10 that you're an individual medical provider and
 11 you don't have your own policies and
 12 procedures. That's correct, right?
 13 **A. Yes.**
 14 **Q.** Okay. But then you add the skilled
 15 nursing facilities typically have their own
 16 policies and procedures in place. But those
 17 policies and procedures were not applicable to
 18 you, correct?
 19 **A. Yes.**
 20 **MS. WISE:** I just need a couple
 21 minutes to review my notes, but I think we are
 22 almost done.
 23 Can we take a quick five minutes?
 24 **MR. ROURKE:** Do you want me to ask
 25 while you are reviewing that?

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1 **MS. WISE:** Go ahead, Rob.
 2
 3 **EXAMINATION**
 4 **BY MR. ROURKE:**
 5 **Q.** Nurse Sithole, my name is Robert
 6 Rourke. We have not spoken or met before
 7 today; is that correct?
 8 **A. Yes.**
 9 **Q.** That is correct, we haven't spoke
 10 before you started your deposition at all;
 11 isn't that correct?
 12 **A. Yes.**
 13 **Q.** Okay.
 14 **A. We haven't met.**
 15 **MS. TURPEN:** Rob, before we go any
 16 further. Shannon, could you change the view so
 17 we are not looking at the documents?
 18 **MS. WISE:** I'm sorry.
 19 **MS. TURPEN:** I appreciate it. Thank
 20 you very much.
 21 **BY MR. ROURKE:**
 22 **Q.** Let me see if I can start my camera
 23 for you, too.
 24 I just want to make sure that I
 25 understood your testimony. You were asked some

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1 time ago whether or not you were going to be
 2 rendering any kind of testimony or opinions
 3 regarding the care and treatment of the staff
 4 at Spanish Hills at the time of trial. If I
 5 understood your testimony, you said that you
 6 were not going to be doing that, correct?
 7 **A. Yes, because -- yes.**
 8 Q. Okay. When you say yes, I just want
 9 to make sure the record is clear. Yes, you are
 10 going to be doing that or no, you are not going
 11 to be doing that?
 12 **A. No, I am not going to be doing that.**
 13 Q. Okay. So it's fair for the parties
 14 here and the judge to assume that you won't be
 15 offering any criticism whatsoever of the
 16 nursing care or the other staff members' care
 17 at Spanish Hills Wellness Suites, correct?
 18 **A. Yes.**
 19 Q. Yes, that is correct?
 20 **A. Yes, I won't be, yeah, offering any**
 21 **opinions regarding the nurses and the staff.**
 22 Q. Okay. I want to take you back. I
 23 don't have the document up, but I think you
 24 will be fresh enough with it. But on your
 25 discharge summary, you reference ACE wrap. Do

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1 you recall that testimony?
 2 **A. Yes.**
 3 Q. Did you ever personally see an ACE
 4 wrap on Mr. Heifetz while he was at Spanish
 5 Hills Wellness Suites?
 6 **A. Not to my recollection.**
 7 Q. Is it possible that that's just an
 8 error in your dictation?
 9 **A. Most probably.**
 10 MR. ROURKE: Okay. Thank you. I
 11 don't have any other questions. Have a nice
 12 day and I appreciate your time.
 13
 14 FURTHER EXAMINATION
 15 BY MS. WISE:
 16 Q. Miriam, why are you conceding that
 17 that was an error in your dictation?
 18 **A. Because I didn't physically see them,**
 19 **but it was -- I was documenting that they were**
 20 **using the stockings or they were using the ACE**
 21 **wraps.**
 22 Q. But you told me earlier you've never
 23 seen ACE wraps being used.
 24 **A. I've never used them, but I have seen**
 25 **them. I said I've never used them, but I have**

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1 **seen them.**
 2 Q. Why would you have noted anything
 3 about an ACE wrap if it's incorrect?
 4 MR. ROURKE: Objection.
 5 Argumentative.
 6 MS. TURPEN: Join.
 7 MR. ROURKE: Form of the question.
 8 BY MS. WISE:
 9 Q. Go ahead, Miriam.
 10 **A. I indicated compression stockings or**
 11 **ACE wraps and specifically said if -- I haven't**
 12 **used them myself, but I have seen them being**
 13 **used.**
 14 Q. So when we went over the
 15 interrogatory that discussed incorrect entries
 16 into medical records, are you going to
 17 supplement that response and say that that was
 18 an incorrect statement that you put in the
 19 discharge summary?
 20 **A. Yes.**
 21 MS. TURPEN: Form. Foundation.
 22 Go ahead.
 23 MR. ROURKE: Yeah, objection.
 24 Argumentative. Asked and answered.
 25 ///

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1 BY MS. WISE:
 2 Q. Okay. So as you sit here today, it
 3 is your testimony that the ACE bandages were
 4 not used in place of compression socks?
 5 **A. Yes.**
 6 Q. And you have an independent
 7 recollection of this?
 8 MS. TURPEN: Form.
 9 THE WITNESS: Yes.
 10 BY MS. WISE:
 11 Q. Okay. Now, I know we went through
 12 the Braden Scale before and you said you don't
 13 have an understanding of what goes into the
 14 Braden Scale, your testimony was, correct?
 15 **A. Yes.**
 16 Q. Now, you have been a nurse or a CNA
 17 or an APRN for nearly 30 years, right?
 18 **A. Yes.**
 19 Q. Have you ever performed a Braden
 20 Scale assessment on a patient?
 21 **A. Not to my recollection. It's been a**
 22 **while so I am not even familiar with it.**
 23 Q. Okay. And you are not going to offer
 24 opinions at the time of trial that Mr. Heifetz
 25 caused or contributed to his injuries, correct?

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1 MS. TURPEN: Form. Foundation.
 2 MR. ROURKE: Asked and answered.
 3 MS. TURPEN: Join.
 4 THE WITNESS: Yes.
 5 BY MS. WISE:
 6 Q. Looking back, is there anything you
 7 would have done different in the care and
 8 treatment of Barry?
 9 MS. TURPEN: Form, foundation,
 10 incomplete hypothetical, and also asked and
 11 answered.
 12 THE WITNESS: I don't recall anything
 13 that I would have done differently.
 14 MS. WISE: All right. I don't think
 15 I have any other questions for you, Miriam.
 16 MS. TURPEN: Bob?
 17 MR. ROURKE: No. I'm done. Thank
 18 you.
 19 MS. TURPEN: Cindy, we are going to
 20 read and sign.
 21 MR. ROURKE: Cindy, I would like an
 22 e-trans. I don't need the exhibits -- let me
 23 put it this way. I don't need Exhibit 2
 24 because we have got them, all of the Bates
 25 stamp numbers -- frankly, I don't think I need

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1 either one because I've got the first one, so
 2 just without the exhibits.
 3 Tim, I don't need a video.
 4 VIDEOGRAPHER: Okay. Well, then this
 5 concludes today's video-recorded testimony of
 6 Miriam Susan Sithole, APRN. The time is
 7 3:09 p.m. We are off the record.
 8 (Proceedings concluded at
 9 3:09 p.m.)
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CERTIFICATE OF DEPONENT

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DECLARATION OF DEPONENT

I, MIRIAM SITHOLE, APRN, Deponent herein, do hereby declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition this _____ day of _____, 2021.

MIRIAM SITHOLE, APRN
 Deponent

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REPORTER'S DECLARATION

STATE OF NEVADA)
) SS.
 COUNTY OF CLARK)

I, CINDY L. HUEBNER, Certified Court Reporter No. 806, declare as follows:

That I reported the taking of the deposition of the witness, MIRIAM SITHOLE, APRN, commencing on May 14, 2021 at the hour of 11:02 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.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript under Rule 30, the original signature page is being forwarded to Katherine Turpen, Esq. to obtain the deponent's signature.

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

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

Dated at Las Vegas, Nevada this 2nd day of June, 2021.

Cindy L. Huebner, CCR 806



EXHIBIT 4

**Deposition of
MIKE YONG-SUK JEONG,
D.O.**

Case No. A-20-808436-C
HEIFETZ v. SPRING VALLEY HEALTH
CARE, LLC, et al.
November 8, 2021

CONDENSED TRANSCRIPT AND KEY WORD INDEX

TURNER REPORTING & CAPTIONING SERVICES, INC.
7500 W. Lake Mead Blvd., Ste. 9246
Las Vegas, NV 89128
(702) 242-9263

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 BARRY HEIFETZ, an Individual,)
5 Plaintiff,)
6 vs.)Case No. A-20-808436-C
7)Dept. No. I
8)
9 SPRING VALLEY HEALTH CARE, LLC,) a foreign limited-)
10 liability company, d/b/a)
11 SPANISH HILLS WELLNESS SUITES;)
12 SHANNA MARIE BALTAR, DO, an) individual; MIRIAM SITHOLE,)
13 APRN, an individual; DOE)
14 DOCTOR I, an individual;)
15 DOE NURSE I, an individual;)
16 DOES I through X; ROE BUSINESS)
17 ENTITIES XI through XX,)
18 inclusive,)
19 Defendants.)
20 _____)
21
22 VIDEO-RECORDED DEPOSITION OF
23 MIKE YONG-SUK JEONG, D.O.
24 Taken on Monday, November 8, 2021
25 At 1:56 p.m.
Taken at 4101 Meadows Lane, Suite 100
Las Vegas, Nevada
Reported By:
Vicki Chelst Turner, CCR 375, RMR, CRR, CRC

1 MIKE YONG-SUK JEONG, D.O.,
2 was called as a witness by the Plaintiff and, having
3 been first duly sworn, testified as follows:
4 EXAMINATION
5 BY MS. MORALES:
6 Q Can you please state your full name for the
7 record.
8 A Mike Yong-Suk Jeong. That's M-i-k-e.
9 Middle name is Y-o-n-g, hyphen, S-u-k. Last name
10 J-e-o-n-g.
11 Q And, Doctor, how many times have you had
12 your deposition taken prior to today?
13 A Ten times.
14 Q Is it fair to say that I don't need to go
15 over the admonitions with you, or do you need me to go
16 through those with you?
17 A You don't need to go through those with me.
18 Q You've been retained in this case as an
19 expert witness; is that correct?
20 A That is correct.
21 Q Okay. Can you tell me how long you've been
22 doing medical-legal work?
23 A Since 2013.
24 Q Okay. And approximately what percentage of
25 your time is spent doing medical-legal work?

1 APPEARANCES:
2 For the Plaintiff: JENNIFER MORALES, ESQ.
3 CLAGGETT & SYKES LAW FIRM
4 4101 Meadows Lane
5 Suite 100
6 Las Vegas, Nevada 89107
7 For Defendants Shanna KATHERINE L. TURPEN, ESQ.
8 Marie Baltar, DO, and JOHN H. COTTON & ASSOCIATES
9 Miriam Sithole, APRN: 7900 West Sahara Avenue
10 Suite 200
11 Las Vegas, Nevada 89117
12 For Defendant Spring T. CHARLOTTE BUYS, ESQ.
13 Valley Health Care, McBRIDE HALL
14 LLC d/b/a Spanish 8329 West Sunset Road
15 Hills Wellness Suites: Suite 260
16 Las Vegas, Nevada 89113
17 Also Present: ANDREW JONES,
18 CERTIFIED LEGAL VIDEOGRAPHY

12
13
14 EXAMINATION PAGE
15 EXAMINATION BY PAGE
16 MS. MORALES 3
17
18

12
13
14 EXHIBITS
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17
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19 Plaintiff's Description Page
20
21 1 Curriculum Vitae 6
22 2 Medical Expert Report 9
23 3 Rebuttal Report 32
24 4 Wound Care Policies and Procedures 72
25

1 A Approximately 20 or less.
2 Q What percentage would you estimate that
3 you're retained by the defense versus plaintiffs?
4 A So far I have done 97 cases, and of that
5 approximately 60 percent is plaintiff and 40 percent
6 is defense.
7 Q Have you given trial testimony before?
8 A No, I have not.
9 Q Have you ever been disqualified or limited
10 as an expert witness?
11 A No, I have not.
12 Q Do you have cases as an expert witness that
13 are outside the state of Nevada?
14 A Yes.
15 Q What percentage of your cases would you
16 estimate are outside the state of Nevada?
17 A Eighty. That's an approximate.
18 Q Is there one particular state that you work
19 out of more than any others?
20 A No.
21 Q What states do you currently have cases out
22 of?
23 A I have cases out of Oklahoma, Ohio,
24 Maryland. Those are the three that I can think of at
25 this time.

Page 5

1 Q Have you given any -- have you given
2 testimony previously regarding pressure sores or bed
3 sores?
4 A **Yes, I have.**
5 Q And when is the last time you recall giving
6 testimony regarding pressure sores?
7 A **I can't recall at this time.**
8 Q Besides acting as a medical-legal expert, do
9 you maintain a full-time practice?
10 A **Yes, I do.**
11 Q Okay. And what's the name of your practice?
12 A **Geriatric Medical Associates of Nevada.**
13 Q And where is it located?
14 A **I practice out of nursing homes, so the main**
15 **one that I attend is Las Ventanas Nursing Facility and**
16 **the assisting facility as well as the residential**
17 **care.**
18 Q We'll go ahead and mark this -- this might
19 make it a little quicker and easier. We'll mark your
20 CV as the first exhibit.
21 I apologize, she only gave me one copy.
22 A **I have it in my memory.**
23 Q I want you to look at it so we can attach it
24 to the depo, and let me know if this is a current CV
25 so that we can save time in going through all your

Page 6

1 educational background.
2 (Plaintiff's Exhibit 1 marked for
3 identification.)
4 Q (BY MS. MORALES) So tell me if anything
5 should be added or changed on that CV. And take all
6 the time you need.
7 A **Thank you.**
8 **Yes, this is an older CV. I have an updated**
9 **CV. The only change that I can see right as of now is**
10 **the post-acute care specialist, August 16 through --**
11 Q Can you just --
12 Let's go off the record.
13 (Discussion held off the record.)
14 THE VIDEOGRAPHER: Good afternoon. This is the
15 video-recorded deposition of Mike Yong-Suk Jeong, M.D.
16 THE WITNESS: D.O.
17 THE VIDEOGRAPHER: D.O. Excuse me.
18 Today's date is November 8, 2021. The time
19 is 3:22 p.m. Unless I haven't recharged my clock. We
20 are at 4101 Meadows Lane in Las Vegas, Nevada, for the
21 matter entitled Barry Heifetz versus Spring Valley
22 Health Care, Case No. A-20-808436-C, being heard in
23 the District Court, District of Nevada.
24 I am the videographer, Andrew Jones. The
25 court reporter is Vicki Turner with Turner Reporting.

Page 7

1 Will counsel please identify yourselves and
2 affiliations.
3 MS. MORALES: Jennifer Morales on behalf of the
4 plaintiff.
5 MS. TURPEN: Katherine Turpen on behalf of
6 defendants Dr. Baltar and APRN Sithole and the
7 witness.
8 MS. BUYS: Charlotte Buys on behalf of defendant
9 Spanish Hill Wellness.
10 THE VIDEOGRAPHER: At this time this deposition
11 is already in process, so the doctor has already been
12 sworn in.
13 You may continue.
14 Q (BY MS. MORALES) Doctor, you understand
15 you're still under oath; correct?
16 A **Yes, I do.**
17 Q Okay. When we took a break, I had you take
18 a look at the CV that we've marked as Exhibit 1.
19 And you identified a few changes; is that
20 correct?
21 A **Yes.**
22 Q Okay. And your counsel is going to provide
23 us with an updated CV; is that accurate?
24 A **That's correct.**
25 Q Okay. And I'm sorry, what's the date of the

Page 8

1 new CV?
2 A **It's October 2021.**
3 Q Okay. And does that CV accurately depict
4 what your educational background is?
5 A **Yes, it does.**
6 Q As -- as -- as well as, if I can talk now,
7 your work history?
8 A **That's correct.**
9 Q Okay.
10 Here is the first exhibit.
11 Okay. What did you do -- well, strike that.
12 Can you tell me when, approximately, you
13 were first contacted to be an expert in this case?
14 A **I actually don't know right now.**
15 Q Okay.
16 A **I did not look at the date when I started**
17 **this case.**
18 Q Can you tell me generally do you have any
19 recollection of what information, if any, you were
20 provided before rendering any opinions in this case?
21 A **I was provided the medical records. There's**
22 **a list on my report --**
23 Q Okay.
24 A **-- of the medical records that was provided**
25 **to me.**

<p style="text-align: right;">Page 9</p> <p>1 Q And we'll go ahead and mark your report as 2 the second exhibit. 3 (Plaintiff's Exhibit 2 marked for 4 identification.) 5 Q (BY MS. MORALES) So on page two there are 6 several materials listed there. 7 Do you see that? 8 A Yes. 9 Q Okay. And that goes on to page three. 10 A Yes. 11 Q Are those the materials that you listed -- I 12 mean, that you identified prior to rendering this 13 report? 14 A Yes. That's correct. 15 Q Now, in preparation for your deposition 16 today, did you review any materials? 17 A I reviewed my report, my rebuttal report. 18 Q Anything else? 19 A And I scanned the Spanish Hills -- let's 20 see. Spanish Hills -- the -- it's Bates 28 through 21 1144. 22 Q So you reviewed the records again in -- 23 prior to this deposition? 24 A Yes, I did. 25 Q How long do you think you spent reviewing</p>	<p style="text-align: right;">Page 11</p> <p>1 Q Now, when you reviewed both of your reports, 2 does that -- are all -- are those -- both of those 3 reports, do those consist -- let me try this again. 4 Strike that. 5 Are all of your opinions that you intend to 6 offer at the time of trial contained within both of 7 those reports? 8 A Yes. 9 Q Have you formulated any other opinions that 10 are not identified within those reports? 11 A No. Not as of today. 12 Q Now, the list of materials that you have 13 here, have you reviewed the actual photographs of the 14 wounds that Mr. Heifetz suffered? 15 A Yes. The photographs that were sent to me, 16 looks like here it says "Photos, Heifetz 1 -- 17 Bates 1 through 27." 18 Q Okay. And one -- the materials that you 19 read prior to drafting this report includes the 20 depositions of both Dr. Baltar and Nurse Practitioner 21 Sithole; is that correct? 22 A That is correct. 23 Q So you had an understanding that Dr. Baltar 24 had graduated medical school in 2014; is that correct? 25 A I don't recall that information, but if that</p>
<p style="text-align: right;">Page 10</p> <p>1 those materials in preparation for today? 2 A Approximately three hours. 3 Q And did you meet with counsel prior to your 4 deposition? 5 A Yes. 6 Q And approximately how long was that meeting? 7 A About five minutes. 8 Q Okay. 9 A You mean as of today? 10 Q In preparation for your depo -- 11 A Okay. 12 Q -- did you meet with counsel? 13 A Yes. 14 Q Okay. And was that the five-minute 15 meeting -- 16 A No. 17 Q -- you were discussing? Okay. 18 A No. I was just thinking of today. I was 19 just thinking of today. 20 Q Okay. 21 A It was yesterday. Twenty minutes. 22 No, I'm sorry. I'm sorry. It was not 23 yesterday. It was Friday for 20 minutes. 24 Q Okay. 25 A I forgot today was a Monday.</p>	<p style="text-align: right;">Page 12</p> <p>1 is part of the deposition -- I didn't think it was 2 meaningful to me at the time, so I did not include it 3 in the report. 4 Q And you understood that she had training in 5 geriatric medicine as well? 6 A Yes. That I understood. 7 Q And you would agree that a 8 multi-disciplinary team approach should be utilized in 9 taking care of patients in a rehab facility; correct? 10 A Yes. 11 Q And you agree that orders placed by 12 physicians or nurse practitioners should be carried 13 out; true? 14 A Yes. 15 Q And pressure-sore prevention should be 16 included in the multi-disciplinary approach in rehab 17 settings; correct? 18 A Yes. If they are identified as at risk, 19 yes. 20 Q You agree that compression stockings should 21 not be left on a patient more than 12 hours in a rehab 22 facility? 23 A Well, if that's the -- if -- what I 24 understand is the orders were 12 hours on and 12 hours 25 off. So the orders should be carried out by nursing</p>

<p style="text-align: right;">Page 13</p> <p>1 staff.</p> <p>2 Q Is there a period of time that you</p> <p>3 believe -- well, strike that.</p> <p>4 What's the longest period of time you</p> <p>5 believe a compression stocking should be left on a</p> <p>6 patient?</p> <p>7 A Well, it depends on the situation. It</p> <p>8 depends on the patient's condition and why they have</p> <p>9 the compression stockings on.</p> <p>10 Q Sorry.</p> <p>11 A There's no -- in -- there's -- there's no --</p> <p>12 it just depends on the situation.</p> <p>13 Q Okay. And after reviewing the medical</p> <p>14 records in this case and the depositions, you have an</p> <p>15 understanding of what Barry Heifetz's preexisting</p> <p>16 conditions were; correct?</p> <p>17 A Correct.</p> <p>18 Q And so Barry Heifetz as a patient, what's</p> <p>19 the longest that compression stockings should have</p> <p>20 been left on him at a time?</p> <p>21 A For Barry Heifetz?</p> <p>22 Q Yes.</p> <p>23 A Well, the order was on 12 hours, off 12</p> <p>24 hours.</p> <p>25 Q Yeah, I understand what the order is. I'm</p>	<p style="text-align: right;">Page 15</p> <p>1 MS. TURPEN: For any provider's standard of care?</p> <p>2 Is that the question?</p> <p>3 MS. MORALES: Yes. Just -- it's not specific to</p> <p>4 anyone.</p> <p>5 Q Do you agree that it would be below the</p> <p>6 standard of care to leave compression stockings on for</p> <p>7 longer than 12 hours?</p> <p>8 MS. BUYS: And I'll just throw an objection to</p> <p>9 form.</p> <p>10 THE WITNESS: If -- if the provider had ordered</p> <p>11 the compression stockings to be on 12 hours and then</p> <p>12 off 12 hours and that was not followed -- I mean,</p> <p>13 sometimes it can go 13, 14 hours, depending on the</p> <p>14 situation. But if it wasn't followed, then yes, that</p> <p>15 would be below the standard of care.</p> <p>16 Q (BY MS. MORALES) So in this case, you would</p> <p>17 agree that it would be below the standard of care to</p> <p>18 leave compression stockings on for 24 hours; correct?</p> <p>19 MS. TURPEN: And -- and I'm just going to make a</p> <p>20 form objection.</p> <p>21 For any type of provider's standard of care?</p> <p>22 Q (BY MS. MORALES) Just for leaving the socks</p> <p>23 on.</p> <p>24 MS. TURPEN: So nursing, physician, clinician,</p> <p>25 mid level.</p>
<p style="text-align: right;">Page 14</p> <p>1 just asking you do you agree that that's the longest</p> <p>2 period of time that the compression stockings should</p> <p>3 have been left on, is 12 hours?</p> <p>4 A I believe that's a reasonable time.</p> <p>5 Q Do you agree that in Barry Heifetz's case,</p> <p>6 it would be below the standard of care to leave</p> <p>7 compression stockings on for more than 12 hours</p> <p>8 without taking them off?</p> <p>9 A Well, in this case, the orders were to be on</p> <p>10 12 and off 12. And my expectation as a provider would</p> <p>11 be that they follow those orders.</p> <p>12 Q Yeah, and I understand what the orders were.</p> <p>13 But my question is a little bit different.</p> <p>14 Do you agree that it would be below the</p> <p>15 standard of care to leave the compression stockings on</p> <p>16 for more than 12 hours in this case?</p> <p>17 A Is this referring to nursing care? I'm</p> <p>18 just --</p> <p>19 Q I'm just saying in general. I'm not</p> <p>20 specifying --</p> <p>21 A Well --</p> <p>22 Q -- whose care. I'm just saying should they</p> <p>23 have been left on longer than 12 -- would it be below</p> <p>24 the standard of care to leave them on longer than 12</p> <p>25 hours.</p>	<p style="text-align: right;">Page 16</p> <p>1 THE WITNESS: Yeah, I -- well, I -- I'm looking</p> <p>2 at it from a physician provider perspective. So if I</p> <p>3 gave an order for a facility to give a particular</p> <p>4 intervention, then I would expect that to happen.</p> <p>5 Q (BY MS. MORALES) Right. And if the</p> <p>6 socks -- compression stockings are left on for a</p> <p>7 24-hour period of time, that would be a breach of the</p> <p>8 standard of care; correct?</p> <p>9 A Well, that would be not following the</p> <p>10 orders.</p> <p>11 MS. TURPEN: Let me just have a late form</p> <p>12 objection.</p> <p>13 Q (BY MS. MORALES) Okay. And not following</p> <p>14 the orders would be a breach of the standard of care;</p> <p>15 correct?</p> <p>16 MS. TURPEN: Same.</p> <p>17 THE WITNESS: Well, usually if they don't follow</p> <p>18 the orders, yes, I --</p> <p>19 Q (BY MS. MORALES) What can happen if</p> <p>20 compression stockings are left on for 24 hours without</p> <p>21 taking them off?</p> <p>22 MS. TURPEN: Form. Incomplete hypothetical.</p> <p>23 MS. BUYS: Join.</p> <p>24 THE WITNESS: Well, it depends on, again, the</p> <p>25 situation and why the patient is on compression</p>

<p style="text-align: right;">Page 17</p> <p>1 therapy and what -- how much compression they require, 2 how edematous they are. 3 So some of the things that can happen would 4 be -- if -- I mean, there -- there is compression, and 5 again, it depends on the patient's vascular status, 6 depending on if they have arterial disease and venus 7 disease. It can cause a constriction, which then can 8 cause to skin breakdown. It can cause pain. But I 9 have seen patients that have used compression therapy 10 for over 24 hours without any incidents. 11 Q And the risk of the -- some of those things 12 that you just talked about is even more prevalent or 13 likely to occur when a patient is obese, suffers from 14 neuropathy and vascular insufficiency; correct? 15 A Those are all risk factors, yes. 16 Q Those are risk factors that make it more 17 likely that there could be some of the things that you 18 talked about, such as skin breakdown; correct? 19 A Skin breakdown, yes. 20 Q And one of the reasons to remove the 21 compression stockings is to check for skin integrity; 22 correct? 23 MS. TURPEN: Form. 24 MS. BUYS: Join. 25 THE WITNESS: Yes. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 what can happen if a compression stocking is left on 2 too long? 3 MS. BUYS: Same objection. 4 MS. TURPEN: Form. 5 THE WITNESS: I'm trying to recall her 6 deposition. 7 So if she did not know some effects of 8 compression stockings being on too long, there would 9 be some concern. 10 Q (BY MS. MORALES) What if she didn't have an 11 understanding of any potential side effects of -- of 12 leaving on compression stockings too long? 13 MS. TURPEN: Form. Calls for speculation. 14 THE WITNESS: Yeah, I'm not sure what you mean by 15 "understanding." 16 Q (BY MS. MORALES) So if she testified she 17 didn't know what could happen if compression stockings 18 are left on too long, is that concerning to you? 19 MS. TURPEN: Same objection. 20 MS. BUYS: Join. 21 THE WITNESS: Yeah, I mean, if -- I mean, she 22 gave the order to have the stocking on 12 hours and 23 off 12 hours. If it's on longer than that, then -- 24 and if she did not know some of the effects -- I mean, 25 it's -- I'm mean, it -- it could -- yeah, it would be</p>
<p style="text-align: right;">Page 18</p> <p>1 Q (BY MS. MORALES) And you agree that doctors 2 and nurse practitioners should have a general 3 understanding what can happen if a compression 4 stocking is not -- is left on too long; correct? 5 A Providers should know. 6 Q Is it concerning to you that Nurse 7 Practitioner Sithole didn't have an understanding of 8 what can happen if a compression stocking is left on 9 too long? 10 MS. TURPEN: Form. 11 THE WITNESS: Repeat -- 12 MS. BUYS: Join. 13 THE WITNESS: Repeat your question. 14 Q (BY MS. MORALES) Yeah, is it concerning to 15 you that Nurse Practitioner Sithole didn't -- did not 16 have an understanding of what can happen if a 17 compression stocking is left on too long? 18 MS. BUYS: Object to form. 19 THE WITNESS: Based on her -- 20 Q (BY MS. MORALES) Deposition testimony. 21 A Uh-huh. 22 Q Is that concerning to you? 23 A Repeat the question again. 24 Q Is it concerning to you that Nurse 25 Practitioner Sithole did not have an understanding of</p>	<p style="text-align: right;">Page 20</p> <p>1 concerning. 2 Q (BY MS. MORALES) Thank you, Doctor. 3 In this case, Mr. Heifetz was admitted with 4 compression stockings on the 14th, and the first 5 notation is that they were removed on the 16th -- the 6 16th. 7 That would be below the standard of care; 8 correct? 9 MS. BUYS: Object to form. 10 MS. TURPEN: Form. Foundation. 11 THE WITNESS: Sorry? 12 Q (BY MS. MORALES) Yeah. In this case, if 13 Mr. Heifetz was admitted with compression stockings on 14 the 14th and the first notation is that they were 15 removed on the 16th, that would be below the standard 16 of care; correct? 17 MS. BUYS: Same objection. 18 MS. TURPEN: Form. 19 THE WITNESS: I mean, if that was the case. But 20 I don't recall seeing that. 21 Q (BY MS. MORALES) Did you have an 22 understanding in reviewing the medical records that 23 Mr. Heifetz was admitted -- reviewing -- well, strike 24 that. 25 Did you have an understanding after</p>

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1 reviewing the medical records, reviewing the
2 deposition of Barry Heifetz, and reviewing the
3 depositions that have been taken in this case that
4 Mr. Heifetz came in with compression stockings?

5 **A He had compression stockings in the**
6 **hospital.**

7 Q Okay. And you reviewed the medical records
8 in this case; correct?

9 **A Yes.**

10 Q And do you recall seeing the notations where
11 it shows when -- when the staff allegedly took the
12 stockings or -- took the stockings off?

13 **A When the staff took it off?**

14 Q Yes.

15 **A There should be a treatment assessment**
16 **record or a TAR.**

17 Q Do you see -- do you recall seeing that when
18 you reviewed the medical records?

19 **A Right now I can't recall that.**

20 Q And if I come across -- I know I have the
21 record, but I don't -- we're already running late --
22 but assuming that that's the case, that Mr. Heifetz
23 came in on the 14th and the compression stockings were
24 not removed until the 16th, that would be below the
25 standard of care; correct?

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1 MS. TURPEN: Assuming he came in with them
2 already on. Is that the question, Jen?

3 MS. MORALES: Yes.

4 THE WITNESS: Again, that's an assumption that he
5 came on with it.

6 Q (BY MS. MORALES) Yeah, and this is a
7 hypothetical. So, yes.

8 **A Hypothetical, okay.**

9 Q So assuming that's true, that he went in on
10 the 14th and the socks were not taken off until the
11 16th, that would be below the standard --

12 **A Well, it --**

13 Q -- of care; correct?

14 **A It depends on when the order was given and**
15 **where -- if the order was there on admission on the**
16 **14th. But my understanding is Miriam -- Miriam**
17 **Sithole had ordered it on the 16th.**

18 Q Okay. And so it's okay to leave compression
19 stockings on for 48 hours until there's an order from
20 a doctor. Is that what your testimony is today?

