Arkansas
State Claims Commission
FEB 12 2020
RECEIVED

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss Mary Ann Jones, as Special Administrator of the ESTATE OF OSCAR ODELL "BILL" JONES, DECEASED, and on behalf of the wrongful death beneficiaries of OSCAR ODELL "BILL" JONES, **Claimant**

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces
Claim No.
Date Filed (Month) (Day) (Year)
Amount of Claim $
Fund

Mary Ann Jones, as Special Administrator of the ESTATE OF OSCAR ODELL "BILL" JONES, DECEASED, and on behalf of the wrongful death beneficiaries of OSCAR ODELL "BILL" JONES (Name), **the above named Claimant, of** [redacted] (Street or R.F.D. & No.) [redacted] (City) [redacted] (State) [redacted] (Zip Code) [redacted] (Daytime Phone No.) **County of** Saline **represented by** Jeff Priebe Law Firm (Legal Counsel, if any, for Claim)

COMPLAINT

of P.O. Box 7481 (Street and No.) Little Rock (City) AR (State) 72217 (Zip Code) 501-580-7890 (Phone No.) 501-868-2505 (Fax No.), **says:**

State agency involved: Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock **Amount sought:** UNKNOWN AT THIS TIME

Month, day, year and place of incident or service: From on or about December 18, 2018 to on or about December 27, 2018 at Arkansas State Veterans Home at North Little Rock

Explanation:

WRONGFUL DEATH COMPLAINT

Claimants, by and through their attorneys, Jeff Priebe Law Firm, for their Complaint, state:

PRELIMINARY STATEMENT

1. This is an action for egregious injuries, damages, and wrongful death suffered by Oscar Odell "Bill" Jones due to the care and treatment, and lack thereof, while he was a nursing home resident of Arkansas State Veterans Home at North Little Rock and in respondent's care. During this time, he suffered [redacted] gnities. This action arises under the common law of the State of Arkansas, the Arkansas Medical Neglgence Act (Arkansas Code Annotated § 16-114-201, et seq.), the Arkansas Long Term Care Residents Rights Act (Arkansas Code Annotated § 20-10-1201, et seq.), the Arkansas Omnibus Long Term Care Reform Act (Arkansas Code Annotated 20-10-1001, et seq.), the Arkansas Staffing Requirements for Nursing Homes Act (Arkansas Code Annotated § 20-10-1401, et seq.), the Arkansas Neglect of an Endangered or Impaired Adult Act (Arkansas Code Annotated §§ 5-28-103(c)(1) and 16-118-107, et seq.), the Arkansas Deceptive Trade Practices Act (Arkansas Code Annotated §§ 4-88-104 and 4-88-204, et seq.), the Arkansas Survival of Actions Act (Arkansas Code Annotated § 16-62-101), the Arkansas Wrongful Death Act (Arkansas Code Annotated § 16-62-102), and other applicable laws for medical negligence, ordinary negligence, violation of nursing home resident rights, neglect of an endangered or impaired adult, deceptive trade practices, breach of fiduciary duty, and wrongful death by respondent.

(Explanation continued on pages 2 to ____)
ATTACHED HERETO

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? NO (Yes or No); when? _____ (Month) (Day) (Year); to whom? _____ (Department); and that the following action was taken thereon: _____

and that $ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? UNKNOWN; if so, state name and address _____ (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code) and that the nature thereof is as follows: _____; and was acquired on _____, in the following manner: _____

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Jeff Priebe, Attorney for Claimant
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock (City) Pulaski (County) AR (State)

(SEAL) on this 7th (Date) day of February (Month) 2020 (Year)

Amy Jo Richardson
(Notary Public)

SEL-R7/99

My Commission Expires: February (Month) 1 (Day) 2028 (Year)

Amy Jo Ann Richardson
Saline County
NOTARY PUBLIC – ARKANSAS
My Commission Expires February 1, 2028
Commission No. 12703938

ARKANSAS STATE CLAIMS COMMISSION

NON VEHICLE PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SECTION 1

CLAIMANT Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones ADDRESS [redacted]

CITY & STATE [redacted] ZIP CODE [redacted]

DATE OF INCIDENT: On or about December 18, 2018 to on or about December 27, 2018 TIME

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

Allegations include egregious injuries, damages and wrongful death. During his residency, Mr. Jones suffered fr[redacted]

(If personal injury claim only, move on to Section IV)

****

SECTION II

Has this property been repaired? Yes ( ) No ( ) If repairs have been made, give the following information: Amount: $_____ Have you paid for the repairs? Yes ( ) No ( )

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

NAME	ADDRESS	AMOUNT
1.		$
2.		$
3.		$

****

SECTION III

Was property covered by insurance? Yes ( ) No ( )

If yes, what is the deductible? $ _____

NAME OF INSURANCE CARRIER ADDRESS

****

SECTION IV

Is injured covered by medical insurance? Yes ( ) No ( )

If yes, what is the deductible? $_____

NAME OF INSURANCE CARRIER ADDRESS

****

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation:_____

****

SECTION VI

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Signature of Claimant/Representative

Sworn to and subscribed before me at Little Rock Pulaski Arkansas
City & State

on this 7th day of Feb., 2020
day month year

Amy Jo Ann Richardson
(Notary Seal)
(Saline County)
NOTARY PUBLIC – ARKANSAS
My Commission Expires February 1, 2028
Commission No. 12703938

My Commission Expires 2/1/2028

Signature of Notary Public

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

February 27, 2020

Colonel Nathaniel Todd
Arkansas Department of Veteran Affairs
2401 John Ashley Drive
North Little Rock, Arkansas 72114

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs***
Claim No. 200817

Dear Colonel Todd,

Enclosed please find a copy of the above-styled claim filed against the Arkansas Department of Veteran Affairs. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Kathryn Irby

ES: mshaynes

Enclosure
cc: Jeff R. Priebe, *counsel for Claimant* (w/encl.)

Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.

From: Vincent France
To: ASCC Pleadings
Cc: Crystal Carey
Subject: RE: Jones, Oscar v. ADVA CC-200817
Date: Monday, March 30, 2020 8:54:07 AM
Attachments: Answer to Complaint.pdf

Please find the Arkansas Department of Veterans Affairs Answer.

Vincent P. France
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas, 72201
Office: 501.682.1314 | Fax: 501.682.2000
vincent.france@arkansasag.gov | ArkansasAG.gov

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MARY ANN JONES, as Special Administrator
Of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF
VETERAN AFFAIRS **RESPONDENT**

ANSWER

COMES NOW, Respondent, Arkansas Department of Veteran Affairs, by and through its attorney, Assistant Attorney General Vincent P. France, and for its Answer to the Complaint states the following:

1. Respondent, Arkansas Department of Veteran Affairs, denies all allegations of the Complaint not admitted herein.

2. Respondent denies that it is liable for any of the alleged injuries to the Claimant, and any of Claimant's damages and/or injuries were not caused by negligence of the Arkansas Department of Veteran Affairs or any of its employees or its agents.

3. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by Claimant's own contributory fault or negligence, which fault or negligence should bar or mitigate the Claimant's recovery in this case.

4. Affirmatively pleading, Respondent states that Claimant has not exhausted all of her remedies against the applicable insurers as required by Ark. Code Ann. §19-10-302.

WHEREFORE, the Respondent PRAYS for dismissal of the Complaint, for any and all other just and proper relief.

Respectfully submitted,
Assistant Attorney General

Vincent P. France
Ark Bar No. 2010063
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-1314
Fax: (501) 682-2591
Email: Vincent.France@arkansasag.gov

CERTIFICATE OF SERVICE

I, Vincent P. France, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via U.S. Mail on this the 30th day of March, 2020:

Jeff Priebe
P.O. Box 7481
Little Rock, AR 72217
Attorney for Claimant

Vincent P. France

From: ASCC Pleadings
To: Vincent.france@arkansas.gov
Cc: crystal.carey@arkansas.gov; ASCC Pleadings; Kathryn Irby
Subject: CORR: Mary Ann Jones v. ADVA, Claim No. 200817
Date: Friday, May 15, 2020 4:32:27 PM
Attachments: Mary Ann Jones v. ADVA.pdf

Mr. France,

Please see attached. Contact Kathryn Irby with any questions.

Julie S. Jones
Arkansas Claims Commision

May 15, 2020

Mr. Jeff Priebe
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs***
Claim No. 200817

Dear Mr. Priebe,

Please be advised that the Arkansas Department of Veteran Affairs (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.

2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Kathryn Irby

ES: msscott

cc: Vincent P. France, *counsel for Respondent* (via email)

From: Jeff Priebe
To: Kathryn Irby
Cc: Sonja McCaleb; vincent.france@arkansasag.gov
Subject: Estate of Oscar Jones v. Ark State Veterans Home, Claim No. 200817
Date: Monday, May 18, 2020 2:59:51 PM
Attachments: Claims Commission Letter requesting a hearing 05182020.pdf

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Mrs. Irby,

I am mailing the attached letter, however I wanted to email it to you as well.

Thank you,

Jeff

Jeff Priebe
Jeff Priebe Law Firm
PO Box 7481
Little Rock, AR 72217
Phone: 501-580-7890

JEFF PRIEBE LAW FIRM

JEFF R. PRIEBE, ATTORNEY AT LAW
P. O. Box 7481
LITTLE ROCK, ARKANSAS 72217
TELEPHONE 501.580.7890

JEFF@JEFFPRIEBELAWFIRM.COM

May 18, 2020

Ms. Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***
Claim No. 200817

Dear Ms. Irby:

I am in receipt of your letter of May 15th. On behalf of my client, I would request a hearing on this claim. If you or the Commission need anything else from me regarding this matter, please do not hesitate to contact me.

Very truly yours,

JEFF PRIEBE LAW FIRM

Jeff R. Priebe

JRP/slm
Enclosures

cc: Mary Ann Jones
Vincent P. France - Assistant Attorney General

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

Arkansas State Claims Commission
MAY 26 2020
RECEIVED

v. **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK **RESPONDENT**

AMENDED NOTICE OF ACTION OR CLAIM IN COMPLIANCE WITH ARKANSAS CODE ANNOTATED § 20-77-304

Pursuant to Arkansas Code Annotated § 20-77-304, the Arkansas Department of Human Services is hereby served with written notice of the filing of an action or claim by Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones. Oscar Odell "Bill" Jones may have been a recipient of medical assistance from the Division of Medicaid of the State of Arkansas. The action or claim has been filed against Arkansas Department of Veterans Affairs.

Respectfully submitted,

By: _____

Jeff Priebe
Ark Bar No. 2001124
Jeff Priebe Law Firm
P. O. Box 7481
Little Rock, AR 72217
501-580-7890
jeff@jeffpriebelawfirm.com

CERTIFICATE OF SERVICE

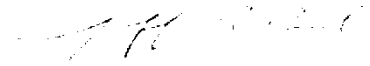
I, Jeff Priebe, certify that a copy of the mandatory notice required by Ark. Code Ann. § 20-77-304 has been served via U.S. Mail via certified mail, return receipt requested on this 14th day of May, 2020 to the following:

Arkansas Department of Human Services
Cindy Gillespie
P.O. Box 1737, Slot S201
Little Rock, Arkansas 72203

CERTIFICATE OF SERVICE

I, Jeff Priebe, do hereby certify that a copy of the foregoing document has been served via U. S. Mail on this 14th day of May, 2020 to the following:

Vincent P. France
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201



Jeff Priebe

JEFF PRIEBE LAW FIRM

JEFF R. PRIEBE, ATTORNEY AT LAW
P. O. Box 7481
LITTLE ROCK, ARKANSAS 72217
TELEPHONE 501.580.7890

JEFF@JEFFPRIEBELAWFIRM.COM

Arkansas
State Claims Commission
MAY 26 2020
RECEIVED

May 14, 2020

Ms. Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***
Claim No. 200817

Dear Ms. Irby:

Enclosed please find for filing is our Amended Notice of Action or Claim in Compliance with Arkansas Code Annotated § 20-77-304. Please return a file-marked copy to me in the self-addressed, postage-paid envelope provided. By copy of this letter, we are providing a copy of the *Amended Notice* to ADHS and opposing counsel.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

JEFF PRIEBE LAW FIRM

Jeff R. Priebe

JRP/slm
Enclosures

cc: Cindy Gillespie - ADHS
Vincent P. France - Assistant Attorney General

From: Kathryn Irby
To: Jeff Priebe; Vincent France
Subject: Mary Ann Jones v. ADVA, Claim No. 200817
Date: Monday, June 29, 2020 4:17:00 PM

Counselors,

The Claims Commission has reviewed Mr. Priebe's request for hearing in the above-referenced claim and would like for the parties to conduct discovery prior to the scheduling of this claim for hearing. When discovery is nearing completion, please contact me to get this claim added to the hearing docket.

Please contact my office with any questions.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Misty Scott on behalf of ASCC Pleadings
To: "Jeff@jeffpriebelawfirm.com"; Vincent France
Cc: ASCC Pleadings; Kathryn Irby
Subject: CORR: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817
Date: Wednesday, June 8, 2022 3:48:00 PM
Attachments: Mary Jones v. ADVA.pdf

Mr. Priebe and Mr. France:

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

June 8, 2022

Mr. Jeff Priebe *(via email)*
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Mr. Vincent P. France *(via email)*
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Re: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs***
Claim No. 200817

Dear Mr. Priebe and Mr. France,

The above-styled claim has been in discovery for an extended period of time. Please notify this office in writing by Wednesday, June 29, 2022, as to the status of discovery. If the Claims Commission does not receive a timely response, this claim will be set for hearing as soon as is practicable.

Sincerely,

Kathryn Irby

ES: msscott

From: Jennifer Winn
To: Kathryn Irby; Misty Scott; ASCC Pleadings
Cc: Vincent France; jeff@jeffpriebelawfirm.com
Subject: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817
Date: Thursday, June 23, 2022 2:49:19 PM
Attachments: image001.jpg
image003.png
image004.jpg
image006.jpg
image008.jpg
image010.jpg
image012.png
Claims Commission Letter re Status Update and Hearing Request.pdf

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> Some people who received this message don't often get email from jwinn@rainfirm.com. Learn why this is important

Ms. Irby,

Please see attached correspondence from Mr. Priebe.

Please let me know if you have any questions.

Thank you
Jennifer

Jennifer Winn
Paralegal
P (501) 868-2943 | **F** (501) 868-2505
E jwinn@rainfirm.com | CallRainwater.com
PO Box 17250 | Little Rock, AR | 72222

A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.

This email may contain confidential information and is intended only for the individual(s) it is addressed. If you are not an intended recipient, you are hereby notified that any unauthorized use of the email is strictly prohibited. If you have received this email in error, please delete it and notify the sender by reply email.

JEFF PRIEBE LAW FIRM

JEFF R. PRIEBE, ATTORNEY AT LAW
P. O. Box 7481
LITTLE ROCK, ARKANSAS 72217
TELEPHONE 501.580.7890

JEFF@JEFFPRIEBELAWFIRM.COM

June 23, 2022

Ms. Kathryn Irby
Arkansas Claims Commission
101 E. Capitol Avenue, Suite 410
Little Rock, AR 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***

Dear Claims Commissioner:

In response to your previous letter, discovery in the above referenced matter is on-going. I would envision that a hearing will be needed in December of this year and/or January of 2023. I would request that the Commission go ahead and set this matter for an all day in-person hearing.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Jeff R. Priebe
Attorney
JRP/jw

cc: Vincent France, Esq.

From:	Kathryn Irby
To:	Jennifer Winn; ASCC Pleadings
Cc:	Vincent France; jeff@jeffpriebelawfirm.com
Subject:	HEARING SCHEDULED: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817
Date:	Friday, June 24, 2022 8:22:00 AM
Attachments:	Jones v. ADVA -- 200817 -- hearing ltr (Cl requesting in person).pdf image001.jpg image002.png image003.jpg image004.jpg image005.jpg image006.jpg image007.png

Jeff and Vincent, please see attached hearing letter.

Kathryn

From: Jennifer Winn <jwinn@rainfirm.com>
Sent: Thursday, June 23, 2022 2:49 PM
To: Kathryn Irby <kathryn.irby@arkansas.gov>; Misty Scott <Misty.Scott@arkansas.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Vincent France <vincent.france@arkansasag.gov>; jeff@jeffpriebelawfirm.com
Subject: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817

> Some people who received this message don't often get email from jwinn@rainfirm.com. Learn why this is important

Ms. Irby,

Please see attached correspondence from Mr. Priebe.

Please let me know if you have any questions.

Thank you
Jennifer

Jennifer Winn
Paralegal
P (501) 868-2943 | **F** (501) 868-2505
E jwinn@rainfirm.com | CallRainwater.com
PO Box 17250 | Little Rock, AR | 72222

A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.

This email may contain confidential information and is intended only for the individual(s) it is addressed. If you are not an intended recipient, you are hereby notified that any unauthorized use of the email is strictly prohibited. If you have received this email in error, please delete it and notify the sender by reply email.

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

June 24, 2022

Mr. Jeff Priebe (*via email*)
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Mr. Vincent P. France (*via email*)
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs***
Claim No. 200817

Dear Mr. Priebe and Mr. France,

The Claims Commission has scheduled a one-day hearing on the above-referenced claim on **Friday, February 10, 2023**, beginning at 9:00 a.m. For the time being, this hearing will be scheduled via Zoom, although the Claims Commission notes Mr. Priebe's request for an in-person hearing. The Claims Commission requests that the parties email me in December 2022 to evaluate the possibility of converting the format of this hearing to in-person. However, should the hearing remain in a Zoom format, the Zoom invitation is included herein.

Each party's witness lists, exhibit lists, and exhibits are due by Friday, January 20, 2023. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time. If the parties will be submitting any testimony by deposition, those deposition transcripts are due at the same time.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by January 20, 2023.

Please note that a copy of any filing must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings
Time: Feb 10, 2023 09:00 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/87579091104?pwd=bkRDL2lFUnZUclhSUE8wS2ZLOGVpZz09

Meeting ID: 875 7909 1104
Passcode: 6EPTmJ
One tap mobile
+13017158592,,87579091104#,,,,*124942# US (Washington DC)
+13126266799,,87579091104#,,,,*124942# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 436 2866 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
Meeting ID: 875 7909 1104
Passcode: 124942
Find your local number: https://us06web.zoom.us/u/kd3oe4TIYF

From:	Kathryn Irby
To:	Jennifer Winn
Cc:	Vincent France; jeff@jeffpriebelawfirm.com
Subject:	HEARING RESCHEDULED: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817
Date:	Tuesday, June 28, 2022 4:11:00 PM
Attachments:	Jones v. ADVA -- 200817 -- hearing rescheduling ltr (Cl requesting in person).pdf image001.jpg image002.png image003.jpg image004.jpg image005.jpg image006.jpg image007.png

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Jeff and Vincent, please see attached letter.

Thanks,
Kathryn

From: Kathryn Irby
Sent: Friday, June 24, 2022 8:22 AM
To: Jennifer Winn <jwinn@rainfirm.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Vincent France <vincent.france@arkansasag.gov>; jeff@jeffpriebelawfirm.com
Subject: HEARING SCHEDULED: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817

Jeff and Vincent, please see attached hearing letter.

Kathryn

From: Jennifer Winn <jwinn@rainfirm.com>
Sent: Thursday, June 23, 2022 2:49 PM
To: Kathryn Irby <kathryn.irby@arkansas.gov>; Misty Scott <Misty.Scott@arkansas.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Vincent France <vincent.france@arkansasag.gov>; jeff@jeffpriebelawfirm.com
Subject: Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veteran Affairs, Claim No. 200817

> Some people who received this message don't often get email from jwinn@rainfirm.com. Learn why this is important

Ms. Irby,

Please see attached correspondence from Mr. Priebe.

Please let me know if you have any questions.

Thank you
Jennifer

Jennifer Winn
Paralegal
P (501) 868-2943 | **F** (501) 868-2505
E jwinn@rainfirm.com | CallRainwater.com
PO Box 17250 | Little Rock, AR | 72222

A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.

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ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

June 28, 2022

Mr. Jeff Priebe (*via email*)
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Mr. Vincent P. France (*via email*)
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs***
Claim No. 200817

Dear Mr. Priebe and Mr. France,

Due to a scheduling conflict, the Claims Commission has rescheduled this one-day hearing on the above-referenced claim on **Friday, April 21, 2023**, beginning at 9:00 a.m. For the time being, this hearing will be scheduled via Zoom, although the Claims Commission notes Mr. Priebe's request for an in-person hearing. The Claims Commission requests that the parties email me in January 2022 to evaluate the possibility of converting the format of this hearing to in-person. However, should the hearing remain in a Zoom format, the Zoom invitation is included herein.

Each party's witness lists, exhibit lists, and exhibits are due by Friday, March 31, 2023. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time. If the parties will be submitting any testimony by deposition, those deposition transcripts are due at the same time. If the parties will require a subpoena, subpoena requests are also due at the same time. Absent a showing of good cause, the Claims Commission will not issue subpoenas for requests received after March 31, 2023.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by March 31, 2023.

Please note that a copy of any filing must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings
Time: Apr 21, 2023 09:00 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/81310968697?pwd=bmh5cWRUQVZFNUZZcUMxR25GRGQ0Zz09

Meeting ID: 813 1096 8697
Passcode: 91ucG5
One tap mobile
+19294362866,,81310968697#,,,,*102433# US (New York)
+13017158592,,81310968697#,,,,*102433# US (Washington DC)

Dial by your location
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
Meeting ID: 813 1096 8697
Passcode: 102433
Find your local number: https://us06web.zoom.us/u/keFTjkRNJl

From: Katie Wilson
To: ASCC Pleadings
Cc: Jordan Broyles; "jpriebe@rainfirm.com"; "jwinn@rainfirm.com"
Subject: RE: Jones, Oscar v. ADVA CC-200817
Date: Wednesday, February 1, 2023 9:32:57 AM
Attachments: image001.jpg
2023-01-30 - Oscar - EOA.pdf

Good Morning,

Attached please find Senior Assistant Attorney General Jordan Broyles's notice of appearance to be entered on behalf of the Arkansas Department of Veteran Affairs in the above-referenced matter.

Thank you,

Katie Wilson
Lead Legal Assistant – Civil Department

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: (501) 682-0790 | Fax: (501) 682-2591
katie.wilson@arkansasag.gov | ArkansasAG.gov

CONFIDENTIALITY NOTICE: The information contained in this e-mail message and any attachment is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It may contain information that is privileged, confidential, or otherwise protected from disclosure. It is intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that reading, copying or distributing this e-mail or the information herein by anyone other than the intended recipient is STRICTLY PROHIBITED. The sender has not waived any applicable privilege by sending the accompanying transmission. If you have received this transmission in error, please notify the sender by reply e-mail immediately, and delete this message and attachments from your computer.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiares of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CASE NO. CC-200817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS **RESPONDENT**

NOTICE OF APPEARANCE

Comes Senior Assistant Attorney General Jordan Broyles, and hereby certifies that she is admitted to practice in this Court, and enters her appearance as counsel for Respondent Arkansas Department of Veteran Affairs.

The undersigned counsel respectfully requests that her name be entered as additional attorney of record in this case and that she receives copies of any and all future notices, pleadings, correspondence, and other papers in this matter from this point forward. Complete contact information for undersigned counsel is included in the signature block below.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: Jordan Broyles

Jordan Broyles
Ark. Bar No. 2015156
Senior Assistant Attorney General
Arkansas Attorney General's Office

323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-9482
Fax: (501) 682-2591
Email: jordan.broyles@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Jordan Broyles, hereby certify that on February 1, 2023, I mailed the foregoing document by U.S. Postal Service to the following:

Jeff R. Priebe
Rainwater, Holt, & Sexton, P.A.
P.O. Box 17250
Little Rock, AR 72222

Jordan Broyles

From: Jennifer Winn
To: ASCC Pleadings
Cc: jordan.broyles@arkansasag.gov; katie.wilson@arkansasag.gov; Jeff Priebe
Subject: Jones, Oscar v. ADVA CC-200817
Date: Thursday, February 2, 2023 3:10:17 PM
Attachments: image001.jpg
image003.png
image004.jpg
image006.jpg
image008.jpg
image010.jpg
image012.png
C"s Supp Ans and Rsp to R 1st IRFPDs - Expert Disclosures 02022023.pdf

---

> You don't often get email from jwinn@rainfirm.com. Learn why this is important

Good afternoon,

Attached please find Claimant's Supplemental Answers and Responses to Respondent's First Interrogatories and Requests for Production of Documents for filing. These have been emailed to Counsel for Respondent, along with the exhibits listed in same.

Thank you,
Jennifer

Jennifer Winn
Paralegal
P (501) 868-2943 | **F** (501) 868-2505
E jwinn@rainfirm.com | CallRainwater.com
PO Box 17250 | Little Rock, AR | 72222

A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.

This email may contain confidential information and is intended only for the individual(s) it is addressed. If you are not an intended recipient, you are hereby notified that any unauthorized use of the email is strictly prohibited. If you have received this email in error, please delete it and notify the sender by reply email.

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MARY ANN JONES, as Special Administrator
Of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CLAIM NO. 20-0817**

ARKANSAS DEPARTMENT OF
VETERAN AFFAIRS **RESPONDENT**

CLAIMANT'S ANSWERS AND RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION

Claimant, by and through undersigned counsel, states the following for her Answers and Responses to Respondent's First Set of Interrogatories and Requests for Production:

INTERROGATORY NO. 2: Please state the name, telephone number and address of each individual, including experts, but not including your attorney, who likely to have discoverable information relevant to the facts or allegations in this case, identifying the subjects of the information.

ANSWER:

Objection. This Interrogatory seeks information that is protected as attorney work product. Without waiving said objection, expert witnesses for trial are undetermined at this time. Claimant will supplement this response in a timely manner prior to trial and in accordance with the Arkansas Rules of Civil Procedure and any scheduling order in this case.

Claimant further states that any nurse, CNA and/or physician who provided treatment and/or services to Mr. Jones may proffer opinions that may be considered expert testimony. Claimant reserves the right to supplement this Response with additional expert witnesses and/or opinions. Further, fact witnesses have not yet been determined in this matter.

Without waiving said objections, Claimant states the following individuals may possess relevant information:

Mary Ann Jones
Jerri Ann Stokes
Karen Garson

Respondents' employees and former employees.

SUPPLEMENTAL ANSWER:

In addition to the above stated individuals, Claimant's expert witnesses include Luanne Trahant, MSN, APRN and Dr. Keith E. Miller.

Claimant also intends to call the following former employees:
Beverly Hameback
Katrina Henderson
Kim Ford
Loretta Crosariol
Natasha Crocker
Rosa Page
Tiffany Atkins
Tymberly Garrett

Claimant reserves the right to supplement this Answer as discovery progresses.

INTERROGATORY NO. 3: Please state the full name, address, and telephone number of each person who you may call as a witness in this case, the subject matter to which each person will testify, and the substance of the facts to which each will testify.

ANSWER:

Claimant has not determined who will be called at trial to testify. However, Claimant anticipates that trial witnesses may include the following:

(a) any of the individuals listed in Mr. Jones' medical and facility records;
(b) other employees or agents of Respondents or other health care providers who may not appear in Mr. Jones' chart, but who may, nonetheless, possess relevant information;
(c) corporate owners, officers and/or employees of Respondents;
(d) employees and/or representatives of the Arkansas Office of Long Term Care; and,
(e) family members and/or friends of Mr. Jones.

Claimant also anticipates that any of the following may testify:

FAMILY MEMBERS

Mary Ann Jones
Cynthea Bartlett
Robert Jones a/k/a Mark Black

Rhonda Brostrom
Jerrie Ann Stokes
Karen L. Garson

TREATING PHYSICIANS/HEALTHCARE PROVIDERS

Dr. Mark Pippinger
4301 West Markham Street, Suite 556
Little Rock, Arkansas 72205

Dr. Donald Bodenner
UAMS
4018 West Capitol Avenue
Little Rock, Arkansas 72205

Dr. Konstantinos Arnaoutakis
UAMS
4018 West Capitol Avenue
Little Rock, Arkansas 72205

Dr. Carrol Chappell
Arkansas Ophthalmology Associates
5 St. Vincent Circle, Suite 200
Little Rock, Arkansas 72205

Dr. James Cooper
Family Practice Associates
1304 Military Road
Benton, Arkansas 72015

Dr. Sam Taggart
Family Practice Associates
1304 Military Road
Benton, Arkansas 72015

MEMS
1121 West 7th Street
Little Rock, Arkansas 72201

Any Treating Physician/Healthcare Provider who may appear in Mr. Jones' medical records who has not yet been identified. Claimant agrees to supplement this Answer should additional information become relevant.

ADMINISTRATOR

Lindsey Clyburn

Gina Chandler
David Barker

ARKANSAS OFFICE OF LONG TERM CARE SURVEYORS/
REVIEWERS/RECORDS CUSTODIANS:

Rebekah T. Lee
Office of Communications & Community Engagement
Deputy Chief/FOIA Officer
700 Main Street
Little Rock, AR 72203

All Surveyors or Complaint Investigators who investigated the facility during the relevant time frame.

OTHER WITNESSES:

1. All lay witnesses designated by Respondents.
2. All expert witnesses designated by Respondents.
3. All witnesses referred to in any deposition testimony.
4. All medical records custodians.
5. All Arkansas Office of Long Term Care records custodians.
6. All individuals deposed.
7. All individuals identified in Claimant's and/or Respondents' discovery responses.
8. In addition, any other medical providers who treated Mr. Jones may be witnesses at trial. This includes nurses, social workers, aids, orderlies, etc.

Claimant reserves the right to supplement this Answer as discovery progresses.

SUPPLEMENTAL ANSWER:

In addition to the above stated witnesses, Claimant intends to call the following experts at the hearing or trial in this matter.

EXPERTS:

Luanne Trahant, MSN, APRN
Dr. Keith E. Miller

FORMER EMPLOYEES:

Beverly Hameback
Katrina Henderson
Kim Ford
Loretta Crosariol

Natasha Crocker
Rosa Page
Tiffany Atkins
Tymberly Garrett

Claimant reserves the right to supplement this Answer as discovery continues to progress. Claimant will supplement this Answer in a timely manner prior to the trial or hearing and in accordance with the Arkansas Rules of Civil Procedure and any Scheduling Order in this case.

INTERROGATORY NO. 4: Please state the name and address of each and every expert witness, if any, upon whom Claimant relies in making the allegations of this Complaint, or who is anticipated as a trial witness in this case. Separately identify for each such person whether Claimant intends to call them as a witness at trial.

ANSWER:

Objection. This Interrogatory seeks information that is protected as attorney work product. Without waiving said objection, expert witnesses for trial are undetermined at this time. Claimant will supplement this response in a timely manner prior to trial and in accordance with the Arkansas Rules of Civil Procedure and any scheduling order in this case.

Claimant further states that any nurse, CNA and/or physician who provided treatment and/or services to Mr. Jones may proffer opinions that may be considered expert testimony. Claimant reserves the right to supplement this Answer with additional expert witnesses and/or opinions.

SUPPLEMENTAL ANSWER:

In addition to the above stated witnesses, Claimant intends to call the following experts at the hearing or trial in this matter.

EXPERTS:

Luanne Trahant, MSN, APRN
Dr. Keith E. Miller

Claimant reserves the right to supplement this Answer as discovery continues to progress. Claimant will supplement this Answer in a timely manner prior to the trial or hearing and in accordance with the Arkansas Rules of Civil Procedure and any Scheduling Order in this case.

INTERROGATORY NO. 5: With respect to each and every expert witness who you may call at trial, and with respect to each and every expert used by you or your attorneys for consultation whose work-product forms a basis either in whole or part of the opinions of an expert who may be called at trial, please state:

(a) the witness' identity, giving the name, address, and profession or occupation;

(b) the date the witness was first contacted;

(c) the subject matter or area on which the witness is expected to testify;

(d) a list of all items the witness reviewed to formulate his or her opinion;

(e) the substance of the specific facts and opinions to which the witness is expected to testify; and

(f) a summary of the specific grounds for each opinion.

ANSWER:

See Claimant's Objection and Answer to Interrogatory No. 4.

SUPPLEMENTAL ANSWER:

In addition to the previous response, Claimant may call the following individuals as expert witnesses in this matter:

(a) Luanne Trahant, MSN, APRN
[redacted]

Dr. Keith E. Miller
[redacted]

(b) Luanne Trahant was first contacted by Claimant's counsel on June 13, 2022.
Dr. Miller was first contacted by Claimant's counsel on June 13, 2022.

(c) Nurse Trahant will testify as to the appropriate standard of care for the Respondent and the breaches of the standard of care related to Mr. Jones

Dr. Miller will testify about the standard of care, breaches of the standard of care, and the cause and effect of Mr. Jones' injuries, medical bills, death and life expectancy.

(d) Nurse Trahant reviewed the following documents:

- **Complaint filed on February 12, 2020 (Pl Bates OOJ-AVA- 002862-OOJ-AVA-002865)**
- **Medical Records for Oscar Odell Jones from the following facilities:**
- **Arkansas Veterans Home (Pl. Bates OOJ-AVA-000004-OOJ-AVA-000366)**
- **MEMS - 12.18.2018 (Pl. Bates OOJ-AVA-000367-OOJ-AVA-000373)**
- **MEMS – 12.18.2018 (2) (Pl. Bates OOJ-AVA-000374-OOJ-AVA-000380)**
- **MEMS – 12.27.2018 (Pl. Bates OOJ-AVA-000381-OOJ-AVA-000387)**
- **VA Records (PL. Bates OOJ-AVA-000388-OOJ-AVA-001092)**
- **Defendant's Records (Def. Bates ADVA Docs 0011 – 0665; ADVA Docs 0677-1321)**
- **Death Certificate (Pl. Bates OOJ-AVA-002852)**
- **Incident and Accident Reports for Resident (Def. Bates ADVA Docs. p. 1430 - 1449)**
- **Facility Brochure and Accident Reports for Resident (Def. Bates ADVA Docs. p. 1430 - 1449)**
- **Federal Regulations (Pl. Bates OOJ-AVA-002862-OOJ-AVA-002964)**
- **Office of Long-Term Care Rules and Regulations for Nursing Homes (Pl. Bates OOJ-AVA-002965-OOJ-AVA-003130)**

Nurse Trahant may review additional records and depositions which may bolster or change her opinion.

Dr. Miller reviewed the following documents:

- **Complaint filed on February 12, 2020 (Pl Bates OOJ-AVA- 002862-OOJ-AVA-002865)**
- **Billing Records for Oscar Odell Jones from the following facilities:**
- **MEMS – 12.18.2018 (Pl. Bates OOJ-AVA-000001)**
- **MEMS – 12.18.2018 (2) (Pl. Bates OOJ-AVA-000002)**
- **MEMS – 12.27.2018 (Pl. Bates OOJ-AVA-000003)**
- **Medical Records for Oscar Odell Jones from the following facilities:**
- **Arkansas Veterans Home (Pl. Bates OOJ-AVA-000004-OOJ-AVA-000366)**
- **MEMS - 12.18.2018 (Pl. Bates OOJ-AVA-000367-OOJ-AVA-000373)**
- **MEMS – 12.18.2018 (2) (Pl. Bates OOJ-AVA-000374-OOJ-AVA-000380)**
- **MEMS – 12.27.2018 (Pl. Bates OOJ-AVA-000381-OOJ-AVA-000387)**
- **VA Records (PL. Bates OOJ-AVA-000388-OOJ-AVA-001092)**

- **Defendant's Records (Def. Bates ADVA Docs 0011 – 0665; ADVA Docs 0677-1321)**
- **Death Certificate (Pl. Bates OOJ-AVA-002852)**
- **Facility Brochure and Accident Reports for Resident (Def. Bates ADVA Docs. p. 1430 - 1449)**
- **Def. Bates ADVA Docs 1812 - 1814 06222020 - ROG 22)**
- **Federal Regulations (Pl. Bates OOJ-AVA-002862-OOJ-AVA-002964)**
- **Office of Long-Term Care Rules and Regulations for Nursing Homes (Pl. Bates OOJ-AVA-002965-OOJ-AVA-003130).**

Dr. Miller may review additional records and depositions which may bolster or change his opinion

(e) and (f)

A summary of Nurse Trahant's opinions are as follows:

- **Respondents failed to properly monitor, check, care plan, and failed to put into place proper interventions to prevent Mr. Jones' significant weight loss**

- **During his residency, Mr. Jones suffered numerous falls.**

- **Respondent failed to assess, care plan, put into place interventions, and failed to update Mr. Jones' plan of care regarding falls including failure to put into place appropriate interventions in a timely manner to prevent falls and prevent injuries from falls.**

- **Respondent failed to assess, care plan, put into place interventions, and failed to update Mr. Jones' plan of care regarding infections and urinary tract infection including failure to put into place appropriate interventions in a timely manner to prevent and treat infections.**

- **Respondent failed to assess, care plan, put into place interventions, and failed to update Mr. Jones' plan of care regarding skin breakdowns including failure to put into place appropriate interventions in a timely manner to prevent pressure sores.**

- **Respondent failed to provide sufficient staffing, including sufficient staff to watch, care for, and protect Mr. Jones.**

- **The actions of Respondent violated the applicable federal and state regulations along with their own policies and procedures.**

- **That past surveys from the Office of Long Term Care cited Respondent for some of the same issues that were issues in the care and treatment of Mr. Jones.**

- **The actions of Respondent violated Mr. Jones' resident rights and amounted to neglect.**

A summary of the opinions and specific grounds for Dr. Miller's opinions can be found in his report, attached hereto as Exhibit A.

REQUEST FOR PRODUCTION NO. 1: If you intend to use an expert witness at the trial of this case, please produce a copy of that witness' C.V., and any report prepared by the witness.

RESPONSE:

See Claimant's Objection and Answer to Interrogatory No. 4.

SUPPLEMENTAL ANSWER:

Nurse Luanne Trahant's CV is attached hereto as Exhibit C. Dr. Keith E. Miller's C.V. is attached hereto as Exhibit C.

Respectfully submitted,

MARY ANN JONES, as Special Administratrix of the Estate of Oscar Odell "Bill" Jones

Jeff Priebe
Arkansas Bar No. 2001124
Jeff Priebe Law Office
P.O. Box 7481
Little Rock, Arkansas 72217
Phone: 501-580-7890
E-Mail: Jeff@JeffPriebeLawFirm.com
jpriebe@rainfirm.com

Attorneys for Claimant

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2023, a true and accurate copy of the foregoing document has been served by U.S. Mail, postage prepaid, upon the following:

Jordan Broyles
Senior Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Email: jordan.broyles@arkansasag.gov

Attorneys for Respondents

Jeff Priebe

From: Justin Brascher
To: ASCC Pleadings
Cc: Jeff Priebe; Jordan Broyles; Brittany Garcia
Subject: Oscar Jones V. ADVA CC-200817
Date: Monday, March 6, 2023 1:40:19 PM
Attachments: image001.png
image003.png
EOA.pdf

> You don't often get email from justin.brascher@arkansasag.gov. Learn why this is important

Good Afternoon,

Attached please find a Notice of Appearance on my behalf as additional counsel to Jordan Broyles for Respondent Arkansas Department of Veteran affairs to be entered in the above-referenced matter.