21 **A No, it is not.**

22 MS. TURPEN: You're fine, Doc. Go ahead.

23 Q (BY MS. MORALES) Okay. So should
24 compression stockings ever be left on for a period of
25 48 hours?

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1 **A Again, it depends on the situation. If a --**
2 **if an individual provider had requested someone to**
3 **have compression stockings on for a prolonged period**
4 **of time, that could be a reason. But I don't know**
5 **that he came in with compression stockings, or if**
6 **there was already orders on the 14th for compression**
7 **stockings to be removed or not removed. So those are**
8 **assumptions.**

9 **I just know from the records that Miriam did**
10 **order the compression stockings on the 16th to be on**
11 **and off.**

12 Q Okay. My question is a little different.

13 My question is, is it ever okay to leave
14 compression stockings on for 48 hours?

15 **A And as have I -- as I have answered, there**
16 **may be some situations where a provider thinks that**
17 **the compression stockings should be on for a longer**
18 **period of time depending on the situation.**

19 Q Okay. In this case, with Mr. Heifetz and
20 his preexisting conditions, which we talked about
21 already, is it okay in his case to leave compression
22 stockings on for 48 hours without removing them?

23 **A In this case with Mr. Heifetz, if he had**
24 **orders from the hospital to have the compression**
25 **stockings on and off 12 hours, then that's what should**

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1 **have been followed. So...**

2 Q How long after a patient is admitted should
3 orders be entered for the ongoing care of a patient?

4 MS. BUYS: Object to form.

5 THE WITNESS: It should be when they're admitted.

6 Q (BY MS. MORALES) Okay. So it should be on
7 the day of admission?

8 **A Yes. Unless there are new findings from a**
9 **history and physical or a -- or a follow-up visit.**

10 Q So it would be below the standard of care if
11 Mr. Heifetz was admitted on the 14th and orders
12 weren't placed until the 16th; is that correct?

13 MS. TURPEN: Form. Foundation.

14 MS. BUYS: Join.

15 THE WITNESS: No.

16 Q (BY MS. MORALES) Why not?

17 **A Because it depends on the situation.**

18 Q Okay. And -- and when is it okay to wait 48
19 hours after admission to place orders?

20 **A There are situations when the patient states**
21 **that "Doctor" or "Nurse Practitioner, I've been using**
22 **compression hose. Can you make sure that that's**
23 **ordered?"**

24 **That could be a situation where a provider**
25 **sees the patient after the admission.**

Page 25

1 Q Well, my question is a little more general
2 than that.

3 So I believe you said upon admission, orders
4 should be placed for a patient; is that correct?

5 A Well, the admission orders from the
6 hospital.

7 Q Okay. So when a patient is admitted to a
8 rehab facility, how long does a doctor or provider
9 have to enter orders for their medical care and
10 treatment while they're in the rehab facility?

11 A Okay. My understanding of this process is
12 that the patient comes to the rehab facility or
13 post-acute care or skilled nursing facility with
14 orders from the hospital. Those are called the
15 discharge orders.

16 The nurse will call the provider and list
17 off the admission orders or list off the discharge
18 orders, and the provider will give the okay to
19 continue with those orders. And the nurse enters
20 those orders in, and then the provider will review the
21 discharge summary usually the day after or whenever
22 they see the new patient.

23 Q Yeah, is there a time period for them to do
24 that? From --

25 A Well, the --

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1 Q Midlevel provider. How long do they have to
2 actually evaluate the patient after admission to
3 rehab?

4 A It usually -- it can vary from -- I mean,
5 the next day to three days out. Medicare says the
6 provider has 30 days to do a comprehensive initial
7 evaluation, but Dr. Baltar did her evaluation the
8 following day.

9 Q Well, Medicare doesn't create what the
10 standard of care is for doctors; correct?

11 A I understand that.

12 Q Is that correct?

13 A That is correct.

14 Q You agree that Mr. Heifetz was at risk for
15 pressure injuries because he suffered from neuropathy,
16 vascular insufficiency, obesity, and was wearing
17 compression stockings; correct?

18 MS. TURPEN: Form. Compound.

19 Q (BY MS. MORALES) Go ahead.

20 MS. BUYS: Join.

21 THE WITNESS: You're talking about -- you're
22 asking about the risk factors for Mr. Barry Heifetz?

23 Q (BY MS. MORALES) He was at risk for
24 pressure injuries because of his preexisting
25 conditions; correct?

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1 Q -- between the discharge from the hospital
2 and their admission to the facility, how long should
3 whoever is going to oversee them within the facility
4 have to institute what orders?

5 MS. TURPEN: Form.

6 Go ahead.

7 MS. BUYS: Join.

8 THE WITNESS: So discharge orders from the
9 hospital are -- when the patient arrives to the
10 facility, they have a discharge summary with discharge
11 orders, which the nursing staff will call the
12 physician if the physician or nurse practitioner is
13 not already at the facility, and they will list off
14 the orders that the hospital recommended. And if
15 there's no disagreement, the physician will go ahead
16 or the nurse practitioner or other nonphysician
17 practitioner will provide admission orders. And
18 the --

19 Q (BY MS. MORALES) Okay. So that happens at
20 the time of an admission.

21 A Yes. And the nurse enters those orders in.

22 Q How long after admission should a doctor or
23 I guess it's sometimes called a -- a midline provider,
24 a nurse practitioner --

25 A Midlevel.

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1 A Correct.

2 Q So in a patient like Mr. Heifetz, it's even
3 more important to make sure that you remove the
4 stockings every 12 hours and check the skin for any
5 redness or breakdown; correct?

6 MS. BUYS: Object to form.

7 MS. TURPEN: Join.

8 THE WITNESS: Yes.

9 Q (BY MS. MORALES) And it's also important to
10 make sure that patients who are at a higher risk of
11 developing pressure sores are frequently turned in
12 bed; correct?

13 MS. BUYS: Object to form.

14 MS. TURPEN: Join.

15 THE WITNESS: Yes, that's one of the
16 interventions.

17 Q (BY MS. MORALES) What is an offloading
18 procedure?

19 A Offloading procedure is usually taking
20 pressure off of a bony prominence.

21 Q And do offloading procedures only apply to
22 the legs and the feet?

23 A No.

24 Q They can -- offloading procedures can apply
25 to the feet; correct?

<p style="text-align: right;">Page 29</p> <p>1 A They can, yes.</p> <p>2 Q And so would you agree that offloading</p> <p>3 minimizes or removes weight placed on the foot to</p> <p>4 prevent heels or ulcers in this case?</p> <p>5 MS. TURPEN: Form.</p> <p>6 Q (BY MS. MORALES) That's how it would be</p> <p>7 helpful; correct?</p> <p>8 MS. BUYS: Join.</p> <p>9 THE WITNESS: Repeat the question again.</p> <p>10 Q (BY MS. MORALES) Yeah, let me try again.</p> <p>11 So in this case with Mr. Heifetz, offloading</p> <p>12 procedures of his -- of his foot would help prevent</p> <p>13 any kind of heel ulcers; correct?</p> <p>14 MS. BUYS: Object to form.</p> <p>15 MS. TURPEN: Join.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q (BY MS. MORALES) And how could that be</p> <p>18 accomplished?</p> <p>19 A Place a pillow underneath the calves.</p> <p>20 Q Would it be concerning to you if a medical</p> <p>21 provider does not understand the meaning of offloading</p> <p>22 procedures?</p> <p>23 MS. BUYS: Object to form.</p> <p>24 MS. TURPEN: Join.</p> <p>25 Any medical provider?</p>	<p style="text-align: right;">Page 31</p> <p>1 MS. MORALES: -- proper objections.</p> <p>2 MS. TURPEN: Join.</p> <p>3 MS. MORALES: Sorry.</p> <p>4 THE WITNESS: Could you say that again?</p> <p>5 Q (BY MS. MORALES) Yeah. You agree that when</p> <p>6 a doctor or nurse practitioner cares for a patient in</p> <p>7 a rehab setting, he or she must consider not only the</p> <p>8 acute reason for admission, but must also consider</p> <p>9 their preexisting conditions that could make them more</p> <p>10 vulnerable to pressure injuries; correct?</p> <p>11 MS. BUYS: Same objections.</p> <p>12 MS. TURPEN: Join.</p> <p>13 THE WITNESS: Again, that's -- so they do have to</p> <p>14 address the acute issues for why they're in the</p> <p>15 facility as well as other comorbidities, such as</p> <p>16 hypertension or hyperlipidemia, the medications that</p> <p>17 they're on.</p> <p>18 And if -- and then you said something about</p> <p>19 and if they're at risk for pressure injuries?</p> <p>20 Q (BY MS. MORALES) They have to consider what</p> <p>21 their preexisting conditions are that could make them</p> <p>22 more vulnerable for pressure injuries.</p> <p>23 That was the other part; correct?</p> <p>24 A That's a consideration for providers.</p> <p>25 Q Are you critical of Dr. Baltar testifying</p>
<p style="text-align: right;">Page 30</p> <p>1 Q (BY MS. MORALES) A nurse practitioner or</p> <p>2 doctor.</p> <p>3 If they don't understand what that means, is</p> <p>4 that concerning?</p> <p>5 A No.</p> <p>6 Q Why not?</p> <p>7 A Well, I mean, it depends on what area that</p> <p>8 they're practicing. It depends on, you know -- it</p> <p>9 depends on a number of factors.</p> <p>10 Q You would expect a geriatric doctor to</p> <p>11 understand that; correct?</p> <p>12 A Offloading procedure to prevent pressure</p> <p>13 ulcers?</p> <p>14 Q Yes.</p> <p>15 A Yes.</p> <p>16 Q You agree that when a doctor or nurse</p> <p>17 practitioner cares for a patient in a rehab setting,</p> <p>18 he or she must consider not only the acute reason for</p> <p>19 the admission, but also -- but must also consider</p> <p>20 their comorbidities that could make them more</p> <p>21 vulnerable to pressure injuries; correct?</p> <p>22 MS. BUYS: Object to form. Compound. Incomplete</p> <p>23 hypothetical.</p> <p>24 MS. MORALES: Okay. Form or foundation is the --</p> <p>25 MS. TURPEN: Join.</p>	<p style="text-align: right;">Page 32</p> <p>1 that offloading procedures wouldn't be on her radar</p> <p>2 because she was focused on the acute reason for</p> <p>3 Mr. Heifetz's admission to the facility?</p> <p>4 MS. TURPEN: Form.</p> <p>5 MS. BUYS: Join.</p> <p>6 THE WITNESS: So I believe I addressed that in my</p> <p>7 report.</p> <p>8 Q (BY MS. MORALES) Yes, please feel free to</p> <p>9 reference your report.</p> <p>10 MS. TURPEN: Are you going to attach a copy of</p> <p>11 the rebuttal as well?</p> <p>12 THE WITNESS: Yeah, I think -- I think it might</p> <p>13 be in the rebuttal.</p> <p>14 MS. MORALES: Okay. We can mark this as the</p> <p>15 third exhibit. Sorry.</p> <p>16 (Plaintiff's Exhibit 3 marked for</p> <p>17 identification.)</p> <p>18 THE WITNESS: Thank you. So my rebuttal</p> <p>19 No. 13 -- do you want me to --</p> <p>20 Q (BY MS. MORALES) Go ahead and read where</p> <p>21 you're referencing.</p> <p>22 A -- read it? What I'm referencing is my</p> <p>23 rebuttal No. 13.</p> <p>24 "Dr. Bolhack opines the knowledge base of</p> <p>25 Dr. Baltar of pressure injuries of lacking -- was</p>

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1 lacking based on her deposition. Dr. Bolhack alleges
 2 Dr. Baltar has a complete disregard for the care of an
 3 at-risk resident in a skilled nursing facility." And
 4 his statement is not -- I said, "Dr. Bolhack's
 5 statement is not supported by the medical records or
 6 Dr. Baltar's deposition.
 7 "When he asked 'Do you believe that
 8 offloading procedures should have been performed on
 9 Mr. Heifetz due to his risks of developing pressure
 10 injuries,' Dr. Baltar stated, 'Based on my original
 11 documentation, that would not have been on my radar.'
 12 "She then testified that 'the patient was
 13 admitted for a recent surgery and my initial H and P
 14 will generally focus on the acute reason for the
 15 admission and stay' and later states -- and later
 16 states 'that's my reason for not being on the radar,
 17 is because the initial complaint and reason for
 18 admission was the hip.'
 19 "In the medical records and her history and
 20 physical, initial visit on January 15, 2019,
 21 Dr. Baltar not only addresses Mr. Heifetz's hip, but
 22 also his joint -- also his pain, hypertension, chronic
 23 pain, osteoarthritis, neuropathy, hypothyroidism, and
 24 glaucoma. This is far from a complete disregard of
 25 the care of an at-risk resident in a skilled nursing

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1 facility.
 2 "In her deposition, Dr. Baltar stated that
 3 she was a board-certified, fellowship-trained
 4 geriatrician and primarily trained in nursing
 5 facilities and outpatient clinic settings. Dr. Baltar
 6 is specially trained in taking care of vulnerable
 7 at-risk residents at skilled nursing facilities."
 8 Q Okay. But my question is more specific
 9 because I'm asking if you're critical of Dr. Baltar
 10 testifying that offloading procedures wouldn't be on
 11 her radar because she was focused on the acute reason
 12 for Mr. Heifetz's admission to the facility.
 13 A No, I wouldn't be too -- I wouldn't be
 14 critical about that.
 15 Q Why?
 16 A Well, again, she's focusing on the reason
 17 why he's there, which is because of his hip surgery
 18 and dislocation times two of his hip.
 19 And if there were other concerns of skin
 20 issues, that is usually brought up then by nursing
 21 assessments, such as, you know, the assessments by
 22 nursing staff and -- and notifying Dr. Baltar or the
 23 other practitioner -- nurse practitioner about any
 24 issues related to their skin assessment.
 25 Q But as a doctor, it's still her patient as

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1 well. So you don't just say, "Okay, well, that's all
 2 nursing." She also has a duty, doesn't she, to make
 3 sure that the patient is safe and that he doesn't
 4 develop pressure sores?
 5 MS. TURPEN: Form. Foundation.
 6 THE WITNESS: I don't -- I didn't see that in --
 7 in this case that she had -- she neglected
 8 Mr. Heifetz.
 9 Q (BY MS. MORALES) Okay. My question is a
 10 little different, though.
 11 So in -- in this case, Dr. Baltar also had
 12 the responsibility to make sure that Mr. Heifetz was
 13 safe and didn't -- didn't develop pressure sores;
 14 correct?
 15 MS. TURPEN: Form.
 16 THE WITNESS: Correct. And that's why she
 17 ordered for the air mattress as well as repositioning
 18 on admission and the wound care consult. So she did
 19 consider that.
 20 Q (BY MS. MORALES) Did you see -- did you see
 21 any specific orders for offloading procedures?
 22 A Well, repositioning would be -- also be
 23 offloading.
 24 Q Was there anything specific that said to
 25 offload his feet, like putting a pillow under his

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1 legs, to prevent heel ulcers?
 2 A I did not specifically see that.
 3 Q And a doctor can write for that; correct?
 4 MS. TURPEN: Form.
 5 THE WITNESS: A doctor can write for that. But
 6 usually it happens at the facility nursing level when
 7 they identify someone who is at risk for pressure
 8 injuries, and they put in a plan of care in place,
 9 which can be offloading, repositioning.
 10 But Dr. Baltar did order the
 11 pressure-relieving mattress as well as a wound care
 12 consult and repositioning of Mr. Heifetz.
 13 Q And you understood the wound care consult
 14 was for the surgical wound at that time; correct?
 15 A Wound care consult for the surgical wound.
 16 But also it initiates the wound care team that sees
 17 the overall skin or any wound issues for the patient.
 18 Q You read her testimony and Dr. Sithole's
 19 testimony, though, that the wound care was contacted
 20 to address the surgical wound; correct?
 21 A Yes, I saw that.
 22 Q And did you see any other notations or
 23 orders for the wound care team to check anything else
 24 of -- for Mr. Heifetz besides a surgical wound?
 25 A Yes. There was orders on January 23 by

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1 **Dr. Baltar when she was notified of the heel wounds.**

2 Q And that was after the -- the wounds were
3 discovered; correct? I'm talking about before. So at
4 the time of admission, according to the deposition
5 testimony, that wound care consult was only for the
6 surgical wound; correct?

7 MS. TURPEN: Form.

8 THE WITNESS: Usually when there's a wound care
9 consult for a surgical wound, that initiates the
10 consultation from the wound care provider as well as
11 the wound care team. And it is their responsibility
12 then to see or identify any other wounds or if they're
13 at risk for developing any other wounds.

14 So it may have been for the wound care of
15 that surgical wound, but it's also common knowledge
16 that it is -- it also initiates a wound care
17 evaluation of the patient with the wound care team.

18 Q And do you know in this case if that
19 happened, if there was a full evaluation besides on
20 the actual surgical wound?

21 A If -- which -- which part of it?

22 Q By the -- I mean, you're saying "usually."

23 So do you know in this case if that's what
24 happened? You're saying usually that a wound care
25 team will do X, Y, and Z. Do you know in this case

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1 patient?

2 A Yeah. Usually the nursing facility has a
3 nursing assessment -- they usually do a Braden scale.
4 I believe the Braden scale was 15, so he was at risk.

5 Q Okay. I -- I'm talking specifically for the
6 wound care team.

7 Are you including the nurses in the wound
8 care team?

9 A Yes. That's usually the wound care team.
10 They're usually nurses.

11 Q Okay. Who else is comprised of the wound
12 care team?

13 A It depends on -- it can be a wound care
14 physician or a wound care nurse practitioner.

15 Q And in this case, do you know who else was
16 involved besides nurses at the facility?

17 A Not that I can recall or see.

18 Q Can you give us a few examples of offloading
19 procedures?

20 A Well, I -- I already told you the one with
21 the pillows underneath the calves. It could also be
22 pillows behind the back or wedge cushions. I mean,
23 anything that offload -- it could also be certain
24 kinds of beds, low air loss beds.

25 Q Who can implement offloading procedures?

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1 what happened?

2 A Yes. I mean, the -- the wound care -- they
3 found the wound, and Dr. -- and Dr. Baltar was
4 notified, and she gave appropriate wound care orders.

5 Q Okay. Let's back up.

6 So at the time of admission when the wound
7 care consult was actually called, and according to
8 Dr. Sithole -- I mean, according to Dr. Baltar and
9 Nurse Practitioner Sithole, the reason for that was
10 the surgical wound. Is that your understanding?

11 A Yes.

12 Q Okay. Now, you also testified that usually
13 these wound care teams will do full evaluations.

14 My question to you is before he actually got
15 wounds on his heels and his calf, do you know if the
16 wound care team did any type of full evaluation as
17 you're indicating?

18 A Well, we would have to look in the medical
19 records.

20 Q And you reviewed the medical records a
21 couple times already, haven't you?

22 A Yes.

23 Q And did you see any kind of notation that
24 predates the wounds actually developing in this case
25 that identified that they did a full evaluation of the

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1 MS. TURPEN: Form.

2 THE WITNESS: Nursing staff.

3 Q (BY MS. MORALES) Okay. Can nurse
4 practitioners implement them?

5 A Implement?

6 MS. TURPEN: Same -- same objection as to
7 "implement."

8 THE WITNESS: Do you mean order or do you mean
9 actually do?

10 Q (BY MS. MORALES) Can they implement, can
11 they do -- can they make sure, can they set it up
12 themselves?

13 MS. TURPEN: Form.

14 THE WITNESS: That's usually a nursing -- nursing
15 job. But, yeah, I mean -- I mean, even physicians --
16 even family members can do it.

17 Q (BY MS. MORALES) Okay. So nurses, nurse
18 practitioners, and doctors all can implement
19 offloading procedures; correct?

20 MS. TURPEN: Same objection.

21 THE WITNESS: Implement. What do you mean
22 "implement"?

23 Q (BY MS. MORALES) So like actually put the
24 pillows under their legs or prop them up so that
25 there's not pressure injuries; correct?

<p style="text-align: right;">Page 41</p> <p>1 MS. TURPEN: Same objection. 2 THE WITNESS: Yes. 3 Q (BY MS. MORALES) And you brought up the 4 word "order." 5 So nurse practitioners and doctors can order 6 offloading procedures; correct? 7 A They can. But it's usually already 8 implemented based upon the risk assessment of the 9 nursing staff. 10 Q But if they want to make sure that that's 11 done and make sure to notify the rest of the team how 12 important it is, they can put that in the order; 13 correct? 14 MS. TURPEN: Form. 15 THE WITNESS: I mean, it's -- yeah. That's -- 16 that's possible. But it's -- it's something that the 17 nursing staff will do. And if it's ordered to 18 reposition or for -- or the compression socks on and 19 off 12 hours -- it's something that -- as providers, 20 if we order something, it should be done or at least 21 we're expected -- our expectation is that it's done. 22 So it's -- you know, it's like -- I don't 23 have to write all the time, you know, lock wheelchair. 24 It's a -- it's a nursing duty. They -- they know how 25 to do that. It's something I don't have to order.</p>	<p style="text-align: right;">Page 43</p> <p>1 MS. TURPEN: Join. 2 THE WITNESS: Well, the standard -- the standard 3 is reposition every two hours. 4 Q (BY MS. MORALES) And in this case, it was 5 ordered every thirty minutes; correct? 6 A Correct. 7 Q Did you see any documentation when you 8 reviewed the medical records that that was actually 9 done? 10 A I did not see that. 11 Q And if, in fact, the nursing staff did not 12 reposition the patient every thirty minutes as ordered 13 by the doctor, that would be below the standard of 14 care; correct? 15 MS. TURPEN: Object -- object to form. 16 Incomplete hypothetical. 17 As to the nurses? 18 MS. MORALES: Yes. 19 Q Let me -- let me try that again since I'm 20 answering questions. 21 In this case, if the nursing staff did not 22 reposition the patient every 30 minutes, that would be 23 below the standard of care; correct? 24 MS. BUYS: Object to form. 25 MS. TURPEN: Join.</p>
<p style="text-align: right;">Page 42</p> <p>1 Q (BY MS. MORALES) But if a doctor -- 2 A That's an example. 3 Q If a doctor or nurse practitioner comes in 4 and evaluates a patient and doesn't see that 5 offloading procedures are being implemented, that's 6 something that can be placed in the order at that 7 time; correct? 8 MS. TURPEN: Form. Foundation. 9 MS. BUYS: Join. 10 THE WITNESS: That's -- if -- I mean, that's -- 11 that's another hypothetical. If -- if they're not 12 seeing it -- but, again, I -- it -- it depends on the 13 situation. I mean, if it is something that is not 14 being done, then, yeah, they can -- they can do it or 15 they can put in a specific order. 16 But sometimes patients have just came back 17 from therapy or other things, and maybe -- it -- it, 18 again, depends on the -- excuse me. It depends on the 19 situation. 20 Q (BY MS. MORALES) In this case -- well, 21 strike that. 22 How often should high-risk patients with the 23 same or similar comorbidities as Mr. Heifetz be turned 24 in bed to avoid pressure sores? 25 MS. BUYS: Object to form.</p>	<p style="text-align: right;">Page 44</p> <p>1 THE WITNESS: So that order that you're talking 2 about, is that -- that was the initial order for him 3 to have a bedrail and to -- so he can reposition 4 himself, and they were to just check on him every 30 5 minutes? Is that what you're referring to? 6 Q (BY MS. MORALES) I'm asking if there was an 7 order to reposition the patient every 30 minutes and 8 the nurses failed to do that, would that be below the 9 standard of care? 10 MS. BUYS: Object to form. 11 MS. TURPEN: Form. 12 THE WITNESS: Well, I mean, that's -- it depends 13 on the situation. But repositioning every two hours 14 is the standard of care. 15 Q (BY MS. MORALES) Okay. If the order is 16 written for every 30 minutes, is it supposed to be 17 done every 30 minutes or every two hours? 18 A If it's written for every 30 minutes, it 19 should be done every 30 minutes. 20 Q And if it's not done every 30 minutes, is 21 that below the standard of care? 22 MS. TURPEN: Form. Asked and answered. 23 MS. BUYS: Join. 24 MS. TURPEN: And, again, form as to whose 25 standard of care? We're not offering him on nursing</p>

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1 standard of care. He's here today to talk about the
2 standard of care of Dr. Baltar and the midlevel.
3 Q (BY MS. MORALES) Can you answer the
4 question, Doctor?

5 A **Can you -- can I see the order that you're**
6 **referring to?**

7 Q I'm -- I'm using a hypothetical.
8 So hypothetically speaking --

9 A **Okay.**

10 Q -- if that -- if that order says reposition
11 every 30 minutes and Mr. Heifetz is not repositioned
12 every 30 minutes, is that below the standard of care
13 of the nurses?

14 MS. BUYS: Same objections.

15 MS. TURPEN: Join.

16 THE WITNESS: If there's an order to reposition
17 every 30 minutes, then it should be followed.

18 Q (BY MS. MORALES) Okay. And it would be
19 below the standard of care not to do it; correct?

20 A **Correct.**

21 MS. BUYS: Late objection. Form.

22 MS. TURPEN: Join.

23 Q (BY MS. MORALES) Now, when you reviewed the
24 medical records, did you even see any documentation
25 identifying that the patient was repositioned every

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1 regulations. I don't recall that.

2 Q (BY MS. MORALES) You would agree that it
3 should be documented according to the standard of care
4 to ensure that it -- that the patient is actually
5 being repositioned; correct?

6 MS. TURPEN: Form. Foundation.

7 MS. BUYS: Join.

8 THE WITNESS: It depends on the facility. It
9 depends on what their policies and procedures are. If
10 they do have an every-two-hour-turning form, then that
11 should be filled out if that's their policy.

12 Q (BY MS. MORALES) Okay. Without a policy
13 and procedure, do you believe that it should be
14 documented when a patient is repositioned?

15 MS. TURPEN: By who?

16 Q (BY MS. MORALES) By anyone.

17 MS. TURPEN: Object to form.

18 Q (BY MS. MORALES) By a -- any medical
19 provider.

20 A **Again, it depends on the facility. But I**
21 **have seen CNAs document that they turned the patient.**
22 **Again, it depends on the facility, if that's their**
23 **policy and procedure. I've seen nursing staff write**
24 **down that the patient was repositioned on -- on their**
25 **shift.**

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1 two hours?

2 A **I recall there was a nurse had documented**
3 **that he was repositioned.**

4 Q In the medical records, did you identify
5 that the staff was showing that they were position- --
6 repositioning the -- the patient every two hours?

7 A **No, I didn't see that.**

8 Q And you're a director of -- or have been a
9 director of a couple of different nursing homes;
10 correct?

11 A **Yes.**

12 Q Have you also been a director of rehab
13 facilities?

14 A **Rehab facilities? There are different kinds**
15 **of rehab facilities. Which ones are you referring --**

16 Q Well, I'm just asking generally.

17 Have you ever been a director of any type of
18 rehab facility?

19 A **The ones that are listed on my CV.**

20 Q Okay. Is there federal regulations that
21 mandate that -- that it's documented when patients are
22 repositioned?

23 MS. TURPEN: Form.

24 MS. BUYS: Join.

25 THE WITNESS: I would have to look at the federal

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1 Q My question is a little different, though.

2 Do you believe the standard of care mandates
3 that medical providers document when patients are
4 repositioned?

5 MS. BUYS: Object to form.

6 MS. TURPEN: Form. Foundation.

7 THE WITNESS: Mandates? There should be some
8 documentation of repositioning of the patient, and the
9 standard is approximately two hours of repositioning.
10 So whatever policies and procedures that the facility
11 chooses to use to document that, that should be
12 documented.

13 Q (BY MS. MORALES) Thank you.

14 Do you agree that risk assessments should be
15 used in evaluating patients to determine their risk
16 for pressure injuries?

17 MS. BUYS: Object to form.

18 THE WITNESS: Risk assessment?

19 Q (BY MS. MORALES) Like the Braden scale.

20 A **Yes. Yes. That's a --**

21 Q Do you believe that doctors and nurse
22 practitioners should have an understanding of the
23 Braden scale assessment?

24 MS. BUYS: Form.

25 THE WITNESS: Not necessarily. They're not the

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1 ones that -- or physicians or midlevels are not the
2 ones that do the Braden scale. It's usually a nursing
3 assessment tool.

4 Q (BY MS. MORALES) Okay. So you don't
5 believe that it's necessary for medical providers to
6 have an understanding of the Braden scale?

7 MS. TURPEN: Form. Asked and answered.

8 THE WITNESS: Yeah, it -- it -- it depends on the
9 provider. Some providers know it, some providers
10 don't, from my understanding.

11 If the facility says that they're at risk
12 and these are the interventions that should -- that,
13 you know, is care planned, there's -- there's no
14 objection to that. But it's not the standard that
15 everyone should know -- all providers should know the
16 details of a Braden score.

17 Q (BY MS. MORALES) What about medical
18 providers who work with geriatric patients?

19 A I mean, they can.

20 Q Do you think that they should have an
21 understanding?

22 A Well, I think it -- I think all medical
23 knowledge is good to have an understanding of. But
24 many times we have to go back and refer to different
25 things, like the Braden scale.

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1 Q Do you believe a nurse practitioner who has
2 worked as a CNA should have an understanding of the
3 Braden scale assessment?

4 A No.

5 MS. TURPEN: Form.

6 Just give me just a sec, Doc. Just a sec.
7 You're fine.

8 Q (BY MS. MORALES) I'm sorry? Do you -- do
9 you believe that a nurse practitioner who has worked
10 as a CNA should have an understanding of the Braden
11 scale assessment?

12 MS. TURPEN: Same objection.

13 THE WITNESS: No.

14 Q (BY MS. MORALES) Why not?

15 A Well, okay, so hypothetically you're saying
16 a CNA that -- a nurse practitioner that was a CNA --
17 my understanding is CNAs do not use the Braden scale.

18 Q What about if a nurse practitioner has been
19 an RN or an LPN?

20 A It can depending on where they've been
21 working as an RN or LPN.

22 Q If a doctor or a midlevel doesn't understand
23 the Braden scale assessment, how would they know if a
24 nurse is properly assessing a patient?

25 MS. TURPEN: Form. Foundation.

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1 MS. BUYS: Join.

2 THE WITNESS: Well, the nurses who make the
3 assessments, the wound care team, they have a
4 knowledge of the Braden scale --

5 Q (BY MS. MORALES) In this -- oh, sorry.

6 A -- and -- and usually nursing staff is
7 supervised by either the assistant director of nursing
8 or the DON. It is not a function of the clinicians to
9 ensure that they're doing their job properly.

10 Q In this case, did -- did you look at the
11 actual Braden scale that was done of Mr. Heifetz to
12 determine if it was the correct score? 15.

13 A I saw -- yes, I saw his Braden scale. I --
14 I'd have to kind of go back and -- and review it again
15 and to try to apply it to him.

16 Q And you understand how to do the Braden
17 scale assessment; correct?

18 A I do. As a medical expert, yes.

19 Q How often should a Braden scale assessment
20 be performed on a patient?

21 MS. BUYS: Object to form.

22 MS. TURPEN: Join.

23 THE WITNESS: It depends on the situation. It
24 depends on the facility. Usually once a week or if a
25 situation changes.

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1 Q (BY MS. MORALES) And is it once a week even
2 if a patient is high risk?

3 MS. TURPEN: Form. Foundation.

4 MS. BUYS: Join.

5 THE WITNESS: Again, it depends on what their
6 policy is. If the condition changes in that high-risk
7 patient, if it's their policy to redo the Braden
8 scale, they can certainly do that.