This case is currently set for one-day hearing on Friday, April 21, 2023 and each party's witness lists, exhibit lists, and exhibits are due by Friday, March 31, 2023. This morning, Ms. Broyles and I spoke with Mr. Priebe to discuss the remaining discovery needed to prepare this case for hearing to include depositions of the claimants, employees of the ADVA, and the expert witnesses and pre-trial motions. It was the consensus of all counsel that discovery cannot be completed by March 31, and a request for a continuance was appropriate.

We believe the case can be worked up and ready for hearing in October. Please consider this a request for continuance of the one-day hearing to the fall of 2023. Too, the hearing was originally set for Zoom, but it is felt based on the number of witnesses needed and potential exhibits that this case would be more appropriate for in-person hearing.

On behalf of ADVA, we appreciate your time and attention to this matter. Please let us know if you have any other questions.

Regards,

Justin Brascher
Assistant Attorney General
Office of Attorney General Tim Griffin
323 Center Street, Suite 200 **|** Little Rock, Arkansas 72201
Phone: (501) 503-4335
Email: justin.brascher@arkansasag.gov

IN THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administration of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CASE NO. CC-200817**

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS **RESPONDENT**

NOTICE OF APPEARANCE

Assistant Attorney General Justin Brascher hereby enters his appearance as counsel for Respondent, Arkansas Department of Veterans Affairs, and requests that all future service and correspondence be sent accordingly. I hereby certify that I am admitted to practice in this Court.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: Justin Brascher
Arkansas Bar No. 2023029
Washington Bar No. 58371
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 503-4335
Fax: (501) 682-2591
Email: justin.brascher@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Justin Brascher, hereby certify that on March 6, 2023, a copy of the foregoing was submitted to the Arkansas Claims Commission via electronic mail and served on all counsel of record by electronic mail:

Jeff R. Priebe
Rainwater, Holt, & Sexton, P.A.
P.O. Box 17250
Little Rock, AR 72222
jpriebe@rainfirm.com

/s/ Justin Brascher
Justin Brascher

From: Kathryn Irby
To: Jeff Priebe
Cc: Justin Brascher; Jordan Broyles; Jennifer Winn
Subject: Re: Oscar Jones V. ADVA CC-200817
Date: Monday, March 6, 2023 3:51:33 PM
Attachments: image003.png

Thanks for this information. I will continue this hearing and will send a new hearing letter in the next week. I acknowledge the parties' request for an in-person hearing, as well.

Thanks,
Kathryn Irby

Get Outlook for iOS

From: Jeff Priebe <jpriebe@rainfirm.com>
Sent: Monday, March 6, 2023 2:36:32 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Justin Brascher <justin.brascher@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: FW: Oscar Jones V. ADVA CC-200817

Mrs. Irby

FYI – wanted to make sure that you saw this email. Anything else you need from us at this time?

I am copying all counsel on this communication.

Thank you,

Jeff

From: Justin Brascher [mailto:justin.brascher@arkansasag.gov]
Sent: Monday, March 06, 2023 1:40 PM
To: asccpleadings@arkansas.gov
Cc: Jeff Priebe <jpriebe@rainfirm.com>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Brittany Garcia <brittany.garcia@arkansasag.gov>
Subject: Oscar Jones V. ADVA CC-200817

Good Afternoon,

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On behalf of ADVA, we appreciate your time and attention to this matter. Please let us know if you have any other questions.

Regards,

Justin Brascher
Assistant Attorney General
Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Phone: (501) 503-4335
Email: justin.brascher@arkansasag.gov

From: Kathryn Irby
To: Jeff Priebe
Cc: Justin Brascher; Jordan Broyles; Jennifer Winn
Bcc: Kathryn Irby
Subject: HEARING RESCHEDULED: Jones v. ADVA, Claim No. 200817
Date: Wednesday, March 8, 2023 11:04:00 AM
Attachments: Jones v. ADVA -- 200817 -- hearing ltr (in person, resched).pdf

---

Counselors, please see attached hearing letter with the new hearing date and prehearing material deadline and motion deadline.

Given the inherent limitations on the amount of live testimony that can be presented, I would encourage the parties to discuss well in advance of the hearing how many witnesses each party expects to call, which witnesses will be presented via deposition, how the day will be divided, etc. to make sure that the hearing can be completed in one day and that there are no disputes over the hearing logistics. If there are disputes, those can be handled in a prehearing conference or motions hearing ahead of the hearing date (if I am given sufficient notice).

Similarly, the parties will need to discuss exhibits in advance – there is no need for both parties to submit the same depositions transcripts. Each party will need to submit four sets of exhibits (one for each commissioner on the panel and one for the claim file). These typically work best when put into binders.

Please note I am unable to move the prehearing material deadline. My commissioners are part-time and all have other employment. That prehearing material deadline allows me to get the claim documents, exhibit binders, and deposition transcripts to the commissioners in sufficient time to allow them to review prior to the hearing date. Typically I see this where the parties are waiting on transcripts to arrive. However, my only option is to continue the claim, which can be frustrating to parties, so I like to make sure everyone knows this on the front end.

Let me know if there are any questions.

Thanks,
Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

March 8, 2023

Jeff Priebe (*via email*)
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Jordan Broyles (*via email*)
Justin Brascher
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs***
Claim No. 200817

Dear Counselors,

Per the parties' request, the Claims Commission has rescheduled the one-day hearing on the above-referenced claim to **Thursday, November 9, 2023**, beginning at 9:00 a.m. This hearing has been scheduled for an in-person hearing at the Claims Commission's offices.

Each party's witness lists, exhibit lists, and exhibits are due by October 19, 2023. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time. If the parties will be submitting any testimony by deposition, those deposition transcripts are due at the same time. If the parties will require a subpoena, subpoena requests are also due at the same time. Absent a showing of good cause, the Claims Commission will not issue subpoenas for requests received after October 19, 2023.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by October 19, 2023.

If a party would prefer to electronically file any prehearing materials or motions, those filings can be emailed to asccpleadings@arkansas.gov. If you do not receive confirmation of receipt within 24 hours of sending, please call our office to confirm that your filing was received.

Please note that a copy of any filing must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

From: Kathryn Irby
To: Jeff Priebe
Cc: Justin Brascher; Jordan Broyles; jwinn@rainfirm.com
Subject: RE: Jones v. ADVA, Case No. 20-00817
Date: Monday, July 17, 2023 10:54:00 AM
Attachments: Byrd subpoena.pdf
Page subpoena.pdf

Jeff, please see attached. Please doublecheck and let me know if you see any issues.

Thanks,
Kathryn Irby

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Friday, July 14, 2023 4:31 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Justin Brascher <justin.brascher@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>; jwinn@rainfirm.com
Subject: Jones v. ADVA, Case No. 20-00817

Mrs. Irby,

Can you provide deposition subpoenas for the following two witness for deposition to take place at the Rainwater, Holt & Sexton office located at 2701 TP White Drive, Jacksonville, AR 72076 for Thursday July 27:

Beverly Hameback Byrd at 1:30 p.m.
[redacted]

Rosa Page at 3:00 p.m.
[redacted]

Thank you and we will ensure that the subpoenas are served with witness fee checks.

Jeff Priebe

Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Beverly Hameback Byrd**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
1:30 p.m.

_____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

Date

PROOF OF SERVICE

_____
SERVED ON (Print Name)

_____ _____
DATE PLACE

_____
MANNER OF SERVICE

_____ _____
SERVED BY (Print Name) TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ _____
DATE SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Ark. R. Civ. Proc. 45(e), Claims Commission Rule 3.3.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Ark. R. Civ. Proc. 45(b). The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the Claims Commission. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Ark. R. Civ. Proc. 45(e). When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the Claims Commission may enforce the subpoena pursuant to Ark. Code Ann. § 19-10-207(d).

Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Rosa Page**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
3:00 p.m.

_____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

Date

PROOF OF SERVICE

_____
SERVED ON (Print Name)

_____ _____
DATE PLACE

_____
MANNER OF SERVICE

_____ _____
SERVED BY (Print Name) TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ _____
DATE SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Ark. R. Civ. Proc. 45(e), Claims Commission Rule 3.3.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Ark. R. Civ. Proc. 45(b). The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the Claims Commission. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Ark. R. Civ. Proc. 45(e). When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the Claims Commission may enforce the subpoena pursuant to Ark. Code Ann. § 19-10-207(d).

From: Jennifer Winn
To: ASCC Pleadings
Cc: Jeff Priebe; Jeff Priebe
Subject: Jones v. Arkansas Department of Veterans Affairs - Claim No. 200817
Date: Thursday, July 20, 2023 10:16:38 AM
Attachments: image001.jpg
image003.png
image004.jpg
image006.jpg
image008.jpg
image010.jpg
image012.png
Claims Commission Letter filing Proof of Service for Byrd and Page Subpoenas 07202023.pdf
JONES-Beverly Byrd Subpoena Return.pdf
JONES-Rosa Page Subpoena Return.pdf

> You don't often get email from jwinn@rainfirm.com. Learn why this is important

Please find attached correspondence and documents for filing.

Thank you,
Jennifer

Jennifer Winn
Paralegal
P (501) 868-2943 | **F** (501) 868-2505
E jwinn@rainfirm.com | CallRainwater.com
PO Box 17250 | Little Rock, AR | 72222

A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.

This email may contain confidential information and is intended only for the individual(s) it is addressed. If you are not an intended recipient, you are hereby notified that any unauthorized use of the email is strictly prohibited. If you have received this email in error, please delete it and notify the sender by reply email.

JEFF PRIEBE LAW FIRM

JEFF R. PRIEBE, ATTORNEY AT LAW
P. O. Box 7481
LITTLE ROCK, ARKANSAS 72217
TELEPHONE 501.580.7890

JEFF@JEFFPRIEBELAWFIRM.COM

July 20, 2023

Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***
Arkansas Claims Commission, Claim No. 200817

Dear Claims Commissioner:

Enclosed please find a Proof of Service for Subpoenas served for for Beverly Hameback Byrd and Rosa Page. I ask that these documents be filed with the Commission.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

JEFF PRIEBE LAW FIRM

Jeff R. Priebe

JRP/jw

Enclosures

Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Beverly Hameback Byrd**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
1:30 p.m.

_____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

Date

PROOF OF SERVICE

Beverly Byrd
SERVED ON (Print Name)

[redacted]

7/18/2023
DATE

PLACE

Hand Delivered
MANNER OF SERVICE

C. Jon Hopkins
SERVED BY (Print Name)

Investigator
TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/18/2023
DATE

C. Jon Hopkins
SIGNATURE OF SERVER

PO Box 1751
Searcy, AR 72145
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

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Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Rosa Page**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
3:00 p.m.

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_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

Date

PROOF OF SERVICE

Rosa Page
SERVED ON (Print Name)

[redacted]
PLACE

7-18-2023
DATE

Hand Delivered
MANNER OF SERVICE

C. Jon Hopkins
SERVED BY (Print Name)

Investigator
TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/18/2023
DATE

C. Jon Hopkins
SIGNATURE OF SERVER

PO BOX 1751
Searcy, AR 72145
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

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From: Justin Brascher
To: ASCC Pleadings
Cc: Jeff Priebe; Brianna McDonough; Jordan Broyles
Subject: Jones V. ADVA CC-200817
Date: Wednesday, October 18, 2023 10:19:46 AM
Attachments: image003.png
Letter to CC in Jones v. ADVA.pdf

> You don't often get email from justin.brascher@arkansasag.gov. Learn why this is important

All,

Please see the attached letter regarding the above case. The parties are requesting more time to file pre-trial documents, but the parties are not requesting a change of the hearing date. Let me know if you have any questions.

Justin Brascher
Assistant Attorney General

Direct Dial: (501) 682-1019
Email: justin.brascher@arkansasag.gov

October 18, 2023

Ms. Kathryn Irby
Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201

Re: *Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs*
Case No.: CC-200817

Dear Ms. Irby:

The deadline in this case for pretrial briefing, witness lists, exhibit lists and exhibits is October 19, 2023. Deposition transcripts are also due at that time. Due to other court deadlines and illness, two experts could not be deposed before October 19, 2023. Plaintiff's expert, Luanne Trahant, RN, will be deposed on October 19, 2023, and Defendant's expert, Dr. Scott Simmons, will be deposed on October 26, 2023.

The parties have conferred and respectfully request an extension to submit pretrial briefing, witness lists, exhibit lists, exhibits, and deposition transcripts until Monday, October 30, 2023. This will allow the parties to include relevant information from these important experts in their pretrial briefing. With Dr. Scott's deposition being on October 26, a draft of the transcript may need to be submitted and then supplemented with the final version.

Please advise if this is acceptable to the Commission.

Respectfully submitted,

Justin Brascher
Assistant Attorney General

JB

From: Kathryn Irby
To: Jeff Priebe
Cc: Jordan Broyles; Brianna McDonough; Justin Brascher
Subject: RE: Jones V. ADVA CC-200817
Date: Thursday, October 19, 2023 10:29:00 AM

I wouldn't be able to send the documents to the commissioners before noon tomorrow anyways, so I can make that work. As for the defense expert, if he or she is testifying live, then the deposition transcript doesn't have to be submitted. Deposition transcripts only have to be submitted where a party is testifying by deposition.

Kathryn

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Thursday, October 19, 2023 10:23 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: Re: Jones V. ADVA CC-200817

Kathyrn

The Court Reporter said she can get us the transcript by noon tomorrow.

Jeff

From: Jeff Priebe
Sent: Thursday, October 19, 2023 10:06 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: Re: Jones V. ADVA CC-200817

Deposition

Sent from my iPhone

> On Oct 19, 2023, at 10:05 AM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:
>
> Jeff, are you intending to have your expert testify live or by deposition?
>
> Kathryn
>
> ---
>
> **From:** Jordan Broyles <jordan.broyles@arkansasag.gov>

Sent: Thursday, October 19, 2023 10:03 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

The defendant will have its expert testify live at trial. Otherwise, defendant is not expecting to have any other witnesses except for reserving the right to cross-examine any witnesses called by the plaintiff.

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
Direct: (501) 682-9482 | Main: (501) 682-2007
jordan.broyles@arkansasag.gov

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

<image001.jpg>

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, October 19, 2023 10:01 AM
To: Jordan Broyles <jordan.broyles@arkansasag.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Are the parties intending to call the experts to testify live?

Kathryn

From: Jordan Broyles <jordan.broyles@arkansasag.gov>
Sent: Thursday, October 19, 2023 9:59 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Kathryn,

We apologize and understand the issue and trouble we've created. We have a

deposition of one of Plaintiff's expert's that starts in 30 minutes and a defense expert on October 26. We will not be able to provide the transcripts for those today.

We can, however, provide pre-hearing briefs, the depositions transcripts for the other witnesses, witness/exhibit lists, and exhibits today.

Will this allow for keeping the Nov. 9 date?

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
Direct: (501) 682-9482 | Main: (501) 682-2007
jordan.broyles@arkansasag.gov

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

<image001.jpg>

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, October 19, 2023 9:34 AM
To: jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Jeff, Jordan, and Justin, unfortunately, as I said in my March 8 email to the parties transmitting the hearing letter (attached), I am unable to move the prehearing material deadline – the Commission has two very full days of hearings in November, and my part-time commissioners (all with other full-time employment) need that time to review claim files to be prepared for hearings. In addition, when the prehearing materials are submitted, the materials have to be processed by my office before the materials (and claim file) can be transmitted to the commissioners. Because my commissioners are scattered around the state, such that claim documents have to be shipped, extra time is necessary.

If the parties cannot submit the prehearing materials today, then I will need to continue this matter. My next available full day spot on the docket is May 9, 2024. I will move this matter to the May 9 docket unless I hear otherwise from you all.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
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From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Wednesday, October 18, 2023 10:20 AM
To: ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Jeff Priebe <jpriebe@rainfirm.com>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>
Subject: Jones V. ADVA CC-200817

> You don't often get email from justin.brascher@arkansasag.gov. Learn why this is important

All,

Please see the attached letter regarding the above case. The parties are requesting more time to file pre-trial documents, but the parties are not requesting a change of the hearing date. Let me know if you have any questions.

<image002.png>

JEFF PRIEBE LAW FIRM

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Arkansas
State Claims Commission
OCT 19 2023
RECEIVED

October 19, 2023

Ms. Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***
Claim No. 200817

Dear Ms. Irby:

Enclosed please find four (4) copies of Claimant's Pre-Hearing Binder. These binders include:

1. Claimant's Pre-Hearing Brief
2. Claimant's Witness List and Exhibits
3. Claimant's Deposition Summaries
4. Claimant's Proposed Findings of Fact and Conclusions of Law
5. Depositions and Deposition Exhibits (enclosed in each binder on a thumb drive)

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

JEFF PRIEBE LAW FIRM

Jeff R. Priebe

JRP/jw
Enclosures

Justin Brascher
Jordan Broyles
Arkansas Attorney General's Office

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones — **CLAIMANT**

v. — **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK — **RESPONDENT**

Arkansas State Claims Commission
OCT 19 2023
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CLAIMANT'S PRE-HEARING BRIEF

At 9:50 a.m. the morning of December 27, 2018, Oscar "Bill" Jones was [redacted]

The question in this case is why this highly decorated veteran who walked into their nursing home in April was allowed to decline to the point of [redacted] The answer to that question is that Bill Jones suffered neglect while he was a

resident of the Arkansas State Veteran's Nursing Home and that the Arkansas State Veteran's Nursing Home is responsible for his untimely death.

WHAT HAPPENED TO BILL JONES?

Bill Jones was born on [redacted] He joined the United States Army at age 17 and had a very long and distinguished military career that included two tours of duty in Vietnam, over 1,000 jumps out of aircraft, and being part of the Special Forces – Green Beret. He was also highly decorated for his bravery and dedication to his country. This is a picture of his military accomplishments and awards:

See **Exhibit 1** (Bill Jones' Military Honors photograph).

Bill and his first wife, Helen Jones, had three children: Cynthia Bartlett, a daughter; [redacted] a son; and Rhonda Brostrom, a daughter. Bill and Helen eventually got a divorce. All three of his children had a continual and good relationship with their father.

Bill met his second wife Mary Ann at an American Legion dance in Little Rock. It was love at first dance and they got married in 1979. Both Bill and Mary Ann had children from previous marriages and both families got along.

After retirement Mary Ann and Bill moved to Bryant, Arkansas, to be close to and help her family. Mary Ann's daughter, Jerri Ann, lived close to them and had a great relationship with her mom and stepfather. Bill's three children lived out of state, though they kept in touch via telephone and frequent visits.

Bill was Mr. Fixit. He could fix anything and build anything. On of his hobbies was finding and fixing old Jukeboxes. In fact, in October of 2008, the Arkansas Democrat Gazette Newspaper did a profile and article on Bill and highlighted his ability to fix Jukeboxes.

Arkansas Democrat-Gazette/KAREN E. SEGRAVE
Seeburg's Select-O-Matic was a familiar presence in restaurants and bars. Bill Jones has several machines in various stages of restoration.