9 MS. TURPEN: Can we go off the record real quick?

10 THE VIDEOGRAPHER: Yes. We are off the record.
11 3:21 p.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We're back on the record.
14 3:22 p.m.

15 Q (BY MS. MORALES) Okay. You're -- and we've
16 talked about this earlier.

17 You're a director of a nursing -- a couple
18 nursing homes; correct?

19 A Skilled nursing facilities that also are
20 nursing homes, correct.

21 Q And in those facilities that you oversee as
22 a director, how often are Braden scale assessments
23 done on your higher risk patients?

24 A They're done on a weekly basis unless
25 there's a condition or wound change. Then they can do

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1 **another Braden scale at that time.**
 2 Q And is it ever a more than -- should it ever
 3 be more frequent than a week besides if you already
 4 see a change in condition of the skin?
 5 MS. TURPEN: Form.
 6 MS. BUYS: Join.
 7 THE WITNESS: Not that I can say.
 8 Q (BY MS. MORALES) And do you help create
 9 policies and procedures at the facilities that you
 10 oversee?
 11 A Yes. I participate in that.
 12 Q What is vascular insufficiency?
 13 A It's -- it depends on which vascular site.
 14 There's arterial and venous. And if there's usually
 15 diminished flow, it's the insufficiency component of
 16 that.
 17 Q And what is neuropathy?
 18 A Neuropathy is a condition where you have
 19 either numbness, tingling, or pain.
 20 Q And if a patient has impaired -- impaired
 21 feeling in the feet or legs, that puts him more at
 22 risk of pressure injuries; correct?
 23 MS. TURPEN: Form.
 24 THE WITNESS: Yes.
 25 Q (BY MS. MORALES) Are you intending on

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1 offering any opinions on the length of time the sores
 2 on Mr. Heifetz's calf would take to develop?
 3 A No.
 4 Q Do you intend on offering any opinions
 5 whether or not the sore on Mr. Heifetz's calf was a
 6 pressure ulcer or a vascular sore?
 7 A No.
 8 Q Can leaving -- can leaving the compression
 9 socks on too long result in pressure sores on the
 10 calf?
 11 MS. TURPEN: Object to form.
 12 MS. BUYS: Form, foundation.
 13 THE WITNESS: No.
 14 Q (BY MS. MORALES) And can a person with
 15 vascular insufficiencies develop pressure sores on the
 16 calf?
 17 MS. BUYS: I'm going to object to form.
 18 MS. TURPEN: Join.
 19 THE WITNESS: It depends on the situation, but
 20 they can.
 21 Q (BY MS. MORALES) A person with vascular
 22 insufficiency in the lower extremities is more
 23 vulnerable to pressure sores on the legs; correct?
 24 MS. TURPEN: Object to form.
 25 MS. BUYS: Join.

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1 THE WITNESS: Yes. In most situations.
 2 Q (BY MS. MORALES) Do you intend on offering
 3 any opinions at the time of trial of the amount of
 4 time it would take for the sores on Mr. Heifetz's
 5 heels to develop?
 6 A No.
 7 Q Are you familiar with the stages of a
 8 pressure ulcer?
 9 A Yes.
 10 Q What are the stages?
 11 A Stage 1 -- do you want me to describe them
 12 or just name -- there's Stage 1, 2, 3, and 4. And
 13 suspected deep tissue injury and unstageable.
 14 Q Okay. So what is a Stage 4 injury? What is
 15 that? How would you describe that?
 16 A Well, it's -- well, it's described by the
 17 National Pressure Injury Advisory Panel as a -- it's a
 18 deep wound that you can see bone, muscle, fascia.
 19 Q And you would agree Stage 4 sores don't
 20 develop overnight; correct?
 21 MS. TURPEN: Form.
 22 MS. BUYS: Join.
 23 THE WITNESS: Overnight? Usually not.
 24 Q (BY MS. MORALES) How would you describe a
 25 pressure ulcer that's Stage 3?

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1 A Stage 3 is -- usually is down to fat.
 2 Q And what do you mean by that?
 3 A That means it passes the dermis -- the
 4 epidermis and dermis layer. So full thickness wound.
 5 Q And pressure 3 ulcers don't develop
 6 overnight; correct?
 7 MS. BUYS: Form.
 8 MS. TURPEN: Form.
 9 THE WITNESS: Usually not.
 10 Q (BY MS. MORALES) And you agree that if a
 11 patient starts developing a wound, you would expect
 12 the nurses and/or providers to document it; correct?
 13 MS. BUYS: Object to form.
 14 MS. TURPEN: Form. Foundation.
 15 THE WITNESS: Yes.
 16 Q (BY MS. MORALES) And you agree that it's
 17 also important that wounds are properly evaluated for
 18 treatment; correct?
 19 MS. BUYS: Object to form.
 20 THE WITNESS: Yes.
 21 Q (BY MS. MORALES) Were you aware through the
 22 deposition testimony and/or the medical records that
 23 Mr. Heifetz had a difficult time repositioning himself
 24 in bed due to the brace among his other issues?
 25 MS. BUYS: Object to form.

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1 THE WITNESS: His deposition?
 2 Q (BY MS. MORALES) I said according to the
 3 deposition testimony and/or the medical records, did
 4 you have that knowledge?
 5 A That he --
 6 MS. BUYS: Same objection.
 7 THE WITNESS: That he had difficulty in
 8 repositioning?
 9 Q (BY MS. MORALES) Yes. Did you -- let me --
 10 let me try again. So strike that.
 11 Were you aware through the deposition
 12 testimony and/or the medical records that Mr. Heifetz
 13 had a difficult time repositioning himself in bed due
 14 to the brace?
 15 MS. BUYS: Object to form.
 16 MS. TURPEN: Join.
 17 Q (BY MS. MORALES) Among his other issues.
 18 A My under- --
 19 MS. BUYS: Same objections.
 20 THE WITNESS: My understanding from the medical
 21 records is that he was minimal assist with bed
 22 mobility when he first came in, and he was, I believe,
 23 modified independent when he left. So according to
 24 the medical documentation there, he did need some
 25 assistance initially, but that he was fairly

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1 independent during his stay.
 2 Q (BY MS. MORALES) And you reviewed the
 3 physical therapy records; correct?
 4 A Yes, I have.
 5 Q And you understood that he had a brace on;
 6 correct? A leg brace?
 7 A Correct.
 8 Q And how -- could you describe -- strike
 9 that.
 10 Were you -- did you -- do you have knowledge
 11 of what type of brace he had?
 12 A He had a -- what they described in the
 13 medical records, an abductor brace.
 14 Q And what's the length of that brace?
 15 A Well, it depends on the manufacturer, but it
 16 can be to the -- to the thigh and to the lower
 17 extremity. It prevents the leg from being abducted.
 18 Q And that type of brace would make it more
 19 difficult for a person to move around; correct?
 20 MS. TURPEN: Form.
 21 MS. BUYS: Join.
 22 THE WITNESS: It depends on the type of brace.
 23 Again, how -- it depends on if he was -- again, it --
 24 it depends on the type of brace.
 25 Q (BY MS. MORALES) If a brace goes from

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1 your -- I guess the top of your femur to somewhere in
 2 your lower extremities, that's going to make it more
 3 difficult for a person to turn and move around than if
 4 you don't have a brace; correct?
 5 A It would be more cumbersome, yes.
 6 Q Is it below the standard of care to use ACE
 7 wraps in lieu of compression stockings?
 8 MS. TURPEN: Form. Foundation --
 9 MS. BUYS: Join.
 10 MS. TURPEN: -- as to whose standard of care.
 11 THE WITNESS: No.
 12 Q (BY MS. MORALES) Okay. Why not?
 13 A Because it's not below the standard of care.
 14 Compression therapy is considered a cornerstone of
 15 venous insufficiency and lower extremity edema,
 16 whether it's compression stockings or ACE wraps.
 17 Q Do you actually use ACE wraps in lieu of
 18 compression stockings on your patients?
 19 A Yes.
 20 Q And how often?
 21 A When the situation arises. If -- if their
 22 lower extremity is too large for compression hose,
 23 then ACE wraps are a good alternative.
 24 Q And besides -- well, strike that.
 25 Is that like an obese patient that you're

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1 speaking of?
 2 A No.
 3 Q When you say "large," what do you mean by
 4 that?
 5 A Edematous legs. Usually that's why we're
 6 using compression therapy.
 7 Q Is there any detriment to using
 8 compression -- or ACE bandages instead of compression
 9 stockings?
 10 MS. TURPEN: Form.
 11 MS. BUYS: Join.
 12 Q (BY MS. MORALES) Is there any -- can any --
 13 well, strike that. Let me try again.
 14 What's the disadvantages of using ACE
 15 bandages instead of compression stockings on a
 16 patient?
 17 A Well, disadvantage would be it depends on
 18 how the ACE wrap -- I mean, compression stockings have
 19 a gradient where it's usually more tighter down
 20 towards the ankles, and it's -- but compression
 21 throughout the leg. ACE wraps, slightly more
 22 difficult because you have to manually put it on. And
 23 so it -- it can -- that's the only difference I would
 24 think.
 25 But you're performing compression for the

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1 lower extremity, and that's the main treatment, main
 2 goal. And so ACE wraps would be more beneficial for
 3 someone who cannot use compression hose or even put on
 4 compression hose. The risk of trying to put on
 5 compression hose for someone who has vascular
 6 insufficiency, which I've seen on several occasions,
 7 is that they tear their skin trying to put on
 8 compression hose. So an ACE wrap would be more
 9 preferable.

10 Q Any other cons of using ACE bandages versus
 11 compression stockings?

12 A No, not at this time.

13 Q Do you think Mr. Heifetz's pressure sores
 14 could have been prevented?

15 MS. BUYS: Object to form.

16 MS. TURPEN: Join.

17 THE WITNESS: I think many pressure ulcers,
 18 including Mr. Heifetz, could -- or -- yeah, could be
 19 preventable. But there are some high-risk patients.

20 Q (BY MS. MORALES) Okay. So in this case,
 21 I'm just asking about Mr. Heifetz.

22 Have you formulated an opinion whether or
 23 not Mr. Heifetz's pressure sores were preventable?

24 A Well, that is -- so in reviewing this case,
 25 I mean, I reviewed it in -- in terms of the providers.

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1 I think for every patient who comes into a
 2 skilled nursing facility has wound care evaluations,
 3 and there are interventions for prevention, just like
 4 Mr. Heifetz had. But it's difficult to say, in
 5 particular for Mr. Heifetz, if his wounds were totally
 6 preventable.

7 Q Why?

8 A He has a medical device in place.

9 Q Okay. The medical device had nothing to do
 10 with the heel pressure wounds; correct?

11 MS. TURPEN: Form. Argumentative.

12 THE WITNESS: I'm just saying anyone who has a
 13 medical device are at high risk for -- or can have
 14 pressure injury.

15 Q (BY MS. MORALES) Okay. So I just want to
 16 be clear.

17 At the time of trial, do you intend on
 18 offering any opinions whether or not Mr. Heifetz's
 19 pressure wounds were preventable?

20 A No.

21 Q You agree that most pressure wounds are
 22 preventable; correct?

23 MS. TURPEN: Form.

24 MS. BUYS: Object to form.

25 MS. TURPEN: Form. Foundation.

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1 THE WITNESS: Most, but not all.

2 Q (BY MS. MORALES) And if interventions are
 3 not implemented, that can -- well, strike that.

4 Have we today talked about all in- --

5 interventions that can be implemented to prevent
 6 pressure sores?

7 MS. TURPEN: Form.

8 MS. BUYS: Join.

9 THE WITNESS: Have we discussed all interventions
 10 of pressure prevention?

11 Q (BY MS. MORALES) Yes.

12 A I don't -- did we -- did you ask me that
 13 before? I mean, I -- I recall something similar, but
 14 I don't know if we discussed all of it, but --

15 Q Okay. Tell me all interventions to -- that
 16 can be implemented to prevent pressure sores.

17 MS. BUYS: Object to form.

18 MS. TURPEN: Join.

19 THE WITNESS: Yeah. Turning and repositioning.

20 Q (BY MS. MORALES) Okay.

21 A Nutrition. Hydration.

22 Q Okay.

23 A Treat any infections. Mobility. Make sure
 24 the patient is mobile.

25 Q Okay. Anything else?

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1 A You can alleviate shear or friction and
 2 reduce moisture in areas that are high risk for
 3 pressure injury.

4 Q Okay. Anything else? Or is that it?

5 A That's it for now.

6 Q And you would agree that if some or all of
 7 those interventions are not implemented, it puts a
 8 patient at a greater risk of pressure sores; correct?

9 MS. TURPEN: Form. Foundation.

10 MS. BUYS: Join.

11 THE WITNESS: Well, you would want to perform
 12 preventative measures on the individual patient that
 13 requires specific interventions based on their need,
 14 based on their -- their evaluation.

15 Q (BY MS. MORALES) And how important is
 16 patient safety to you on a scale of one to ten, ten
 17 being the highest?

18 MS. TURPEN: Form.

19 THE WITNESS: Patient safety is very important.

20 Q (BY MS. MORALES) Okay. So on a scale of
 21 one to ten, what would you rate that?

22 A I -- I would say a ten.

23 MS. MORALES: Okay. So if we could take a short
 24 break. I'm going to reorganize. I think I'm almost
 25 done, though.

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1 MS. TURPEN: And don't forget the CV if you want
 2 to do that.
 3 MS. MORALES: Yeah, yeah. I want to do that too.
 4 THE VIDEOGRAPHER: We are off the record,
 5 3:41 p.m.
 6 (Recess taken.)
 7 THE VIDEOGRAPHER: We're back on the record.
 8 3:52 p.m.
 9 Q (BY MS. MORALES) Okay, Doctor, when we were
 10 off the record, I provided you a copy of the CV that
 11 we just got by email.
 12 Did you have an opportunity to look at that?
 13 A Yes, I did.
 14 Q Okay. And is that your most updated CV?
 15 A Yes, it is.
 16 MS. MORALES: Okay. And we'll go ahead and mark
 17 that as the next exhibit. I forget what number we're
 18 on.
 19 MS. TURPEN: Weren't we going to do it as 1
 20 because we --
 21 MS. MORALES: Let's switch off the first one.
 22 That makes more sense, yeah. So if we can switch out
 23 and make this the first exhibit.
 24 Q And you didn't see any additional changes
 25 that needed to be made on the most recent CV; is that

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1 amendments, or corrections to that report that you
 2 provided to us?
 3 A No.
 4 Q Okay. And then your second report is dated
 5 July 28, 2021; is that correct?
 6 A That is correct.
 7 Q Okay. And do you stick by the opinions that
 8 you provided within this report?
 9 A Yes, I do.
 10 Q Is there any revisions, amendments that you
 11 need to make to this report?
 12 A No. Not at this time.
 13 Q Have you had the opportunity to review the
 14 deposition -- I guess part of the deposition
 15 transcript of Rachel Anderson?
 16 A No, I have not.
 17 Q Okay.
 18 MS. TURPEN: He's not been provided that. It's
 19 my understanding the first half is not available yet.
 20 MS. MORALES: Oh. I don't know.
 21 MS. TURPEN: Okay. I -- because I -- I'll put on
 22 the record as I looked for that --
 23 MS. MORALES: Oh, okay.
 24 MS. TURPEN: -- because I know my understanding
 25 is because she's being continued or potentially

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1 correct?
 2 A Currently, that is correct. I did see that
 3 for the post acute care specialist, it says "to
 4 present," which is true. I'm no longer seeing
 5 patients for them, but I'm still a member, a founding
 6 member or --
 7 Q Okay.
 8 A Until that entity dissolves.
 9 Q Okay.
 10 A So it is correct.
 11 Q All right. Earlier I -- we marked both of
 12 your reports.
 13 The first report is dated June 21, 2021; is
 14 that correct?
 15 A Yes.
 16 Q Okay. And do you still -- do you intend on
 17 testifying at the time of trial all of the opinions
 18 that you provided within this report?
 19 A Yes. Unless there's any new information
 20 provided to me.
 21 Q Okay.
 22 A My opinions may change, but this is what my
 23 opinions are at the time.
 24 Q Okay. Up -- up until today, everything
 25 you've reviewed, would you like to make any revisions,

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1 continued --
 2 MS. MORALES: Yeah, usually we get it.
 3 MS. TURPEN: -- I don't think Part 1 of the
 4 transcript is available now.
 5 MS. BUYS: I don't have it either yet.
 6 MS. MORALES: Okay. All right.
 7 Q (BY MS. MORALES) So I guess you haven't
 8 received it.
 9 A No. No, I have not.
 10 Q Okay. Now, have you in this case -- did you
 11 review the facility's policies, procedures, and
 12 protocols?
 13 A Regarding?
 14 Q Wound care prevention.
 15 A Wound care prevention. I briefly reviewed
 16 them.
 17 Q Okay. You agree that when a wound is
 18 discovered, that not only information that there is a
 19 wound should be documented, but also a description of
 20 the wound; correct?
 21 MS. BUYS: Object to form.
 22 MS. TURPEN: Join.
 23 THE WITNESS: Yes. That's usually what's
 24 documented.
 25 Q (BY MS. MORALES) Okay. And in your review

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1 of the medical records in this case, did you see any
 2 description as required by the policies and procedures
 3 of the -- Barry Heifetz's wounds?
 4 MS. BUYS: Object to form.
 5 MS. TURPEN: Join.
 6 THE WITNESS: I don't know the details of the
 7 policies and procedures regarding wound care for Barry
 8 Heifetz. I saw that there was orders for a deep
 9 tissue injury to the left heel and -- and also to the
 10 right --
 11 Q (BY MS. MORALES) Okay. Did you see any
 12 documentation identifying or describing the actual
 13 wound? Like the size of the wound. Any described --
 14 descriptive factors that were put in medical records
 15 regarding the wound?
 16 A **Not that I can recall.**
 17 Q And you would agree with me that the
 18 standard of care requires that -- requires that
 19 there's a description of the wound in the medical
 20 records; correct?
 21 MS. BUYS: Object --
 22 MS. TURPEN: Form -- form as to whose standard of
 23 care.
 24 MS. BUYS: Object to form.
 25 THE WITNESS: Usually that the wound care

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1 assessment team or -- or whoever the nurse assigned to
 2 wound care will have a description or -- documented
 3 description of the wound.
 4 Q (BY MS. MORALES) Okay. Do you believe that
 5 the medical providers in this case, Dr. Baltar or
 6 Nurse Practitioner Sithole, had any duty to document
 7 and describe the wound as far as size, color, any
 8 description?
 9 A **No, they did not have a duty to document the**
 10 **description of the wound.**
 11 Q Do you believe the standard of care required
 12 that they describe the wound within their
 13 documentation in the medical record?
 14 MS. TURPEN: Dr. Baltar and Nurse Sithole?
 15 MS. MORALES: Yes.
 16 Q Dr. Baltar and Nurse -- is it Sithole? How
 17 would you say Sithole?
 18 MS. TURPEN: I like to call her Miriam.
 19 Q (BY MS. MORALES) Sorry. Let me -- strike
 20 that.
 21 So do you believe that either -- well, let
 22 me start with Dr. Baltar.
 23 Do you believe Dr. Baltar -- the standard of
 24 care required Dr. Baltar to describe the wound within
 25 the medical record? The size, color.

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1 A **If she saw -- if she saw Mr. Heifetz, she**
 2 **could note that there was a wound. But she had**
 3 **Miriam, the nurse practitioner, see Mr. Heifetz.**
 4 Q Okay. So do you believe the nurse
 5 practitioner in this case had a duty, according to the
 6 standard of care, to identify by documentation a
 7 description of the wound? The size, the color.
 8 MS. TURPEN: Form.
 9 THE WITNESS: Usually what's documented is the
 10 wound, but not necessarily the -- the size and
 11 description. All those measurements are done by the
 12 nursing staff in their wound care documentation.
 13 Q (BY MS. MORALES) Okay. If a -- if a -- a
 14 midlevel provider is evaluating a patient and
 15 evaluating the wound, is that something that they
 16 should include within their own notations?
 17 MS. TURPEN: Form. Asked and answered.
 18 THE WITNESS: Yes. If they're addressing a
 19 wound, they can note that there is a wound there in
 20 the lower extremity and have documented that wound
 21 care is in place.
 22 Q (BY MS. MORALES) And you would agree that
 23 it's important to measure the size of wounds in part
 24 to determine if that wound is getting better or worse;
 25 correct?

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1 MS. TURPEN: Form. Foundation.
 2 MS. BUYS: Join.
 3 THE WITNESS: By who?
 4 Q (BY MS. MORALES) Medical providers.
 5 So it's important to put within the medical
 6 records a description of the wound, including the
 7 size, to determine if that wound is getting better or
 8 worse over time; correct?
 9 MS. TURPEN: Form. Foundation.
 10 MS. BUYS: Join.
 11 THE WITNESS: Medical provider in terms of the
 12 nursing staff that's evaluating the wound?
 13 Q (BY MS. MORALES) Anyone evaluating the
 14 wound.
 15 A **Yes.**
 16 Q And according to the policies and procedures
 17 of the facility -- we can go ahead and mark this as
 18 the next exhibit.
 19 (Plaintiff's Exhibit 4 marked for
 20 identification.)
 21 Q (BY MS. MORALES) You would agree -- and
 22 take your time to review that if you need to.
 23 A **Okay.**
 24 Q You would agree that policy and procedure at
 25 the facility requires that -- that there's a

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1 description of the wound within the medical
2 documentation; correct?
3 MS. TURPEN: Form. Foundation.
4 MS. BUYS: Join.
5 THE WITNESS: Well, okay, so this is Spanish
6 Hills' policies and procedures for their wound care?
7 Because I don't see Spanish Hills on here.
8 Q (BY MS. MORALES) That's the policies and
9 procedures that were provided --
10 A Okay.
11 Q -- in this litigation.
12 A I see.
13 **But, yeah, based on the policies and**
14 **procedures, it spells out what needs to be done here.**
15 Q Okay. And that includes documenting the
16 size and description of the wound; correct?
17 MS. TURPEN: Form. Foundation.
18 MS. BUYS: Join.
19 THE WITNESS: It says under "Procedures: Wound
20 Measurement Terminology. Length and width are
21 documented using clock descriptions." So yes.
22 Q (BY MS. MORALES) Okay. And when you
23 reviewed the medical records in this case, did you see
24 any description of the wounds --
25 A Well --

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1 Q -- as -- as required pursuant to that policy
2 and procedure?
3 MS. BUYS: Object to form.
4 THE WITNESS: I did not.
5 Q (BY MS. MORALES) Okay. Do you have an
6 understanding one way or the other whether or not the
7 midlevel -- midlevel providers in this case, the nurse
8 practitioner and Dr. Baltar, whether or not they were
9 supposed to follow the policies and procedures of the
10 facility?
11 MS. TURPEN: Just -- just a -- a form,
12 foundation. Dr. Baltar is not midlevel. Just Nurse
13 Baltar -- or just Nurse Sithole.
14 THE WITNESS: My understanding is policies and
15 procedures for documentation of this particular wound
16 care, it looks like it's for the nurse's assessment.
17 Q (BY MS. MORALES) Okay.
18 A **Not physicians or nurse practitioners. This**
19 **is for their nursing staff.**
20 Q Okay. Do you know one way or the other
21 whether or not the bylaws require that the medical
22 providers working out of the facility of Spanish Hills
23 know and follow its policies and procedures?
24 MS. BUYS: Object to form.
25 MS. TURPEN: Form. Foundation.

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1 THE WITNESS: No. No. Usually, I mean, it's --
2 usually the policies and procedures that they have a
3 medical staff -- policies and procedures that we
4 follow by. But the facility -- again, I -- I don't
5 know. I've not seen Spanish Hills' physician provider
6 or midlevel provider policies and procedures.
7 Q (BY MS. MORALES) Okay. And do -- what I'm
8 asking, though, is do you know one way or the other
9 whether or not Dr. Baltar or the nurse practitioner in
10 this case was supposed to follow the policies and
11 procedures of the facility?
12 MS. TURPEN: Form and foundation as to which
13 policies and procedures. I think he's made a
14 differentiation between medical staff and nursing
15 staff.
16 MS. BUYS: Object to form.
17 THE WITNESS: That's a vague question because,
18 again, it's -- this is -- I mean, there's separate
19 nursing policies and procedures that I don't
20 necessarily need to follow. But if there are medical
21 specifically for credentialed providers, then, yes, we
22 should follow those. But this is -- looks like
23 more -- this is a nursing policies and procedure.
24 Q (BY MS. MORALES) Okay. And my question was
25 just -- I mean, it was a little more broad than that,

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1 whether you know one way or the other who was supposed
2 to follow that -- those policies and procedures.
3 A **I do know that the nursing staff --**
4 Q Right.
5 A **-- at the facility should follow their own**
6 **policies and procedures.**
7 Q Okay. Do you know in this case if there
8 were policies and procedures that the doctor or nurse
9 practitioner were supposed to follow to have
10 credentials to work out of that facility?
11 MS. BUYS: Object to form.
12 MS. TURPEN: Join.
13 THE WITNESS: I was not given that information,
14 so I cannot comment.
15 Q (BY MS. MORALES) Was it concerning to you
16 that the nurse practitioner in this case identified
17 that Dr. Baltar was supervising her, but Dr. Baltar
18 didn't seem to know that?
19 MS. TURPEN: Form. Foundation. Misstates
20 testimony.
21 Go ahead.
22 MS. BUYS: Join.
23 THE WITNESS: Well, I'm -- I can't comment on
24 that. I don't know what their working relationship
25 is. Their -- the nurse practitioners are independent

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1 providers as well here in the state of Nevada, as you
 2 probably already know, that they can -- they have
 3 prescript- -- prescribing abilities as well as
 4 prescribing C2 medications and can have their
 5 independent practice.
 6 Q (BY MS. MORALES) They can maintain their
 7 independent practice, but are -- aren't they supposed
 8 to be overseen by a medical doctor?
 9 MS. TURPEN: Form.
 10 THE WITNESS: In what setting?
 11 Q (BY MS. MORALES) As a nurse practitioner.
 12 Do they need to in any way have a doctor
 13 review any of their charts or anything that they do?
 14 MS. TURPEN: Form. Foundation.
 15 THE WITNESS: In the state of Nevada, no.
 16 They -- they're independent practitioners.
 17 Q (BY MS. MORALES) So you don't believe that
 18 there's any supervisory -- that a doctor -- well,
 19 strike that.
 20 You don't believe a doctor needs to
 21 supervise a nurse practitioner for the care and
 22 patient of a -- care and treatment of a patient?
 23 MS. TURPEN: Form. Foundation.
 24 THE WITNESS: It depends on the situation. You
 25 know, it's -- the state law is the state law. They're

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1 able to practice independently. So if they're in a
 2 hospital or other settings, they have other bylaws
 3 that govern how they should be, what kind of
 4 relationship they should have.
 5 Q (BY MS. MORALES) And did you get an
 6 understanding through the deposition testimony in this
 7 case whether or not there was any kind of supervising
 8 by Dr. Baltar of the nurse practitioner?
 9 MS. TURPEN: Form.
 10 THE WITNESS: My understanding was Dr. Baltar and
 11 Miriam Sithole was a team to provide care at the
 12 facility. They broke up by halls which patients that
 13 they were going to take care of.
 14 Q (BY MS. MORALES) Okay. Do you believe that
 15 both Miriam Sithole or Sithole, however you say it,
 16 and Dr. Baltar provided quality care in this case?
 17 A Yes. Based on medical records.
 18 Q Okay. And you don't -- there's nothing that
 19 you see that they should have done differently in
 20 their medical care and treatment of Mr. Heifetz?
 21 A Well, it is my opinion that they met the
 22 standard of care and they took care of Mr. Heifetz
 23 well.
 24 Q And after reading Miriam's deposition, did
 25 you have any concern regarding her knowledge of

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1 wounds?
 2 A Not that I can recall at this time.
 3 Q Was it concerning to you that she works in
 4 this environment with geriatric patients, yet she
 5 testified that she's never treated a pressure injury?
 6 MS. TURPEN: Form.
 7 MS. BUYS: Join.
 8 THE WITNESS: It depends on, I guess, what she
 9 means by treated a pressure injury. I mean, gave
 10 orders or approved or did she actually do the
 11 treatment herself. So I'm not sure the context of --
 12 of that question or what her testimony was.
 13 Usually medical providers will provide
 14 orders for the treatment, and the treatment is
 15 actually rendered by the nursing staff.
 16 Q (BY MS. MORALES) Was it concerning to you
 17 that Miriam testified that she's unaware of what a
 18 deep tissue injury is?
 19 MS. TURPEN: Form. Foundation.
 20 MS. BUYS: Join.
 21 THE WITNESS: Again, the context of that question
 22 in terms of understanding of deep tissue, was it the
 23 type of physiology or how it looked?
 24 Q (BY MS. MORALES) You read her deposition;
 25 correct?