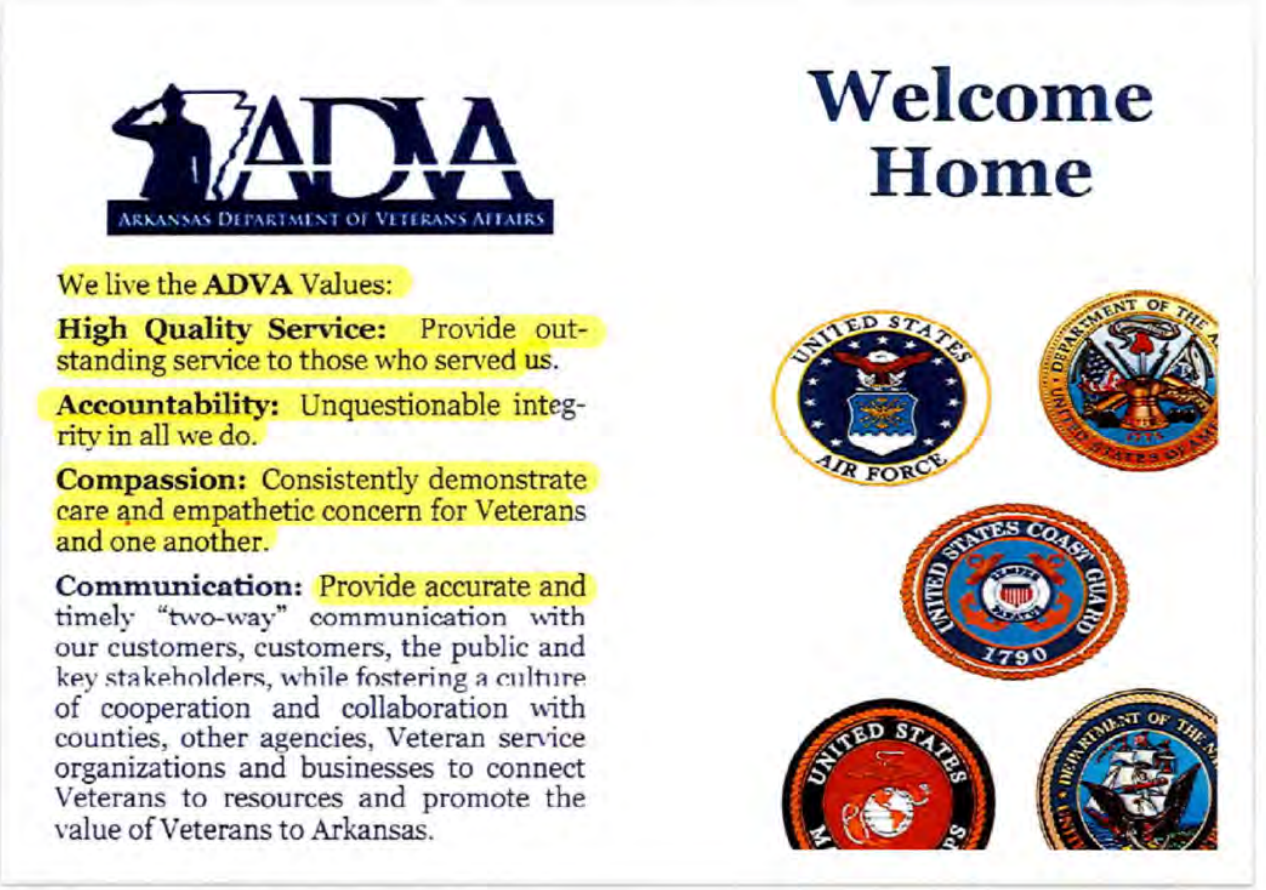
See **Exhibit 23** (Ark. Democrat Gazette Article).

Around 2012, Mary Ann started noticing that Bill was forgetting things and shortly thereafter Bill was [redacted]. Mary Ann, [redacted]. Due to his military

history, they were eligible to receive help and assistance from the VA Home Health program.

[redacted] Mary Ann was going to need more help with Bill, and she was faced with a very difficult decision. She had conversation with all of the kids, and she started looking into area nursing homes. Though it was not open yet, she took a tour of Arkansas State Veteran's Nursing Home in North Little Rock. It was different than a traditional nursing home in that it had eight separate houses instead of just one large building. Each house had twelve rooms along with a living area, kitchen, and dining area. Staff were assigned to each house and staff did all aspects of care and provided housekeeping and meals. What is traditionally known as Certified Nursing Assistants, (CNAs), Arkansas State Veteran's Nursing Home called them Universal Workers. These Universal Workers would provide all aspects of care that were needed including helping residents get up and out of bed, helping them go to the bathroom, keeping residents clean and dry if they soiled or wet themselves, helping them with bathing, etc. Nurses also worked at the Arkansas State Veteran's Nursing Home, and they would pass medications, do treatments, and supervise other staff members, as necessary.

The Arkansas State Veteran's Nursing Home held itself out to veterans and families as a true home for veterans. In fact, in the brochures to the community and prospective families, the Arkansas State Veteran's Nursing Home stated:



ADVA
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

We live the **ADVA** Values:

High Quality Service: Provide outstanding service to those who served us.

Accountability: Unquestionable integrity in all we do.

Compassion: Consistently demonstrate care and empathetic concern for Veterans and one another.

Communication: Provide accurate and timely "two-way" communication with our customers, customers, the public and key stakeholders, while fostering a culture of cooperation and collaboration with counties, other agencies, Veteran service organizations and businesses to connect Veterans to resources and promote the value of Veterans to Arkansas.

Welcome Home

See **Exhibit 3** (Brochure of Arkansas State Veteran's Nursing Home).

After discussions with and agreement from all the children, Mary Ann decided to admit Bill into the Arkansas State Veteran's Nursing Home. She thought that because it was associated with veterans that Bill would get the care and help that he needed. The family moved Bill into the Arkansas State Veteran's Nursing Home on April 12, 2018. On admission, he was assessed by staff at Arkansas State Veteran's Nursing Home and was [redacted] *See* **Exhibit 4** (bates 647 and 649-653). [redacted]

[redacted]. *See* **Exhibit 4** (bates 647 and 649-653).

[redacted]. This Care Plan is mandated by the applicable state and federal regulations and Arkansas State Veteran's Nursing Home's own policy. In his initial Care Plan, Arkansas State Veteran's Nursing Home recognized [redacted] *see* **Exhibit 5** (bates 214, 231, and 250)) and [redacted] *See* **Exhibit 6** (bates 227, 246, and 265).

See **Exhibit 2** (Mary Ann and Bill Jones at the Arkansas State Veteran's Nursing Home).

The first four months of his stay at the Arkansas State Veteran's Nursing Home were somewhat uneventful [redacted]a. In August of 2018, Bill moved to a different house at the Arkansas State Veteran's Nursing Home.

[redacted]

[redacted]

See **Exhibits 10, 11, and 12 (bates 687 and 875)**. *The wound photographs are provided herewith as* ***Exhibit 13*** *however we would caution when viewing these photographs as they may be quite disturbing to the viewer.*

were all the result of staff at the Arkansas State Veteran's Nursing Home not provided needed care.

See **Exhibit 14** (Bill Jones' Death Certificate). As described by the Claimant's physician expert, Dr. Keith Miller, Bill's death was caused by th

THE CLAIMANTS

- **The Estate of Oscar "Bill" Jones**

Mary Ann Jones, Bill's wife, is the court appointed administrator of Bill Jones' estate. *See* **Exhibit 15** (probate order). At the time of his death, Mr. Jones was married to Mary Ann and he had three children: Cynthia Bartlett, a daughter;

[redacted] a son; and Rhonda Brostrom, a daughter. Mary Ann is the representative of the Estate in pursuit of this claim and the Estate is entitled to pursue damages including Bill's loss of life.

- **Wrongful death beneficiaries of Oscar "Bill" Jones**

Under Arkansas law, Bill's Jones' wrongful death beneficiaries are: (1) his wife, Mary Ann, (2) Bill's oldest daughter, Cynthia Bartlett, (3) Bill's son, [redacted]nd (4) Bill's youngest daughter, Rhonda Brostrom. Each wrongful death beneficiary is entitled to be compensated for their mental anguish and grief associated with the wrongful and untimely death of their loved one.

DEPOSITION TESTIMONY

The Claimant is submitting to the Commission the deposition testimony of Mr. Jones' family members including his wife Mary Ann Jones, his stepdaughter Jerrie Ann Stokes, his daughter Cynthia Bartlett, his daughter Rhonda Brostrom, and his son [redacted]. The Claimant is also submitting the deposition testimony of the former administrator of the Arkansas State Veteran's nursing home, Lindsey Clyburn, and two former Licensed Practical Nurses who worked at the Arkansas State Veteran's nursing home and cared for Bill Jones: Beverly Byrd and Rosa Page. The Claimant also submits the deposition testimony of Claimant's expert physician, Dr. Keith Miller. The claimant will submit the deposition testimony of Claimant's nurse expert, Luanne Trahant however Nurse Trahant's deposition was just recently taken and will be submitted along with a deposition summary upon its receipt.

CLAIMANT'S CLAIMS AND EXPERTS

The Claimant is pursuing claims of negligence, medical negligence, violations of Arkansas Resident Rights, and a claim for wrongful death. Each claim will be addressed separately, however the ultimate question in this case is whether the Arkansas State Veteran's Nursing Home's was negligent in the treatment of Bill Jones. The answer is "Yes." Yes, because upon admission to the Arkansas State Veteran's Nursing Home, the nursing home knew that Bill was [redacted]

What happens when a nursing home does not provide the needed care or does not have the staff to provide the needed care? Well, [redacted]. [redacted] The Arkansas State Veteran's Nursing Home is responsible for his condition on December 27, 2018, and his

ultimate death on January 3, 2019.

Claimant has produced two expert witnesses who have reviewed the medical records and depositions in this case: Physician Expert Dr. Keith Miller and Nurse Expert Luanne Trahant. Nurse Expert Luanne Trahant has extensive experience and spent years treating nursing home patients when she has worked in nursing homes, has been the Director of Nursing at various nursing homes, and has taught nursing to nursing students. *See* **Exhibit 16** (Nurse Trahant's CV). She has 31 years of nursing experience and knows the applicable regulations, rules, and standards of care that are required for caring for nursing home residents such as Bill Jones. She knows how a reasonable nursing home should operate and should care for its residents.

In this case Nurse Trahant testified about the standard that applies to the Arkansas State Veteran's Nursing Home and the care and treatment of Bill Jones. Based on her education, training, and experience, she has described the ways that the Arkansas State Veteran's Nursing Home failed to meet the applicable standard of care, including basic nursing practices, in the care and treatment of Bill Jones. Specifically, Nurse Trahant provided the following opinions in this case based upon her years of being a nurse and in working in nursing homes:

- The regulations and policies required the Arkansas State Veteran's Nursing Home to update Bill's Care Plan as his needs changed. [redacted]
- Starting in September of 2018, the Arkansas State Veteran's Nursing Home's documentation related to Bill's meals and food intake is poorly maintained and often missed any documentation on the amount of food he was eating.
- Even though he was supposed to offered fluids, there is no documentation as to if he was offered fluids, how much he drank, or

if he refused. This is extremely important after he became dependent on staff. Fluids are also a way to help the body fight and prevent infections. [redacted].

- [redacted]
- [redacted].
- [redacted]
- The failure of the That the Arkansas State Veteran's Nursing Home to properly update Bill Jones' Care Plan [redacted] violated the nursing home's policy and the state and federal regulations.
- The failure of the That the Arkansas State Veteran's Nursing Home to properly update Bill Jones' Care Plan for [redacted] violated basic nursing practices.
- Based upon the missing documentation and the testimony of the Nurses and her experience in working at nursing homes, the Arkansas State Veteran's Nursing Home had staffing issues that effected the care provided to the residents including Bill Jones.
- That the Arkansas State Veteran's Nursing Home failed to have sufficient staff to meet the needs of residents which violates the federal and state regulations which require a nursing home to meet the needs of residents.
- **That the Arkansas State Veteran's Nursing Home's failure to document the ADL documentation for Bill Jones violated the nursing home's own policy and the federal and state regulations for documentation**.
- **That the Arkansas State Veteran's Nursing Home's failure to document the ADL documentation for Bill Jones violated good nursing practice**.
- That the Arkansas State Veteran's Nursing Home's failure to document [redacted]e Bill Jones violated the nursing home's

own policy and the federal and state regulations for documentation.

- That the Arkansas State Veteran's Nursing Home's failures amount to "neglect" as that term is defined in their own policies.
- **That the Arkansas State Veteran's Nursing Home's failures violated Bill Jones' Resident Rights including his right to dignity.**

Conversely, the Arkansas State Veteran's nursing home **WILL NOT** be calling any nurse expert to support its care and treatment of Bill Jones. This is significant because the Arkansas State Veteran's Nursing Home cannot rebut the testimony of Nurse Expert Luanne Trahant.

The Claimant will also submit the testimony of physician expert Dr. Keith Miller. Dr. Miller is a physician that was trained here in Little Rock at the University of Arkansas Medical System and did his residency in family medicine here in Arkansas as well. He has been treating nursing home patients for the past 35 years and is board certified in family medicine and in hospice and palliative care. *See* **Exhibit 17** (Dr. Miller's CV). He has been treating veterans similar to Bill Jones during his entire time practicing medicine. In addition to serving as a consultant to the Texas State Medical Boad, he had the pleasure of serving on the Texas State Medical Board. He has reviewed the medical records and depositions in this case. Based upon his education, training, and 35 years of experience in treating patients such as Bill Jones, Dr. Miller prepared a written report and testified that the Arkansas State Veteran's nursing home breached the standard of care in its treatment of Bill Jones. *See* **Exhibit 18** (Dr. Miller's written report). In addition to his report, he has been deposed and provided the following expert medical opinions regarding standard of care and causation:

- The Arkansas State Veteran's Nursing Home knew that Bill Jones [redacted]

[redacted] (*see* Dr. Miller depo. at pgs. 94-96).

- During Bill Jones' residency at the Arkansas State Veteran's Nursing Home, [redacted] (*see* Dr. Miller depo. at pgs.96-97).

- While the Arkansas State Veteran's Nursing Home put into place a good Care Plan when Bill was admitted in April of 2018, at no time did they update his care plan to reflect his need for more help and his dependency on the staff [redacted] (*see* Dr. Miller depo. at pgs. 96-98).

- According to the testimony from former nurses, **the Arkansas State Veteran's Nursing Home had staffing problems that worsened in December of 2018** (*see* Dr. Miller depo. at pgs. 100-102).

- [redacted] (*see* Dr. Miller depo. at pgs. 90, 91, 95, and 101).

- [redacted] (*see* Dr. Miller depo. at pgs. 85-86, and 90).

- [redacted] were all due to the negligence of the Arkansas State Veteran's Nursing Home for failing to provide the care that was reasonable and that met the applicable standard of care (*see* Dr. Miller depo. at pgs. 67 and 87).

- [redacted] (*see* Dr. Miller depo. at pg. 99).

- That if Bill Jones would have received care that met the standard of care at the Arkansas State Veteran's Nursing Home, [redacted] **and would have lived another four to five years** (*see* Dr. Miller depo. at pgs. 67 and 87).

The Claimant has met the burden of proof to provide expert medical testimony

from a qualified nurse expert and a qualified physician expert. While the Respondent's physician expert has not been deposed, it is important to note that the nursing home will not call any expert to rebut the opinions and testimony of Expert Nurse Luanne Trahant.

A. Bill Jones suffered from neglect at the Arkansas State Veteran's Nursing Home.

The duty that a nursing home owes to its residents is set forth in Arkansas Model Jury Instruction No. 1504 - Duty of Hospital, Sanitarium, or Nursing Home:

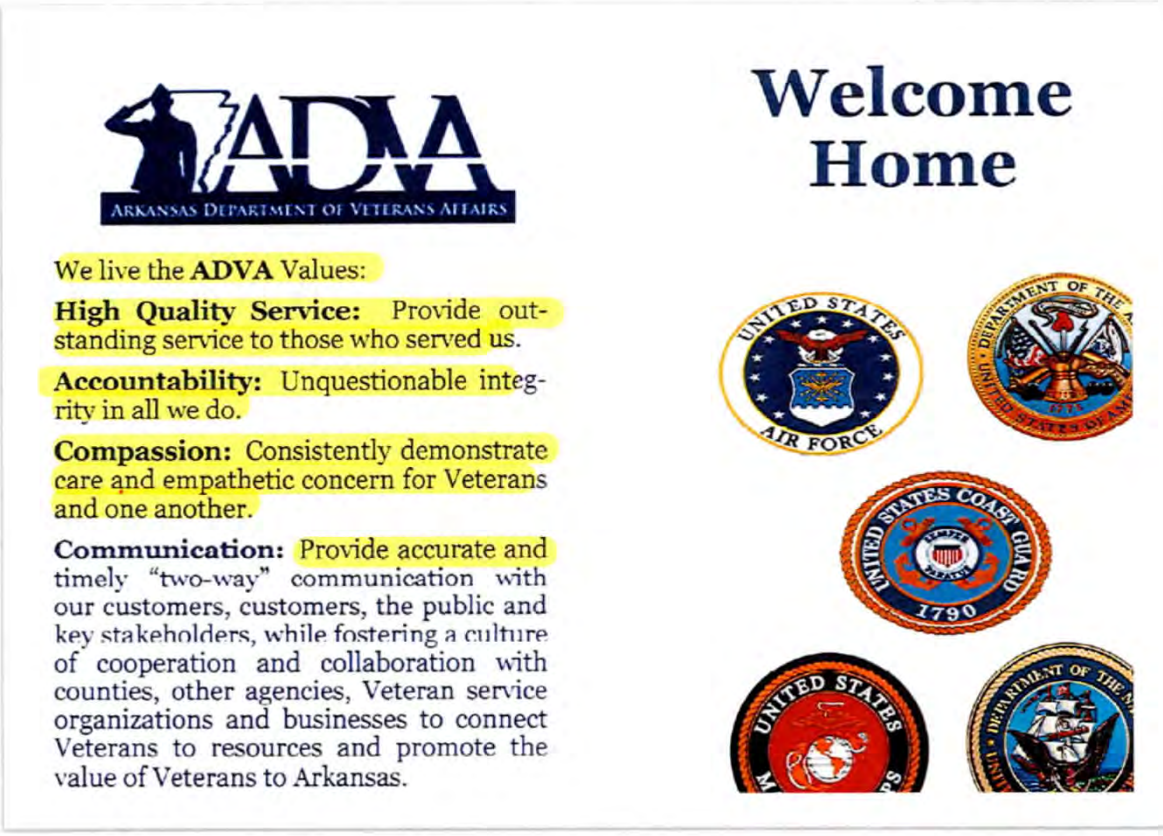
> A nursing home must use ordinary care to furnish a patient the care and attention reasonably required by his mental and physical condition.

This duty includes following the applicable state and federal regulations applicable to nursing homes such as the Arkansas State Veteran's Nursing Home such as:

- 42 CFR 483.10 - The resident has a right to dignified existence, self-determination, and communication;
- 42 CFR 483.15 - A facility must care for its residents in a manner that promotes quality of life and dignity;
- 42 CFR 483.20 - The facility must conduct initially a comprehensive, accurate assessment of each resident's functional capacity, a plan of care, based on a resident assessment, which will be used to provide care and services to attain the highest practical physical, mental, and psychosocial well-being;
- 42 CFR 483.30 - The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care;
- Arkansas LTC 601 RESIDENT RECORD MAINTENANCE - The facility will maintain an individual record on all residents admitted in accordance with accepted professional standards and practices. The resident record service must have sufficient staff, facilities, and equipment to provide records that are completely and accurately documented, readily accessible, and systematically

organized.

In addition to the federal and state regulations, the Arkansas State Veteran's Nursing Home had its own standards and policies; policies that the administrator testified that he expected all staff of the Arkansas State Veteran's Nursing Home to follow. The Arkansas State Veteran's Nursing Home held itself out and advertised to the community that is provided "High quality Service" and "outstanding service" to its veterans:



See **Exhibit 3** (Brochure of Arkansas State Veteran's Nursing Home). In its own policy regarding resident dignity, the Arkansas State Veteran's Nursing Home held itself to the following standard:

Policy Statement

Each resident shall be cared for in a manner that promotes and enhances quality of life, dignity, respect and individuality.

Policy Interpretation and Implementation

1. Residents shall be treated with dignity and respect at all times.
2. "Treated with dignity" means the resident will be assisted in maintaining and enhancing his or her self-esteem and self-worth.

See **Exhibit 19** (Arkansas State Veteran's Nursing Home's Dignity Policy). Its policy on charting mandated that all care be documented in the medical records:

Policy Statement

All services provided to the resident, or any changes in the resident's medical or mental condition, shall be documented in the resident's medical record.