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1 A Yes. Yes, I did.
 2 Q Okay. And you didn't have any concern with
 3 what her -- what her testimony was as it pertained to
 4 her unawareness of deep tissue injuries?
 5 A Not that I can recall at this time.
 6 Q Was it concerning to you that she didn't
 7 know how to measure or characterize a wound?
 8 MS. TURPEN: Form.
 9 MS. BUYS: Object to form.
 10 THE WITNESS: Well, she might not have -- I -- I
 11 don't know -- no, I don't have a concern for that.
 12 Q (BY MS. MORALES) Okay. Do medical
 13 providers such as Dr. Baltar and Miriam Sithole have
 14 any responsibility to make sure that their orders are
 15 carried out?
 16 MS. TURPEN: Form. Foundation.
 17 MS. BUYS: Join.
 18 THE WITNESS: Well, if we're notified that
 19 something was not done, then, yes, we want to make
 20 sure that it gets done next time. It's, you know,
 21 it's very difficult -- it depends on the situation or
 22 it depends on many factors.
 23 I mean, if -- if I order for someone to have
 24 a medication, I'm not going to be going back and
 25 looking at, you know, every time the nurse gave it, if

<p style="text-align: right;">Page 81</p> <p>1 they gave it or not. That's a nursing supervisor 2 role. 3 So unless I'm notified or unless Dr. Baltar 4 or Sithole was -- Sithole was notified regarding 5 orders not being followed, they don't have the 6 responsibility of -- of checking every order. 7 Q (BY MS. MORALES) Okay. When they -- either 8 the doctor or the nurse practitioner goes in to 9 evaluate Mr. Heifetz, at that time do they have any 10 responsibility to go back through the medical chart to 11 make sure that their orders are being implemented or 12 followed? 13 MS. TURPEN: Form. 14 THE WITNESS: State the question again. 15 MS. MORALES: Can you read that one back? I'm 16 getting tired. 17 (Question read.) 18 THE WITNESS: If there was a -- a concern or if 19 there -- if they were concerned about a specific issue 20 or the patient said there -- something wasn't being 21 done, there may be a reason to go back and to see if a 22 particular order was followed. But that's -- that's a 23 very practice-limiting event if I have to do that 24 every time I walk in to make sure every orders are 25 followed. So I think that's -- I believe that's</p>	<p style="text-align: right;">Page 83</p> <p>1 THE WITNESS: Again, it depends on the patient's 2 situation. It depends on if orders were followed. It 3 depends on the wound care assessment by nursing staff. 4 It depends on the patient's willingness to turn. It 5 depends on their underlying medical condition. 6 Q (BY MS. MORALES) So, in your opinion, is 7 there anything that Dr. Baltar or Nurse Practitioner 8 Miriam Sithole could have done to prevent 9 Mr. Heifetz's wounds? 10 MS. TURPEN: Form. Foundation. Asked and 11 answered. 12 MS. BUYS: Join. 13 THE WITNESS: As I've stated before, that 14 Dr. Baltar did order pressure-relieving mattress, 15 repositioning, and -- that's all. 16 Q (BY MS. MORALES) Okay. And what about 17 Miriam Sithole? 18 A I have -- I stated in my opinions that she 19 did not fall below the standard of care in her care 20 for Mr. Heifetz. 21 Q And you believe that she provided quality 22 care to Mr. Heifetz; correct? 23 A Yes. Yes. Correct. 24 MS. MORALES: Okay. I have no further questions. 25 MS. TURPEN: Charlotte, do you have anything?</p>
<p style="text-align: right;">Page 82</p> <p>1 impractical. But if there are concerns, then, yes, I 2 would -- depending on the situation. 3 Q (BY MS. MORALES) Did you have any concerns 4 with the stage of the wound when it was actually 5 discovered? 6 MS. TURPEN: Form. Foundation. 7 MS. BUYS: Join. Object to form. 8 THE WITNESS: Did I have concern? 9 Q (BY MS. MORALES) Yeah. 10 A Regarding the -- the stage? It's a -- 11 it's -- 12 Q Yeah. The -- the significance of the wound 13 at the time that it was discovered. 14 MS. TURPEN: Same objections. 15 MS. BUYS: Object to form. 16 THE WITNESS: It is not uncommon. 17 Q (BY MS. MORALES) When you say it's not 18 uncommon, what do you -- what do you mean by that? 19 A It's not uncommon that a patient have a 20 wound like Mr. Heifetz had. 21 Q Okay. And we -- you testified earlier that 22 wounds are preventable. 23 So why is it not uncommon? 24 MS. BUYS: Object to form. 25 MS. TURPEN: Form. Foundation.</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. BUYS: No questions. 2 MS. TURPEN: We're going to read and sign. 3 MS. MORALES: Thank you. 4 THE VIDEOGRAPHER: This concludes today's 5 deposition of Mike Yong-Suk Jeong, D.O. We are off 6 the record. 4:18 p.m. 7 (The deposition was concluded at 8 4:18 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE

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16
17 I, MIKE YOUNG-SUK JEONG, D.O., deponent
18 herein, do hereby certify and declare under penalty of
19 perjury the within and foregoing transcription to be
20 my testimony in said action, that I have read,
21 corrected, and do hereby affix my signature to said
22 transcript this _____ day of _____,
23 2021.
24

25
MIKE YOUNG-SUK JEONG, D.O.
Deponent

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss:

4 COUNTY OF CLARK)

5 I, Vicki Turner, a certified court reporter in
6 Clark County, State of Nevada, do hereby certify:
7 That I reported the taking of the deposition of the
8 witness, MIKE YOUNG-SUK JEONG, D.O., commencing on
9 November 8, 2021, at 1:56 p.m.

10 That prior to being examined, the witness was by me
11 first duly sworn to testify to the truth, the whole
12 truth, and nothing but the truth.

13 That I thereafter transcribed my said shorthand
14 notes into typewriting and that the typewritten
15 transcript of said deposition is a complete, true, and
16 accurate transcription of shorthand notes taken down
17 at said time.

18 I further certify that I am not a relative or
19 employee of an attorney or counsel of any of the
20 parties, nor a relative or employee of any attorney or
21 counsel involved in said action, nor a person
22 financially interested in the action.

23 IN WITNESS WHEREOF, I have hereunto set my hand in
24 my office in the County of Clark, State of Nevada,
25 this 28th day of November 2021.

Vicki Turner



EXHIBIT 5

Page 1		Page 3	
1	DISTRICT COURT	1	INDEX OF EXAMINATION
2	CLARK COUNTY, NEVADA	2	
3	BARRY HEIFETZ, an individual,	3	WITNESS: BARRY HEIFETZ
4	Plaintiff,	4	
5	vs.	5	EXAMINATION PAGE
6	CASE NO. A-20-808436-C	6	By Ms. Turpen 5
7	DEPT. NO. I	7	By Mr. Rourke 49
8	SPRING VALLEY HEALTHCARE, LLC,	8	By Ms. Turpen 84
9	a foreign limited-liability	9	By Mr. Rourke 93
10	company d/b/a SPANISH HILLS	10	By Ms. Wise 95
11	WELLNESS SUITES; SHANNA MARIE	11	
12	BALTAR, DO, an individual;	12	
13	MIRIAM SITHOLE, APRN, an	13	
14	individual; DOES I	14	
15	through X; ROE BUSINESS	15	
16	ENTITIES XI through XX,	16	INDEX TO EXHIBITS
17	inclusive,	17	
18	Defendants.	18	Initial
19	~~~~~	19	Defendants' Description Reference
20	REMOTE DEPOSITION OF	20	
21	BARRY HEIFETZ	21	
22	March 12, 2021	22	
23	10:00 a.m.	23	
24	Conducted via videoconference with	24	
25	all participants appearing remotely	25	
	Gary F. Decoster, CCR No. 790		
Page 2		Page 4	
1	APPEARANCES OF COUNSEL	1	Remote Deposition of
2	For the Plaintiff:	2	Barry Heifetz
3	CLAGGETT & SYKES LAW FIRM	3	March 12, 2021
4	SHANNON L. WISE, ESQ.	4	(Prior to the commencement of the
5	4101 Meadows Lane	5	deposition, all of the parties present agreed to
6	Suite 100	6	waive statements by the court reporter, pursuant
7	Las Vegas, Nevada 89107	7	to Rule 30(b)(4) of NRC.P.)
8	702.655.2346	8	* * *
9	702.655.3763 Fax	9	THE COURT REPORTER: Pursuant to Rule 29
10	swise@claggettlaw.com	10	of the Nevada Rules of Civil Procedure, all parties
11	For the Defendant Spring Valley Healthcare, LLC	11	stipulate and agree that the witness is identified as
12	d/b/a Spanish Hills Wellness Suites:	12	Barry Heifetz and the witness's testimony will be
13	ROURKE LAW FIRM	13	treated as if the witness is under oath. This
14	ROBERT D. ROURKE, ESQ.	14	deposition shall be used for all purposes like other
15	10161 Park Run Drive	15	depositions.
16	Suite 150	16	Counsel, can you please identify yourselves
17	Las Vegas, Nevada 89145	17	for the record, state whom you represent, name any
18	702.515.7440	18	other parties in attendance in your location, and
19	702.515.7441 Fax	19	state, on the record, that you agree to the
20	robert@rourkelawfirm.com	20	stipulation.
21	For the Defendants Shanna Marie Baltar, DO	21	MS. TURPEN: Good morning. This is Katherine
22	and Miriam Sithole, APRN:	22	Turpen. I represent defendants Dr. Shanna Baltar and
23	JOHN H. COTTON & ASSOCIATES, LTD.	23	Advanced Practice Nurse Miriam Sithole. I'm in my
24	KATHERINE L. TURPEN, ESQ.	24	office. There's no one else present with me.
25	7900 West Sahara Avenue	25	MR. ROURKE: I'm Robert Rourke. I represent
	Suite 200		
	Las Vegas, Nevada 89117		
	702.832.5909		
	702.832.5910 Fax		
	kturpen@jhcottonlaw.com		

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1 Spanish Hills Wellness Suites. I'm in my home office
2 and there's nobody present with me.
3 MS. WISE: My name is Shannon Wise, I
4 represent Barry Heifetz, and I am at my home office
5 and I am alone.
6 THE COURT REPORTER: And you agree to the
7 stipulation?
8 MS. WISE: Yes, I agree.
9 THE COURT REPORTER: Mr. Heifetz, would you
10 please raise your right hand?
11 * * *
12 BARRY HEIFETZ, having been first duly sworn,
13 was examined and testified as follows:
14 EXAMINATION
15 BY MS. TURPEN:
16 Q. Mr. Heifetz, how do you prefer to be
17 addressed? Do you like to be called Mr. Heifetz or
18 do you prefer to be called Barry?
19 A. Barry is fine.
20 Q. Okay. Please call me Katherine then.
21 Where are you today, Barry?
22 A. I'm at home.
23 Q. Okay. Is anybody there with you?
24 A. No.
25 Q. All right.

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1 A. My animals.
2 Q. Your animals, very good.
3 What is your home address?
4 A. My address is 7803 Canoe Lane, Las Vegas,
5 Nevada 89145.
6 Q. Okay. Have you ever had your deposition
7 taken before?
8 A. Yes, I have.
9 Q. Okay, how many times?
10 A. Twice.
11 Q. Okay. When was the last time you had your
12 deposition taken?
13 A. I believe it was about a year ago.
14 Q. Okay. And can you tell me, were you a
15 witness or a party to the case that your deposition
16 was taken in one year ago?
17 A. I was a party.
18 Q. Okay. What type of case was it?
19 A. It was an accident -- accident case, car
20 accident.
21 Q. Okay. And were you a defendant or a
22 plaintiff?
23 A. Plaintiff.
24 Q. Okay. All right. And the prior -- the
25 deposition before that, what type of case was that?

Page 7

1 A. That was also an auto accident.
2 Q. Okay.
3 A. That was in -- I think it was about two and a
4 half, three years ago.
5 Q. Okay. And were you a plaintiff or a
6 defendant in that case?
7 A. I believe I was a defendant in that case.
8 Q. Okay. And that was also the result of a car
9 accident?
10 A. Yes.
11 Q. Okay. Well, since you are an experienced
12 deponent with two prior depositions, I'm just going to give
13 you a few basic deposition admonitions.
14 The first one is, if you don't understand my
15 questions, please just let me know. I'm always happy
16 to rephrase them or try and ask them another way.
17 It's not my intent here to trick you or
18 confuse you or get things turned around. Today is a
19 discovery deposition and I'm just interested in
20 hearing what you have to say and have you tell me what
21 happened. So please ask me if you don't understand
22 what I'm asking you and I will rephrase.
23 The other thing is we're taking this
24 deposition by Zoom, which is a little bit unusual, so
25 if we have any technology issues or if for some reason

Page 8

1 you can't hear me or hear any of the other attorneys,
2 let us know, wave your hand or something. We do
3 encounter some technical difficulties when we do these
4 Zoom depositions every once in a while, so please do
5 bear with us.
6 Also, all the more reason that we'll need
7 you to answer all of the questions audibly as opposed
8 to um-hum or um-um or moving of your hands. It's
9 important that everybody understands what you have to
10 say today, especially so that Gary, our court
11 reporter, can take a clear and accurate transcript.
12 A. I understand.
13 Q. All right. You did take an oath this morning
14 to tell the truth; do you understand that?
15 A. Yes, I do.
16 Q. Okay. Is there any reason why you can't
17 answer my questions or give a deposition today?
18 A. No, not at all.
19 Q. All right. What, if anything, did you do to
20 prepare for your deposition?
21 A. I sat at Shannon's office, my attorney's
22 office, twice and I reviewed some of the notes that we
23 discussed.
24 Q. Okay. And how long ago were you at Shannon's
25 office to prepare for your deposition, just an

<p style="text-align: right;">Page 9</p> <p>1 estimate in time?</p> <p>2 A. The last time was Wednesday.</p> <p>3 Q. All right.</p> <p>4 A. This past Wednesday.</p> <p>5 Q. And what documents was it that you reviewed?</p> <p>6 A. The formal paperwork from -- I guess from</p> <p>7 your office, the questions that were asked and that</p> <p>8 were answered.</p> <p>9 Q. The written discovery requests?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. Okay. Anything else?</p> <p>12 A. Just the notes that -- we had some</p> <p>13 handwritten notes that we reviewed.</p> <p>14 Q. Okay. So there have been some handwritten</p> <p>15 notes produced in this case and I believe some of them</p> <p>16 are handwritten notes from you and then perhaps also</p> <p>17 one from your sister.</p> <p>18 A. I believe so, yes.</p> <p>19 Q. Is that what you reviewed?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Have you ever looked at any of your</p> <p>22 medical records in this case?</p> <p>23 A. I'm not sure.</p> <p>24 Q. Okay.</p> <p>25 A. I'm not sure if -- I see many doctors for</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And before you retired, what did you do for</p> <p>2 work?</p> <p>3 A. Well, I was always in sales all my life and I</p> <p>4 sold almost everything, and I believe the last</p> <p>5 business that I had was a personal pager business,</p> <p>6 beepers, personal pagers.</p> <p>7 Q. I am familiar.</p> <p>8 A. That business was disposed of in December of</p> <p>9 1992 and that's when I retired.</p> <p>10 Q. Okay. All right. Do you currently live</p> <p>11 alone other than with your animals?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. How long have you lived alone?</p> <p>14 A. I am divorced from my second wife since</p> <p>15 December -- I'm sorry, since 2007.</p> <p>16 Q. Okay.</p> <p>17 A. So I guess I'm living alone since 2007.</p> <p>18 Q. Okay. Do you have anybody who comes in to</p> <p>19 help you with the house, like with housework or</p> <p>20 chores?</p> <p>21 A. Yes, I have a housekeeper, comes in every</p> <p>22 Wednesday for about two and a half hours, and she</p> <p>23 cleans the place and does the laundry and that stuff.</p> <p>24 Q. Okay. And how long have you had your</p> <p>25 housekeeper coming in?</p>
<p style="text-align: right;">Page 10</p> <p>1 various things.</p> <p>2 Q. Okay.</p> <p>3 A. And I'm not sure which ones were for what.</p> <p>4 Q. Okay. But you didn't look at any medical</p> <p>5 records to prepare for your depo; is that correct?</p> <p>6 A. I don't think so.</p> <p>7 Q. Okay, that's fine.</p> <p>8 Barry, have you taken any medications today?</p> <p>9 A. Yes, as a matter of fact, I take four</p> <p>10 prescribed prescriptions. Two of them -- two pills</p> <p>11 are for blood pressure, one is for thyroid and -- I'm</p> <p>12 trying to think, blood pressure, thyroid and -- oh,</p> <p>13 yeah, and I take a gabapentin for my nerve -- I have</p> <p>14 peripheral neuropathy and I take gabapentin for that.</p> <p>15 That was the four pills I took. That was earlier this</p> <p>16 morning.</p> <p>17 Q. All right.</p> <p>18 A. Take them every morning.</p> <p>19 Q. I'm sorry, you cut out. What did you say?</p> <p>20 A. I take the four pills every morning.</p> <p>21 Q. Okay. So those are your daily medications?</p> <p>22 A. Yes.</p> <p>23 Q. All right. I understand that you are</p> <p>24 retired, right, Barry?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Oh, for quite a long time, about -- I'd say</p> <p>2 about two years now because that's when I felt I</p> <p>3 wasn't able to continue doing it myself.</p> <p>4 Q. Okay. And can you expound on that? Why is</p> <p>5 it you felt you couldn't do it yourself any longer?</p> <p>6 A. I had hip replacement surgery in December of</p> <p>7 2017 and that went well, but shortly thereafter,</p> <p>8 probably at the end -- probably the following year,</p> <p>9 2018 -- yeah, probably the end of that year, 2018,</p> <p>10 that's when I started having the cleaning lady because</p> <p>11 it was starting to get to me. That was it, just I</p> <p>12 felt it was something that I should be doing, having a</p> <p>13 housekeeper.</p> <p>14 Q. Absolutely. Other than the housekeeper, do</p> <p>15 you have anybody else who comes in to help you with</p> <p>16 like home health care or to help you with any of your</p> <p>17 medical issues at the house?</p> <p>18 A. Not now. I did when I had the second hip</p> <p>19 replacement surgery. After that, after I -- well,</p> <p>20 after the rehabilitation, I had home health care.</p> <p>21 Q. Okay. And that was specific to your recovery</p> <p>22 from your second hip replacement; is that correct?</p> <p>23 A. No, it was -- the rehabilitation was for the</p> <p>24 hip replacement, and then afterwards, because of the</p> <p>25 wound that I sustained, that's when I had the home</p>

<p style="text-align: right;">Page 13</p> <p>1 health care --</p> <p>2 Q. Okay.</p> <p>3 A. -- come to my home.</p> <p>4 Q. Okay. And just an estimate, Barry, when did</p> <p>5 that home health care stop coming to your house for</p> <p>6 wound care? Month or year is fine, or even season.</p> <p>7 A. Probably last summer, probably June or July</p> <p>8 of last summer.</p> <p>9 Q. Okay. Barry, I detect a very slight accent.</p> <p>10 Where are you from originally?</p> <p>11 A. Originally from New York City.</p> <p>12 Q. Ah, there it is.</p> <p>13 A. Right. I was born in New York City. Born in</p> <p>14 the Bronx, raised to Brooklyn, moved to Staten Island</p> <p>15 with my first wife and moved to Manhattan after my</p> <p>16 divorce and then I moved here 1994, 27 years ago.</p> <p>17 Q. Okay. Well, the accent came with you because</p> <p>18 it's still slightly there.</p> <p>19 A. I guess so. I've been living here so long, I</p> <p>20 thought I sounded like a normal person, but I guess</p> <p>21 not.</p> <p>22 Q. So it's my understanding you have a doctor's</p> <p>23 appointment set for later this afternoon, correct?</p> <p>24 A. It was like out of the blue, I got a referral</p> <p>25 to see this doctor this afternoon, you know, so that's</p>	<p style="text-align: right;">Page 15</p> <p>1 appointments because she wants to be -- she became my</p> <p>2 mom, that's how it is. She's my baby sister. I'm ten</p> <p>3 years older than her.</p> <p>4 Q. Okay.</p> <p>5 A. And she moved about six years ago to</p> <p>6 Las Vegas and she mothers me now.</p> <p>7 Q. Okay. And is that Sharon?</p> <p>8 A. No, Sharon is my daughter.</p> <p>9 Q. Okay.</p> <p>10 A. This is Susan, my sister.</p> <p>11 Q. Susan, okay. And so Susan goes to most of</p> <p>12 your appointments with you. Does she drive you or do</p> <p>13 you drive?</p> <p>14 A. She usually comes to pick me up. She lives</p> <p>15 in Sun City and she drives over here and picks me up,</p> <p>16 unless the doctor I see is closer to her area, then</p> <p>17 she'll met me there or something.</p> <p>18 Q. Okay. Do you drive?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So other than the endocrinologist that</p> <p>21 you're going to go see this afternoon, who else are</p> <p>22 your current treating health care providers? Who do</p> <p>23 you follow with?</p> <p>24 A. I have a kidney doctor, Dr. Ong, Gene Ong. I</p> <p>25 see him once or twice a year. My primary physician is</p>
<p style="text-align: right;">Page 14</p> <p>1 what I wanted to let you know.</p> <p>2 Q. Okay.</p> <p>3 A. In case you were going to go long.</p> <p>4 Q. No, and that's just fine. We'll make sure</p> <p>5 you get out of here in time to get to your doctor's</p> <p>6 appointment.</p> <p>7 Who are you going to go see today?</p> <p>8 A. It's an endocrinologist, Dr. Motklas,</p> <p>9 M-O-T-K-L-A-S, something like that. I've never seen</p> <p>10 this doctor before. It's an endocrinologist.</p> <p>11 Q. Are you seeing him for your thyroid?</p> <p>12 A. No, I had had an abdominal CAT scan or an MRI</p> <p>13 or something, I think about a year ago.</p> <p>14 Q. Okay.</p> <p>15 A. And because of the COVID situation, I wasn't</p> <p>16 able to see this doctor until now. This is when he</p> <p>17 said, okay, now I can come to see him regarding that</p> <p>18 situation. And I really don't know what it's for</p> <p>19 other than the fact that he's an endocrinologist.</p> <p>20 Q. Understood. So will you go to that</p> <p>21 appointment today by yourself or will somebody go with</p> <p>22 you?</p> <p>23 A. My sister will probably go with me.</p> <p>24 Q. Okay.</p> <p>25 A. She goes with me to most of my medical</p>	<p style="text-align: right;">Page 16</p> <p>1 Dr. Malone, Daniel Malone.</p> <p>2 And I have a retinal specialist I see,</p> <p>3 Dr. Hart -- no, no, that's -- Dr. Hart is the</p> <p>4 ophthalmologist.</p> <p>5 I see Dr. Hart, the ophthalmologist, and</p> <p>6 Dr. -- the name escapes me. I only see him once a</p> <p>7 year, Retinal Specialists. That's the name of the</p> <p>8 company, Retinal Specialists of Nevada.</p> <p>9 Q. Okay.</p> <p>10 A. The name escapes me at the moment.</p> <p>11 Q. That's fine.</p> <p>12 A. I'm trying to think. Other -- I have an</p> <p>13 annual wellness exam physical. I think that's Marcy</p> <p>14 Holloway, is the lady who performs that.</p> <p>15 Q. And is Miss Holloway, is she -- to your</p> <p>16 knowledge, is she a physician assistant or a</p> <p>17 physician?</p> <p>18 A. I think she's a PA, but I'm not a hundred</p> <p>19 percent sure.</p> <p>20 Q. Okay. All right. All right. So other than</p> <p>21 Holloway and Dr. Malone, Dr. Ong and your retinal</p> <p>22 specialist, do you have any other health care</p> <p>23 providers that you currently see?</p> <p>24 A. Offhand, I don't think so.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 17</p> <p>1 A. Oh, I'm seeing Dr. Kooyman, the podiatrist, 2 the wound doctor, but I saw him I think about two 3 weeks ago was the last time. 4 Q. Okay. 5 A. And he told me at that time that my foot, as 6 far as he was concerned, you know, was healed enough 7 for me not to have it medicated or bandaged. 8 Q. Okay, so yeah, let's talk about that 9 appointment. It was two weeks ago? 10 A. I believe. 11 Q. Pardon? 12 A. It could have been two or three weeks ago. 13 Q. Okay. 14 A. It was either two or three weeks ago. That 15 was the last appointment. 16 Q. Okay. Was that at his office or over Zoom? 17 A. Oh, no, at his office. 18 Q. Okay. 19 A. It was at his office. 20 Q. Did he -- like did he examine your foot, put 21 hands on your foot and your leg? 22 A. Yes. 23 Q. Okay. 24 A. Yes, he did. 25 Q. And at this time do you have any future</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Correct. 2 Q. Do you remember being admitted to Spanish 3 Hills Wellness Suites? 4 A. Yes. 5 Q. Okay. All right. So I will represent to you 6 the records indicate that Dr. Baltar saw you within 7 about a day of your arrival and she performed an 8 initial -- what we call an initial H & P or an initial 9 intake. Does that jog your memory at all with regard 10 to Dr. Baltar? 11 A. No. 12 Q. Okay. Would it be fair to say then that you 13 don't remember having any conversations with 14 Dr. Baltar? 15 A. You have to understand, I don't know -- 16 unless I saw Dr. Baltar, I don't know who I saw. 17 Q. Okay. All right. Well, let's try -- and 18 that's fair enough, and if you don't know, you don't 19 know. Like I said, my questions are not meant to be 20 tricky. I just want to -- I'm here today to learn 21 about what happened at the facility. You were there 22 and I wasn't and this is my only opportunity to talk 23 to you, so I'm going to ask you a couple of different 24 questions in that regard. 25 A. Okay.</p>
<p style="text-align: right;">Page 18</p> <p>1 appointments with Dr. Kooyman scheduled? 2 A. No, there were no appointments scheduled, but 3 he did tell me, as he told me the last time he told me 4 it was healed, he said anytime that I have a problem, 5 to come in -- 6 Q. Okay. 7 A. -- and see him. 8 Q. Okay. 9 A. So he said, you know, there's always a 10 possibility; that's why he left that open. 11 Q. Okay. Always a possibility, but it's your 12 understanding, as of that last appointment, the wound 13 is healed? 14 A. Correct. 15 Q. Okay. All right. So the lawsuit that brings 16 us here today is your claim against about three 17 different defendants, including my clients, Dr. Baltar 18 and Advanced Practical Nurse Sithole. As we sit here 19 today, do you know who they are? 20 A. If I saw them, I might recognize them, but 21 offhand, I can't put the names to faces. 22 Q. Okay. So their involvement with your care 23 and treatment occurred while you were admitted to 24 Mr. Rourke's client, which was Spanish Hills Wellness 25 Suites.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Do you remember receiving an initial 2 evaluation by a doctor when you first came to the 3 facility? 4 A. No. 5 Q. Okay. How about Miriam Sithole; she's an 6 advanced practice nurse. Do you know who she is? 7 A. Truthfully, I would have to physically see 8 the person to be able to know that that's the person 9 we're talking about. 10 Q. Okay. 11 A. I don't recall their -- I remember some 12 names. 13 Q. Okay. 14 A. But I don't recall who they were. 15 Q. Okay. Well, let's try it that way. Tell me 16 the names that you remember. 17 A. I remember -- okay, there was a -- I remember 18 some of the CNAs, their names. I remember Raquel. I 19 remember a Dr. Quinn. I saw a Dr. Quinn. 20 Q. Okay. 21 A. I was concerned why I saw this Dr. Quinn. 22 There was a -- I think the name is Precious 23 or something like that, a woman. 24 Q. Okay. 25 A. I don't know.</p>

Page 21

1 Q. Anybody else?

2 A. Offhand, I can't think of any names.

3 Q. Okay. All right. Barry, do you have any

4 memory problems?

5 A. No.

6 Q. Okay.

7 A. Nothing that most people don't have.

8 Q. Understood, understood.

9 Well, let's start off generally. You

10 testified a few moments ago that you remember being at

11 the Spanish Hills Wellness Suites, correct?

12 A. That's correct.

13 Q. Okay, so let's start off broadly. Tell me

14 what you remember about your stay there at Spanish

15 Suites and then we'll work down from there.

16 A. I remember being admitted to the Spanish

17 Hills. I was given a room and, I don't know, I really

18 don't know what you want me to say about it.

19 Q. Fair enough. We can try it another way.

20 At some point in time you were -- well, let's

21 try this: What is your understanding as to why you

22 were admitted to Spanish Hills?

23 A. I had hip replacement surgery on January 7th

24 of 2019. 2019, yes.

25 Q. Okay.

Page 22

1 A. And I had asked the surgeon if I could go

2 into rehab after the surgery and it was his

3 professional opinion that his patients don't go to

4 rehab, they just go home after the surgery, so the

5 following day I was sent home. That was on January --

6 Q. Was that Dr. Allen?

7 A. Mark Allen.

8 Q. Okay.

9 A. And I was home that -- Tuesday is the 8th and

10 I was home and I took -- here in this, where I am now,

11 and I took care of all my normal daily activities. I

12 bathed myself, I ate, I dressed, Wednesday, Thursday,

13 Friday.

14 And Saturday, my second wife, ex-wife, called

15 and asked if I wanted to go for breakfast and she came

16 to pick me up -- I told her I couldn't meet her so she

17 came to pick me up and we went over to a local place

18 and we ordered our food. We were sitting. They

19 served us. It was like breakfast or brunch.

20 And we finished and when I got up to leave, I

21 felt a terrible pain in my hip that I was like locked

22 into a standing position.

23 And a couple of guys who were at the adjacent

24 table saw my distress, I guess, and they asked if

25 there's anything wrong, and I said, yeah, I would like

Page 23

1 to be able to sit down, I can't sit. So they each

2 grabbed an arm and they sat me down.

3 And then I called my sister, because I didn't

4 know what to do, pain was awful, and she said she was

5 going to call me back.

6 In the interim she called, I guess, Dr. Allen

7 and he told her to -- for me to call 911 and go to

8 Summerlin Hospital because they had the records of my

9 stay at Henderson Hospital, where I had the surgery.

10 And they took me to Summerlin Hospital in an

11 ambulance, and I was out because they sedated me, I

12 guess, to reinsert the hip mechanism.

13 Q. Okay.

14 A. They sent me -- they had me walking around

15 and they said that, you know, everything was fine and

16 they sent me home, and that was at 6:00 p.m.

17 And I came home and I'm sitting where I'm

18 sitting right now, I was reading a newspaper because I

19 hadn't read the newspaper all day and having a cup of

20 coffee, and when I got -- when I went to stand up, I

21 felt exactly the same pain that I had earlier in the

22 day and I knew exactly what it was, that the pin fell

23 out.

24 So I just called 911, and they came almost

25 immediately, like they were down the block waiting for

Page 24

1 me to call, and they took me back to Summerlin

2 Hospital and that's where they kept me -- they

3 admitted me, it was that Saturday night.

4 And I was there Sunday, and then Monday

5 somebody from the orthopedic company came and had a

6 brace put on me on my left side to hold my hip in

7 place, I guess.

8 Q. Okay.

9 A. And that evening, Monday evening, I was

10 transferred to Spanish Hill.

11 Q. Okay. Do you have any understanding as to

12 why your hip had become dislocated on either -- on

13 both occasions?

14 A. I have no idea. When I spoke to Dr. Allen,

15 he said I was the very first patient that he'd ever

16 done the surgery on that had the hip dislocation.

17 Q. When were you first diagnosed with peripheral

18 vascular insufficiency, do you know?

19 A. I couldn't -- I don't remember. It was a

20 number of years ago. I don't know.

21 Q. More than --

22 A. Long time ago.

23 Q. More than ten years ago?

24 A. Not more than ten years ago, but at least

25 five years ago.

Page 25

1 Q. Okay. Do you have a memory of which doctor
2 gave you that diagnosis?
3 A. I think it was Dr. Fortson.
4 Q. Okay.
5 A. F-O-R-T-S-O-N. He was a very good doctor,
6 but he moved his practice somewhere or he disappeared,
7 I don't know. That's when I became a patient with
8 Dr. Malone.
9 Q. Okay. So Dr. Fortson was your PCP, your
10 primary care physician?
11 A. Yes, he was.
12 Q. All right. All right. Prior to your time at
13 Spanish Hills, had you ever had any issues or problems
14 with your skin on your legs?
15 A. I have stasis dermatitis on my leg.
16 Q. Oh, you know what, I'm going to have to have
17 you say that again because also Gary needs to hear you
18 say it.
19 A. Stasis dermatitis.
20 Q. Okay. And what is your understanding as to
21 what that is?
22 A. It's something to do with the blood supply to
23 my legs that causes the skin to be the way it is.
24 Q. Okay. It's related to the vascular
25 insufficiency?

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1 A. I guess so.
2 Q. All right.
3 A. I'm not a doctor, so all I know is the words
4 they told me.
5 Q. I understand. I'm not a doctor either.
6 Other than the stasis dermatitis, any other
7 issues with the skin on your legs prior to going to
8 Spanish Hills?
9 A. No.
10 Q. Have you ever had any kind of skin wound
11 opening on your lower extremities? And when I say
12 lower extremities, I mean, feet, ankles, calves,
13 knees, legs.
14 A. I don't think so.
15 Q. Okay. Not that you recall?
16 A. No.
17 Q. So is it your recollection then that the
18 first wound that you ever had on your lower -- any of
19 your lower extremities was the wound you developed at
20 Southern -- or at Spanish Hills?
21 A. Yes.
22 MR. ROURKE: I'm going to object to the form
23 of the question.
24 BY MS. TURPEN:
25 Q. Prior to going to Spanish Hills, had you ever

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1 been prescribed or recommended by a health care
2 provider to wear compression stockings?
3 A. Yes.
4 Q. Okay. When did that first happen?
5 A. When I started with Dr. Malone several years
6 ago, he's the one who suggested that I wear
7 compression stockings and keep my feet elevated.
8 Q. Okay.
9 A. And I try to do that as often as I can.
10 Q. Okay. So do you think that was more than
11 five years ago that you would have started wearing
12 compression stockings?
13 A. At least three to four years ago.
14 Q. Okay.
15 A. Maybe five, but at least four years ago.
16 Q. Okay. And what type of compression stockings
17 were you wearing at that time?
18 A. They covered my calf almost up to my knee,
19 the full-full -- my full leg. I don't know how to
20 describe them other than --
21 Q. Well, there's a couple of different kinds.
22 You've already kind of described it. Some of them are
23 just for the foot and ankle. Some of them have the
24 toes open. Some of them go all the way up to the
25 thigh. So describe what yours looked like.

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1 A. Looked like a dress stocking.
2 Q. Okay.
3 A. Like I used to wear dress socks, you know,
4 they covered my calf, and these came all the way up,
5 all the way up to the knee.
6 Q. Okay.
7 A. Was the compression stocking.
8 Q. Okay. And did they cover your toes and heel
9 also?
10 A. Correct.
11 Q. Okay, so like a full sock?
12 A. Yes.
13 Q. Okay.
14 A. Absolutely.
15 Q. All right. Do you know what grade of
16 compression those were?
17 A. I don't --
18 Q. That's fine.
19 A. What would the grade look like, like a
20 number?
21 Q. Well, sometimes they have -- the compression
22 stockings come with like a rating as to how tight they
23 are. Do you remember whether yours had a rating?
24 A. No, I don't. I really don't.
25 Q. Okay. Where did you get them?

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1 A. Well, I bought them -- originally I bought
2 them at the medical supply store here in Las Vegas on
3 Charleston Boulevard. I don't remember their name.
4 Q. Okay.
5 A. That was the first time. That was four or
6 five years ago. But then I've ordered them online.
7 I've gotten them online.
8 Q. Okay.
9 A. Because they were much cheaper to buy them
10 online.
11 Q. Okay.
12 A. That was it.
13 Q. What website did you buy them online?
14 A. It was through Amazon.
15 Q. Okay.
16 A. It was an Amazon website.
17 Q. Okay. When was the last time you bought a
18 new pair?
19 A. Oh, sometime last year. I bought, I think, a
20 package of eight. I think it was -- I don't remember,
21 it was July -- I think July or August or last year.
22 Q. Okay.
23 A. I think right after my doctor appointment at
24 that time, I think it was August, when he said at that
25 time my foot was healed, that's when I ordered new

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1 compression stockings, because I wasn't able to put
2 stockings on prior to that because my leg was wrapped
3 and medicated.
4 Q. Oh, you know what, Barry? This would be one
5 of those instances where at least I here have a little
6 bit of a technical issue and you bleeped out on me. I
7 got you weren't able to wear them and then I got a
8 digital sound. Could you repeat yourself?
9 A. Because my Dr. Kooyman was taking care of my
10 leg wound, I wasn't able to wear compression
11 stockings.
12 Q. Right.
13 A. And when he told me it was healed and I would
14 no longer have the leg medicated or wrapped with Ace
15 bandage, that's when I was able to wear my stockings
16 again and, like I told my friends, like a normal
17 person.
18 Q. Okay.
19 A. And I bought some new compression socks.
20 Q. Great, okay. And so that was July or August
21 of 2020?
22 A. I think it was August.
23 Q. Okay.
24 A. No, August -- yes, yes.
25 Q. And how frequently -- are you wearing them

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1 today?
2 A. No, as a matter of fact, I didn't put them on
3 because it was a rushed morning.
4 Q. Oh, I'm sorry.
5 A. I wanted to make sure I got ready for this.
6 I had to take my dog out, you know, for his morning
7 ablutions and feed the cats and take care of my --
8 whatever I had to take care of to make sure that
9 everything was all set up.
10 So, because it takes me a while to put them
11 on. It's not an easy thing. I can't bend down. I
12 have to use a special device to put my stockings on,
13 so I said, oh, the hell with it this morning -- pardon
14 the expression, you know -- and that was it.
15 Q. Okay. All right. So understanding that this
16 morning was a special circumstance given what we have
17 going on here today, how frequently do you wear your
18 compression stockings now?
19 A. I wear them daily.
20 Q. Okay. All day?
21 A. I put them on in the morning and I take them
22 off when I go to bed at night, yes.
23 Q. Okay. Okay. And have you done that
24 regularly since July or August of 2020?
25 A. No, because after a couple of months, the

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1 wound I had on my heel opened up again.
2 Q. Okay.
3 A. And that's why I went to see Dr. Kooyman, and
4 again my foot was medicated and wrapped and I wasn't
5 able to wear the stockings.
6 MR. ROURKE: Katherine, can I jump in for
7 just one second?
8 MS. TURPEN: Of course.
9 MR. ROURKE: Mr. Heifetz, can I ask you to
10 spell the name of the doctor that you just referenced?
11 It's kind of garbled on my end. I just wanted to make
12 sure I got the doctor that you --
13 THE DEPONENT: His name is Dr. Kooyman, K, as
14 in king, double O, Y-M-A-N.
15 MR. ROURKE: Thank you very much. I
16 appreciate that.
17 Sorry, Katherine.
18 MS. TURPEN: Yeah, no worries, no worries.
19 BY MS. TURPEN:
20 Q. Okay. So you wore them for a while in July
21 or August of 2020. Then you went back to see
22 Dr. Kooyman.
23 A. I think I started August, and from August,
24 September, October, November, and I think -- I'm not
25 sure when I saw Dr. Kooyman the first time when it

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1 reopened, but it was either late in the year or early
2 -- no, it was probably -- I don't remember. I'd have
3 to check my records. I think I saw him in October or
4 November. So I wore them for a couple months, and
5 till just now, just the past couple weeks, I'm
6 starting to wear them again.
7 Q. Okay. So tell me about when your -- the
8 wound that reopened in October or November, was it in
9 your heel?
10 A. Yes.
11 Q. Okay, so tell me about that. What
12 precipitated that?
13 A. All of a sudden, I noticed that my stockings
14 were wet because of the leakage, it was leaking, and
15 there was an odor and I noticed it immediately,
16 something's wrong.
17 And I tried looking at my foot with a mirror,
18 but because of my surgeries and my arthritis, I wasn't
19 able to bend down sufficiently to see it, so I asked
20 my sister to take a look at it.
21 She came over and she said it didn't look
22 good. That's when I went to see -- then I called up
23 to make an appointment to see Dr. Kooyman.
24 Q. And did he -- did he order any additional
25 wound care for you at that time?

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1 A. You mean like at my home?
2 Q. Anywhere, like did he order you to go to the
3 wound care clinic or did he order to have anybody come
4 home?
5 A. Just at his office.
6 Q. Okay. Let me circle back just a little bit,
7 Barry.
8 So with regard to wearing the compression
9 stockings, were you wearing the compression stockings
10 regularly prior to your hip surgery with Dr. Allen, in
11 that period of time?
12 MS. WISE: Object to form.
13 THE DEPONENT: Yes, yes.
14 MS. WISE: Object to form.
15 BY MS. TURPEN:
16 Q. How regularly were you wearing them at that
17 time?
18 A. Daily.
19 Q. Okay. And did you have any -- did you
20 experience any wound issues with regard to the
21 stockings at that time?
22 A. No, I never had any wound issues prior to
23 that.
24 Q. Okay. What is a typical day for you, Barry?
25 What type of things do you do?

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1 A. I get up and I tend to the pets, make sure,
2 you know, I feed them.
3 Q. Yeah.
4 A. And, well, I get up, I take care of myself.
5 I wash, shave, whatever, and take care of the animals.
6 And then I take Bentley, my dog, out. We usually walk
7 for half hour to an hour.
8 I might go grocery shopping or I go over to a
9 friend. I have some friends in the neighborhood here.
10 I might visit with a friend.
11 There's not -- with the COVID conditions,
12 there's not much that's available to do.
13 Q. I understand.
14 A. So I come home and I putt around with my
15 computer. That's it. Generally I take my dog out a
16 couple of times during the day, so we have a nice --
17 you know, we go -- there's a dog park locally. We go
18 to the dog park. I have some friends there. We shoot
19 the breeze. And that's about it, make myself dinner,
20 watch some television, go to sleep.
21 Q. Okay. Well, understanding that COVID has
22 certainly complicated life for all of us, COVID issues
23 aside, is there anything on a daily basis that you
24 can't do anymore because of your wound that has since
25 healed?

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1 A. Well, when I was suffering with the wound,
2 initially I wasn't -- I was obligated to be home.
3 I had to stay home. And since it's healed, I was able
4 to do the things that I normally did before I had that
5 problem.
6 Q. Okay.
7 A. I don't know if that answers your question,
8 but --
9 Q. It does, and perhaps that was a confusing
10 question, but I think you've answered it, that COVID
11 aside, now that your wound is healed, there's nothing
12 that you can't do anymore?
13 A. Nothing that I haven't done before, no.
14 Q. Okay. All right, but you did tell me there
15 was a period of time where you couldn't do anything --
16 couldn't do certain things because of your wound; is
17 that right?
18 A. That's correct. I was obligated to stay
19 home, keep my weight off my foot. I had to wear a
20 special boot that kept my heel up and so there was no
21 pressure on it. I wasn't able to drive for quite a
22 long time.
23 Q. Okay.
24 A. And I couldn't go out. So my family helped
25 me with the grocery shopping, among other things.

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1 Q. Okay. What were some of -- give me a couple
2 of examples of what some of those other things were.
3 A. I had some things that had to go to the dry
4 cleaner and my daughter took some of my clothes to the
5 dry cleaner.
6 And, oh, yeah, my granddaughter came over.
7 She helped me change the bed linen. I said, you know,
8 I need -- I called her up because my daughter -- my
9 sister, actually, said, you know, your granddaughter
10 is an adult; she can help you also.
11 So I called her up and I asked her to come
12 over to help me change the sheets on my bed, so she
13 did that.
14 And my grandson came and he changed the
15 filters in the air-conditioning, the heating thing.
16 He changed the filters, which I normally do myself but
17 I wasn't able to do it and I couldn't work up on a
18 ladder. And I don't know, some odds and ends like
19 that, just things around the house.
20 Q. Okay. But you had your family and they came
21 and helped you?
22 A. Yes.
23 Q. That's nice. Okay.
24 Can you estimate for me how long you had
25 limitations in that regard?

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1 A. When I left Spanish Hill, it was
2 January 30th, and I was -- I was -- I went to my -- I
3 stayed at my daughter's house because I live alone and
4 I wasn't able to -- there was a lot of things I wasn't
5 able to do. I was still recuperating.
6 So I stayed at my daughter's house. They
7 have a spare, a guest bedroom, and I was there for
8 quite a while, a couple of -- I think I may have been
9 there for two months, I'm not sure. It was at least a
10 month.
11 Q. Okay.
12 A. And then I went -- and then the only reason I
13 left there was the shower -- a woman who came to help
14 me shower a couple times a week and we couldn't get
15 the shower chair -- because I had to sit in the chair
16 -- into the shower at my daughter's house. It was
17 just a regular tub shower.
18 So my second wife volunteered that I could
19 come to there because we had -- that was our house, so
20 she kept the house, you know.
21 Q. Okay. All right.
22 A. And it has a very, very large shower that I
23 was able to get the shower chair into. So that's why
24 I stayed there for quite a while, a month or two --
25 Q. Okay.

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1 A. -- I don't remember exactly, and until I was
2 able to go home, and that's when I went home.
3 Q. Okay.
4 A. But it was very nice that these people helped
5 me with that.
6 Q. Absolutely.
7 So let me put that together. So you think
8 that you stayed with your daughter for between at
9 least a month, perhaps two?
10 A. Yes.
11 Q. And then you went to your ex-wife's house for
12 probably two more months?
13 A. I think so, yes.
14 Q. And by then you were home, so if that was --
15 so maybe do you think that you were in your home by
16 June of 2019?
17 A. I believe so.
18 Q. Okay. And by the time you were in your own
19 house, were you able to get up and walk around and do
20 your normal activities?
21 A. No, I still wore the -- I had a --
22 Dr. Kooyman gave me a special shoe to wear on my left
23 foot, also that I could walk on the street with it and
24 keep the pressure off my heel --
25 Q. A boot?

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1 A. -- but I was able to drive.
2 Q. Okay. By the time you got to your house in
3 around June of 2019, other than having to wear the
4 special shoe from Dr. Kooyman, were there any other
5 limitations on your activities at that time?
6 A. Well, I'm not very -- I'm not very active, so
7 it was -- yeah, I guess you could say I had my normal
8 activities.
9 Q. Okay.
10 A. I was still under Dr. Kooyman's care,
11 though --
12 Q. Of course.
13 A. -- during the time.
14 Q. You were still going to see him for
15 treatments?
16 A. Yes.
17 Q. Okay. Just generally, how often did you go
18 see Dr. Kooyman in 2019?
19 A. It was weekly.
20 Q. Okay.
21 A. I had to see him every week, and then he said
22 come back in two weeks and then come back in three
23 weeks, then to come back in four weeks, like that.
24 So during those times when I didn't see him
25 weekly, my sister was coming over to -- oh, see, this

<p style="text-align: right;">Page 41</p> <p>1 is the second time.</p> <p>2 The first time I had a home health aide come</p> <p>3 to change the dressing on my foot.</p> <p>4 Q. Okay.</p> <p>5 A. Then with the second time that I had the</p> <p>6 wound open and the doctor told me to, you know, come</p> <p>7 back after several weeks, my sister came over and she</p> <p>8 changed the medication which the doctor gave for me --</p> <p>9 it was medication and bandages -- to change the</p> <p>10 medication on the foot weekly.</p> <p>11 Q. Okay. Does your sister have any medical</p> <p>12 background, medical or nursing background?</p> <p>13 A. No. It was a simple procedure. There was a</p> <p>14 medication called Prisma to be pushed into the wound</p> <p>15 and then just covered up with a gauze and a bandage</p> <p>16 and then wrap it up with an Ace bandage.</p> <p>17 I would -- if I could bend that far, I would</p> <p>18 have done it myself, but I couldn't. I can't --</p> <p>19 because of my -- I guess my hip surgery, I can't bend</p> <p>20 down far enough even to tie shoelaces, so I wear shoes</p> <p>21 with Velcro.</p> <p>22 Q. But if you could have bent, you would have</p> <p>23 just had -- you would have done it yourself instead of</p> <p>24 your sister?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 43</p> <p>1 pain. Was it prescribed for pain relative to your hip</p> <p>2 becoming dislocated or for a different reason?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay.</p> <p>5 A. I also was given a prescription for Eliquis.</p> <p>6 Q. I don't know what that is.</p> <p>7 A. It's a blood thinner.</p> <p>8 Q. Oh, okay.</p> <p>9 A. I didn't even -- I don't think I filled the</p> <p>10 prescription because they gave me a couple of samples</p> <p>11 at the hospital and then my primary physician told me</p> <p>12 not to take it.</p> <p>13 Q. Oh, okay. Do you remember why?</p> <p>14 A. He said I didn't need it.</p> <p>15 Q. Okay. So other than the -- other than the</p> <p>16 hydrocodone, in that 2019 time period while your wound</p> <p>17 is healing, did you take any other pain medications?</p> <p>18 A. No, I don't even take aspirin, nothing like</p> <p>19 that.</p> <p>20 Q. Okay, so no aspirin, no Tylenol, no</p> <p>21 ibuprofen?</p> <p>22 A. Not at all.</p> <p>23 Q. Okay. Did the wound cause you pain?</p> <p>24 A. Yes, I was going to say -- yes, I was going</p> <p>25 to say, it's not that I didn't have any pain, it's</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. Okay. During the period of time where you</p> <p>2 left Spanish Hills and then were living at your</p> <p>3 sister's house and then your ex-wife's house and then</p> <p>4 came home but were still --</p> <p>5 A. I never lived at my sister's house. It was</p> <p>6 my daughter's house.</p> <p>7 Q. Oh, thank you for your correction, your</p> <p>8 daughter's house.</p> <p>9 During that period in 2019 after you left</p> <p>10 Spanish Hills, were you taking any prescription pain</p> <p>11 medication?</p> <p>12 A. I was prescribed hydrocodone.</p> <p>13 Q. Okay.</p> <p>14 A. But I didn't -- I think I took the pill twice</p> <p>15 and I didn't take it after that.</p> <p>16 Q. Okay. And would that have been short -- when</p> <p>17 you took the pill on those two occasions, would that</p> <p>18 have been shortly after you were discharged from</p> <p>19 Spanish Hills, like early in your discharge?</p> <p>20 A. I believe so. I believe it was around that</p> <p>21 time.</p> <p>22 Q. Okay. And what were you prescribed the</p> <p>23 hydrocodone for?</p> <p>24 A. I guess it was for pain.</p> <p>25 Q. Okay, fair enough, it was prescribed for</p>	<p style="text-align: right;">Page 44</p> <p>1 just that I didn't feel it was worthwhile for me to</p> <p>2 start taking all these medications.</p> <p>3 Q. I understand.</p> <p>4 A. I'm obligated to take these couple of</p> <p>5 prescription drugs that I mentioned to you, but I</p> <p>6 really don't like taking drugs. I'm not that kind of</p> <p>7 person.</p> <p>8 Q. I understand. I understand that.</p> <p>9 So you did have some pain or discomfort in</p> <p>10 the wound, but you were able to manage without any</p> <p>11 pain medication; is that correct?</p> <p>12 A. Yes, I still do.</p> <p>13 Q. All right. You still manage without pain</p> <p>14 medication?</p> <p>15 A. Yes, and I still have pain.</p> <p>16 Q. Okay.</p> <p>17 A. It's not continuous pain. It's just that</p> <p>18 every so often I do get a sharp like a stabbing</p> <p>19 sensation in my heel, my foot.</p> <p>20 Q. Is it like a nerve pain?</p> <p>21 A. I don't know. It's just like every so often</p> <p>22 I'm walking and suddenly I'll get a pain, you know,</p> <p>23 like a stab, that's it, but I go on from there.</p> <p>24 Q. How long does it last?</p> <p>25 A. Just it's momentary.</p>

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1 Q. Okay. And does it always happen when you're
2 doing an activity like you're walking or moving?
3 A. Well, yeah, just walking, putting pressure on
4 my heel. Wait, it was -- you just said something --
5 Q. I was asking if the sharp pain that you feel,
6 does it only occur when you're moving or walking or
7 putting pressure on it?
8 A. Just walking.
9 Q. Just when you walk?
10 A. That's what it is, but it's not continuous.
11 Q. Okay.
12 A. I could walk with my dog for a half hour and
13 suddenly I get a pain and then that's it, you know.
14 It's not like it's a continuous thing.
15 Q. Understood. How often does it happen,
16 occasionally?
17 A. I have peripheral neuropathy, and I shouldn't
18 have any pain in my feet. I don't.
19 Q. Okay.
20 A. Like, I could walk on something sharp and I
21 don't feel it, but I do feel this pain that I
22 shouldn't feel.
23 Q. Okay. And is it occasional?
24 A. Yes.
25 Q. All right.

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1 A. That's it, it's occasional.
2 Q. Occasional and momentary?
3 A. Correct.
4 Q. All right. You just mentioned that you've
5 got peripheral neuropathy and that you shouldn't be
6 feeling pain in your feet. Can you feel your legs?
7 A. Yes.
8 Q. Okay. So where -- if you can describe for
9 me, where in your legs can you feel?
10 A. I can feel my entire leg, my thigh, my calf,
11 down to my ankle.
12 Q. Okay.
13 A. You know, I feel, I have feelings; but on the
14 soles of my feet, I don't have feeling.
15 Q. Okay. How long has that been?
16 A. Well, since, I'd say, at least -- I'm trying
17 to think -- at least five or six years.
18 Q. Okay. And so -- go ahead.
19 A. So I've got good fortune, I think, we
20 recognized it, and that was at least five or six years
21 ago, so it must be at least that long.
22 Q. All right. And can you -- you said you don't
23 have any feeling in the soles of your feet. Can you
24 feel the top of your feet?
25 A. Yeah. Yes.

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1 Q. Okay. And what about, how high up on your
2 heel does the neuropathy symptoms go?
3 A. That's too technical. I don't know.
4 Q. Okay. Well, I'm not trying to put words in
5 your mouth. You describe it to me, like just from toe
6 to the bottom of your heel?
7 A. I really can't describe it other than the
8 fact that I don't feel when I walk around barefoot.
9 For argument's sake --
10 Q. Okay.
11 A. -- I don't have -- I could walk on my dog's
12 toys or the cat's toys and I don't feel it. I could
13 feel there's a pressure, there's something -- I'm
14 stepping on something, but it's not the feeling I
15 should have.
16 Q. Is it like a numbness?
17 A. Yes.
18 Q. Numbness, okay.
19 A. Yes, no feeling.
20 Q. Okay.
21 A. The doctor stuck pins in it, you know, to
22 test it out, and I don't feel it.
23 Q. Okay. So, Barry, we've been going an hour.
24 Do you want to take a quick stretch break or a
25 restroom break?

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1 A. No, I'm okay, thank you.
2 Q. Okay. I'm just going over my notes here.
3 So since we started an hour ago, has your
4 memory been jogged at all with regard to who
5 Dr. Baltar is?
6 A. Like I said, I would probably recognize
7 Dr. Baltar.
8 Q. Okay.
9 A. If I saw her.
10 Q. Okay.
11 A. But I never called her by or saw somebody --
12 I didn't address anybody that I recall as a
13 Dr. Baltar.
14 Q. What about Dr. Shanna? Her first name is
15 Shanna; does that ring a bell?
16 A. No.
17 Q. Okay. All right. And then the same with
18 regard to Advanced Practice Nurse Sithole: Has
19 anything that -- since we've been talking for about an
20 hour, has anything jogged your memory with regard to
21 who she is?
22 A. Does she have a first name?
23 Q. Yeah, her first name is Miriam.
24 A. I may have seen somebody named Miriam, but
25 like I said, it was a long time ago.

<p style="text-align: right;">Page 49</p> <p>1 Q. I understand.</p> <p>2 A. And I would have to actually see the person</p> <p>3 or a picture of them to say, oh, yes, I remember them.</p> <p>4 Offhand, the names don't fit into any face. I don't</p> <p>5 recall.</p> <p>6 Q. Okay.</p> <p>7 MS. TURPEN: Okay, so thank you, Barry. I'm</p> <p>8 sure I'm going to have some more questions for you</p> <p>9 later, but now I'm going to pass you over to</p> <p>10 Mr. Rourke, who represents the facility.</p> <p>11 THE DEPONENT: Okay.</p> <p>12 EXAMINATION</p> <p>13 BY MR. ROURKE:</p> <p>14 Q. Good morning, Mr. Heifetz.</p> <p>15 A. Hi.</p> <p>16 Q. My name is Robert Rourke. We introduced</p> <p>17 ourselves at the beginning of the deposition. I</p> <p>18 represent Spanish Hills Wellness Suites.</p> <p>19 By the nature of going second, I might jump</p> <p>20 around a little bit. If you don't follow one of my</p> <p>21 questions, would you please tell me that you're not</p> <p>22 following the question?</p> <p>23 A. I will.</p> <p>24 Q. Okay, thank you.</p> <p>25 And up to this point in time, have you been</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. If I understood you correctly, she and</p> <p>2 your sister have taken you to various doctor's</p> <p>3 appointments; is that correct?</p> <p>4 A. Well, primarily my sister, occasionally my</p> <p>5 daughter, because my sister is retired, as well as I</p> <p>6 am, but my daughter has a job and she doesn't have the</p> <p>7 availability or the time to go with me.</p> <p>8 Q. I understand. How old is your daughter?</p> <p>9 A. She's 56.</p> <p>10 Q. And what does she do?</p> <p>11 A. She's the -- manages the constable's office</p> <p>12 of the Metropolitan Police Department here in</p> <p>13 Las Vegas.</p> <p>14 Q. Okay. How about your son; what's your son's</p> <p>15 name?</p> <p>16 A. My son is Allen Robert Heifetz.</p> <p>17 Q. And where does he reside?</p> <p>18 A. I believe he lives in Las Vegas, but I</p> <p>19 haven't seen him or had any contact with him in</p> <p>20 several years.</p> <p>21 Q. Okay. Are we talking more than three or four</p> <p>22 years? I'm just trying -- I'm not trying to pry, sir.</p> <p>23 I'm just trying to get an idea whether or not he has</p> <p>24 any information regarding this case.</p> <p>25 A. (Inaudible) years.</p>
<p style="text-align: right;">Page 50</p> <p>1 able to understand Katherine's questions?</p> <p>2 A. For the most part, yes.</p> <p>3 Q. Okay. And were you providing complete and</p> <p>4 accurate answers to her questions?</p> <p>5 A. I believe I did, yes.</p> <p>6 Q. Okay. I'm going to go through just a little</p> <p>7 bit of background with you, if you don't mind.</p> <p>8 You said that you were in sales most of your</p> <p>9 life; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And you retired in 1992 and moved to</p> <p>12 Las Vegas in 1994?</p> <p>13 A. Yes.</p> <p>14 Q. All right. You mentioned having one</p> <p>15 daughter. Do you have any other children?</p> <p>16 A. I have a son.</p> <p>17 Q. Let's start first with your daughter. She</p> <p>18 lives here in Vegas?</p> <p>19 A. Yes, she does.</p> <p>20 Q. And what's her full name?</p> <p>21 A. Sharon Graciano. Middle name is Faye.</p> <p>22 Sharon Faye Graciano.</p> <p>23 Q. Okay. And did she visit you while you were</p> <p>24 in Spanish Hills Wellness Suites?</p> <p>25 A. Yes, she did.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. I'm sorry, I didn't --</p> <p>2 A. A little over three years.</p> <p>3 Q. Okay.</p> <p>4 A. I haven't seen him.</p> <p>5 Q. He doesn't have any information about this</p> <p>6 case. He didn't see you at Spanish Hills Wellness</p> <p>7 Suites; is that correct?</p> <p>8 A. No.</p> <p>9 Q. Okay. You had mentioned that you've been</p> <p>10 deposed, I believe, twice previously.</p> <p>11 A. Yes.</p> <p>12 Q. Is that correct?</p> <p>13 A. Yes, correct.</p> <p>14 Q. All right. Once was about a year ago where</p> <p>15 you were a plaintiff in a case.</p> <p>16 A. Correct.</p> <p>17 Q. Is that involving a car accident?</p> <p>18 A. Yes, automobile accident, yes.</p> <p>19 Q. Okay. And I saw references to it in your</p> <p>20 medical records from Nevada Orthopedic, and who was</p> <p>21 your attorney that represented you in that case?</p> <p>22 A. I believe it's Henness & Haight.</p> <p>23 Q. Okay.</p> <p>24 A. The attorney is Sean Molina. He was my</p> <p>25 attorney for the Henness & Haight firm.</p>

<p style="text-align: right;">Page 53</p> <p>1 Q. Okay. And has that case been since 2 resolved -- 3 A. No. 4 Q. -- or is it still active? 5 A. Still ongoing. 6 Q. All right. In that case, what type of 7 damages are you claiming in that case? 8 A. I had a back injury. 9 Q. Are you claiming any damages as it relates to 10 your lower extremities or your hips? 11 A. Just my -- I had asked if it had affected my 12 hip, but I was told it didn't, just my lower back. 13 Q. Okay. Did you -- are you seeking damages in 14 that case for inability to perform any type of 15 household functions or household services or anything 16 like that, to the best of your knowledge? 17 A. I believe it's for the pain and suffering I 18 sustained. 19 Q. Okay. To the best of your knowledge, are 20 there any damages that you're claiming in the car 21 accident case that overlap with the damages that 22 you're claiming in this case? 23 A. Not at all. 24 Q. Okay. So let's talk about the damages that 25 you're claiming in this case. Other than what I've</p>	<p style="text-align: right;">Page 55</p> <p>1 any limitations that you have experienced that you 2 plan to inform a jury of at the time of trial that you 3 haven't told Katherine or I at this time up to this 4 point in your deposition. 5 A. I believe we discussed the injury that I 6 sustained at length and I don't know that -- I don't 7 think there's any other injury. 8 Q. Okay. That's all I was trying to get at. 9 Can you give me a quick synopsis of your 10 educational background? 11 A. I went to school in Brooklyn. I went to high 12 school, graduated high school. I went to Brooklyn 13 College, but I only went to Brooklyn College for, I 14 think, about two years and I -- during the time I was 15 going to school, I started a business. 16 Like I said, I was always in sales. I had a 17 printing business, and it was doing very, very well 18 and I decided that I didn't need any more college; I 19 could make a nice living doing that printing business. 20 I did that for a couple of years and then I 21 went on to something else. I was selling records, you 22 know, the LPs. I was doing it on a national basis. I 23 had some people out on the road, and I keep going from 24 business to business. I did a lot. 25 I started leasing trucks. I worked for</p>
<p style="text-align: right;">Page 54</p> <p>1 seen in the pleadings here, it seems like it's -- or 2 strike that question. 3 From what I've seen in the pleadings in this 4 case, from what you've testified here today, it seems 5 as though your injuries that you're claiming in this 6 case are limited to the formation of the decubitus 7 wounds, skin wounds on your heels; is that correct? 8 A. Yes. 9 Q. Okay. And in answering Katherine's questions 10 here today, she asked you questions about when that 11 onset was, when it resolved and what limitations that 12 you had during that time, and you said you're 13 essentially back to normal now. 14 Is there anything about the damages that you 15 haven't -- that you are claiming that you haven't told 16 Katherine or I at this point in time? 17 MS. WISE: Object to form. 18 THE DEPONENT: I really don't understand that 19 question. I thought Katherine and I discussed it at 20 length and I don't know what else -- I don't know -- I 21 don't understand your question. 22 BY MR. ROURKE: 23 Q. Sure. Let me see if I can reword that for 24 you. 25 All I'm trying to understand is if there's</p>	<p style="text-align: right;">Page 56</p> <p>1 Hertz. I worked for Avis. I worked for Ryder. I 2 leased trucks for a lot of people. 3 Q. Okay, thank you. I was just trying to get 4 some idea of what the background included. 5 As it relates to -- and you said you retired 6 in 1992. You don't have any plans on going back to 7 work at all? 8 A. Not at all. 9 Q. Okay. You're financially secure enough that 10 you don't have to return to work? 11 A. Yeah, I would say so. 12 Q. Okay. I'd like to take you back to the 13 testimony when you were asked if you had any 14 recollection of any individuals providing care to you, 15 and you mentioned you remembered a Rachel and a 16 Dr. Quinn. Do you remember that testimony? 17 A. I remember a Raquel. 18 Q. Raquel. 19 A. And I remember a couple of other people, 20 their names -- see, I remember this Dr. Quinn because 21 I think there was a Dr. Quinn that was a psychologist 22 or something and I was wondering why I saw this 23 Dr. Quinn. I asked him, why am I seeing you, you 24 know, and it just kind of struck me funny, that was 25 all.</p>