Policy Interpretation and Implementation

1. All observations, medications administered, services performed, etc., must be documented in the resident's clinical records.

See **Exhibit 20** (Arkansas State Veteran's Nursing Home's Charting Policy). The Arkansas State Veteran's Nursing Home own definition of Neglect was:

anguish.

b. "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

See **Exhibit 21** (Arkansas State Veteran's Nursing Home's Neglect Policy). These policies and standards were not optional – they were required to be followed by the

Arkansas State Veteran's Nursing Home.

The Arkansas State Veteran's Nursing Home failed to meet these standards, failed to follow the regulations and policies with respect to the care provided to Bill Jones, and failed to act reasonably. The Arkansas State Veteran's Nursing Home knew of Bill Jones' physical and mental impairments and of [redacted] when he was admitted. In the April 2018 initial Care Plan for Bill Jones, the nursing home knew [redacted]:

[redacted]

See **Exhibit 5** (Arkansas State Veteran's Nursing Home's Care Plan for [redacted] at bates 214). The Arkansas State Veteran's Nursing Home knew of Bill Jones [redacted]:

[redacted]

See **Exhibit 6** (Arkansas State Veteran's Nursing Home's Care Plan for [redacted] at bates 227).

To address these risks, the Arkansas State Veteran's Nursing Home was required to put into place interventions to address Bill's risks. To address his [redacted] on April 24, 2018, the Arkansas State Veteran's Nursing Home put into place this intervention:

[redacted]

See **Exhibit 6** (Arkansas State Veteran's Nursing Home's Care Plan for [redacted] at bates 227). This intervention is needed [redacted]

While this intervention was appropriate when he simply needed supervision in April, this intervention became more i[redacted]

When we look at the Arkansas State Veteran's Nursing Home documentation in December, we see that the staff is routinely failing to document[redacted]

See **Exhibit 8** (Arkansas State Veteran's Nursing Home's December 2018 ADL documentation at bates 600). In fact, of the three reportable daily shifts from December 1, through December 26, 2018, 14% of the total shifts (11 blanks / 78 shifts) are missing any information. Knowing that Bill is [redacted] during that shift. Again, when we look at December 2018 to see [redacted], we see numerous shifts with zero information:

See **Exhibit 8** (Arkansas State Veteran's Nursing Home's December 2018 ADL documentation at bates 600). In fact, of the three reportable daily shifts from December 1, through December 26, 2018, 19% of the total shifts (15 blanks / 78 shifts) are missing any information.

This lack of documentation clearly violates the regulations that require accurate and complete documentation. It also violates the Arkansas State Veteran's Nursing Home's own charting policy that mandates **that all care be documented**. *See* **Exhibit 20** (Arkansas State Veteran's Nursing Home's Charting Policy). This is not reasonable or appropriate care.

See Deposition testimony of Beverly Byrd at pgs. 22-25.

[redacted]. *See* **Exhibit 8** (Arkansas State Veteran's Nursing Home's December 2018 ADL documentation at bates 605). How can a nurse describe [redacted]? Again, missing documentation on an issue of grave importance to Bill Jones.

This missing information is consistent with a nursing home that is having staffing problems. When we deposed two of the former nurses that worked at the Arkansas State Veteran's Nursing Home, they both discussed the staffing problems. LPN Byrd testified about her staffing concerns:

> Q. What were your concerns?
>
> A. There -- how do I say. **There were not enough staff to take care of two homes**. There just wasn't. It's not safe. Which means that I would be in this home over here, and if this -- somebody fell in this home, I would have to stop what I was doing over here and go outside and go back in the other house to see what was going on.
>
> And it also meant that more than likely, the meds were going to be late in one home. That, you know, one home would have the meds on time and one home wouldn't because you just -- I just couldn't do it.
>
> Q. Did you ever talk to the DON or the ADON about your concerns about staffing?
>
> A. Yes.
>
> Q. And how often?
>
> A. Probably a lot. I can't tell you every day because -- but it was a lot.
>
> Q. And what would they tell you?
>
> A. "You can do it. You're fine. If you need help, holler at one of us." Never happened. I mean, I could holler at one of them, **but I didn't get any help**.

See Deposition testimony of Beverly Byrd at pg. 19. LPN Bryd went on to say that the

residents would have gotten better care with additional staff.

Q. I know you talked about needing more help and telling the DON and the ADON about needing more help. Do you think the residents would have gotten better care if they had more help?

A. If the residents would have got better care if what?

Q. If you had more help?

A. **Yes. There's no doubt about it.**

Q. Do you think the -- they were veterans, right?

A. Yes, all of them were veterans.

Q. Do you think the veterans deserve to have more help there?

A. Yes, they do

See Deposition testimony of Beverly Byrd at pg. 32.

LPN Byrd's testimony is supported by another nurse, LPN Rosalind Page. LPN Page also discussed the staffing issues she experienced:

Q. So in 2018 and 2019?

A. Yes, yes.

Q. So go ahead.

A. Yes, **the staffing levels had gotten really bad with universal workers, as well as with nurses**. When I was on the night shift, I was the only staff nurse at night and that includes the nursing supervisors, who were also agency.

It would be me and -- so it would be me and four -- three other nurses because we had eight homes. So it would be one nurse to two homes, and the nursing supervisor would mean we should have had a total of five people, five nursing staff at night. But there were times when we -- it would only be, like, three nurses and –

Q. Would you ever go talk to somebody about that?

A. I had brought -- I would bring it up in staff meetings, you know, about, you know, we had low staffing ratios. They were aware of it. You know, they were trying to hire people.

> I think at one time, they even had a nursing fair or something to try to get people, you know, to come, but for some reason we could not get staff. I mean, my personal belief is that it was the pay scale but, you know, we had a staff -- we had staffing problems.

See Deposition testimony of Rosalind Page at pgs. 16-17. LPN Page eventually quit working at the Arkansas State Veteran's Nursing Home in part because of staffing problems. *See* Deposition testimony of Rosalind Page at pgs. 25-26.

Staffing issues are also reflective of the turmoil happening with the administration of the Arkansas State Veteran's Nursing Home. [redacted]

From the evidence presented, staffing was a problem. The effect that it had on patient care is not only seen by the testimony but also the documentation (and lack thereof) as it relates to Bill Jones.

[redacted]

[redacted]. This is supported by the testimony of Nurse Luanne Trahan and Dr. Keith M[redacted]

The Arkansas State Veteran's Nursing Home was negligent in its care towards Bill Jones. This negligence led to and were a proximate cause of [redacted] The actions of the Arkansas State Veteran's Nursing Home took this man from this family and another four to five years of life.

B. Bill Jones was also the victim of medical negligence.

The Claimant has also asserted a claim for medical negligence related to the Arkansas State Veteran's Nursing Home's care and treatment of Bill Jones. Arkansas Mode Jury Instruction No. 1501 sets forth the "Duty of Physician, Surgeon, Dentist or Other Medical Care Provider."[1] In this case, it would provide:

> **In (treating) a patient, a (nursing home) must possess and apply with reasonable care the degree of skill and learning ordinarily possessed and used by members of fits] profession in good standing, engaged in the same (type of service) in the locality in which fit] practices, or in a similar locality. A failure to meet this standard is negligence.**

The Claimant's nurse expert, Luanne Trahant, and physician expert, Dr. Keith Miller, both discussed the duties owed by the Arkansas State Veteran's Nursing Home to Bill Jones and how the Arkansas State Veteran's Nursing Home breached those duties. In addition, Dr. Miller testified that the failures of the State Veteran's Nursing Home [redacted] Thus, the causation element has been

met.

As discussed herein, the Arkansas State Veteran's Nursing Home was fully aware that that Bill Jones was [redacted]. The Arkansas State Veteran's Nursing Home was aware of his needs, especially in December of 2018. The Arkansas State Veteran's Nursing Home was aware of the rules and regulations that mandated that it put into place a Care Plan and interventions to prevent Bill [redacted] The failure to follow the rules and to put into place appropriate interventions, resulted in how Bill Jones [redacted]

C. The violations of Bill Jones' Arkansas Resident Rights are evidence of negligence.

All nursing home residents in Arkansas are entitled to statutory "Resident Rights" are set forth in Arkansas Code Annotated § 20-10-1204. These rights include:

> (8) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the residential care plan, with established and recognized practice standards within the community, and with rules as adopted by the office;
>
> ***
>
> (21) The right to be **treated courteously, fairly, and with the fullest measure of dignity . . . . .**

See Arkansas Code Annotated § 20-10-1204. To enforce these rights, the Arkansas General Assembly passed Arkansas Code Annotated § 20-10-1209 which provides that a violation of resident rights is evidence of negligence.

In this case, [redacted]. Not having sufficient staff to meet the basic needs of residents is negligence. The evidence shows that staff would simply either fail to document or wrongly document on Bill Jones – documentation that was supposed to be a key communication tool for the staff. These actions all violated Bill Jones' right to receive adequate and appropriate health care and the right to be treated **"courteously, fairly, and with the fullest measure of dignity."** These failures are all further evidence of negligence of the Arkansas State Veteran's Nursing Home.

D. Violations of state and federal regulations are evidence of negligent treatment of Bill Jones.

Arkansas Model Jury Instruction No. 601 provides that a defendant's violation of laws, rules, and/or regulations is evidence of negligence. In this case, there are numerous state and federal regulations that govern the care and treatment of Bill Jones while he was a resident at the Arkansas State Veteran's Nursing Home. Even though it does not take an expert to show these violations, Claimant's experts discussed the requirements and violations of:

- 42 CFR 483.10 - The resident has a right to dignified existence, self-determination, and communication;
- 42 CFR 483.15 - A facility must care for its residents in a manner that promotes quality of life and dignity;
- 42 CFR 483.20 - The facility must conduct initially a comprehensive, accurate assessment of each resident's functional capacity, a plan of care, based on a resident assessment, which will be used to provide care and services to attain the highest practical physical, mental, and psychosocial well-being;
- 42 CFR 483.30 - The facility must have sufficient nursing staff to

provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care;

- Arkansas LTC 516.2 - Routine Care and Services - Each patient in the home shall receive the type of nursing care including restorative nursing as required by his/her condition. Patients shall be encouraged to be active, to develop techniques for self-help, and be stimulated to develop hobbies and interests. . . . ; and

- Arkansas LTC 601 RESIDENT RECORD MAINTENANCE - The facility will maintain an individual record on all residents admitted in accordance with accepted professional standards and practices. The resident record service must have sufficient staff, facilities, and equipment to provide records that are completely and accurately documented, readily accessible, and systematically organized.

Pursuant to Arkansas law, evidence that the Arkansas State Veteran's Nursing Home failed to follow and/or violated these regulations is evidence of the Arkansas State Veteran's Nursing Home negligence in the care and treatment of Bill Jones. The failure to ensure that Bill Jones was given his statutory and mandatory resident rights and the Arkansas State Veteran's Nursing Home failure to follow the applicable federal and state rules and regulations is additional evidence to support the families' claims for negligence – negligence that caused Bill Jones to suffer and his untimely death.

DAMAGES

The Estate of Oscar "Bill" Jones and his Wrongful Beneficiaries are entitled to damages for what happened at the Arkansas State Veteran's Nursing Home. Bill Jones' medical bills were paid for by the Veteran's Administraiton, so those are not being sought by his family. However, his estate is entitled to damages under Arkansas law for:

- The nature, extent, duration and permanency of the injury to Bill Jones;

- Bill Jones' pain, suffering, and mental anguish; and
- Bill Jones' loss of life.

The evidence reflects that Bill suffered from [redacted] The testimony reflects that Bill was still enjoying life: he would smile, he liked to be outside, and he would go toward his family when they visited. He deserved another four to five years with his family.

In Arkansas, wrongful death beneficiaries are entitled to be awarded mental anguish (for example grief and despair) suffered due to the untimely death of Bill Jones. *See* Arkansas Model Jury Instruction, No. 2216 - Measure of Damages - Wrongful Death. In this case, Bill Jones' wife and three children are entitled to recover for their mental anguish, grief, and despair. They all testified that they miss him, love him, and still grieve his loss. A wife lost her husband. Three kids lost their father. Can anyone doubt that they have and continue to suffer?

Bill Jones' life was important. Bill Jones' life was worthy, no matter what medical conditions he had, Bill Jones deserved to receive good quality care – care that the Arkansas State Veteran's Nursing Home said was "high quality." His family, no matter any flaws they may have had, deserved to have a husband and father live out his natural life. Bill's life was taken from him and from his family.

See **Exhibit 22** (Bill Jones' photograph at the Arkansas State Veteran's Home).

What is this worth? To what is his estate and family entitled? What is life of a decorated soldier worth who survived two tours of duty in Vietnam, survived over 1,000 parachute jumps, who served his country as a Green Beret? It is invaluable.

To place a price on what happened is difficult. But what is reasonable is $1 million for his estate and $1million for his wrongful death beneficiaries to share equally.

CONCLUSION

Bill Jones fought for his country. He was, and is, a Hero. This Hero deserved to [redacted]. You can tell this Hero's family that he deserved better and that the Arkansas State Veteran's Nursing Home will be held accountable for what happened. You can and you should.

Respectfully submitted,

By: Jeff R. Priebe

Jeff R. Priebe (AR 2001124)
Jeff Priebe Law Firm
PO Box 7481
Little Rock, AR 72217
Telephone: 501580-7890
jeff@jeffpriebelawfirm.com

Attorneys for Claimant

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK **RESPONDENT**

CLAIMANT'S WITNESSES AND EXHIBIT LIST

Claimant will submit the deposition of the following witnesses in this case along with summaries of their depositions:

FAMILY MEMBERS:

Mary Ann Jones (wife)
Jerrie Ann Stokes (stepdaughter)
Cynthia Bartlett (daughter)

Rhonda Bronstrom (daughter)

ARKANSAS STATE VETERAN'S NURSING HOME'S FORMER EMPLOYEES

Beverly Hamelback Byrd (former Licensed Practical nurse)
Rosalind Page (former Licensed Practical Nurse)
Lyndsey Clyburn (former Administrator)

CLAIMANT'S EXPERTS

Nurse Luanne Trahant (Claimant's Nursing Expert)
Dr. Keith Miller (Claimant's Physician Expert)

EXHIBIT LIST:

1) Photograph of Bill Jones' miliary honors and awards (BATES OOJ-AVA-002872)

2) Photograph Bill and Mary Ann (BATES OOJ-AVA-002861)

3) Arkansas State Veteran's Nursing Home Brochure (BATES ADVA Docs.pgs.1813-1814)

4) Arkansas State Veteran's Nursing Home's Admission Assessment (BATES ADVA Docs. pgs. 647, 649-653)

5) Arkansas State Veteran's Nursing Home's Care Plan for Infection (BATES ADVA Docs. pgs. 214, 231, 250)

6) Arkansas State Veteran's Nursing Home's Care Plan for Pressure Sores (BATES ADVA Docs. pgs. 227, 246, 265)

7) September ADLs (BATES ADVA Docs. pgs. 571- 574)

8) December ADLs (BATES ADVA Docs. pgs. 598-606)

9) MEMS Report (BATES OOJ-AVA000381-000387)

10) VA Hospital Medical Records (BATES OOJ-AVA000875)

11) VA Hospital Medical Records (BATES OOJ-AVA000634; 000636; 000687)

12) VA Hospital Medical Records (BATES OOJ-AVA000816)

13) VA Wound Photos (BATES OOJ-AVA002882-002888)

14) Death Certificate (BATES OOJ-AVA-002852)

15) Letters of Administration (BATES OOJ-AVA-002853-002854)

16) Expert Nurse Luanne Trahant CV

17) Expert Dr. Keith Miller CV

18) Expert Dr. Keith Miller Report

19) Arkansas State Veteran's Nursing Home's Dignity Policy (BATES ADVA 7287-7288)

20) Arkansas State Veteran's Nursing Home's Documentation Policy (BATES ADVA 7222)

21) Arkansas State Veteran's Nursing Home's Neglect Policy (BATES ADVA 7226-7227)

22) Picture of Bill Jones Picture at Arkansas State Veteran's Nursing Home

23) Bill Jones Arkansas Democrat Gazette Article

24) Lindsey Clyburn Administrative Leave documentation

25) Lindsey Clyburn Resignation email

26) Any exhibits on Respondents Exhibit List or exhibits discovered after the submission of this Pre-Hearing Brief.

Respectfully submitted,

/s/ Jeff Priebe
Jeff Priebe ABN 2001124
Jeff Priebe Law Firm
P. O. Box 7481
Little Rock, AR 72217
501-580-7890
jeff@jeffpriebelawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, a true and accurate copy of the foregoing document has been served by email upon the following:

Justin Brascher
Jordan Broyles
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
justin.brascher@arkansasag.gov
jordan.broyles@arkansasag.gov

Jeff R. Priebe

EXHIBIT
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EXHIBIT
2

EXIT
EXIT
OOJ-AVA-002861

EXHIBIT
3

ACTIVITIES AT OUR HOME

Our Activity Director and Universal Workers lead a variety of activities throughout the day. Our activities include bingo, cookouts, musical entertainment, fishing, special performances, exercises, inspirational/Church Services, seasonal activities, poker games and more. Whatever your interest, you'll find lots of activities to keep you entertained throughout the day.

ADVA

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

We live the **ADVA** Values:

High Quality Service: Provide outstanding service to those who served us.

Accountability: Unquestionable integrity in all we do.

Compassion: Consistently demonstrate care and empathetic concern for Veterans and one another.

Communication: Provide accurate and timely "two-way" communication with our customers, customers, the public and key stakeholders, while fostering a culture of cooperation and collaboration with counties, other agencies, Veteran service organizations and businesses to connect Veterans to resources and promote the value of Veterans to Arkansas.

2401 John Ashley Drive
North Little Rock, Arkansas 72114-1825
(501) 683-2382
(501) 682-0357 (Fax)

Welcome Home

ADVA Docs. p. 1813

VETERANS!

ADVA

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

Arkansas State Veterans Home
at
North Little Rock

OUR SERVICES

Our bottom line is the comfort and care of our Veterans and their family. Our staff to resident ratio exceeds the Office of Long Term Care's standards. We also provide 24/7 RN coverage, not provided by most skilled nursing facilities. We are committed to providing a warm, caring home for your loved one!

- Medical Director
- RN, LPN and Universal Worker skilled nursing around the clock in our "home-style" setting
- Physical, Occupational and speech therapy
- Social Worker
- Transportation available
- DirecTV
- Personal laundry done at no additional charge
- Designated smoking area
- Active Resident and Family Councils

MEET YOUR NEW HOME

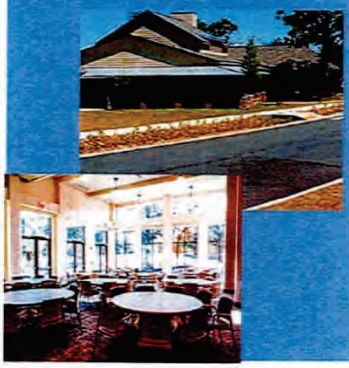
Arkansas State Veterans Home at North Little Rock (ASVH-NLR) is a 96 bed skilled nursing facility. Utilizing the "home-style" concept of service delivery, the ASVH-NLR provides a comfortable and supportive atmosphere for our Veterans. We encourage family/friend visits and participation in activities held at the facility. There is also a Community Building for community meetings and other activities held at ASVH-NLR.

CRITERIA FOR ADMISSION

- Honorable discharge
- Have a medical need for skilled-nursing home placement & care
- Must be a Veteran, Veteran's Spouse or Gold Star Parent to apply for admission.

All veterans admitted to the Arkansas State Veterans Home in North Little Rock will be given a "big warm welcome" to their new home and a Community Binder with all information about our facility and its activities.

We also have multiple payment sources, one of which will work for you! For more information contact the Social Worker at (501) 682-4017.



ADVA Docs. p. 1814

EXHIBIT
4

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

EXHIBIT
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[redacted]

EXHIBIT
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[redacted]

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[redacted]

EXHIBIT
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[redacted]

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EXHIBIT
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[redacted]

[redacted]

[redacted]

[redacted]

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EXHIBIT
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EXHIBIT
14

[redacted]

EXHIBIT
15

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF
OSCAR ODELL "BILL" JONES, DECEASED **NO. 63PR-19-163-4**

ORDER APPOINTING SPECIAL ADMINISTRATRIX

The Petition of Mary Ann Jones, an interested person, for appointment of a Special Administrator of the estate of Oscar Odell "Bill" Jones, deceased, is presented to the Court. Upon consideration of the Petition and the facts and evidence in support of it, the Court finds:

1. No demand for notice of proceedings for the appointment of a personal representative of the estate has been filed. The Petition is not opposed by any known person, and it may be heard without notice.

2. Oscar Odell "Bill" Jones, [redacted]

3. This Court has jurisdiction of this proceeding and venue properly lies in the County.

4. Good cause exists to appoint a special administrator of the decedent's estate, namely, the investigation and prosecution of a potential personal injury/ wrongful death cause of action, the value of which is unknown at this time.

5. Petitioner, Mary Ann Jones, the surviving spouse of Oscar Odell "Bill" Jones, who resides at [redacted] is a proper person by law to serve as Special Administrator of the estate for the purpose of the investigation and prosecution of a potential personal injury/ wrongful death cause of action.

6. There are no disclosed unsecured claims against the decedent's estate.

7. No demand for notice of proceedings for the appointment of a personal

representative of the estate has been filed as permitted by Section 28-40-108. The Petition may be heard without notice.

8. The only asset of the estate is a potential survival/ wrongful death cause of action, the value of which is unknown at this time. Accordingly, bond is waived at this time. The Court will revisit the issue of bond should the estate acquire assets at any time.

IT IS THEREFORE ORDERED as follows:

a. the administration of the estate is opened;

b. Mary Ann Jones is appointed Special Administratrix of the estate; and

c. Letters of Special Administration shall be issued to this Special Administratrix without the requirement of a bond.

DATED this 3rd day of April, 2019.

CIRCUIT JUDGE

Submitted by:

Deborah Riordan, Bar #93231
Appellate Solutions, PLLC
d/b/a Riordan Law Firm
1501 N. University Ave., Suite 310
Little Rock, AR 72207
(501) 235-8235 Telephone
(501) 235-8234 Facsimile

Arkansas
State Claims Commission
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EXHIBIT
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Luanne Trahant, MSN, APRN, FNP-BC

[redacted]

EDUCATION

- Bachelor's of Science in Nursing, Northwestern State University, Shreveport, 1992
- Master's of Science in Nursing, *Cum Laude*, University of Phoenix, 2005
- Post Graduate-Family Nurse Practitioner, Northwestern State University, Shreveport, 2010

EMPLOYMENT

RN, Rapides Regional Medical Center ***1992- 1996***
Charge nurse for a 20 bed acute cardiac unit, provided daily nursing care and managed staffing for the unit. Case Manager for a 30-bed med-surg telemetry floor, provided review for length of stay, insurance use and approval, quality and standards of care review. Inservice Coordinator

RN, Agency Nursing, Nurse Finders ***1993-2000***
Provide direct nursing care in various clinical settings including pediatrics, med-surg, ICU/CCU, physical rehab, psych units, cardiac units, orthopedics, long-term care and surgical units

RN, Case Manager, Staff Nurse, Agency Nurse, Interim Home Health Staffing ***1996***

Direct care of home health patients, chart and standard of care review on all Medicare and Medicaid recipients of home health, staff development that included physicians, rehabilitative services and nurses in the field. Agency nursing in Long-term care, psychiatric care, medical-surgical nursing and pediatrics

Director of Nursing/Administrator, Wilshire Manor Nursing Home ***1996-2000***

provided direct nursing care as needed in long-term care setting, directed overall operations of 110 bed facility including staffing, budgeting, purchasing, development of policies and procedures, monitor adherence to policies and Medicare and Medicaid regulations, quality assurance, infection control coordinator, operation of 10 bed Medicare Skilled Unit, inventory, supplies and review for compliance with federal and state regulations as set forth by the Department of Health and Hospitals, directly responsible for providing staff development and chart review on residents weekly for breach of care or substandard care

RN, Case Manager, Staff Nurse ***1998 & 2000***
Thompson Home Health
Direct care of the home health patient, coordinate visits for home health recipients, JCAHO education for the staff, manage Medicare and Medicaid utilization, Supervisory duties in the field

Director of Nursing, Pecan Grove Training Center, ***2000-2001***
Oversee nursing department for a 130 bed facility for the mentally retarded including medical and training services, quality assurance, case management, infection control and overall health needs of the well client. Directly responsible for staff and client education regarding health and medical issues

RN, Night Manager/Charge, Christus St. Francis Cabrini Hospital Staff RN/Agency RN ***1993-2005***
Provide direct nursing care of the elective post surgical knee and hip replacement patients, direct care to long-term rehabilitation patients. Provided direct care to telemetry patients, long-term care patients, rehab patients, medical surgical and ICU patients

RN, Staff Nurse/Faith Foundation Hospice **2006-2010**
provide direct nursing care on an as needed basis to patients with a variety of illnesses in the nursing home setting, provide quality assurance assessments and performance evaluations, member of the IDG team for evaluation of patient care, collaborate and coordinate care with the nursing home staff including evaluating and devising the plan of care, updating and changing the plan of care, monitoring care provided to the resident between nursing home visits, collaborating with the treatment team including the attending physician, nurses, therapists, social worker, pastor and administration, in order to provide consistent, comprehensive care to the residents.

FNP Clinical Residency **2008-2010**
Responsible for providing assessments, plans, diagnoses and treatment to patients with a variety of illnesses. These services were provided in the clinic setting, nursing home, assisted living and hospital. The population served ranged from young adult to geriatrics. Collaborate and coordinate care with an interdisciplinary health care team.

FNP-Applicant **5/2010-10/2010**
Responsible for providing assessments, plans, diagnoses and treatment to predominately geriatric patients with a variety of illnesses. These services were provided in the clinic setting, nursing home, assisted living and hospital. The population served ranged from young adult to geriatrics. Collaborate and coordinate care with an interdisciplinary health care team.

Family Nurse Practitioner-Christus Medical Group **1/2011-1/2012**
Responsible for providing assessments, diagnoses and treatment to patients in a quick care setting with a variety of illnesses. The population includes children, adolescents, adults and geriatric patients.

Family Nurse Practitioner/RN-Faith Foundation Hospice **10/2010-1/2012**
Responsible for providing assessments, plans, diagnoses and treatment to predominately geriatric patients with terminal illnesses and end of life issues. These services are provided in the home and long-term care settings. Courtesy visits are provided in the hospital setting. Member of the IDG team for evaluation of patient care, collaborate and coordinate care with the long-term care/hospice staff including evaluating and devising the plan of care, updating and changing the plan of care, monitoring care provided to the patient/resident between visits, collaborating with the treatment team including the attending physician, nurses, therapists, social worker, pastor and administration, in order to provide consistent, comprehensive care to the residents.

Brian Clinic-Dr. Jonathon Hunter **1/2012-7/2013**

Responsible for providing assessments, planning, diagnosis and treatment to residents/patients in the long-term care setting (which includes nursing homes and assisted living facilities) for a variety of illnesses. The population served is predominantly geriatric. Coordinate and collaborate with the interdisciplinary team for the delivery of patient care.

APRN, LNCC, Owner, Consulting Concepts ***2001-present***
In depth medical case review and reporting for plaintiff and defense firms nationwide. Provide consulting services in the areas of medical and nursing malpractice, nursing home litigation and Medicare and Medicaid fraud. Expert witness services are provided nationwide.

Louisiana College **Jan 2014-August 2014**
RN/FNP
Provide medical diagnoses, assessment and treatment to individuals at campus clinic; includes middle adult and geriatric populations; Provide education and guidance to Senior nursing students in the Baccalaureate program regarding assessment, care planning, intervention and evaluation for acute and chronic illnesses in various settings.

Louisiana College RN/FNP-BC **July 2015-Present**
Adjunct Faculty
Provide Bedside Clinical education and guidance to entry level and senior level nursing students which includes the introduction to the nursing process and leadership role, development of care plans, designing interventions for age-specific populations and introduction and evaluation of the provision of nursing care, clinical reasoning, evaluation of nursing care and revision process in multiple settings including hospitals, outpatient clinics and public health settings.

MEMBERSHIPS/PUBLICATIONS/ACCOMPLISHMENTS

- Louisiana Association of Nurse Practitioners, Member, 2009-2016
- Reviewer: United States Department of Justice,2011-Present
- Louisiana Association of Nurse Practitioners-Public Policy Review Committee-2011-2014
- American Association of Nurse Practitioners 2012-2016
- *Completed WCN program through Wick's and Associates using the Wound, Ostomy and Continence Society's Core Curriculum 2017*

CERTIFICATIONS

- **2010/Board Certification-Family Nurse Practitioner-American Nurses Credentialing Center-Expires October 2020**
- **2005/Board Certification-Legal Nurse Consultant-American Nurses Credentialing Center-Expired 2015**

EXHIBIT
17

CURRICULUM VITAE

KEITH E. MILLER, M.D.

[redacted]

(936) 598-2716 (Office)

[redacted]

KEITH E. MILLER, M.D.

- EDUCATION -

Chief Resident, 7/1987 to 6/1988
University of Arkansas Medical Sciences Campus
Area Health Education Center, South Arkansas
El Dorado, Arkansas

Family Practice Residency, 7/1986 to 6/1988
University of Arkansas Medical Sciences Campus
Area Health Education Center, South Arkansas
El Dorado, Arkansas

Family Practice Internship, 7/1985 to 6/1986
University Hospital
Little Rock, Arkansas

Doctor of Medicine Degree, 8/1981 to 5/1985
University of Arkansas College of Medicine
Little Rock, Arkansas

Attended, 8/1980 to 5/1981
University of Arkansas at Little Rock, School of Law
Little Rock, Arkansas

Bachelor of Arts, 8/1976 to 5/1979
German and Chemistry
Baylor of University
Waco, Texas

Attended, 8/1975 to 5/1976
Biology and Chemistry
East Texas Baptist College
Marshall, Texas

Shelbyville High School, 8/1971 to 5/1975
Shelbyville, Texas

KEITH E. MILLER, M.D.

-PRACTICE ACTIVITIES-

Full Time Family Medicine Practice, April 2016 to Present
Hope Community Medicine
Federally Qualified Health Center
620 Tenaha Street
Center, Texas 75935
(936) 598-2716

Full Time Family Medicine Practice, July 1988 to April 2016
Keith E. Miller, M.D.
620 Tenaha Street
Center, Texas 75935
(936) 598-2716

Commissioner, 9/2003 to 9/2007
Texas State Board of Medical Examiners / Texas Medical Board
State Medical Licensing Board of Texas

Physician Consultant for Physician Peer Review, 8/1990 to 9/2003
Texas State Board of Medical Examiners
State Medical Licensing Board of Texas

Member, Texas Statewide Medical Advisory Committee, 8/1995 to Present
Blue Cross/Blue Shield of Texas
Performs Physician Peer Review for All Blue Cross/Blue Shield Patients in Texas

President, 1990 to Present
Shelby County Medical Society

Advisory Committee Member and Clinical Faculty, 8/1990 to Present
School of Licensed Vocational Nursing
Panola College
Center, Texas

Member, Board of Directors, and Medical Director, 8/1990 to Present
Shelby County Child Advocacy Center
Center, Texas

KEITH E. MILLER, M.D.

-PRACTICE ACTIVITIES (CONTINUED)-

2014 to Present
Family Medicine Service Privileges
Memorial Hospital San Augustine
San Augustine, Texas

2014 to Present
Family Medicine Service Privileges
Nacogdoches Medical Center
Nacogdoches, Texas

Former Physician Reviewer, Texas Medical Foundation, 8/1990 to 8/2003
Performs Physician Peer Review/Quality Assurance for Medicare and Champus

Former Clinical Faculty, Preceptor, 8/1990 to 8/2003
University of Texas Health Sciences Center
Family Practice Residency Program
Tyler, Texas

Former Director of Emergency Services, 8/1990 to 8/2003
Shelby Regional Medical Center
Center, Texas

Former Chief of Staff
Shelby Regional Medical Center
Center, Texas

July 1988 to 2013
Full Time Active Family Practice Privileges
Shelby Regional Medical Center
Center, Texas

September 2010 to July 2015
Medical Director
Legacy Hospice of Center
Center, Texas

KEITH E. MILLER, M.D.

-PRACTICE ACTIVITIES (CONTINUED)-

March 2011 to April 2016
Assistant Medical Director
The Hospice of East Texas
Tyler, Texas

July 1988 to Present
Attending Physician
Holiday Nursing and Rehabilitation
Center, Texas

July 1988 to Present
Attending Physician
Pine Grove Nursing Center
Center, Texas

July 1988 to Present
Attending Physician
Focused Care of Center
Center, Texas

July 1988 to Present
Attending Physician
Summit Nursing and Rehab Center
San Augustine, Texas

July 1988 to Present
Attending Physician
Colonial Pines Healthcare Center
San Augustine, Texas

July 1988 to Present
Attending Physician
Stonecreek Nursing and Rehabilitation Center
San Augustine, Texas

KEITH E. MILLER, M.D.

-PRACTICE ACTIVITIES (CONTINUED)-

July 1988 to Present
Attending Physician
Stonecreek Village Assisted Living
San Augustine, Texas

December 2013 to Present
Attending Physician
Lakeside Village Assisted Living
Center, Texas

March 2012 to May 2014
Medical Director
Bethany Home Health Care Agency
Carthage, Texas

January 2014 to March 2016
Medical Director
Jennings Place
Assisted Living Facility and
Home and Community-Based Services Program for Adults with Mental Disabilities
Center, Texas

April 2016 to Present
Medical Director
Affinity Hospice
Center, Texas

October 2015 to Present
Emergency Department Physician
Tyler County Hospital
Woodville, Texas

KEITH E. MILLER, M.D.

- BOARD CERTIFICATIONS -

American Board of Family Medicine, ID 53861

Certification Date July 8, 1988

Re-Certification Date July 14, 1995

Re-Certification Date July 12, 2002

Re-Certification Date July 15, 2010

Re-Certification Date April 18, 2019

- PROFESSIONAL CERTIFICATIONS -

Hospice Medical Director Certified (HMDC)
Hospice Medical Director Certification Board
Certified July 8, 2014
Recertified November 25, 2020

Certified Medical Review Officer
United States Department of Transportation
Certified February 21, 2006
Re-certified March 24, 2012
Re-certified December 10, 2017

Certified Medical Examiner
Federal Motor Carrier Safety Administration
United States Department of Transportation
United States Department of Health and Human Services
Certified February 11, 2014

Fellow (AAFP), 1990 to Present
American Academy of Family Physicians

KEITH E. MILLER, M.D.

- PROFESSIONAL AFFILIATIONS -

American Medical Association

Southern Medical Association

American Academy of Family Physicians

Texas Medical Association

Shelby County Medical Society

- VOLUNTEER ACTIVITIES -

Texas State Legislature
Physician of the Day, 1989 to Present

Coordinator, Free Physicals Programs, 1988 to Present
Department of Athletics
Center Independent School District, Center, Texas

Team Physician, 1988 to Present
Department of Athletics
Center Independent School District

Vice-President, Board of Trustees, 1990 to 1999
Center Independent School District, Center, Texas

Preceptor, 1990 to Present
Texas Statewide Medical Student Preceptorship Program

Member, Development Council
Baylor University

Former Member, Committee on Rural Health Concerns
Texas Medical Association

Former Member, Committee on Rural Health
Texas Academy of Family Physicians

KEITH E. MILLER, M.D.

-LICENSURE-

State of Texas (H-2155), 8/87 to Present

Formerly Licensed in Arkansas and Louisiana

- AWARDS -

Texas Academy of Physician Assistants
Supervising Physician of the Year - 2004

American Medical Association
Physician's Recognition Award

American Academy of Family Physicians
Award for Clinical Instruction of Medical Students

Center Independent School District
Community Service Award for Contributions to
Student Academics and Athletics

Anderson County Educational Cooperative
Service Award for Organizing Programs for
Special Services Students

Texas State Legislature
Award of Appreciation for Serving as
Physician to Legislators While in Session

- PUBLICATIONS -

"Use of Digoxin in the Family Practice Setting"
Journal of the Arkansas Medical Society
February 1988

KEITH E. MILLER, M.D.

- ARTICLES -

"More Doctors in Texas After Malpractice Caps"
New York Times
October 5, 2007
Story of Texas Medical Board Responding to Increased Licensing Demands During My Tenure as Chairman of the Licensing Committee

"Dangerous Doctors"
Reader's Digest
June 2004
Background Story of Texas Medical Board Prior to My Appointment as a Commissioner

"Dangerous Doctors – Follow-Up"
Reader's Digest
March 2005
Follow-up Story of Texas Medical Board After My Appointment as a Commissioner Including Motion Made by Me for the Largest Fine Levied Against a Doctor by any State in History

"No Medicinal Jet Fuel"
Texas Medicine
August 2009
Story of My Filing of Complaint Against a Physician for Non-Therapeutic Prescribing

- PERSONAL -

Married to Linda Gee Miller since 1975

Interests Are Health-Care Reform and Finance Issues, in America and Abroad

Speaks Fluent German and Passable Spanish

Instrument-Rated Private Aircraft Pilot

Umpire, High School Baseball

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18

Keith E. Miller, M.D., F.A.A.F.P.

[redacted]

June 24, 2022

Mr. Jeff R. Priebe, Attorney at Law
Rainwater Holt & Sexton, P.A.
Post Office Box 17250
Little Rock, Arkansas 72222

Re: Mr. Oscar Jones, Deceased

Dear Mr. Priebe:

Thank you for allowing me to review this case on behalf of Mr. Oscar Jones, and his family. My opinions in this report are based on the information I have reviewed to date and my education, training, and direct experience in the diagnosis and treatment of patients with conditions similar to those of Mr. Oscar Jones, as described in the materials I have reviewed and discussed in this report. Each opinion is based on reasonable medical and nursing, probability and certainty.

BACKGROUND

My name is Keith E. Miller, M.D., and I give this report for the purpose of complying with any applicable provisions or codes. As my attached curriculum vitae demonstrates and which is incorporated into this report by reference, I am a Medical Doctor currently licensed to practice in the State of Texas and formerly licensed in the States of Louisiana and Arkansas. I currently practice in nursing homes similar to the Arkansas State Veteran's Home at North Little Rock, in North Little Rock, Arkansas. I have had numerous patients similar to Mr. Oscar Jones. I am board-certified in Family Medicine, and I have been in practice for more than 30 years. By virtue of my education, training, and direct experience, I am qualified to render opinions regarding the standards of care as they apply to this particular case.

I am over the age of 18, of sound mind, and capable of preparing this expert medical report. My opinions in this report are based on the information I have reviewed to date, as well as my education, training, knowledge, and direct experience in the diagnosis and treatment of patients with conditions similar to those of Mr. Oscar Jones, as described in the materials I have reviewed and discussed in this report. My opinions are based on reasonable medical and nursing, probability and certainty. My opinions concern the care and treatment received by Mr. Oscar Jones, or lack thereof, in regard to the applicable standards of care and the manner, in which the care rendered to Mr. Oscar Jones, by the healthcare facility in this case, fell below the standards of care and caused the illnesses, infections, and subsequent death of Mr. Jones.

It is impossible in an expert medical report to marshal all the proof regarding the standard of care, breach, and causation and include it within my expert opinions in this case. My report represents a good faith effort to inform the health care facility of the specific conduct that I am calling into question and to provide a basis for anyone to conclude that the claims in this matter have merit. Obviously, any defendant in a medical malpractice case has medical knowledge of medical terms which, when read in context with my opinions, will be clear to any competent health care facility.