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1 Q. Okay. Let's focus on Raquel. Do you recall
2 that name being Raquel Anderson, by chance?
3 A. I don't know the last names.
4 Q. Okay. What do you remember of Raquel?
5 A. She was -- I think -- I remember that I asked
6 her what the problem was that I can't get any service
7 here in the Spanish Hill.
8 And it was the second time I had stayed
9 there. The first time was my right hip. I had a
10 wonderful experience.
11 And then the second time when I asked
12 specifically to go to Spanish Hill because of the
13 wonderful experience I had the first time with my
14 first surgery, she told me that the Spanish Hill was
15 understaffed and I think she told me it had changed
16 hands, since I had been there, several times.
17 Q. Are you -- do you have specific recollection
18 of that or is that something -- I'm trying to
19 understand where that's coming from because to my
20 knowledge, I'll represent to you it's not changed
21 hands at all.
22 A. I remember that woman so accurately because I
23 was really surprised to get that kind of information.
24 Q. Okay. I'll represent to you, to my
25 knowledge -- I've represented them since they opened

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1 the doors -- they haven't changed any ownership, so --
2 A. I understand what you just said.
3 Q. No, I understand.
4 So you're just saying that you think that
5 what she said is you believe she said that they were
6 understaffed and had changed hands?
7 A. Yes.
8 Q. Okay. What was different about your second
9 experience as compared to the wonderful experience you
10 had there the first time?
11 A. There was very, very little attention from the
12 staff. You know, they have the buzzer to call an
13 attendant, and nobody would come for hours.
14 I had initially asked them for a -- one time
15 asked for the urinal, you know, to be able to use the
16 urinal in the bed because I was bedridden, and I said
17 I needed more than one, and it took them a long time
18 to get me a second one.
19 And then finally they brought me a few of
20 them and I would fill them up and stack them up on the
21 table next to the bed because nobody was coming to
22 take them away. You know, it's just the service was
23 not what I had previously experienced.
24 Q. Okay. Other than what you just described,
25 was there anything about the service that was

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1 different?
2 A. Say that again.
3 Q. Sure. Other than what you just described
4 about the call light and the bedpans, was there
5 anything else that was different about the service?
6 A. Just the fact that there was no -- oh, yeah,
7 they had a coffee machine or coffee urn that was
8 available, you know, 24 hours a day, more or less, and
9 the first time I was there, there was never any
10 problem getting coffee.
11 Second time, they would tell me it was empty,
12 you know, so it wasn't being taken care of. You know,
13 little things like that.
14 Q. Anything else that you can recall that was
15 different during your second visit other than what
16 you've told me here today?
17 A. I don't recall if there was any other thing I
18 can think of.
19 Q. Okay. And on the urinal issue, the bedside
20 pan, how many times did that happen during your stay?
21 A. How many times did what happen?
22 Q. How many times did you have an issue with the
23 bed -- using the bedpan?
24 A. Several times. One time it overflowed and it
25 wet the bed and they had to, you know, change the --

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1 get me out of the bed to change all the linen.
2 Q. Can you give me any idea of, when you say
3 several times, are we talking two to three? I'm just
4 trying to understand what your testimony will be at
5 the time of trial if you're permitted to testify as to
6 these issues. That's what I'm trying to figure out.
7 A. I don't remember how many times.
8 Q. Okay.
9 A. I don't know.
10 Q. Other than the coffee and the bedpan issue,
11 you haven't identified any other concerns that you had
12 for your second admission; is that correct?
13 A. I really don't --
14 MS. WISE: I lost connection. Can you repeat
15 that last question?
16 MR. ROURKE: Sure. What I was asking -- I'll
17 just rephrase it.
18 BY MR. ROURKE:
19 Q. You've identified the coffee machine being
20 empty and that you had issues with the use of the
21 bedpan, and I just wanted to confirm that those are
22 the only two criticisms that you can recall having
23 regarding your second stay at Spanish Hills Wellness
24 Suites.
25 A. Well, also that I had -- I was supposed to

<p style="text-align: right;">Page 61</p> <p>1 get a -- I guess you would call it a bath, to bathe me 2 in the bed, you know, with a sponge or washcloths or 3 something like that, and the person who was assigned 4 to do that, they said they couldn't do it because I 5 had this brace on; I had a brace on my hip. 6 And I said, well, what about the rest of my 7 body, why can't you wash the rest of me, my left side? 8 And they said they couldn't because of the brace, and 9 that was in the evening, and they said that the 10 morning person would then take care of it. 11 So when the morning came and nobody came to 12 wash me, and I don't remember the day, but I think in 13 -- I didn't get a bath for a number of days and then I 14 asked one of the -- oh, yes, the -- I don't know if it 15 was a nurse or attendant if they could bring me a 16 washcloth and a basin with water and I could wash 17 myself, and I did. That was early in the morning of 18 one of the days. I don't remember what day it was. 19 And then a couple of hours later, another 20 attendant came and asked me if I wanted to have a 21 bath, and I said I just bathed myself because nobody 22 did it in several days. 23 Q. Do you recall how many times you were bathed 24 during your second admission? 25 A. I don't recall, but after that, I was able to</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. I'm sorry. 2 A. Female, a woman. 3 Q. Okay. And do you know about how old she was? 4 A. I couldn't tell you. Maybe in her 20s or 5 30s. 6 Q. Do you know what her ethnic background was; 7 was she black, white, Hispanic? 8 A. Black lady. 9 Q. Okay. Was she of a slight build or larger 10 build, a medium build? 11 A. Normal -- not overweight, normal build. 12 Q. Okay. All right. So now you've identified 13 the issue with the bed pans, the coffee machine being 14 empty and the issue with your bathing. Was there any 15 other concern that you had during your second 16 admission? 17 A. I really can't think of anything else at the 18 moment. 19 Q. Has any of your doctors said that the lack of 20 coffee in the coffee machine or your concerns over 21 bathing or your concerns with a bedpan caused you any 22 injury whatsoever? 23 A. No, none of those things. 24 Q. Okay. Is there anything else about your 25 second admission to Spanish Hills Wellness Suites that</p>
<p style="text-align: right;">Page 62</p> <p>1 get a shower. I remember a couple of times I had a 2 shower with the attendant, attendant to help me shower 3 in a special room there with the shower chair. 4 Q. Do you recall ever refusing to participate in 5 a bath or a bed bath? 6 A. No, that's another thing. When I asked that 7 lady in the evening to wash me, she said she couldn't, 8 somebody would do it the following day, they told me 9 that in the record it indicated I refused a bath. And 10 I said, I never refused a bath, they told me they 11 couldn't bathe me. And they said -- I said, why does 12 the record show that? And I was told that they can 13 only say I had a bath or refused a bath; there's no 14 other way to describe it. 15 Q. Can you describe to me this individual that 16 you claim said that they wouldn't bathe you because it 17 was inhibited by -- the process was inhibited by the 18 brace? 19 A. I don't know. I don't recall the name of the 20 person. It might be in the records somewhere. I know 21 I had some written records, which I don't have at my 22 disposal, but the name of the person might be in that 23 written record I had. 24 Q. Can you tell me if it was a male or a female? 25 A. Woman, a female.</p>	<p style="text-align: right;">Page 64</p> <p>1 you can recall that you would like to tell me about at 2 this time or that you intend on telling the jury about 3 at the time of trial that we haven't discussed as of 4 this point? 5 A. I don't think there's anything else in 6 reference to those items that you just mentioned. 7 Q. Okay. Do you have a recollection of the 8 compression socks being utilized at Spanish Hills 9 Wellness Suites during your second admission? 10 A. When I arrived there, I was wearing 11 compression socks from Summerlin Hospital and I had 12 explained that I was told by the -- when I was at 13 Summerlin Hospital I was told that when I arrived at 14 Spanish Hill, or wherever I was going, that they had 15 to remove the compression socks, and I gave that 16 information to the people at Spanish Hill, and they -- 17 Q. Are you aware -- I'm sorry, sir. I didn't 18 mean to cut you off. There's a little delay here. 19 A. Yeah, they didn't remove them at Spanish 20 Hill. They were told to -- I told them they had to be 21 removed. They didn't remove them. 22 Q. Is it your testimony that they never removed 23 them at any point in time during any day while you 24 were at Spanish Hills Wellness Suites? 25 A. That's correct.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q. So if the records reflect that that, in fact, 2 was ordered to be done and the records reflect that it 3 was done, you believe that that's an inaccurate 4 charting in the records? 5 A. Say that again, please. 6 Q. Sure. If the records reflect that there's an 7 order in the chart that they be removed daily for a 8 period of time and the records reflect that that, in 9 fact, was done, you believe that to be an inaccuracy 10 in the medical record? 11 A. Yes, absolutely, because they didn't remove 12 them. 13 Q. And just so I'm clear, it's your testimony 14 they were never removed at all during the time 15 frame -- 16 A. Yes. 17 Q. -- that you were Spanish Hills? 18 A. Not the entire time I was at Spanish Hill. 19 When I arrived there, I had the stockings on my legs, 20 and I think it was three or four days later that one 21 of my friends that came to visit, who happens to be a 22 nurse, she removed them. 23 Q. Who was this friend? 24 A. Kerry McGiverney. 25 Q. How does she spell her name?</p>	<p style="text-align: right;">Page 67</p> <p>1 is, the court reporter has asked for a break here for 2 a moment. We're going to go ahead and take that break 3 and then we'll pick back up once we get off the break. 4 Why don't we take -- it's 11:25. Why don't we take 5 till -- what do you need, Gary? 6 THE COURT REPORTER: Five or ten. 7 MR. ROURKE: Let's just do ten minutes. 8 We'll reconvene at 11:35. 9 THE DEPONENT: Okay. 10 MR. ROURKE: Thank you, sir. 11 THE DEPONENT: Thank you. 12 (Recess taken.) 13 MR. ROURKE: Are we back on the record? 14 THE COURT REPORTER: Yes. 15 BY MR. ROURKE: 16 Q. Sir, before we took the break -- well, first 17 of all, you understand you're still under oath, still 18 obligated to tell the truth, correct? I need a verbal 19 answer. 20 A. Yes, I thought I said -- yes, I said yes. 21 Q. Okay. I guess it was a transmission issue 22 there. 23 So we were talking about a Kerry McGiverney. 24 You said that she's a nurse? 25 A. Yes.</p>
<p style="text-align: right;">Page 66</p> <p>1 A. K-E-R-R-Y, and the last name is McGiverney, 2 M-C-G-I-V-E-R-N-E-Y. 3 Q. And you said she's a nurse. What type of 4 nurse is she? 5 A. I don't know. All I know, she's a nurse. 6 Q. Do you know where she works? 7 A. She owns a couple of assisted living places 8 or nursing homes; that's her business. 9 THE COURT REPORTER: Rob, can we take a -- 10 BY MR. ROURKE: 11 Q. Do you have a phone number for her? 12 THE COURT REPORTER: When you get to a good 13 point, can we take a quick break? 14 THE DEPONENT: Offhand, I don't have it, but 15 I believe my attorney has it. 16 MR. ROURKE: Sure. Thank you. What we'll do 17 here, we'll just leave a blank in the deposition and 18 I'll ask that you, when you review your deposition 19 testimony, that you fill in the contact information, 20 her name, address, phone number, okay? 21 THE DEPONENT: Sure. 22 (Please provide the requested information 23 on the Deposition Errata Sheet on the 24 second-to-last page of the deposition.) 25 MR. ROURKE: Okay. And then what we'll do</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. And she owns nursing homes or something along 2 those lines? 3 A. Yes. 4 Q. You said that she came in about four or five 5 days after your admission to Spanish Hills Wellness 6 Suites and she removed your compression stockings; is 7 that your testimony? 8 A. Yes, she removed the compression socks that I 9 was wearing from the time I arrived there from the 10 Summerlin Hospital. 11 Q. Okay. What did she do with them? 12 A. She didn't take them. She left them, I 13 guess, on the table that was adjacent to the bed. 14 Q. Did she ever place them back on your lower 15 extremities prior to her departing the facility? 16 A. No. 17 Q. And just so you know, Mr. Heifetz, I can see 18 your face and see your mouth move, but there's a delay 19 in the audio, so I'm not trying to step on your 20 testimony, by any means. It's just hard for me to 21 know when you're done answering, so I apologize. If I 22 cut you off at any point in time, you just tell me, 23 okay? 24 A. Okay. 25 Q. Thank you. I want to make sure you get a</p>

<p style="text-align: right;">Page 69</p> <p>1 full opportunity to answer the questions.</p> <p>2 How long did they remain off your legs, to</p> <p>3 the best of your recollection, after this Kerry</p> <p>4 McGiverney removed them?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know if she ever spoke to any of the</p> <p>7 staff members at Spanish Hills Wellness Suites prior</p> <p>8 to doing so?</p> <p>9 A. I don't know that.</p> <p>10 Q. Did she only see you on that one occasion?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did your --</p> <p>13 A. At that facility. I've seen her after that,</p> <p>14 but --</p> <p>15 Q. Okay, but I'm concerned about when she was at</p> <p>16 Spanish Hills Wellness Suites. It was only one visit</p> <p>17 and she removed your compression stockings. To your</p> <p>18 knowledge, she left them on the side of the bed and</p> <p>19 you don't know when they were put back on?</p> <p>20 A. No.</p> <p>21 Q. You mentioned that your daughter visited you</p> <p>22 at Spanish Hills Wellness Suites?</p> <p>23 A. Yes.</p> <p>24 Q. Did your daughter ever take any type of steps</p> <p>25 to provide care to you while you were at Spanish Hills</p>	<p style="text-align: right;">Page 71</p> <p>1 conversation.</p> <p>2 Q. Okay. I'm just trying to see if there was</p> <p>3 any kind of additional treatment or if they removed</p> <p>4 anything or repositioned you or anything like that.</p> <p>5 A. After the wound was discovered, the wound</p> <p>6 doctor at the Spanish Hill recommended that I have a</p> <p>7 cushion under my calves to elevate my feet so my heels</p> <p>8 wouldn't be resting on the bed. And when my sister</p> <p>9 came to visit me a couple of times, she adjusted that</p> <p>10 pillow that was under my -- under my legs, if that's</p> <p>11 what you mean by assisting. That's the only thing</p> <p>12 that I recall her doing.</p> <p>13 Q. And when you say adjusting the pillow under</p> <p>14 or the pad underneath your legs, what exactly did she</p> <p>15 do in that regard?</p> <p>16 A. Well, sometimes if you're just lying there,</p> <p>17 the pillow would get shifted because of my -- I guess</p> <p>18 I moved my leg or something and it got shifted, so she</p> <p>19 would reposition it so it was under both of my legs.</p> <p>20 That was all she did.</p> <p>21 Q. Okay. How many occasions, roughly, did she</p> <p>22 do that?</p> <p>23 A. How many days, did you say?</p> <p>24 Q. Occasions, how many times did she do that?</p> <p>25 A. Maybe twice in the entire time period that</p>
<p style="text-align: right;">Page 70</p> <p>1 Wellness Suites?</p> <p>2 A. What kind of care are we talking about?</p> <p>3 Q. Any type of care, whether it was assisting</p> <p>4 with bathing, assisting with a bedpan, removing</p> <p>5 compression stockings, altering compression stockings,</p> <p>6 anything at all other than sit there and speak with</p> <p>7 you.</p> <p>8 A. No, nothing, just what you said, sitting with</p> <p>9 me and talking with me.</p> <p>10 Q. Okay. And your ex-wife, your second ex-wife</p> <p>11 that you had referenced that she -- you went to her</p> <p>12 house after your daughter's house because of the</p> <p>13 showering concerns, did she ever visit you at Spanish</p> <p>14 Hills Wellness Suites?</p> <p>15 A. I believe she did.</p> <p>16 Q. To your knowledge, did she ever interact with</p> <p>17 you other than speaking with you?</p> <p>18 A. No.</p> <p>19 Q. Your sister that you referenced that's ten</p> <p>20 years younger than you, did she visit you at Spanish</p> <p>21 Hills Wellness Suites?</p> <p>22 A. Yes.</p> <p>23 Q. Did she ever interact with you other than</p> <p>24 sitting and speaking with you?</p> <p>25 A. I don't believe there was anything other than</p>	<p style="text-align: right;">Page 72</p> <p>1 she came to visit.</p> <p>2 Q. And how frequently would she be at the</p> <p>3 facility?</p> <p>4 A. I don't recall. Frequently, but I couldn't</p> <p>5 tell you how many times.</p> <p>6 Q. Okay. Is there anything about anybody</p> <p>7 that you know from your friends or family that visited</p> <p>8 you at Spanish Hills Wellness Suites that you can</p> <p>9 recall that we haven't talked about?</p> <p>10 I'm just seeing if there's anything out there</p> <p>11 that -- an encounter with a person that you knew,</p> <p>12 whether they're related to you or not, that came in</p> <p>13 and did something for you or with you while you were</p> <p>14 in Spanish Hills Wellness Suites during your second</p> <p>15 admission.</p> <p>16 A. No, none of the people that came to visit me,</p> <p>17 no.</p> <p>18 Q. Okay. Has any physician that treats you that</p> <p>19 you have seen told you that the heels -- or the wounds</p> <p>20 that you have on your heels, that they were caused as</p> <p>21 a result of any breach in the standard of care by any</p> <p>22 of the staff members at Spanish Hills Wellness Suites?</p> <p>23 MS. WISE: Objection; foundation</p> <p>24 THE DEPONENT: So am I supposed to answer</p> <p>25 this question with an objection?</p>

<p style="text-align: right;">Page 73</p> <p>1 MS. WISE: Go and answer.</p> <p>2 THE DEPONENT: Okay.</p> <p>3 Would you just repeat the question?</p> <p>4 BY MR. ROURKE:</p> <p>5 Q. Sure. I just want to make sure you clearly</p> <p>6 understand my question.</p> <p>7 My question is, has any of your treating</p> <p>8 physicians, any of them, told you at any point in time</p> <p>9 that the wounds on your heels were a result of any</p> <p>10 breach in the standard of care by any of the people</p> <p>11 who treated you at Spanish Hills Wellness Suites?</p> <p>12 MS. WISE: Same objection.</p> <p>13 THE DEPONENT: Well, they didn't -- or no one</p> <p>14 said it was because of a breach, but it was recognized</p> <p>15 where the wound occurred.</p> <p>16 BY MR. ROURKE:</p> <p>17 Q. And I appreciate that and I appreciate your</p> <p>18 response. My question was a little different.</p> <p>19 My question was specifically, because of any</p> <p>20 of the alleged breaches in the standard of care that</p> <p>21 you're alleging in this lawsuit, did any of your</p> <p>22 treating physicians tell you that your wounds were a</p> <p>23 result of substandard care by the staff at Spanish</p> <p>24 Hills Wellness Suites?</p> <p>25 MS. WISE: Same objection.</p>	<p style="text-align: right;">Page 75</p> <p>1 I've never had a wound like that before.</p> <p>2 Q. Okay. And no physician has told you that</p> <p>3 there was negligent care that -- strike that.</p> <p>4 None of your treating physicians have told</p> <p>5 you that there was negligent care at Spanish Hills</p> <p>6 that led to your wounds, correct?</p> <p>7 A. No one has said that.</p> <p>8 Q. Okay. Have you spoken with your experts in</p> <p>9 this case?</p> <p>10 A. Who are you talking to?</p> <p>11 Q. I'm talking to you, Mr. Heifetz. I just</p> <p>12 leaned over to get some documents.</p> <p>13 A. And you asked me if I spoke to experts?</p> <p>14 Q. Yeah, your experts. You understand that</p> <p>15 there's been experts retained by you, in this case;</p> <p>16 Diana Schmidt, do you know who that is?</p> <p>17 A. No, I don't.</p> <p>18 Q. You've never spoke with Ms. Schmidt?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Okay. Do you know -- do you know a Scott</p> <p>21 Matthew Bolhack, a Dr. Scott Matthew Bolhack?</p> <p>22 Bolhack, I guess, B-O-L-H-A-C-K.</p> <p>23 A. I don't believe I've met the gentleman.</p> <p>24 Q. Okay. In any event, you have no recollection</p> <p>25 of speaking with him; is that correct?</p>
<p style="text-align: right;">Page 74</p> <p>1 THE DEPONENT: Not in those words. Yeah, not</p> <p>2 those words.</p> <p>3 BY MR. ROURKE:</p> <p>4 Q. Okay.</p> <p>5 A. Nobody said those words.</p> <p>6 Q. Okay. Has anybody -- other than saying that</p> <p>7 the wounds appeared while you were at Spanish Hills</p> <p>8 Wellness Suites, nobody's expressed concerns over the</p> <p>9 care that was provided there; is that what you're</p> <p>10 telling me?</p> <p>11 MS. WISE: Object to foundation.</p> <p>12 THE DEPONENT: That, I really don't -- that's</p> <p>13 too complicated a question, if you please. I don't</p> <p>14 understand it.</p> <p>15 BY MR. ROURKE:</p> <p>16 Q. Okay. Let me break it down again for you.</p> <p>17 It's pretty -- let me see if I can make it pretty</p> <p>18 simple.</p> <p>19 A. Yeah, please.</p> <p>20 Q. (Inaudible) in this lawsuit that your wounds</p> <p>21 were a result of -- we'll use the term negligent care</p> <p>22 provided to you while you were in Spanish Hills</p> <p>23 Wellness Suites; do you understand that?</p> <p>24 A. Okay, I don't know if it's because of</p> <p>25 negligence, but it happened at the Spanish Hills.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I don't.</p> <p>2 Q. All right. Do you have any recollection of</p> <p>3 any Ace bandages being used on your lower extremities</p> <p>4 while you were at Spanish Hills Wellness Suites during</p> <p>5 your second admission?</p> <p>6 A. I don't remember.</p> <p>7 Q. Okay. In your records from Nevada Ortho and</p> <p>8 Spine Center, there's a reference to a visit that you</p> <p>9 had on February 19th, approximately 20 days after your</p> <p>10 discharge from Spanish Hills Wellness Suites from your</p> <p>11 second admission there. It references that there was</p> <p>12 Ace bandages being used at that time.</p> <p>13 Do you remember any point in time after you</p> <p>14 were discharged from Spanish Hills Wellness Suites</p> <p>15 where Ace bandages were used on your lower</p> <p>16 extremities?</p> <p>17 A. Yes.</p> <p>18 Q. Who prescribed them and who administered</p> <p>19 them?</p> <p>20 A. I don't know who prescribed, but it was the</p> <p>21 visiting nurses that came to my house -- or not my</p> <p>22 house, where I was staying after I left Spanish Hill,</p> <p>23 and that was the procedure, to medicate the wounds and</p> <p>24 wrap my leg with Ace bandage.</p> <p>25 Q. Do you know why you were using an Ace bandage</p>

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1 at that point in time versus compression stockings?
2 A. Okay, there was a glitch in the tech -- say
3 it again.
4 Q. Sure, not a problem. I understand that there
5 are some glitches here.
6 Do you know why or what precipitated the
7 change from compression stockings to the use of Ace
8 bandages after you had left Spanish Hills Wellness
9 Suites?
10 A. No, I don't. Just I assumed that was the
11 reason for the medication, it was part of the
12 medication.
13 Q. Okay.
14 A. To have an Ace bandage.
15 Q. Were they used along with the compression
16 stockings or were they in lieu of, in substitution of?
17 A. I wasn't wearing the compression stockings
18 when I had the Ace bandage on.
19 Q. Okay. And how long did you -- how long were
20 the Ace bandages used on you, if you have a
21 recollection?
22 A. For several months, until Dr. Kooyman
23 determined that it was healed; back in August, I
24 guess.
25 Q. Do you recall whether or not you had any

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1 other skin down break -- skin breakdown issues --
2 strike that. That was a horrible question.
3 Do you recall having any other skin breakdown
4 issues on your lower extremities while you were in
5 Spanish Hills Wellness Suites or immediately
6 thereafter on any other portion of your lower
7 extremities other than your heels?
8 A. Yes.
9 MS. WISE: Object to form.
10 THE DEPONENT: I had a wound on the back of
11 my leg, my left leg, and there was also a wound on my
12 right heel, but Dr. Kooyman said that that wound on my
13 right heel wasn't as severe as the one on the left and
14 it didn't require medication; it was going to heal
15 naturally.
16 BY MR. ROURKE:
17 Q. Okay. When you say on the back of your left
18 leg, can you describe for me when that wound occurred
19 and what you recall of it?
20 A. It was at the same time as the -- both wounds
21 appeared at the same time.
22 Q. And where was it located?
23 A. The primary wound was on the heel and the
24 secondary was on the back of my left calf.
25 Q. Okay.

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1 A. But the lower part, closer to the ankle.
2 Q. Okay. Where the pillow would have been
3 resting?
4 A. No, the pillow was under my calf, the thick
5 part of my calf, and the wound was closer to the
6 ankle.
7 Q. How about did you have any skin breakdown
8 issues as it relates to where the brace was that they
9 put on to stabilize your hip?
10 A. No, it didn't affect my skin at all.
11 Q. Did you have an understanding of why you were
12 wearing the compression hose or stockings while you
13 were at Spanish Hills Wellness Suites?
14 A. I don't understand that question.
15 Q. Sure. Did anybody explain to you why it was
16 necessary for you to have the compression stockings on
17 your feet while you were at Spanish Hills Wellness
18 Suites?
19 A. Nobody said anything about that. I arrived
20 at Spanish Hill with the compression stockings from
21 Summerlin Hospital.
22 Q. All right.
23 A. And the only information regarding that was I
24 explained -- I told the -- whoever it was that was
25 handling me at Spanish Hill that they had to remove

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1 the stockings. That was it.
2 Q. Okay. And did you have an understanding of
3 why you were wearing the compression stockings when
4 you came into Spanish Hills? Did anybody at your
5 prior facility or any of your treating physicians
6 explain to you why you were wearing them?
7 A. I've been wearing compression stockings for
8 years and it just was a natural thing for me to have
9 compression stockings on. I didn't question it at
10 all.
11 Q. As you sit here today, do you have any
12 understanding as to what the purpose of you wearing
13 those are?
14 A. I wear the compression stockings because of
15 my -- the condition of my legs, the -- it was
16 prescribed to me by the doctor to wear compression
17 stockings because I have -- what do you call it
18 again -- the blood -- I don't know the medical
19 terms -- venous insufficiency, so the compression
20 stockings helped that.
21 Q. Okay. And do you have an understanding of
22 what venous insufficiency means?
23 A. It means that the blood doesn't go properly
24 in my veins. Again, you know, I don't know the
25 medical terms, but there are little portions of your

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1 veins that are supposed to push the blood, and mine
2 don't push it properly in my legs. The blood settles
3 in my calves, that's why I wear the compression
4 stockings, and it squeezes them up, squeezes the blood
5 out.
6 Q. Did anybody -- did you have -- strike that.
7 Do you have an understanding of what a DVT
8 is?
9 A. Deep vein thrombosis. I've been examined for
10 that and I don't have that.
11 Q. Do you know whether or not that was a concern
12 for you following your hip surgeries while you were at
13 Spanish Hills Wellness Suites?
14 A. It wasn't my concern, but it was obviously a
15 concern because they tested me for that.
16 Q. You do recall being tested for that?
17 A. Yes.
18 Q. Okay. You told us in testimony here earlier
19 that you're essentially back to your normal daily
20 activities prior to your second admission to Spanish
21 Hills Wellness Suites, and I think you've testified as
22 to when that time frame occurred.
23 Is there anything at all that you intend on
24 testifying at time of trial that's different than what
25 you've told us here today?

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1 A. I don't think so.
2 Q. Okay. You indicated earlier that -- you
3 referenced a housekeeper that comes in and helps you
4 out. You've had her for approximately two years. You
5 think it was from the -- if I heard you correctly, it
6 was from the end of 2018, and that she not only helps
7 you out with the chores of cleaning around the house
8 but she also does your laundry; is that correct?
9 A. Well, she just -- I've been having her change
10 the bed linen and throw it in the washing machine, and
11 she dusts, you know, mops the floor and cleans up the
12 bathrooms and the kitchen, you know, couple of hours a
13 week, that's what she comes in for.
14 Q. Has that been the same person the entire
15 time?
16 A. Yes.
17 Q. What's her name?
18 A. Lazara Diaz, L-A-Z-A-R-A, Lazara Diaz,
19 D-I-A-Z.
20 Q. Do you happen to have her contact information
21 or phone number or her address available handy?
22 A. I don't know her address because she -- I
23 live in a little community, it's 89 homes, a little
24 gated community. She's one of the people who lives in
25 one of the homes. I know where she lives. Offhand, I

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1 don't know the address.
2 Q. So if I were to ask you to fill that name and
3 phone number in and her address when we leave a blank
4 in your deposition testimony here, would you be able
5 to do that when you review your testimony?
6 A. Oh, sure.
7 Q. Okay.
8 MR. ROURKE: Mr. Court Reporter, would you
9 please leave a blank for him to fill that information
10 in?
11 THE COURT REPORTER: Yes, I will.
12 (Please provide the requested information
13 on the Deposition Errata Sheet on the
14 second-to-last page of the deposition.)
15 MR. ROURKE: Okay, give me just one moment.
16 I'm looking over some notes here.
17 At this point in time, thank you, sir, for
18 your time, and I'm going to pass the witness back to
19 Shannon or to Kathleen -- or Katherine, whichever one
20 that wants to take.
21 MS. TURPEN: Shannon, I do have a few more
22 questions. Did you have anything?
23 MS. WISE: No, go ahead.
24 I do, but I'll wait till the very end, you
25 might cover them.

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1 FURTHER EXAMINATION
2 BY MS. TURPEN:
3 Q. Hi, Barry, it's me again. I have a couple
4 questions for you.
5 A. Yes.
6 Q. There have been some handwritten notes
7 produced in this case, and I suspect they're the same
8 handwritten notes you and I talked about very early in
9 your deposition that you said you had reviewed at your
10 attorney's office. So my understanding is that
11 they're your handwriting. Did you make some notes
12 when you were at the facility?
13 A. Yes, I did.
14 Q. Okay. Why did you do that?
15 A. My sister told me to. She said -- she gave
16 me this notepad and she said, why don't you write down
17 anything that you want to -- you know, your thoughts,
18 anything at all, give you something to do.
19 Q. Okay.
20 A. I didn't think to do that, but she -- because
21 of her suggestion, so I did it.
22 Q. Okay. So was it -- you did it to have
23 something to do?
24 A. Basically, because I'm laying there in the
25 bed, had nothing to do.