This report will provide a summary of my opinions, as of this date, regarding: 1) the applicable standards of care at issue in this case; 2) how the applicable standards of care were violated and breached; 3) how the violations and breaches of the applicable standards of care resulted in the [redacted] of Mr. Oscar Jones; and 4) what the nursing home in this case should have done differently to prevent the [redacted] of Mr. Jones. I reserve the right to amend, or add to, my opinions upon further review of records, testimony, or facts, as they become available.

MY EXPERTISE

I am a medical doctor currently licensed to practice in the State of Texas. I have been a licensed medical doctor since 1985, have been practicing medicine continuously since then, including during the time of this claim, and as part of my practice, have been, and am currently, involved in the diagnosis, care, and treatment of many patients similar to Mr. Oscar Jones. I am familiar with the [redacted] Mr. Oscar Jones. I am familiar with the standards of care applicable to physicians, nurses, hospitals, nursing homes, rehabilitation centers and their staffs that treat patients such as Mr. Jones. My training is similar to the training of the healthcare

providers, nurses, and facility staff in this case.

After graduating from medical school in 1985 at the University of Arkansas, I received additional training and experience in a family practice residency program which I successfully completed in 1988. I have over 30 years' experience practicing medicine in office settings, hospitals, nursing homes, rehabilitation centers and emergency departments. I am board-certified in Family Medicine by the American Board of Family Medicine and have been in practice for more than 30 years. By virtue of my education, training, knowledge and direct experience, I am qualified to render opinions regarding the standards of care as they apply to this particular case, including the standards of care applicable to physicians, nurses, hospitals, nursing homes, rehabilitation centers and their staffs treating patients for [redacted] other conditions exhibited by Mr. Oscar Jones, because I have treated many patients with these conditions.

A COPY OF MY CV IS ATTACHED

My attached curriculum vitae is incorporated herein as part of my report.

MATERIALS REVIEWED

The specific medical records of Ms. Oscar Jones, which I have reviewed to date, include his medical records from the following:

1) Arkansas State Veteran's Home at North Little Rock, in North Little Rock, Arkansas;
2) Central Arkansas Veteran's Healthcare System in Little Rock, Arkansas;
3) Metro EMS in Little Rock, Arkansas;
4) Complaint;
5) State of Arkansas, Certificate of Death.

SIGNIFICANT FACTS

[redacted]

[redacted]

The nursing home staff of the Arkansas Veteran's Home failed to adequately monitor Mr. Jones for signs and symptoms of [redacted] document their observations, and consistently and adequately report these findings to Mr. Jones' physician.

[redacted]

[redacted]

[redacted]

FAMILIARITY WITH THE STANDARD OF CARE

At the time of the care and treatment of Mr. Oscar Jones by the Arkansas Veteran's Home in North Little Rock, Arkansas, during April through December 2018, I was familiar with the minimum medical standards of care applicable to the

described in the referenced medical records. I am familiar with the medical and nursing standards of care for the above referenced conditions applicable to the Arkansas Veteran's Home in North Little Rock, Arkansas. The minimum standards of care for treatment of patients with similar signs, symptoms, and conditions as Mr. Oscar Jones, that are the basis of this report, are universally accepted standards of care and do not differ from community to community.

From the time of the medical treatment of Mr. Oscar Jones from April through December 2018, and through the present, I have had an active clinical practice as a family practitioner in Center, Texas that includes providing care to adult patients in nursing homes and rehabilitation centers, such as Mr. Oscar Jones. During my career as a family practitioner, I have worked with and or supervised medical office staff, hospital staff, nursing home staff, and rehabilitation center staff, including medical technologists and nurses, in the care of my patients. I have also participated in the development and use of protocols, policies, and procedures for

addition, based on my education, training, knowledge, and direct experience, I am familiar with the accepted and expected, standards of care, as listed below, for nursing home and rehabilitation center facilities, who take care of patients with

[redacted] and can offer opinions on the standards of care, the breaches of the standards of care and the causation of the injuries from these breaches.

In my medical practice, I routinely rely on medical records, nursing records, lab reports, diagnostic tests and images, consulting physician reports and other patient data. I consider materials of this type to be generally reliable, unless evidenced otherwise, and they are the type of materials routinely relied upon by physicians and clinical staff in providing care to patients.

CASE SPECIFIC EXPERTISE

[redacted]

I acquired this education, knowledge, training, and experience through:

1) My attending, and successfully completing, medical school classes, and residency, that teach [redacted]

[redacted]

3) Discussions with colleagues at yearly conferences, seminars, and meetings;

4) Study of technical works routinely published in textbooks, journals and literature concerning the evaluation, diagnosis, care, and treatment of patients with the same or similar conditions as Mr. Oscar Jones and [redacted]

5) My routine discussions and consultations with other physicians who also [redacted]

6) My routine and regular contact with nursing home nurses, staff and residents who take care of patients with the [redacted]

7) My knowledge and experience giving lectures and in-service conferences to the nurses and staff;

8) My experience serving on numerous hospital and nursing home committees; and

9) My observation of nurses and nurse conduct, supervising residents, and instructing nurses and residents in [redacted]

FACILITY - PATIENT RELATIONSHIP

Based upon the above facts, there was a facility-patient relationship established between Mr. Oscar Jones and the Arkansas Veteran's Home in North

Little Rock, Arkansas.

DUTY

There was a duty owed to Mr. Oscar Jones by the Arkansas Veteran's Home in North Little Rock, Arkansas, to do what a reasonable nursing home or rehabilitation center would have done under the same or similar circumstances, or not to do what a reasonable nursing home or rehabilitation center would not have done under the same or similar circumstances.

RELEVANT STANDARDS OF CARE IN ISSUE

This section addresses some of the principal applicable standards of care that the Arkansas Veteran's Home in North Little Rock, Arkansas, and its staff should have met for Mr. Oscar Jones specifically how the Arkansas Veteran's Home, and its staff breached the standards of care and the causal relationship of the breach to Mr. Jones' [redacted] These standards are based on my education, training, and direct experience, and are reflected in the state and federal regulations that govern nursing homes and rehabilitation centers.

The following standards, among others, are consistent with the standards of care that were required to be followed by the Arkansas Veteran's Home of North Little Rock, Arkansas, and its staff as it concerns Mr. Oscar Jones:

1. 42 CFR 483.10- The resident has a right to dignified existence, self-determination, and communication.

2. 42 CFR 483.13, "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

3. 42 CFR 483.15- A facility must care for its residents in a manner that promotes quality of life and dignity.

4. 42 CFR 483.20-The facility must conduct initially a comprehensive, accurate assessment of each resident's functional capacity, a plan of care, based on a resident assessment, which will be used to provide care and services to attain the highest practical physical, mental, and psychosocial well-being.

5. 42 CFR 483.20 (k) (3) (I) - The services provided or arranged by the facility must meet professional standards of quality.

6. 42 CFR 483.25 (1) (2)- Ensure a resident entering the facility without pressure sores does not develop them unless the resident's clinical condition demonstrates

that they were unavoidable and a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

7. 42 CFR 483.25(a) (3) - A resident who is unable to carry out activities of daily living must receive the necessary services to maintain good nutrition.

8. 42 CFR 483.25 (f)(1)- A resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

9. 42 CFR 483.25 (h) (2) - A resident must receive adequate supervision and assistance devices to prevent accidents.

10. 42 CFR 483.25 (j) - The facility must provide a sufficient fluid intake to maintain proper hydration and health.

11. 42 CFR 483.25(l) (1) - Based on a resident's comprehensive assessment, the facility must ensure the resident maintains acceptable parameters of nutritional status.

12. 42 CFR 483.30- The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

13. 42 CFR 483.65- The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease.

14. Arkansas LTC 303.7 – Sufficiently trained personnel shall be on duty at all times. Provisions shall be made for relief of direct care personnel during vacations and other relief periods.

15. Arkansas LTC 306.11.1(3) - "Neglect" means:

a. Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to [a nursing home resident;

b. Negligently failing to report health problems or changes in health problems or changes in health condition of [a nursing home resident] to the appropriate medical personnel; and

c. Negligently failing to carry out a prescribed treatment plan.

16. Arkansas LTC 318.5 - Only those persons are accepted whose needs can be met by the facility directly or in cooperation with the community resources or other providers of care with which it is affiliated or has contracts.

17. Arkansas LTC 318.6 - As changes occur in their physical or mental condition necessitating service or care which cannot be adequately provided by the facility, residents shall be transferred promptly to facilities which can provide appropriate care.

18. Arkansas LTC 352.1 - Total resident care includes medical care, nursing care, rehabilitation, restorative therapies, and personal cleanliness in a safe and clean environment.

19. Arkansas LTC 402 – General - Every institution must be maintained, managed, and equipped to provide adequate care, safety, and treatment of each resident.

20. Arkansas LTC 453 – Equipment and Supplies - Nursing equipment and supplies shall be provided to meet the patients' needs and maintained in good condition to ensure adequate nursing care of the patients.

21. Arkansas LTC 516.2 - Routine Care and Services - Each patient in the home shall receive the type of nursing care including restorative nursing as required by his/her condition. Patients shall be encouraged to be active, to develop techniques for self – help, and be stimulated to develop hobbies and interests. Criteria for determining adequate and proper care includes:

22. Arkansas LTC 516.2 - Significant changes in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications). Charting will be required on every shift until the resident's condition becomes stable.

23. Arkansas LTC 516.2.9 - Measures shall be taken toward the prevention of pressure sores, and if they exist, treatment shall be given on written medical order. The position of bed patients shall be changed every two (2) hours during the day and night.

24. Arkansas LTC 516.2.13 - Fluids shall be offered at frequent intervals when the patient is unable to obtain them. Water pitchers shall be refilled at least once each shift and should be kept in reach of patients. Clean drinking glasses shall be kept with each water pitcher.

25. Arkansas LTC 516.2.17 - Proper bed and chair positioning.

26. Arkansas LTC 516.2.18 - Nursing equipment is in sufficient supply, in good condition, is properly cleaned, and cared for, well organized, and readily available.

27. Arkansas LTC 516.2.19 - Precautions to assure the safety of patients are continuously in effect.

28. Arkansas LTC 516.2.20 - Bedside nursing care.

29. Arkansas LTC 519 - Supervision of Patient Nutrition - Nursing personnel shall be aware of the nutritional needs, food, and fluid in-take of patients and assist promptly where necessary in the feeding of patients.

HOW THE STANDARDS OF CARE WERE BREACHED AND CAUSED INJURY, HARM, OR DAMAGES

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

HOW ANY PRE-EXISTING MEDICAL CONDITIONS OF MR. OSCAR JONES IMPACTED THE STANDARD OF CARE THAT SHOULD HAVE BEEN FOLLOWED BY THE ARKANSAS VETERAN'S HOME

[redacted]

[redacted]

MR. OSCAR JONES' DEATH CERTIFICATE CONFIRMED THAT HIS DEATH WAS CAUSED BY THE NEGLIGENCE OF THE ARKANSAS VETERAN'S HOME

[redacted]

SUMMARY

I have been advised that "*Negligence*" means:

> *Negligence, when used with respect to the conduct of a medical facility means failure to use ordinary care, that is, failing to do that which a medical facility of ordinary prudence would have done under the same or similar circumstances or doing that which a medical facility of ordinary prudence would not have done under the same or similar circumstances.*

I have been advised "*proximate cause*" means:

> *That cause that was a substantial factor in bringing about an occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission must be such that a health care provider using ordinary prudence would have foreseen that the occurrence, or some similar occurrence, might reasonably result there from. There may be more than one proximate cause of an occurrence.*

More likely than not, this negligence on the part of the Arkansas Veteran's

Home in North Little Rock, Arkansas, to practice in an acceptable manner proximately caused Mr. Oscar Jones' [redacted] specifically set forth above, the actions and inactions of this facility caused the conditions and complications described above.

In summary, the Arkansas Veteran's Home in North Little Rock, Arkansas, did not meet the standard of care in its treatment of Mr. Oscar Jones. It is my opinion, based on my medical education, experience, and training and based upon a reasonable degree of medical and nursing, probability and certainty, that these negligent acts and omissions as stated above proximately caused Mr. Oscar Jones' [redacted] my opinion that the Arkansas Veteran's Home, in North Little Rock, Arkansas, knew or should have known that its failure to meet the standards of care would put Mr. Jones at extreme risk of harm and knew that this failure to meet these standards would likely cause [redacted] to Mr. Jones. Nevertheless, the Arkansas Veteran's Home, still failed to follow the above standards. Had the standards of care been followed by the Arkansas Veteran's Home, more likely than not and based upon a reasonable degree of medical and nursing, probability and certainty, Mr. Oscar Jones would not have suffered the [redacted]

I reserve the right to amend, or add to, my opinions upon review of additional records, testimony, or facts, as they become available, or upon further review of existing materials.

Respectfully submitted,

Keith E. Miller, M.D.

Keith E. Miller, M.D.
558 Lakewood Drive
Center, Texas 75935

EXHIBIT
19

Arkansas
State Claims Commission
OCT 19 2023
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Quality of Life – Dignity

Highlights	Policy Statement
	Each resident shall be cared for in a manner that promotes and enhances quality of life, dignity, respect and individuality.

Policy Interpretation and Implementation

Dignity and Respect	1. Residents shall be treated with dignity and respect at all times.
"Treated with Dignity"	2. "Treated with dignity" means the resident will be assisted in maintaining and enhancing his or her self-esteem and self-worth.
Grooming Preferences	3. Residents shall be groomed as they wish to be groomed (hair styles, nails, facial hair, etc.).
Clothing Preferences	4. Residents shall be encouraged and assisted to dress in their own clothes rather than in hospital gowns.
Choice of Activities	5. Residents shall be assisted in attending the activities of their choice, including activities outside the facility.
Respect of Private Space and Property	6. Residents' private space and property shall be respected at all times. a. Staff will knock and request permission before entering residents' rooms. b. Staff will not handle or move a resident's personal belongings (including radios and televisions) without the resident's permission.
Respectfully Addressing the Resident	7. Staff shall speak respectfully to residents at all times, including addressing the resident by his or her name of choice and not "labeling" or referring to the resident by his or her room number, diagnosis, or care needs.
Keeping Resident Informed and Oriented to Environment	8. Staff shall keep the resident informed and oriented to their environment. Procedures shall be explained before they are performed and residents will be told in advance if they are going to be taken out of their usual or familiar surroundings.
Confidentiality of Clinical Information	9. Staff shall maintain an environment in which confidential clinical information is protected, for example: a. Verbal staff-to-staff communication (e.g., change of shift reports) shall be conducted outside the hearing range of residents and the public. b. Signs indicating the resident's clinical status or care needs shall not be openly posted in the resident's room unless specifically requested by the resident or family member. Discreet posting of important clinical information for safety reasons is permissible (e.g., taped to the inside of the closet door). c. In the interest of public health, posting the resident's isolation status or Transmission-Based Precautions is permissible as long as the type of infection remains confidential. d. The display of the resident's name on the door or the presence of memorabilia among the resident's belongings is not considered a violation of the resident's privacy or dignity.

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Bodily Privacy During Care and Treatment

10. Staff shall promote, maintain and protect resident privacy, including bodily privacy during assistance with personal care and during treatment procedures.

Promotion of Resident Dignity

11. Demeaning practices and standards of care that compromise dignity are prohibited. Staff shall promote dignity and assist residents as needed by:

    a. Helping the resident to keep urinary catheter bags covered;
    b. Promptly responding to the resident's request for toileting assistance; and
    c. Allowing residents unrestricted access to common areas open to the public, unless this poses a safety risk for the resident.

Treatment of Cognitively Impaired Residents

12. Staff shall treat cognitively impaired residents with dignity and sensitivity; for example:

    a. Addressing the underlying motives or root causes for behavior; and
    b. Not challenging or contradicting the resident's beliefs or statements.

References		
OBRA Regulatory Reference Numbers	483.15; 483.15(a); 483.15(b)	
Survey Tag Numbers	F240; F241; F242	
Related Documents		
Policy Revised	Date:_____	By:_____
	Date:_____	By:_____
	Date:_____	By:_____
	Date:_____	By:_____

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EXHIBIT
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Charting and Documentation

Highlights	Policy Statement
	All services provided to the resident, or any changes in the resident's medical or mental condition, shall be documented in the resident's medical record.

Policy Interpretation and Implementation

Highlights	Policy Interpretation and Implementation
Documentation Requirements	1. All observations, medications administered, services performed, etc., must be documented in the resident's clinical records.
Recording Entries	2. Entries may only be recorded in the resident's clinical record by licensed personnel (e.g., RN, LPN/LVN, physicians, therapists, etc.) in accordance with state law and facility policy. Certified Nursing Assistants may only make entries in the resident's medical chart as permitted by facility policy.
Recording Accidents/ Incidents	3. All incidents, accidents, or changes in the resident's condition must be recorded.
Confidentiality and Release of Resident Information	4. Information documented in the resident's clinical record is confidential and may only be released in accordance with state law and facility policy. Refer all requests for information to the Director of Nursing Services, Nurse Supervisor/Charge Nurse or to the business office.
Use of Abbreviations and Symbols	5. To ensure consistency in charting and documentation of the resident's clinical record, only facility approved abbreviations and symbols may be used when recording entries in the resident's clinical records.
Documentation Criteria	6. Documentation of procedures and treatments shall include care-specific details and shall include at a minimum: a. The date and time the procedure/treatment was provided; b. The name and title of the individual(s) who provided the care; c. The assessment data and/or any unusual findings obtained during the procedure/treatment; d. How the resident tolerated the procedure/treatment; e. Whether the resident refused the procedure/treatment; f. Notification of family, physician or other staff, if indicated; g. The signature and title of the individual documenting.

References	
OBRA Regulatory Reference Numbers	483.10(e); 483.60; 483.60(a); 483.75(l)(1)(i)-(iv); 483.75(l)(4)(i)-(iv)
Survey Tag Numbers	F164; F425; F514
Related Documents	Abbreviations and Symbols (*See CD-ROM*) Guidelines for Charting and Documentation (*See CD-ROM*)
Policy Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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EXHIBIT
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EXHIBIT
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EXHIBIT
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Jukebox hero

The sound of new memories being made is sweet music to the ears of jukebox restorer Bill Jones

BY KIMBERLY DISHONGH
SPECIAL TO THE DEMOCRAT-GAZETTE

Arkansas Democrat-Gazette/KAREN E. SEGRAVE

Bill Jones places a 45 rpm record inside a Seeburg jukebox he is restoring. Restoration, the Bryant resi

Arkansas Democrat-Gazette/RUSSELL POWELL

The Seeburg M100C jukebox has pilaster lights with revolving colors. Restored by Bryant resident Bill Jones, this model is a favorite of his wife, Mary Ann.

Arkansas Democrat-Gazette/KAREN E. SEGRAVE

Amplifier tubes have to be checked and often replaced inside the jukeboxes Bill Jones restores. His wife, Mary Ann, helps Jones find parts on the Internet.

Arkansas Democrat-Gazette/KAREN E. SEGRAVE

Seeburg's Select-O-Matic was a familiar presence in restaurants and bars. Bill Jones has several machines in various stages of restoration.

Arkansas Democrat-Gazette/ KAREN E. SEGRAVE

The jukeboxes restored by Bill Jones hold 50 45 rpm records.

BRYANT — Bill Jones' thoughts roam as he works in the shop behind his home.

"Anytime I finish a jukebox, I stand up and look at it and wonder, 'Now how many people over the years have listened to this in bars? How many have played this and danced to it? How many marriages have ended up [starting] because of it?' It's amazing," he marvels, just inches away from a Seeburg M100C, the same kind of jukebox seen in many episodes of *Happy Days*.