<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. And do you remember about -- and you</p> <p>2 can estimate for me -- when during your admission she</p> <p>3 made that suggestion to you?</p> <p>4 A. Oh, when I was first admitted, she gave me a</p> <p>5 little package of stuff, some candy and, I don't</p> <p>6 remember, couple of odds and ends, and this little</p> <p>7 little notepad and she said, you know, to keep some</p> <p>8 notes for yourself, whatever you think, ideas,</p> <p>9 thoughts, whatever.</p> <p>10 Q. Okay. And so you did that?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. And so then do these handwritten notes</p> <p>13 then, they represent your ideas and thoughts while you</p> <p>14 were at the facility?</p> <p>15 A. Well, yeah, things that occurred while I was</p> <p>16 there.</p> <p>17 Q. Okay. There has also been produced in this</p> <p>18 case a letter to United Healthcare from your sister</p> <p>19 where she was complaining about the care you received</p> <p>20 at Henderson Hospital; do you know anything about</p> <p>21 that?</p> <p>22 A. I recall her sending a letter, yes.</p> <p>23 Q. Okay.</p> <p>24 A. It was to the appeals -- I think it was</p> <p>25 something like that, appeals division of United</p>	<p style="text-align: right;">Page 87</p> <p>1 produced in this case. Have you looked at any of</p> <p>2 those photographs before?</p> <p>3 A. Well, yeah, I think a number of them were</p> <p>4 taken by Dr. Kooyman at his office.</p> <p>5 Q. Okay.</p> <p>6 A. So he either used my phone or my sister's</p> <p>7 phone as a record of the progress that was -- the</p> <p>8 progress of my leg wound.</p> <p>9 Q. So to photograph how your wound was healing,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. So, and I appreciate that explanation.</p> <p>13 There are two photographs, though, that I have a</p> <p>14 couple of questions about.</p> <p>15 Many of the photographs have dates on them,</p> <p>16 and they're dates that occur after you left Spanish</p> <p>17 Hills, so we know they weren't taken at Spanish Hills.</p> <p>18 A. Correct.</p> <p>19 Q. Probably the photos you just explained that</p> <p>20 were taken by Dr. Kooyman.</p> <p>21 A. Right.</p> <p>22 Q. But there are two photographs that don't have</p> <p>23 any dates, and it appears to be your foot and lower</p> <p>24 leg, one of them with a stocking rolled down and then</p> <p>25 one after your stocking was taken off. Are you</p>
<p style="text-align: right;">Page 86</p> <p>1 Healthcare.</p> <p>2 Q. Was that something you asked her to do?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you have an understanding as to why</p> <p>5 she -- why she complained to United Healthcare?</p> <p>6 A. Possibly because of the -- what she</p> <p>7 recognized as a change in the methods and the -- that</p> <p>8 I had previously enjoyed at the Spanish Hill my prior</p> <p>9 stay there.</p> <p>10 Q. Oh, okay, well, let me back up.</p> <p>11 Let me ask you this: Have you ever seen the</p> <p>12 letter that your sister wrote to United Healthcare?</p> <p>13 A. Yeah, I did see it. That was quite a while</p> <p>14 ago.</p> <p>15 Q. Okay. I'll represent to you that it doesn't</p> <p>16 complain about Spanish Health Care. It actually</p> <p>17 complains about Henderson Hospital. Does that change</p> <p>18 anything for you?</p> <p>19 A. I don't recall -- I recall the letter, but I</p> <p>20 don't recall what it -- what you're saying now is</p> <p>21 probably correct.</p> <p>22 Q. Okay.</p> <p>23 A. I don't recall.</p> <p>24 Q. All right, fair enough.</p> <p>25 There have also been some photographs</p>	<p style="text-align: right;">Page 88</p> <p>1 familiar with those photos?</p> <p>2 A. Yes, I am.</p> <p>3 Q. Okay. Where were those photos taken?</p> <p>4 A. Those were at the Spanish Hill facility.</p> <p>5 MS. WISE: Katherine, do you want me to show</p> <p>6 the photos?</p> <p>7 MS. TURPEN: Oh, yeah, if you can.</p> <p>8 MS. WISE: Because I was actually going to</p> <p>9 pull them up. I'm staring right at them, so would</p> <p>10 that help?</p> <p>11 MS. TURPEN: Yeah.</p> <p>12 MS. WISE: Okay.</p> <p>13 MS. TURPEN: If you don't mind helping me out</p> <p>14 with that, that would be great.</p> <p>15 MS. WISE: Let's see.</p> <p>16 MS. TURPEN: Yep, that's the first one.</p> <p>17 BY MS. TURPEN:</p> <p>18 Q. So, Barry.</p> <p>19 A. Yes.</p> <p>20 Q. That's marked as Heifetz -- for Bates number,</p> <p>21 Heifetz No. 4 down at the lower left corner.</p> <p>22 A. I see that.</p> <p>23 Q. Where was that photo taken?</p> <p>24 A. That was in the Spanish Hill. That's --</p> <p>25 adjacent to my leg there, the metal is the stand from</p>

<p style="text-align: right;">Page 89</p> <p>1 the table that was alongside my bed. 2 Q. Okay. So was that photo taken at your -- in 3 your room? 4 A. In the room at Spanish Hill, yes. 5 Q. Okay. Who took that photo? 6 A. I don't remember. 7 Q. Okay. Was it -- go ahead. 8 A. Either my sister or my daughter. 9 Q. Okay. 10 A. I don't think it was anyone else who would 11 have taken that. 12 Q. Okay. Did you ask them to take it? 13 A. I don't remember if I asked them to. I think 14 it was suggested that they take -- somebody should 15 take a picture of it. 16 Q. Okay. Who suggested that? 17 A. I think it was my sister. 18 Q. Okay. Do you understand why? 19 A. Because my leg -- you know, I'm not talking 20 about the condition of my skin because I've had that 21 condition for a long time. It was the condition of my 22 ankle. There was -- it just looked awful. 23 Q. Now, are you talking about how there appears 24 to be swelling in your ankle or swelling below your 25 ankle?</p>	<p style="text-align: right;">Page 91</p> <p>1 they weren't removed for a number of days and they 2 caused this condition. 3 Q. And that condition is -- you've already said 4 it's not the skin condition because you had that skin 5 condition for years. 6 A. Yeah, I'm talking about this narrowing of my 7 ankle. 8 Q. Okay. And then the swelling below your 9 ankle? 10 A. Well, yes. 11 Q. Okay. And so then after that was removed, 12 did the swelling resolve? 13 A. Probably. I don't have recollection of what 14 transpired after that. 15 Q. Okay. You know what, Barry, I think I might 16 have already asked you, but can you estimate for me 17 when in your stay these two photographs were taken? 18 A. I believe on -- Wednesday, Thursday, Friday 19 -- I believe it was Saturday -- the 15th, 16th, 17th 20 -- I think it was Saturday the 18th, I believe. 21 Q. So the first Saturday of your admission? 22 A. Yes. 23 Q. Okay. And so those white compression 24 stockings, are those the ones that you have testified 25 you came into the facility with?</p>
<p style="text-align: right;">Page 90</p> <p>1 A. I don't know if it was swelling; it was 2 compression. 3 Q. Okay. 4 MS. WISE: Do you want me to move to the next 5 photo that shows it without the stocking? 6 MS. TURPEN: Sure, move on over, if you 7 could. Thank you, Shannon. 8 BY MS. TURPEN: 9 Q. This next one is -- 10 A. That's what we're talking about. 11 Q. Yeah. Heifetz No. 3, was this picture taken 12 in your room also? 13 A. Yes. 14 Q. Okay. And was that taken by either your 15 sister or your daughter? 16 A. Yes. 17 Q. Okay. And do you have -- same line of 18 questions, Barry: Did you ask them to take this? 19 A. I don't recall if I asked them or if it 20 was -- they just decided it had to be done. 21 Q. Okay. 22 A. I don't remember that. 23 Q. Okay. And so what -- what does this 24 photograph show you? What does it mean to you? 25 A. That the compression stockings I was wearing,</p>	<p style="text-align: right;">Page 92</p> <p>1 A. That's correct. 2 Q. Okay. Are those the stockings that your 3 nurse friend removed? 4 A. Yes. 5 Q. Was she there when those photos were taken? 6 A. I believe she was. 7 Q. Okay. 8 A. She may have been the one who suggested it. 9 You know, I don't recall. 10 Q. Okay. And when you took off that stocking, 11 what did -- did you see any -- other than the 12 swelling, did you find anything else? 13 A. No. 14 Q. Okay. Are those -- those white compression 15 stockings that you have on there in the photograph, 16 are those like the ones that you wear now? 17 A. Well, I wear black ones. 18 Q. Okay. 19 A. I don't have white ones. 20 Q. So you have more stylish ones now? 21 A. Well, yes, as a matter of fact, I have some 22 very colorful ones I bought online. 23 Q. Okay, good. 24 Let me ask you this: Earlier in the depo you 25 and I talked about like the grade or the rating of the</p>

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1 compression of the stockings and you didn't know.
2 Those white ones, can you estimate for me, were those
3 about as tight as the ones you wear now?
4 A. I don't remember how tight they were. I
5 really don't.
6 Q. Okay.
7 MS. TURPEN: Okay, you know what, I think
8 that's all I have. Thank you.
9 THE DEPONENT: Thank you, Katherine.
10 MS. WISE: Rob, do you have any follow-ups?
11 MR. ROURKE: I do have a couple quick
12 follow-ups.
13 MS. WISE: Okay, go ahead.
14 MR. ROURKE: Shannon, could you pull that
15 photograph back up for him?
16 FURTHER EXAMINATION
17 BY MR. ROURKE:
18 Q. Can you see the photograph, sir?
19 Can you hear me?
20 A. I can hear you.
21 Q. Okay. All right, on the photograph -- this
22 is the one that was -- there we go, No. 3 or No. 4
23 there -- your testimony, sir, is that at Spanish Hills
24 Wellness Suites in your room adjacent to your bed?
25 A. Yes.

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1 Q. Okay. And how long was the sock rolled down,
2 and by whom, prior to that photograph being taken?
3 A. I don't believe any specific person rolled it
4 down. I think it rolled down during my sleep.
5 Q. Do you know how long it had been rolled down?
6 A. At least 12 but possibly more than 12 hours.
7 Q. How do you know that?
8 A. Well, it wasn't rolled down the day before,
9 so it happened probably, you know, during overnight
10 while I was sleeping, and that's what -- it was that
11 way in the morning.
12 Q. Do you have a recollection of this photograph
13 being taken in the morning time?
14 A. It was not early morning, probably late
15 morning.
16 Q. And do you -- I know that Katherine may have
17 asked this question. I didn't quite hear the answer.
18 Do you know what day, roughly, this was taken?
19 A. I believe it was Saturday, the first Saturday
20 after my admission into Spanish Hill.
21 Q. Okay.
22 MR. ROURKE: All right, I appreciate you
23 answering those questions for me, sir. Thank you.
24 THE DEPONENT: Thank you, Rob.
25 MS. WISE: Okay. I just have a couple

Page 95

1 follow-ups.
2 EXAMINATION
3 BY MS. WISE:
4 Q. Barry, you talked about how you've worn
5 compression stockings for years; do you remember all
6 that testimony?
7 A. Yes.
8 Q. Approximately what time each day do you put
9 them on?
10 A. Well, when I wake up, I shower, I shave, I
11 brush my teeth and then I get dressed and I put them
12 on, and so usually it could be anywhere between 8:00
13 and 9:00 a.m.
14 Q. Okay. And what time do you generally take
15 them off each day?
16 A. I wear them the entire day, late into the
17 evening, and generally I go to bed usually around
18 11:00 p.m. and that's when I take them off.
19 Q. Okay. I'm going to jump around because it's
20 only a couple follow-ups.
21 You talked a little bit about your neuropathy
22 and how it's not normal to feel pain but you felt
23 pain; is that correct?
24 A. Yes.
25 Q. Okay. Have you ever experienced the pain --

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1 the shooting pain that you were describing, had you
2 ever experienced that prior to developing the pressure
3 sores?
4 A. No.
5 Q. Okay.
6 MR. ROURKE: I'm going to interpose an
7 objection as to the term pressure sores, but go ahead.
8 MS. WISE: Okay, or wounds, we can call them
9 whatever.
10 BY MS. WISE:
11 Q. Do you do anything -- you also testified that
12 you -- Dr. Kooyman said, hey, if the wound opens, you
13 can come back for treatment, and that happened once,
14 and so now he's released you from treatment. Do you
15 do anything in particular to prevent the wound from
16 opening in the future?
17 A. I try to put as little pressure as I can on
18 my heel. Walking is -- most people walk heel-toe,
19 heel-toe, and I try not to walk that way. I try to
20 keep my heel from having as much -- I try not to put
21 pressure on my heel, so I walk funny.
22 Q. Okay. Okay. Now, you also testified that
23 you remember a Dr. Quinn coming to see you and you had
24 asked why you were seeing a psychiatrist; do you
25 remember that testimony?

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1 A. Yes.

2 Q. Okay. Do you recall what Dr. Quinn told you

3 the reason that he was seeing you?

4 A. No, I don't.

5 Q. Okay. If I was to represent to you that in

6 the records there was mention of getting confused

7 after dark, would that ring any bells?

8 A. Say that again.

9 Q. If I was to -- yeah, if I was to represent to

10 you that in the records for -- in the records that we

11 received there was some mention that there was

12 confusion after dark and it noted that you get

13 confused after the sun goes down. Does that make --

14 does that ring any bells to you?

15 A. Okay. I remember having a conversation that

16 I explained my father had hip replacement surgery that

17 went terribly wrong many years ago in New York City

18 and he was hospitalized for several months because of

19 it and he actually died in the hospital, but they told

20 me that it was -- he had a condition called

21 sundowning, and I explained that to somebody while I

22 was there, and I think that they misinterpreted it and

23 said it was related to me, but it had nothing to do

24 with me; it was an explanation about something that

25 happened to my father 20 years earlier.

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1 Q. Okay. Have you ever been diagnosed with

2 dementia?

3 A. No.

4 Q. Would it be surprising to you that the

5 records indicate that you had been diagnosed with

6 dementia?

7 A. It would, yes.

8 Q. Okay. Would it be surprising to you that you

9 received medication for dementia?

10 A. Would it surprise me if . . .

11 Q. That you were receiving medications for

12 dementia.

13 A. Yes, I would -- I have never been prescribed

14 any medication for dementia.

15 Q. Okay.

16 MS. WISE: That's all the questions I have.

17 MR. ROURKE: I don't have anything further,

18 Katherine.

19 MS. TURPEN: Nothing, I'm done. Thank you.

20 MR. ROURKE: All right. I think we're done.

21 (Discussion off the record.)

22 MR. ROURKE: So we're back on the record.

23 Just for a clerical point of view, I wanted to let the

24 court reporter know that I would like an electronic

25 version of the deposition.

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1 And also, while we were off the record, the

2 parties stipulated that the photographs that we were

3 speaking of, which were Bates stamps -- who has the

4 reference on the Bates stamps?

5 MS. TURPEN: Heifetz 3 and 4.

6 MR. ROURKE: Those will be forwarded by

7 Shannon Wise over to you, Gary, for attachments as

8 Exhibit 1 to the deposition.

9 MS. TURPEN: So stipulated.

10 (Exhibit 1 identified.)

11 MS. TURPEN: And, Gary, I would like my usual

12 transcript order, please.

13 MS. WISE: Stipulated by Shannon as well and

14 I would like a copy of everything.

15 (Thereupon, the deposition concluded

16 at 12:20 p.m.)

17

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) ss:

4 COUNTY OF CLARK)

5 I, Gary F. Decoster, CCR No. 790, licensed

6 by the State of Nevada, do hereby certify: That I

7 reported the deposition of BARRY HEIFETZ, on Friday,

8 March 12, 2021, commencing at 10:00 a.m. That prior

9 to being deposed, the witness was duly sworn by me to

10 testify to the truth. That I thereafter transcribed

11 my said stenographic notes via computer-aided

12 transcription into written form, and that the

13 typewritten transcript is a complete, true and

14 accurate transcription of my said stenographic notes.

15 That review of the transcript was not requested.

16 I further certify that I am not a relative,

17 employee or independent contractor of counsel or of

18 any of the parties involved in the proceeding, nor a

19 person financially interested in the proceeding, nor

20 do I have any other relationship that may reasonably

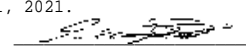
21 cause my impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my

23 office in the County of Clark, State of Nevada, this

24 3rd day of April, 2021.

25


GARY F. DECOSTER, CCR NO. 790

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1 DEPOSITION ERRATA SHEET

2

3

4 Our Assignment No. J6495093

5 Case Caption: HEIFETZ vs. SPRING VALLEY HEALTHCARE

6

7 DECLARATION UNDER PENALTY OF PERJURY

8

9 I declare under penalty of perjury that I

10 have read the entire transcript of my Deposition taken

11 in the captioned matter or the same has been read to

12 me, and the same is true and accurate, save and except

13 for changes and/or corrections, if any, as indicated

14 by me on the DEPOSITION ERRATA SHEET hereof, with the

15 understanding that I offer these changes as if still

16 under oath.

17

18

19 Signed on the ____ day of

20 _____, 20__.

21

22

23

24 BARRY HEIFETZ

25

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1 DEPOSITION ERRATA SHEET

2 Page No. ____ Line No. ____ Change to: _____

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4 Reason for change: _____

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24 SIGNATURE: _____ DATE: _____

25 BARRY HEIFETZ

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1 DEPOSITION ERRATA SHEET

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22 Reason for change: _____

23

24 SIGNATURE: _____ DATE: _____

25 BARRY HEIFETZ

EXHIBIT 6



HEIFETZ 000003

EXHIBIT

1



EXHIBIT 7



TAKEN 2/18/19

2PET APP 186

EXHIBIT 8

**Standard Authorization, Attestation and Release for Health Plans, Health Insurers and
Health Care Organizations**
(Not for Use for Employment Purposes)

Purpose of Form

This form has been developed for use by Nevada health plans and health insurers, and may be used by hospitals and other healthcare organizations. Its purpose is to provide a single consolidated form for use by applicants for participation as a provider (hereinafter, "Participation") with health plans or health insurers and may be used for hospital and other healthcare organization medical staff membership and clinical privileges (hereinafter, sometimes, "Membership"). This form, once properly completed will be accepted by all Nevada health plans and health insurers and may be accepted by hospitals and other healthcare organizations (hereinafter, collectively referred to as "Entities").

Acknowledgements and Agreements with respect to Health Plans and Health Insurers

I understand and agree that, as part of the credentialing application process for Participation at or with each health plan or health insurer and any of their affiliated Entities, I am required to provide sufficient and accurate information for a proper evaluation of my current licensure, relevant training and/or experience, clinical competence, health status, character, ethics, and any other criteria used by them for determining initial and ongoing eligibility for Participation.

Acknowledgements and Agreements with respect to Healthcare Organizations

By filing this application, I agree to be bound by the bylaws, rules and regulations, policies, and code of conduct of each and every medical center, medical staff and other healthcare organizations to which I am applying in Nevada. I understand that I have an opportunity to review those bylaws, rules and regulations and policies.

I understand that it is my responsibility to assure that a copy of this application is sent to each and every healthcare organization to which I wish to apply.

I understand that my misrepresentation or significant omission in this application constitutes cause for denial or for subsequent revocation of membership and privileges. I also understand that I have an opportunity to review the information submitted in support of this application pursuant to each entity's policy regarding review. If during the process of credentialing, an entity receives information that varies substantially from information I have provided, I will be notified of this and will have an opportunity to correct erroneous information. I have the right, upon request, to be informed of the status of my application.

I recognize that as the applicant I bear the burden of demonstrating that I am qualified and remain qualified for the award of membership and privileges in accord with the criteria and standards described in the applicable bylaws and comparable documents, and I recognize that I have the burden of resolving any reasonable doubts about my qualifications for membership and privileges.

In order to facilitate the evaluation of this application and the assessment of any subsequent exercise of privileges, I agree to meet and cooperate with the various officers, representatives and committees charged with responsibility for credentialing and peer review activities.

I understand that the evaluation of credentials shall be accomplished in a professional manner, and that I will be afforded an appropriate review in the event that action on this application is adverse in accordance with the bylaws or rules pertaining to each organization.

As part of this application, I pledge that if I am granted the requested membership and privileges, I will maintain an ethical practice in accord with applicable bylaws, and specifically that I will: a) Refrain from fee splitting or other inducements relating to patient referral; b) Provide for the continuous care and supervision of my patients; c) Refrain from delegating the responsibility for diagnosis or care of hospitalized patients to a medical practitioner who is not qualified to undertake this responsibility and

Attestation and Release

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This form has been developed for use by Nevada health plans and health insurers, and may be used by hospitals and other healthcare organizations. Its purpose is to provide a single consolidated form for use by applicants for participation as a provider (*hereinafter, "Participation"*) with health plans or health insurers and may be used for hospital and other healthcare organization medical staff membership and clinical privileges (*hereinafter, sometimes, "Membership"*). This form, once properly completed will be accepted by all Nevada health plans and health insurers and may be accepted by hospitals and other healthcare organizations (*hereinafter, collectively referred to as "Entities"*).

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Furthermore, should I be granted the requested membership and privileges, I will accept appropriate committee assignments and otherwise assist as requested, in the discharge of medical staff responsibilities.

Acknowledgements and Agreements with Respect to all Entities

Independent Action, No Employment

I acknowledge that each Entity has its own criteria for acceptance, and I may be accepted or rejected by each independently. I further acknowledge and understand that my cooperation in obtaining information and my consent to the release of information do not guarantee that any Entity will grant me Membership or Participation. I understand that my application for Membership or Participation with the Entity is not an application for employment with the Entity and that acceptance of my application by the Entity will not result in my employment by the Entity.

EXHIBIT 9

WOUND CARE POLICIES AND PROCEDURES

SUBJECT: TURNING AND REPOSITIONING

POLICY:

All residents identified at risk for skin breakdown, or with the presence of wounds, will be placed on a turning/repositioning program. Refer to the tissue tolerance test procedure.

PROCEDURES:

1. Any turning/repositioning program includes a consistent plan for changing the resident's position and realigning the body.
2. The turning/repositioning program should be organized, planned, documented, monitored, and evaluated based on an assessment of the resident's needs.
3. The expected repositioning times and positions should be defined by the facility team as to ensure that the care providers have a clear understanding of the resident's individualized turning/repositioning program.
4. Completion of turning/repositioning should be documented, at a minimum, every shift by the CNA or licensed nurse. This may occur on the resident's MARs/TARs or on a separate turning/repositioning flowsheet.

EXHIBIT 10

WOUND CARE POLICIES AND PROCEDURES

SUBJECT: WOUND DOCUMENTATION

POLICY:

Documentation of wounds will be performed consistently using approved forms.

PROCEDURES:

1. Documentation about the wound provides valuable information about wound progress or lack of progress.
2. On admission and/or discovery, the clinician initiates the wound documentation process.
3. Wounds may be numbered for consistency in documentation. If they are, numbers do not change. New wounds are assigned a new (different) number. Reoccurrence of a wound over an old site retains the original number of that wound.
4. Wound evaluations, treatments are documented on the appropriate form. It is a monthly form.
5. There is one wound form per wound. Dressing changes and evaluations are documented on side 1. Initial and weekly evaluations are documented on side 2.
6. Tracking of all wounds will be completed weekly on the Wound Tracking Worksheet.
7. All documentation and corrections shall be made in line with the applicable guidelines outlined in the # 23 Nursing Policies and Procedures manual.

WOUND CARE POLICIES AND PROCEDURES

Components of wound documentation:

Characteristics	Evaluation
Location	Anatomical location of the wound(s).
Size & Stage of Pressure Ulcer	Measurement of the length, width and depth (if any) of the wound(s) in centimeters.
Onset date for Pressure Ulcers	The date the pressure ulcer was discovered initially as a Stage II or higher or the date the pressure ulcer deteriorated to a Stage II or higher. The pressure ulcer retains the same onset date even if deterioration past a Stage II occurs
Color	Color of the wound base, exudate color and consistency, and approximate volume of the wound drainage.
Odor	Presence or absence of wound or drainage odor.
Necrotic Tissue (when present)	Slough, or eschar, stated in terms of approximate percentages.
Tunneling/Undermining (when present)	Presence of sinus tracts cavities or tunneling; tissue destruction under intact tissue.
Infection	Presence or absence or signs of local wound infection: erythema, induration, purulent drainage. (Evaluate drainage for s & s of infection after cleaning as to not confuse with debridement process, dressing melt down or occlusion.)
Healing (when present)	Presence of granulation tissue (fragile beefy red healing tissue composed of small blood vessels and connective tissue) or epithelialization tissue (thin silvery epidermal tissue).
Surrounding Skin	Color, appearance and integrity of
Pain	Presence or absence of, severity of if present

EXHIBIT 11

WOUND CARE POLICIES AND PROCEDURES REFERENCE

SKIN AND WOUND CARE GUIDELINES

Guidelines for the treatment/management of:

- ◆ **INTACT SKIN**
Normal and dry skin
- ◆ **INCONTINENCE (URINARY AND FECAL)**
Intact skin
Denuded (a.k.a. excoriated skin)
- ◆ **FUNGAL LESIONS**
Dry
Incontinence related
Wet or moist lesion
- ◆ **SKIN TEARS**
Flap present
No flap present
More than 24 hrs after injury
- ◆ **SUSPECTED DEEP TISSUE INJURY**
- ◆ **STAGE ONE PRESSURE ULCERS**
- ◆ **STAGE TWO PRESSURE ULCERS**
- ◆ **STAGE THREE PRESSURE ULCERS**
Minimal to moderate drainage, less than 50% slough in wound bed
Moderate to heavy drainage, less than 50% slough in wound bed
Minimal to moderate drainage, more than 50% slough in wound bed
Moderate to heavy drainage, more than 50% slough in wound bed
- ◆ **STAGE FOUR PRESSURE ULCERS**
Minimal to moderate drainage, less than 50% slough in wound bed
Moderate to heavy drainage, less than 50% slough in wound bed
Minimal to moderate drainage, more than 50% slough in wound bed
Moderate to heavy drainage, more than 50% slough in wound bed
- ◆ **UNSTAGEABLE PRESSURE ULCER**
Autolytic debridement
Chemical debridement
Conservative Sharp debridement
Biomedical

WOUND CARE POLICIES AND PROCEDURES REFERENCE

SKIN AND WOUND CARE GUIDELINES (Continued)

◆ **ESCHAR COVERED WOUNDS**

Autolytic Debridement
Chemical Debridement
Conservative Sharp Debridement
Biomedical Debridement

◆ **ARTERIAL ULCERS**

Dry Gangrene or Uninfected Necrotic Arterial Wounds

◆ **VENOUS STASIS ULCERS**

◆ **DIABETIC ULCERS**

◆ **MEDICAL NUTRITION THERAPY FOR PRESSURE ULCERS**

◆ **CARE PLANS**

Actual pressure ulcer(s)
At risk for skin breakdown
Wound, not pressure related

PHYSICIAN ORDERS WILL STILL BE REQUIRED FOR WOUND CARE.

Products when referred to are listed by generic classification. Examples of products in that particular classification may not be available on our formulary. Some classifications of products have many representations on the formulary; others may be one of a kind type of item.

Treatment alternatives (when listed) are not listed in any order or priority. They were placed in the guidelines to provide options for the management of different wounds.

These guidelines are to be used in conjunction with the Wound Care Policies and Procedures Manual, whenever possible.

WOUND CARE POLICIES AND PROCEDURES REFERENCE

Advanced Wound and Skin Care Product Reference Guide	
Absorbent Acrylic	<u>3M</u> Tegaderm Absorbent Clear Acrylic Dressing
Alginates (Calcium alginate)	<u>3M</u> Tegaderm HI Alginate sheets and rope Tegaderm HG Alginate sheets and rope <u>Kendall/Covidien</u> Curasorb sheets and rope <u>Medline</u> Maxorb sheets and rope
Antifungal	Barrier Creams <u>ConvaTec</u> Aloe Vesta Antifungal <u>Medline</u> Soothe & Cool antifungal Remedy Antifungal Cream Powder <u>Smith & Nephew</u> Mitrazol Powder <u>Medline</u> Remedy Antifungal Powder
Anti-microbials/bacteriostatics	<u>3M</u> Tegaderm Silver Mesh <u>ConvaTec</u> Aquacel Ag <u>Smith & Nephew</u> Hydrofera Blue <u>Kendall/Covidien</u> Thermasene Kerlex AMD Curity AMD <u>Medline</u> Silva Sorb Sheets/Cavity Silva Sorb Gel Arglaes Film and Island Arglaes Powder

**WOUND CARE POLICIES AND PROCEDURES
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Advanced Wound and Skin Care Product Reference Guide	
Cleanser	<u>3M</u> 3M Wound Cleanser <u>Kendall/Covidien</u> Constant Cleanse <u>Medline</u> Skintegrity Normal Saline
Collagen	<u>Medline</u> Puracol Plus
Composite Dressings	<u>3M</u> 3M Medipore with Pad 3M Tegaderm with Pad <u>Kendall/Covidien</u> Telfa Plus, Island Dressing Tendrsorb Copa Island Viasorb <u>Medline</u> Borderless composite dressing Medline Bordered Gauze Stratasorb
Dried Saline Impregnated Gauze	Mesalt
Enzymatic Debrider	PHARMACY ORDERED Santyl –Collagen specific
Exudate Absorbers	<u>3M</u> Tegaderm HI Alginate sheets and rope Tegaderm HG Alginate sheets and rope <u>ConvaTec</u> Combiderm
Foams	<u>3M</u> 3M Tegaderm foam <u>ConvaTec</u>

**WOUND CARE POLICIES AND PROCEDURES
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Advanced Wound and Skin Care Product Reference Guide	
	<p>Versiva</p> <p><u>Kendall/Covidien</u></p> <p>Copa</p> <p>Copa Plus</p> <p><u>Smith & Nephew</u> Hydrofera Blue</p> <p><u>Medline</u></p> <p>Optifoam</p> <p>Gentleheal</p>
Hydrocolloids	<p><u>3M</u></p> <p>3M Tegaderm Hydrocolloid Dressing</p> <p><u>ConvaTec</u></p> <p>Duoderm</p> <p><u>Medline</u></p> <p>Exuderm LP thin, RCD odor shield</p>
Hydrogels	<p>Amorphous</p> <p><u>3M</u></p> <p>3M Tegaderm Hydrogel</p> <p><u>ConvaTec</u></p> <p>Saf-Gel</p> <p>Duoderm Gel</p> <p><u>Kendall/Covidien</u></p> <p>Curafil</p> <p><u>Medline</u></p> <p>Skintegrity</p> <p>Sheet</p> <p><u>Kendall/Covidien</u></p> <p>Aquaflow</p> <p><u>Medline</u></p> <p>Derma-Gel</p> <p>Gel Impregnated gauze</p> <p><u>Kendall/Covidien</u></p>

WOUND CARE POLICIES AND PROCEDURES REFERENCE

Advanced Wound and Skin Care Product Reference Guide	
	Curafil hydrogel impregnated gauze <u>Medline</u> Skintegrity hydrogel gauze
Hydrofiber	<u>ConvaTec</u> Aquacel Aquacel Ag (a silver antimicrobial dressing)
Leg Ulcer Wraps & Systems	Elastic Bandages <u>Medline</u> Sure Wrap Matrix Swift Wrap Soft Wrap <u>Kendall/Covidien</u> Curity Elasticwrap Marked Elastic Bandages <u>Medline</u> Sure Pres Compression Systems <u>3M</u> Coban 2 layer <u>Medline</u> Four Flex <u>Kendall/Covidien</u> Flex Wrap Unna Boots <u>Medline</u> Unna's Boot (with or without calamine) <u>Kendall/Covidien</u> Tenderwrap Unna boot (with or without calamine) Cohesive Wrap <u>3M</u> Coban <u>Medline</u> Co-Flex Other (Padding)

WOUND CARE POLICIES AND PROCEDURES REFERENCE

Advanced Wound and Skin Care Product Reference Guide	
	<u>Kendall/Covidien</u> Webril
Medical Grade Honey	Derma Sciences Medihoney Calcium Alginate Medihoney Rope (Alginate) Medihoney Hydrocolloid Medihoney Paste
Mild pH balance soap	Dove Oil of Olay
Moisture Barriers	<p>Petroleum based <u>Kendall/Covidien</u> Vaseline</p> <p><u>ConvaTec</u> Aloe Vesta Protectant Barrier</p> <p><u>Medline</u> Soothe & Cool Moisture Barrier ointment. A&D ointment</p> <p>Lanolin/petroleum <u>Medline</u> Laniseptic Calmoseptine</p> <p>Dimethicone <u>ConvaTec</u> Aloe Vesta Skin Conditioner</p> <p><u>Medline</u> Inzo Invisible Zinc Oxide Barrier</p> <p>Zinc Oxide <u>ConvaTec</u> Sensicare Protectant Paste</p> <p><u>Medline</u> Soothe & Coole Skin Paste Inzo Invisible Zinc Oxide Barrier</p> <p>Antifungal <u>ConvaTec</u> Aloe Vesta Antifungal</p> <p><u>Medline</u> Soothe & Cool antifungal</p>

WOUND CARE POLICIES AND PROCEDURES REFERENCE

Advanced Wound and Skin Care Product Reference Guide	
Moisturizers	Remedy Antifungal Cream Eucerin Vaseline Intensive Care <u>Medline</u> Soothe & Cool Petroleum based Vaseline <u>ConvaTec</u> Sensicare Moisturizing Cream <u>Medline</u> A&D ointment
Ointments	Bacitracin Polysporin Bactroban
Peri Wash Products	<u>ConvaTec</u> Aloe Vesta bathing cloths <u>Medline</u> Soothe & Cool No Rinse Foam Soothe & Cool No Rinse Spray Soothe & Cool Peri Fresh 3 in 1 Wash Cream Medline Peri Wash Medline Cleansing wipes
Polyacrylate Gel	<u>Medline</u> Tenderwet ♦ Cavity system (For packing) ♦ System (Not for packing)
Skin Protectant	PHARMACY ORDERED ♦ Optase (1 st Line) ♦ Xenaderm (2 nd Line) ♦ Granulex Or ♦ See skin sealants
Skin Sealants	<u>3M</u> Cavilon No Sting <u>Medline</u> SurePrep

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Advanced Wound and Skin Care Product Reference Guide	
	Sure Prep No Sting
Transparent Film aka: Thin Film Dressing or Transparent Adhesive Dressing	<u>3M</u> 3M Tegaderm Transparent Dressing <u>Kendall/Covidien</u> Polyskin <u>Medline</u> Suresite Arglaeas film, island
Tubular bandages	<u>Medline</u> Medigrip Elastic Net
Wound Emulsion Cream	Biafine - Pharmacy Ordered

WOUND CARE POLICIES AND PROCEDURES REFERENCE

VENOUS STASIS ULCERS

Goals: Absorb drainage; moist wound healing; insulate wound bed; protection from injury; identification and treatment of infection; assist venous return

ENSURE THAT THE WOUND IS TRULY A VENOUS STASIS ULCER. CONSULT WOUND MANUAL FOR EVALUATION PARAMETERS.

- 1) Cleanse wound with normal saline.
- 2) Apply skin sealant or use wound emulsion to intact surrounding skin of the wound.
- 3) Cover wound with calcium alginate dressing or (medical honey alginate).
- 4) Wrap with roll gauze.
- 5) Apply marked elastic bandage . *(May be hand washed, air dried and re-used up to 20 times, and follow manufacturer's guidelines).*
- 6) Change/perform daily.

Treatment Alternative

- 1) Cleanse wound with normal saline.
- 2) Apply skin sealant or use wound emulsion to intact surrounding skin of the wound
- 3) Apply 3 or 4 layer leg compression wrapping system.
- 4) Change/perform every 5 to 7 days.

For all Patients/Residents/Clients:

- 1) **Obtain baseline albumin or pre-albumin level.**
- 2) **Obtain a nutritional evaluation and PT evaluation, if not already done.**
- 3) **Document wound care and wound appearance.**
- 4) **Re-evaluate current treatment every 2 weeks for effectiveness. If there is no change in the wound, or the wound bed deteriorates, notify the physician, ET Nurse or Wound Care Specialist.**
- 5) **Medicate patient/resident for pain 30 minutes prior to performing these treatments.**
- 6) **Evaluate and document level of patient's/resident's pain. If medications are not effective, notify the patient's/resident's Physician.**

When determining wound care for a patient/resident, a thorough evaluation (e.g. Skin Risk Analysis & Intervention) is required. The evaluation should identify causative factors and underlying disease processes that may have contributed to the patient/resident developing their wound(s). Once causative factors have been identified, all efforts should be made to eliminate or correct them.

If a wound infection is suspected consult the Physician, ET Nurse, or Wound Care Specialist.

EXHIBIT 12

LEADERSHIP POLICIES AND PROCEDURES

SECTION VI: MEDICAL SERVICES

SUBJECT: PHYSICIAN ASSISTANT, NURSE PRACTITIONER, OR CLINICAL NURSE SPECIALIST - SUPERVISION OF

POLICY:

The Facility's Leadership will require that a physician assistant, nurse practitioner, or clinical nurse specialist (except those licensed to practice independently) will be licensed by the state, act within his/her scope of practice, and be supervised by a licensed physician.

PROCEDURES:

1. In a skilled nursing facility, a physician may delegate tasks (as permitted by federal and state law) to a physician assistant, nurse practitioner, or clinical nurse specialist who:
 - A. Meets the applicable definition for his/her profession, or in the case of a clinical nurse specialist is licensed as such by the state.
 - B. Acts within the scope of practice as defined by federal and state law.
 - C. Is under the supervision of the physician.
2. Following the initial visit by the attending physician, in skilled nursing facilities where the state allows, the qualified nurse practitioner, clinical nurse specialist, or physician assistant who functions under the supervision of the physician may alternate visits with the attending physician. This does not apply if the patient's/resident's medical condition requires evaluation by the physician.
3. In a skilled nursing facility, the physician may not delegate a task when the regulations specify that a physician must perform it personally, or when the delegation is prohibited under state law or Facility policies.
4. In a non-skilled facility, at the option of the State, any required physician's task (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or a physician assistant who is not an employee of the facility, but who is working in collaboration with a physician.

EXHIBIT 13

WOUND CARE POLICIES AND PROCEDURES

SUBJECT: TURNING AND REPOSITIONING

POLICY:

All residents identified at risk for skin breakdown, or with the presence of wounds, will be placed on a turning/repositioning program. Refer to the tissue tolerance test procedure.

PROCEDURES:

1. Any turning/repositioning program includes a consistent plan for changing the resident's position and realigning the body.
2. The turning/repositioning program should be organized, planned, documented, monitored, and evaluated based on an assessment of the resident's needs.
3. The expected repositioning times and positions should be defined by the facility team as to ensure that the care providers have a clear understanding of the resident's individualized turning/repositioning program.
4. Completion of turning/repositioning should be documented, at a minimum, every shift by the CNA or licensed nurse. This may occur on the resident's MARs/TARs or on a separate turning/repositioning flowsheet.

EXHIBIT 14

Affidavit (Amended June 22, 2021)

Barry Heifetz

vs.

Spanish Hills Wellness Suites

Commonwealth of Nevada

County of Clark

My Background

As Scott Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP, I have served the residents of Tucson in multiple areas of medical practice since 1992. I am board-certified in both Internal Medicine and in Hospice and Palliative Care. I also hold two additional certifications: one as a Certified Medical Director (CMD), a certificate granted by The Society for Post-Acute and Long-Term Care Medicine; and another as a Certified Wound Specialist Physician (CWSP) as designated by the American Board of Wound Management. My current clinical activities include skilled nursing facilities delivering primary care for the past 26 years. I am also a medical director of a hospital-based wound care center in Tucson where I have practiced for the past 12 years. I speak nationally about rehabilitation in nursing homes, quality improvement processes, palliative care, and wound care. I have additional experience as a medical director for skilled nursing facilities, assisted living facilities, hospices, home health agencies and wound centers. I have presented over 35 scientific posters in the areas of quality improvement in skilled nursing facilities, post-hospital care, and wound care. I am qualified to review this case involving a resident who received care in a skilled nursing facility. As part of my practice, I routinely directly supervise nurse practitioners, nurses (at all levels of training: RN, LPN, CNA), and other staff in the skilled nursing facility.

Documents Reviewed

I originally reviewed the following records as they pertain to Mr. Barry Heifetz:

- 1. Henderson Hospital Admission**
- 2. Nevada Orthopedic and Spine**
- 3. Spanish Hills Wellness Suites**
- 4. Summerlin Hospital**
- 5. American Medical Response**
- 6. Photographs of Wounds**
- 7. Affidavit of Diana Schmitt**

Since my original review the following documents were made available to me:

- 1. Deposition of Miriam Sithole, APRN**
- 2. Deposition of Shanna Mari Baltar, DO**
- 3. Leadership Policies and Procedures, Section V- Credentialing Non-TJC SNFs, Independent Practitioner Agreement for Miriam Sithole, APRN**
- 4. Leadership Policies and Procedures, Section V- Credentialing Non-TJC SNFs, Independent Practitioner Agreement for Shanna Baltar, DO**
- 5. Deposition of Barry Heifetz**
- 6. Deposition of Sharon Faye Graziano**
- 7. Deposition of Susan Heifetz**
- 8. Wound Care Policies and Procedures for Spanish Hills**
- 9. Documentation Policies for Spanish Hills**
- 10. Medical Records for Southwest Medical Home Health**
- 11. 30b6 Discovery**

Summary of Case

Barry Heifetz was a 79-year-old male who was admitted to Spanish Hills Wellness Suites on January 14, 2019, and discharged to home on January 30, 2019. He recently had a left total hip arthroplasty completed at Henderson Hospital on December 25, 2018, by the orthopedic surgeon Mark Allen DO, but had a delay in his rehabilitation due to dislocation of the left hip. This admission to Spanish Hills was his second admission due to the complication of the dislocation, after he was placed in an abductor brace.

Mr. Heifetz' medical problem list at the time of his admission to Spanish Hills included: left total hip arthroplasty with complication of dislocation, hypothyroidism, hypertension, glaucoma, chronic back pain, muscle wasting of the left lower extremity and neuropathy. The initial history and physical from January 14, 2019, completed by the admitting clinician Shanna Baltar, DO does not reflect any issues with his skin. Dr. Baltar ordered a pressure-relieving mattress (January 14, 2019)¹ and a one-time wound care consult (January 15, 2019)² for evaluation of his surgical wound; and orders for compression stockings to be worn for 12 hours during the day (January 16, 2019)³ but off for the night.

On January 22, 2019, the clinician Miriam Sithole, APRN noted that he had an edematous left lower extremity and she ordered compression stockings at that time, along with a venous doppler ultrasound to successfully rule out a blood clot in that extremity.

On January 23, 2019, the first documentation of his wounds was noted. On the right heel, it was noted that he had developed a fluid-filled blister; on the left heel it was reported that he

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suffered from a deep tissue injury.⁴ There are no measurements, nor any other parameters of these injuries noted anywhere in the medical record. Miriam Sithole, APRN references in her progress note for the day to treat as indicated. A reference by Rachel Anderson LPN on January 23, 2019, is entered that the dressings were changed to his bilateral lower extremities and his heels were elevated on pillows to prevent pressure on heel. This is the only such documentation of prevention for further injury to his heels for his entire stay at the facility by any staff member.

On January 25, 2019, the orthopedic surgeon Mark Allen, DO also referenced the heel blisters and lower extremity compression for Mr. Heifetz' edema.⁵

On January 30, 2019, in the discharge summary for Mr. Heifetz,⁶ the wounds and edema were briefly addressed. The patient required wound care secondary to multiple lesions of his bilateral left lower extremities calf area due to 'chronic vascular insufficiency' [sic]. He was continued on ACE wraps to his lower extremities because his legs were too edematous for compression stockings [sic]. At the time of discharge, home health orders were referenced as: H/H wound care team for daily wound management.⁷ There were no further specifics to those orders, reference to location(s) of the wounds, treatment plans, dressings or plans for follow-up. In fact, there was no acknowledge of the pressure injuries at all in the discharge summary. It was as if they did not exist as far as the clinicians were concerned. In review of the HCFA 485 home health orders, there were no specific dressings ordered for the wounds.⁸

On February 19, 2019, the orthopedist Mark Allen, DO notes that the patient has a heel wound that he developed while in rehabilitation, and recommends a wound care evaluation by a physician for debridement, medical grade honey, and possibly hyperbaric oxygen. He is shown the pictures of the heels by the daughter of Mr. Heifetz.⁹

Photographs with a written notation of February 28, 2019, reveal a left heel pressure injury that was unstageable with a thick eschar in place and a pressure injury of the left posterior ankle that appears as a stage 3 injury. By the April 2, 2019, visit with the orthopedic surgeon Dr. Allen, his recovery from the hip repair continues to be restricted due to the pressure injury of the left heel.¹⁰

Mr. Heifetz continued to receive wound care and associated medical care and services at the time of discharge from Southwest Medical Home Healthcare, his podiatrist and his primary care clinician(s) at Southwest Medical. These treatments were appropriate, necessary and reasonable for the complicated pressure injury that he sustained at Spanish Hills that required medical care and attention through April 2021. This injury is in a vulnerable location and due to scar tissue, will always be an area at risk for reoccurring wounds.

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There were numerous employees that were involved in the failures and breaches in the standard of medical care for Mr. Heifetz. These employees (nurses and CNAs) of Spanish Hills Wellness Suites include:

1. Diana Hale RN
2. Ziegelda Ross RN
3. Javier Canan
4. Joshua Abellera LPN
5. Erin Faucette LPN
6. Rachel Anderson LPN
7. Carlynne G. Tiquia LPN
8. Sheryl Coke LPN
9. Adora Laus De Leon LPN
10. Queenie Ochoa, LPN

In addition, the primary care clinicians involved in his care at Spanish Hills also demonstrated failures and breaches in the standard of care. These clinicians include:

1. Shanna Marie Baltar, DO
2. Miriam Sithole, APRN

I reserve the right to amend and alter my opinions as additional evidence becomes available.

Opinions

There are numerous breaches of the standard of medical care by the employees of Spanish Hills and for the primary care clinicians Shanna Baltar, DO and Miriam Sithole, APRN. These breaches of the standard of care occur during Mr. Heifetz's stay at Spanish Hills and with his transition to home health. They are as follows:

1. Failure to prevent the occurrence of pressure injuries in a vulnerable adult (including but not limited to all the nursing staff and clinicians). The pressure injuries were avoidable.
2. Failure to prevent the progression of pressure injuries in a vulnerable adult (including but not limited to all the nursing staff and clinicians).
3. Failure to accurately complete and document a risk assessment scale for pressure injury (Braden Scale) (including but not limited to all the nursing staff and clinicians). The Braden Scale ®used by the facility is a modified Braden Scale® (without attribution) and does not reflect the correct document referenced in their policies and procedures (SHWS 000567, 000568). The language in the sensory section of the Braden Scale® used by the facility has been changed and the staff, therefore, did not characterize this section correctly. (SHWS000055). If they had used the correct document, this could have drawn attention to the peripheral neuropathy that Mr. Heifetz suffered, and they may have initiated a preventive plan to protect his heels from injury and his prolonged recovery. This was also a failure of Spanish Hills to follow their own wound care policies and procedures.
4. Failure to accurately assess the wounds in terms of specific location, size, shape, odor, characteristics, etiology (including but not limited to all the nursing staff and clinicians).

This was a failure of Spanish Hills to follow their own wound care policy and procedures (SHWS000568-000575)

5. Failure to recognize that Mr. Heifetz was at risk for pressure injuries and initiate a care plan for prevention of heel injuries (including but not limited to all the nursing staff and clinicians).
6. Failure to initiate interventions in a timely manner to prevent the progression of pressure injuries in a vulnerable adult including but not limited to all the nursing staff and clinicians).
7. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in repositioning due to his hip surgery which resulted in pressure injuries to his heels including but not limited to all the nursing staff and clinicians).
8. Failure to acknowledge that Mr. Heifetz was a vulnerable adult requiring assistance in positioning his lower extremities with elevation to counter the effects of edema including but not limited to all the nursing staff and clinicians).
9. Failure to ensure that the ordered wound consultation on January 14, 2019, was completed (including but not limited to all the nursing staff and clinicians).
10. Failure to prevent the heels from further pressure injury by initiating specific orders or requesting orders from the clinicians for calf elevation while lying in bed, or specific orthoses for offloading the heels while in a wheelchair (including but not limited to all the nursing staff and clinicians).
11. Failure to create a precise care plan on January 23, 2019.¹¹ It was noted that the patient was at risk for pressure ulcer due to friction and shear; however, the care plan is backdated to January 21, 2019; does not state where the area of risk for pressure injury exists; provides a generic approach to resolution by having a minimum of 2 people plus draw sheet to lift resident while in bed; and to perform skin assessment and inspection every shift with close attention to heels (including but not limited to all of the aforementioned nursing staff and clinicians).
12. Failure of accurately documenting Mr. Heifetz' skin condition as noted by the document Observation Detail List Report on January 24, 2019, one day after the heel ulcerations were documented elsewhere in the medical record including but not limited to all of the aforementioned nursing staff and clinicians.¹²
13. Failure of accurately documenting Mr. Heifetz' skin condition as noted by Minimum Data Set (MDS), Section M, on January 30, 2109, his day of discharge, seven days after pressure injuries of the heel were already noted and being treated. The MDS entered for January 30, 2019, Section M Skin Conditions, does not refer to the existence of **any** pressure injuries including but not limited to all the nursing staff and clinicians. (Miriam S. Sithole, APRN)¹³
14. Failure to communicate significant changes in his condition with the family including but not limited to all the nursing staff and clinicians.
15. Failure of all parties to advocate for the resident for a stay based upon his need for the care of deep tissue injury of the left heel that required a skilled need. Note that Dr. Allen, his orthopedic surgeon stated in his note (SHWS 000266) to not send the patient until his wounds are stable.
16. Failure of all parties to advocate on behalf of the resident when an unnecessary psychotropic medication was ordered for Mr. Heifetz. F757 of the Federal Regulations states that each

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resident's drug regimen must be free from unnecessary drugs: the quetiapine ordered and administered was given without an appropriate indication (generalized anxiety is an off-label use)(F758); was given without Mr. Heifetz' understanding exactly what the medication was being given for (SHWS 000231); did not give consent for the medication (no documentation could be found in the record); and if he did give consent, it would not be clear if that would be valid due to the presumptive diagnosis of dementia that is replete throughout his chart. The use of this medication at the very least may have resulted in an adverse consequence due to sedation for Mr. Heifetz.

17. Failure to ensure the safety of compression garments on a patient with edema with 'chronic vascular insufficiency' (as noted by Miriam Sithole APRN). The arterial status of Mr. Heifetz was never determined. In my clinical experience, patients with suspected vascular insufficiency require an evaluation of their status before any form of compression is initiated (including but not limited to all the clinicians).
18. Failure of the clinical staff to correctly identify the cause of the skin injury and initiate and monitor the status of the skin resulting in a worsening conditioning and prolonged recovery (including but not limited to all the nursing staff and clinicians).
19. Failure to carry the specific orders written by the clinicians for compression stockings, not for ACE bandages as supplied including but not limited to all the nursing staff).
20. Failure to utilize the appropriate compression garment in an at-risk patient. ACE bandages are not an appropriate compression device to utilize for lower extremity edema and can result in medical device pressure injuries including but not limited to all the nursing staff.
21. Failure to insure that home health initiated daily wound care orders. The discharge note from Spanish Hills Wellness Suites specifically asks for daily wound treatments and assistance with management and monitoring of the bilateral lesions to the lower extremities including but not limited to all the nursing staff and clinicians.
22. Failure to specify to Home Health the treatment plan, the dressings, and follow-up for the wounds as the patient transitioned to the home setting (Miriam S. Sithole, APRN)
23. As a result of the breaches of the standard of care, Mr. Heifetz developed pressure sores to both heels.
24. Failure of the facility to comply with Federal Regulations F686 Skin Integrity and F684 Quality of Care.
25. Failure of the facility to implement protocols, policies, and procedures to prevent pressure wounds including but not limited to offloading procedures.
26. Failure of the facility to properly hire, train, and/or retain its employees, agents, and/or independent contractors.
27. Breach of the standard of care for the clinicians (the physician and APRN) for failure to assess the cause of and insure the treatment of the wound during his stay.
28. Breach of the standard of care for the clinicians (the physician and APRN) for not ensuring that the wound care consult was completed as ordered on January 15, 2019.
29. Breach of the standard of care for the clinicians (the physician and APRN) for failure to properly assess the vascular condition of the patient before ordering compression garments, for not ensuring that the proper garment was utilized, and for not understanding the implications and consequences of the use of the incorrect garment for compression.
30. These breaches of the standard of care set forth herein caused and/or contributed to Mr. Heifetz developing pressure injuries.

31. Due to the development of pressure injuries, and specifically the unstageable pressure injury to the left heel, the patient suffered a prolonged recovery from his hip surgery.
32. The breaches in the standards of prevention, treatment and care resulted in a prolonged burden of medical care including negative pressure wound treatment (wound vacuum device) that lasted for approximately an additional six months; his pressure injury on the left heel was not considered completely closed until April 2021.
33. Failure of the medical clinicians to communicate and collaborate concerning the care of Mr. Heifetz during his stay at Spanish Hills.
 - a. In her deposition, Shanna Baltar, DO states that she meets weekly to discuss current residents at the facility. (Deposition Baltar Page 12); however, it is clear from her deposition, as well as the deposition for Miriam Sithole, APRN, that there was no communication during his stay. (Deposition Baltar Page 95)
 - b. Among other issues, it was only until her review of the chart for the deposition of Shanna Baltar that she was aware of the severity of the wounds. (Deposition Baltar Page 124)(Deposition Sithole Page 33) (Miriam Sithole, APRN Page 155)
34. Failure of the Spanish Hills to comply with the federal regulation that each resident of the facility is assigned a physician.
 - a. F710 states that the medical care of each resident is supervised by a physician. That function, and the ultimate responsibility for care of the resident by the physician, cannot be delegated.
35. Failure of Shanna Baltar, DO to assume responsibility for the care of the resident, or the actions of Miriam Sithole, APRN, as the supervisory physician (F710).
 - a. Shanna Baltar, DO stated in her deposition that she delegated the care of the resident to Miriam Sithole, APRN (Deposition Baltar Page 25, 26).
 - b. She stated that her treatment for Mr. Heifetz ended after the first encounter. (Deposition Baltar Page 120; 130;131)
 - c. By Federal regulation, she is not able to delegate this responsibility.
 - d. Furthermore, Shanna Baltar, DO, takes no responsibility for her review of the Discharge Summary – somehow explaining that her signature on the document is completed because Spanish Hills put an extra line there for her. (Deposition Baltar Page 131)
36. Failure of Shanna Baltar, DO to recognize that the issues of the skin related to Mr. Heifetz were beyond the knowledge base of Miriam Sithole, APRN.
37. Failure of Shanna Baltar, DO to understand that as the supervisory physician she is responsible for anything that occurs to the resident including that all orders and the treatments are carried out by the staff.
 - a. She stated in her deposition that she is not responsible in every case for the treatment plan for the resident (Deposition Baltar Page 26); nor for the nurses following the treatment plan (Deposition Baltar page 27).
 - b. She later states that she does not create orders for off-loading procedures (Deposition Baltar Page 74), orders for which she is responsible.
 - c. Therapy orders are not standard orders, and she is responsible for writing for them. (Deposition Baltar Page 122)
38. The knowledge base of Shanna Baltar, DO concerning the use of compression for the lower extremity is deficient.

- a. She stated that the benefit of compression hose is only useful during ambulation is incorrect. (Deposition Baltar Page 58)
 - b. Her concern that leaving compression on for an extended time is the buildup of bacteria which is incorrect. (Deposition Baltar Page 61)
 - c. She approves of the use of ACE bandages for compression (Deposition Baltar Page 128) which is not therapeutic for patients with venous hypertension or insufficiency.
39. The knowledge base of and Miriam Sithole, APRN concerning the use of compression of the lower extremities is equally deficient.
- a. She stated that compression stockings are only useful when the patient is ambulating (Miriam Sithole, APRN Page 63). This is medically incorrect and does not reflect the standard of care, nor for other options for compression readily available.
40. The knowledge base of Shanna Baltar, DO concerning pressure injuries is lacking.
- a. When asked if she was concerned about orders for offloading for Mr. Heifetz', she stated that would not have been on her radar. (Deposition Baltar Page 78).
 - b. She states that since Mr. Heifetz was admitted with the right hip issue, that was her focus. This is a complete disregard for the care of an at-risk resident in a skilled nursing facility.
 - c. She was aware of risk assessments for pressure injuries (Braden Scale; Norton Scale) but knew little else of what parameters it covers, how she could use it to assess risk, when it should be completed, or how often (Deposition Baltar Page 80-81).
 - d. Later in her deposition, Shanna Baltar, DO is confused about the staging for venous stasis ulcers and pressure injuries. (Deposition Baltar Page 113-115)
41. The knowledge base of Miriam Sithole, APRN concerning pressure injury prevention is deficient.
- a. She states that she defers orders for offloading to the nursing staff (Miriam Sithole, APRN Page 85; 105;117), taking no responsibility for this important and basic prevention principle.
 - b. Her unfamiliarity with pressure injury risk assessment scales in general, and the Braden Scale specifically, is negligent for a clinician taking care of residents in the skilled nursing facility. The language of the F686 Federal Regulation for skin integrity is based upon the comprehensive assessment of a resident which includes input from the clinicians caring for the resident. The facility looks towards the clinician to order interventions and monitoring guidelines for the effectiveness of the interventions. The regulation states that clinicians are responsible for evaluating each existing and potential risk factor for developing a pressure injury.
 - c. She is unable to recognize clinically that Mr. Heifetz was an at-risk patient (Miriam Sithole, APRN Page 93); she even admits that she is not specialized in any of Mr. Heifetz' comorbidities (Miriam Sithole, APRN Page 93), but never reached out to Shanna Baltar, DO for guidance.
 - d. She breached her duties by not documenting that Mr. Heifetz had pressure injuries (Miriam Sithole, APRN Page 120), using bizarre logic that wound care was

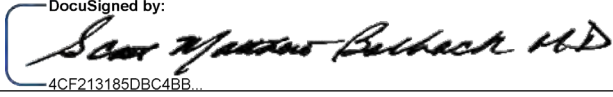
- following the patient, even though wound care was consulted about the surgical wound, not the pressure injuries nor the other skin ulcerations.
- e. When asked if there was anything that could have been done to prevent the pressure injuries from occurring in Mr. Heifetz, she stated just to follow the care plan, that she had already admitted multiple times that she did not follow and/or have access to. (Miriam Sithole, APRN Page 167-168)
42. Miriam Sithole, APRN admits that she has never treated a pressure injury, regarding any stage of injury (Miriam Sithole, APRN Page 131), yet she remained as the provider of care for Mr. Heifetz.
- a. With all due respect, for a clinician taking care of residents in a skilled nursing facility, this was a tragedy for Mr. Heifetz.
 - b. She is unaware of what a deep tissue injury is (Miriam Sithole, APRN Page 148).
 - c. I note that she was a certified nurse assistant and nurse prior to her experience as an APRN.
 - d. She does not even accept responsibility for knowing how to measure and characterize a wound (Miriam Sithole, APRN Page 148), or what to do if the dressing becomes soiled (Miriam Sithole, APRN Page 149).
 - e. These failures do not meet the standard of care for any clinician in any setting of primary care.
43. Miriam Sithole, APRN acknowledges her lack of understanding of compression and the risks of ordering compression putting Mr. Heifetz at risk.
- a. There is failure to recognize and advocate for the proper observation of the skin with the use of the compression garment (Miriam Sithole, APRN Page 65) in a high-risk patient.
 - b. She further testifies that she has no interest in making sure that her orders for compression are carried out successfully (Miriam Sithole, APRN Page 71-75), a failure to advocate for the safety, health, and well-being of Mr. Heifetz.
44. The knowledge base of Miriam Sithole, APRN concerning the sequelae of chronic venous hypertension is poor.
- a. Based upon her documentation in the medical record, she did not differentiate what type of vascular insufficiency she was referring to. It is not until her deposition that she exposes her elementary discussion of venous disease (Miriam Sithole, APRN Page 90).
 - b. Skin changes with chronic venous hypertension are not associated with 'not having enough blood' or to 'nutrition' problems. (Miriam Sithole, APRN Page 90)
 - c. Without this basic knowledge, her ability to treat Mr. Heifetz should have been assumed by Shanna Balta, DO, the physician of record for this resident.
 - d. The ulcers that were presumed to be due to chronic vascular insufficiency are due venous hypertension, not from lack of circulation (Miriam Sithole, APRN Page 121)
45. Miriam Sithole, APRN had no interest in providing clinical care or advocating for Mr. Heifetz which ultimately affected his safety in the facility.
- a. She made it clear during her deposition that she was not concerned for developing, reviewing, or insuring any care plan for Mr. Heifetz.

- b. She had little to no understanding of pressure injuries or chronic venous hypertension and admits that she was not expert at any of the comorbidities for him.
 - c. She did not know how to access important documents that would have potentially saved Mr. Heifetz from a prolonged recovery; she states that she had no access to documents like nursing notes, care plans and risk assessments for skin when all she had to do was ask to view if she was interested.
 - d. She took no responsibility for any input from the wound team, the therapy department, the psychiatrist, or the nursing staff; furthermore, her duty to notify her supervisory physician of any difficulties never occurred. (Miriam Sithole, APRN Page 98-101)
 - e. In a bizarre loop of logic, when asked if she expected to be notified of new pressure injury, she stated that it usually goes on a document, then stated that she does not know the procedure on the reporting of a pressure injury, nor what constitutes a severe pressure injury that needs to be reported; and as stated multiple times during her deposition, she would have not known how to access the document. (Miriam Sithole, APRN Page 104-106; 135, 136,139)
 - f. Despite a deep tissue injury that she was unaware of, she stated in her discharge summary the overall course of his rehabilitation stay was uneventful.
- 46. Failure of the facility to notify Shanna Baltar, DO of the change of condition for a new pressure injury in a timely manner. (Deposition Baltar Page 104).
 - 47. Failure of Shanna Baltar, DO to communicate the presence of the pressure injury to Miriam Sithole, APRN in a timely manner. (Deposition Baltar Page 104)
 - 48. Failure of Spanish Hills and of Shanna Baltar, DO that absence of documentation of a wound is below the standard of care. (Deposition Baltar Page 119)
 - 49. Failure of Spanish Hill to communicate and make available documents to the clinicians to provide optimal care. The difficulty of communicating changes in the skin to the clinicians providing care for Mr. Heifetz prevented the ability to care for his skin conditions.
 - 50. Failure by Miriam Sithole, APRN and Shanna Baltar, DO to acknowledge that Mr. Heifetz had a deep tissue injury (a stage of pressure injury) at the time of his discharge, affecting the ability to care for him properly as he transitioned to the home setting (Miriam Sithole, APRN Page 159).
 - 51. Failure of Miriam Sithole, APRN and Shanna Baltar, DO to comply with the policies and procedures that they agreed to adhere to according to their signed Independent Practitioner Agreement (Sithole 0053; Baltar 0049).

The multiple failures, breaches of care, lack of communication, deficits in knowledge, and lack of compliance with Federal regulations had a negative impact on the treatment and complications sustained by Mr. Heifetz.

I reserve my right for further review and comment as additional information concerning the care of Barry Heifetz is discoverable over time.

All my opinions above are made to a reasonable degree of medical probability.

DocuSigned by:

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6/29/2021

Scott Matthew Bolhack, MD, MBA, CMD, CWSP, PCWC, FACP

Date