He also wonders how many more lives will be touched when the restored jukebox goes to its new home.

"As I'm working on these boxes I'm also thinking about all the technicians who have worked on these. A lot of times I'll find writing on the inside of the jukeboxes."

One signature Jones found, written with a large pencil, was T. Arnford, 1950.

"This guy has probably been dead for years but there's his signature. [Some] even put the day and time he either put this box together or worked on it. So there's a lot of nostalgia that goes with it. It's pretty neat."

Jones, 76, has adored jukeboxes since around 1942, when he was a boy drinking soft drinks and listening to records with a friend in Rome, Ga.

"Across the street from us, there was a bar called Guice's Bar," he says. "This lady who ran the little juke joint had a son, Arthur, who was my age." Jones remembers being lulled to sleep each night by the muffled strains from the jukebox across the street, too young to be allowed in the bar at those late hours.

"I think I was about 12 or 13 at that time," he says. "In the daytime, when the place was closed, Arthur would open it up and we would go in there and get Cokes and he would [play] this old jukebox. We listened to music from that time — gospel songs, if you can believe that in a bar, and the Carter Family ... I think that's the first time I really fell in love with jukeboxes."

Jones has long since lost track of Guice, but his memories of that jukebox are strong. When he spotted an ad in the newspaper about 14 years ago from a company that was getting rid of its jukeboxes that played 45 rpm records and marketing only ones that played CDs, he saw an opportunity.

Jones, who has a degree in engineering from Michigan State University and more than 21 years of military training in electronics, called the chief technician at that company, who was eager to get rid of the phased-out machines.

"That was a little bit funny in a way because I didn't know how many they had," says Jones.

The company owned 50 or 60 jukeboxes; some were still in bars and restaurants. The technician showed Jones the 30 or so that were there, and Jones ultimately hauled every one to his house.

"My truck could carry four," he says. "I would just go over there every once in a while and look around." Each machine weighs about 500 pounds.

Jones thought he was extremely fortunate to have his choice of all those boxes to tinker with, but he soon realized they weren't all his heart's desire. Most of those boxes were made in the 1960s, 1970s and 1980s and his interest was in Seeburg jukeboxes manufactured in the 1950s.

The newer machines, he says, had metal cases and "were painted black or some off-the-wall color and they weren't pretty to me at all," he says.

Jones finds the jukeboxes he loves through ads, on the Internet and sometimes by word of mouth. He and his wife, Mary Ann, drive all over the state — and often to other states — to pick up jukeboxes. He sometimes has them shipped to him from as far away as New York.

Before he got those first jukeboxes, he had little insight into their inner workings.

"There are 600 parts just in that thing alone," he says, gesturing to the mechanism that lifts the records onto a turntable after a button is pushed.

The selection mechanism, which communicates the person's choices to the part that plays the record, has a pin bank with 200 pins that are about 2 inches long and less than onequarter of an inch in diameter.

"They have to be movable," Jones says. "If they're rusted into place, you're not going to be able to get a record to play." Rust, he says, is a big problem in

jukeboxes from 1950 and 1951.

At first, Jones sent the pin banks to someone else for repair. It cost $300 and he would have to wait several months, so he then decided to fix them himself.

Another challenge is wiring. Jones tests the wires, whose colors would indicate their purpose if they hadn't faded. He also planes and cuts wood for the jukebox's exterior.

Jones works from schematics and manuals for each model of jukebox. He relies on a Waukee, Iowa, parts warehouse, Victory Glass, to track down hard-to-find parts.

"They've got about everything you need," he says. "But they are expensive, naturally."

So Jones, with the help of his Internet-savvy wife, also searches the Web for some parts.

Some of the machines that make it to Jones' shop arrive in terrible condition.

"You would not believe what some of these looked like before Bill worked on them," Mary Ann says. "They can smell just awful if they've been in a place where there's smoking."

"One was a total wreck," Bill says. "I've never seen anything so bad. The glass was all busted. Inside, the parts were all rusted. I looked at it and thought 'what have I done.' It cost $350 and another $150 to get it shipped here. But I got it in operating condition."

Mary Ann remembers that jukebox well.

"It was so bad he didn't think he could fix it." But she knew better.

"He thought he would keep it for parts, but he couldn't stand it and he would go out [to the shop] and start into it. I wish he had taken some pictures."

She says it takes her breath away to see some of the jukeboxes her husband has restored.

"He can do just about anything," she says, pointing out intricately carved wooden ducks and soapstone figurines Jones created. He also built an addition for their home.

"When he gets a jukebox in, he will work all day. I have to call him in to eat sometimes."

To stay in good working condition, jukeboxes need to be played, says Jones.

Mike Higgs doesn't have to be told to keep the music playing.

"I play it virtually every day," says Higgs of the 1962 Seeburg jukebox his wife gave him as a birthday present three years ago. It is stocked with 45 rpm records of 1950s and early 1960s music. His home is decorated like a retro-1950s diner.

"Everybody loves it. It's really a showpiece," he says of the jukebox his wife purchased from Jones.

Larry Davis of Hot Springs is another of Jones' satisfied customers. Jones has worked on Davis' jukebox several times. One day it just stopped working, so Davis called Jones, who gave him instructions by phone on how to fix it.

Jones puts a $4,000 to $5,000 price tag on restored jukeboxes. He says it's often women who make the decisions about which jukebox couples buy.

He says it's difficult to say how long a restoration can take.

"It's hard for me to guess. A lot of times I'll be working on one box and I'll switch to another one," Jones says. "It just depends, sort of, how I feel on that day. But I would say if I worked solid on one box it would take me — this has got to include finding parts and stuff like that — it's got to take me five to six months."

Mary Ann's favorite jukebox is the Seeburg M100C with pilaster lights that have revolving colors. One sits in a room with a refrigerator and wet bar in the couple's home."We have a lot of country and western, some instrumentals and always some Elvis Presley," she says. The jukebox holds 50 records and they change them from time to time, but always keep some favorites, such as "Lost in

the Feeling" by Conway Twitty, "Last Date" by Floyd Cramer and "Love Me Tender" by Presley.

"That's my favorite Elvis song," she says.

Other songs on the jukebox are "Georgia on My Mind" by Jerry Lee Lewis, "Spanish Eyes" by the Arkansas Jamboree Band, "The Wind Beneath My Wings" by Gary Morris, "Jukebox in My Mind" by Alabama, "Islands in the Stream" by Kenny Rogers and Dolly Parton and "Harbor Lights" by The Platters.

"Bill is a man of many talents. He makes some beautiful things happen," Mary Ann says. "There's no telling how many more years that these jukeboxes he has worked over are going to make memories."

EXHIBIT
24

[redacted]

EXHIBIT
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[redacted]

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones — **CLAIMANT**

v. — **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK — **RESPONDENT**

CLAIMANT'S DEPOSITION SUMMARIES

- **Mary Ann Jones (wife of Bill Jones)**

This case is about the care that her husband, Bill Jones, did not receive at the Arkansas State Veteran's Nursing Home. (4). Mary Ann grew up in Little Rock and went to Little Rock Central High School. (5). Prior to being married to Bill, she had been married twice. (6). She had two children from her first marriage, Jerri Ann Stokes and Karen Lynn. She met Bill at an American Legion dance here in Little Rock and fell in love. (7). She did not have any children with Bill. (8). Bill enlisted in the Army at the age of 17 years old and after basic training, he was sent to Korea twice. (10). After his second tour of duty in Korea, he was stationed in Germany and was in the Special Forces. Bill grew up in a large family in Alabama. (11). He served 21 years in the military and did two tours in Vietnam before becoming a military instructor. (12). He was very talented musically and he helped entertain the troops. He was 46 years old when they met. (13). He had three children from his first marriage, Cynthia Barlett, [redacted] and Rhonda Brostrom. Mary Ann had a good relationship with Rhonda. (14). [redacted]. He loved to go fishing. (18).

After they got married, they lived in Georgia until 1995 when they moved back here to help her family. (21). He could fix anything. The Democrat Gazette did an article about him fixing jukeboxes. (22). Around 2012, she noticed that things were not as easy for [redacted]

[redacted]. (29-30). A VA social worker told her about the Arkansas State Veteran's Nursing Home. S[redacted] 34). She checked out other local nursing homes but thought that because he was a military veteran, he would be good care at the Arkansas State Veteran's Nursing Home. (35). He was 100% service disabled. (36). He did not have a problem going to the Arkansas State Veteran's Nursing Home. (37).

After he was admitted into the Arkansas State Veteran's Nursing Home, he wanted to come home because staff were not gentle with him. (39). One time two male staff members [redacted], and he would not come out of his room. (40). [redacted] (41). One time she found Bill on the porch, and he would not go back in as he was trying to leave. (43). He eventually went back into the nursing home. She found him on the porch all by himself another time as well (44). He did elope from the Arkansas State Veteran's Nursing Home a few weeks after he was admitted. (45). She would visit every other week, sometimes more. (46). Though she never saw a [redacted] (47). He was originally in House 7 and then they moved him to House 8. She told the Arkansas State Veteran's Nursing Home about the [redacted]s. (48). She met with staff about the issues and after the meeting [redacted]. (49-50). She liked the move to House 8. He recognized her and her daughter when they visited. (51). When they got to the nursing home, he would come to them, and he called her Ann. (52). She was told he had pushed an aide but not about other behaviors. The last few weeks he was there, [redacted]. (54). H[redacted]). Bill did not complain. (56). They were with him on December 24 and 25 and the 27th is when he went to the VA hospital. She was trying to get him moved because [redacted] (61).

She trusted the Arkansas State Veteran's Nursing Home to take good care of him. [redacted] She blames the Arkansas State Veteran's Nursing Home for his care and death. She is still grieving today. (68). While serving in the military, he did over 1000 parachute jumps and received a purple heart. (69).

- **Jerri Ann Stokes (Bill Jones' stepdaughter)**

She lives in Bryant and has two of her own children. (5). Bill was her stepfather and he had three other children. (6). She had a good relationship with her stepfather. (6). She called him by his nickname "Bill." (9). His three children were not able to visit him at the nursing home. [redacted]. (10). She is not sure about the relationship with the other two kids. (11). **Bill had a awesome relationship with his daughter Rhonda. (12).** Jerri Ann worked for Edward Jones as a senior branch administrator. She would visit Bill at the Arkansas State Veteran's Nursing Home. (13-14). Bill married her mom in 1979, the same year she graduated high school. (15). She visited Bill and went to the funeral. (17). She was aware of Bill's [redacted]. (25). She went to the Arkansas State Veteran's Nursing Home. It was new and had large rooms. It was nice. (27). The plan was that it would be his permanent home. (28). Mom handled the meetings with the nursing home. (29). [redacted]. (31).

They would visit Bill every other Sunday in 2018 and she would drive her mom. (32). Mom visited at times without her. He seemed happy when they visited. (33). They would visit around mealtime, and they would watch TV with him. (34). Bill liked being outside. (35). At first, [redacted] (37). Bill did elope one time from the nursing home, and she was called by the nursing home. (38). The Arkansas State Veteran's Nursing Home usually called her mom, she went to a family meeting at the nursing home. (39). She told the nursing home about him wearing other people's clothes and that the nursing home had missed some of his doctor's appointments. She understood that the Arkansas State Veteran's Nursing Home would provide 24/7 care. (40). She discussed the clothes and the missed appointments at the meeting with the nursing home. (41-42). [redacted]. (46). She first thought he was in an actual chair. (47). [redacted]. They would try to call the Arkansas State Veteran's Nursing Home phone, but it was never answered. (48). The last six weeks were hard [redacted] 55).

She felt the Arkansas State Veteran's Nursing Home was a fraud and they knew when the family would visit, and [redacted] She blames the Arkansas State Veteran's Nursing Home for this. (68).

- **Cyntha Barlett (daughter of Bill Jones)**

Dad passed due to neglect and this case is about him. Cythnia is 67 years old, and her dad was married to her mom for twenty-one years before they divorced. (4-5). She moved to Germany when she was twenty-one years old. Dad was amazing, talented, had a strong moral character and they had a really close relationship. (6). Her mom was German, and they lived in Germany for many years. Dad was a Green Beret and was in the special forces. She had a relationship with him ever after the divorce. (7). She traveled to see her dad after he moved to Georgia. (8). After she had two kids, she could not travel as much even when Bill moved to Arkansas. She would communicate with him through her sister, and there were a few years they did not talk. (10). Mary Ann placed him in the Arkansas State Veteran's Nursing Home because she needed help and Cynthia thought it was the correct decision. (11). Cythina did not think the care at the Arkansas State Veteran's Nursing Home was very good and he was being left alone and not being cared for. (12). Her sister Rhonda was able to visit him more than she did. (13). [redacted] (15). She had a good relationship with her stepsisters. (18). She wants the Arkansas State Veteran's Nursing Home to be held accountable. She is still grieving her father and still loves him. (18).

- **Rhonda Brostrom (daughter of Bill Jones)**

This case is about her father's death, how he died, and what happened to him. She is 62 years old and Bill's youngest daughter. (5). Dad was around the whole time she was growing up and had a lot of involvement in her life. When her parents divorced when she was sixteen years old, she lived with her dad. (6). After she got married at the age of eighteen, she would visit her dad often. We were there all the time, and we had a good relationship. [redacted] Ann was fine. Mary Ann got along with her mom as well. (8). She visited more once he

[redacted] She lives in Minnesota. When she visited, she noticed Mary Ann was having a hard time with dad. (9). Her husband was a pilot, and she could not come down when Bill was moved into the nursing home. She was not able to visit him at the Arkansas State Veteran's Nursing Home however she was on her way to see him when he died. (10). She saw her dad right before he went into the Arkansas State Veteran's Nursing Home. Mary Ann wanted to make sure that they were all in agreement about putting him into a nursing home. (11). A[redacted] (12). They thought it was probably the best thing to put Bill into a nursing home. All three of his kids agreed. (13). She wants the Arkansas State Veteran's Nursing Home to be held accountable for what happened to her dad. (14). She grieved and still grieves for her father; she loved him very much. (15). Her information about the specifics of the lawsuit came from Mary Ann. (16).

- **[redacted] (son of Bill Jones)**

This case is about the negligence that caused the death of his father. (4). He was sixteen when his parents divorced. At that time, [redacted] was in the Marines Corp. **His relationship with his dad was excellent as always**. He would talk with him two to three times per week. He continued to communicate with his dad until his dad could no longer remember. (5). Mary Ann told him about the problems she was having with his dad. (6). From 2010 to 2015 he was living in Michigan and made two trips to see his dad. One trip was to make sure his dad was saved, that he believed in God. The second trip, his dad was having memory issues. Saw his dad be disoriented and repetitive. (7). His relationship with Mary Ann was good up until his dad's death. He would talk with his dad on the phone. (8). He came to visit his dad about eight to ten months prior to him going into the Arkansas State Veteran's Nursing Home. [redacted]. It was heartbreaking. He would be in constant communication with Mary Ann. They agreed that at some point he might need to be put into a nursing home. (9). [redacted]. He was able to talk to his dad one time at the Arkansas State Veteran's Nursing Home. **The Arkansas State Veteran's Nursing Home would not answer the phone; he tried to call a thousand times. He left a lot of messages. No one ever called him back**. (10). He got updates from Mary Ann, and she would tell him about things at the nursing home. (11). He does not recall what Mary Ann told him. [redacted]. (12). If money is awarded in this case, Mary Ann would be entitled to some as she was his wife. (15). Any money should be shared equally. He wants the Arkansas State Veteran's Nursing Home to be held accountable for what happened to his dad. (16). **He grieves for his dad every day.** (17).

- **Beverly Byrd (former Licensed Practice Nurse at the Arkansas State Veteran's Nursing Home)**

Beverly is currently working as a Licensed Practice Nurse (LPN) at an Assisted Living Facility in Conway, Arkansas. She has been a nurse for twenty-five years. (7). She previously worked as an LPN at the Arkansas State Veteran's Nursing Home. She typically worked the day shift from 7 am to 7 pm three to four days a week. (9). The nursing home had seven to eight different houses and she was assigned to two houses when she worked. (11). She would be the only nurse assigned to those two houses during her shift and she would supervise Certified Nursing Assistants (CNAs) or Universal Workers as they called them at the nursing home. (12). **If she did not have enough staff, she would call and ask for more staff. Lot of times she was told to make do with the staff that they had.** (13). She would chart on a computer and would mark medications treatment records. She did not do treat pressure sore or do wound care. (14). There was a wound care nurse that was responsible for wound care. (15). She would pass medications three times a shift and she did not do head to toe assessments on her shift. (17). She was very busy during the day. She was not in charge of staffing. (18). **She had concerns about staffing. They did not have enough staff for the two houses. She talked to the Director of Nursing and the Assistant Director of Nursing about her staffing concerns. They never got additional help.** (19). She had to stay and work after her shift because they did not have another nurse.

She remembers Bill Jones. He was friendly [redacted] (26). Bill's wife would call the nursing home. (27). She would bring him yogurt and his wife would do the same. She spent her own money on his yogurt. (29). S[redacted] **idents would have gotten better care if they had more help. The Veterans deserved more help.** (32). She gave Bill the best care she could. (34). She would have taken steps to help Bill. (35). If she put something in his chart, it happened. She made it a priority to talk with family members. She doesn't recall Bill having behavioral issues. (3[redacted] 95% of the residents were male. (41). They had two workers to make meals, to go to the rooms and change their beds. (43). Everyone was busy at work. She could not chart each thing she did. (45). Care takes priority and cannot chart everything that happens. (46). She did not witness Bill being neglected. (49). He was one of her favorite residents. (50). Mrs. Jones was particular about certain things. She got mad because he was wearing something else's shirt. (51-52). It was the nursing home's policy to chart when medication was given and that was also good nursing practice. (55). CNAs were responsible for documenting activities of daily living. **She was**

taught that if it was not documented, it was not done. That is policy everywhere. Nurses' notes are communications tool to help talk to the next shift. (56). If mediation documentation was not filled out, there would be a note. There should have been someone checking the charting. (58-59). **Mrs. Jones was more involved than a lot of families. She wanted the best for Bill.** (61). [redacted]. It is not acceptable to document on a resident when there are not in the building. (62).

- **Rosalind Page (former Licensed Practical Nurse at the Arkansas State Veteran's Nursing Home)**

She has been a Licensed Practice Nurse (LPN) for thirty-three years. (5). She worked at the Arkansas State Veteran's Nursing Home from 2017 to 2019. She worked the night shift and would be assigned to two houses. (6). She oversaw the nurse assistants and would pass medications on her shift. She also charted and did nursing stuff. She would document by using the computer. (7). It was policy to document when they gave medication. (9). Another nurse would do wound treatments. (10). The wound nurse did the weekly skin assessments. She did not do head to toe skin assessments every shift. Universal workers did the majority of activities of daily living for residents. (11). Universal workers would do their own documentation. (12). **She would see holes in their documentation. It was the policy of the nursing home to have all the documentation completed**. (13). Documentation is a communication tool. Heard not documented not done since she was in nursing school. (14). They would let them stay late to document. It is important to document care. Sometimes she would be assigned to three houses not just two. (15).

At night, there would be two universal workers per house. **She had concerns about staffing – the last year she was there they had staffing problems. That was at the end of 2018 and early 2019**. (16). **The staffing levels had gotten really bad with both universal workers and nurses. At times there were only three nurses at night for the whole facility. She brought up the staffing issues at meetings and her bosses were aware of it. We had staffing problems**. (17). She told the administrator about the staffing problems. He told her that they were trying to hire more people. They never stopped taking new residents. (18). She does not really recall Bill Jones. (19). She recalls meeting him a couple of times. [redacted] (20). She recalls Bill's wife – she was overly involved. (21). **She recalls a staff member calling her over to see Bill because** [redacted] **She left the Arkansas State Veteran's Nursing Home because of the poor staffing. She was the only nurse on the night**

shift. (25). Staff came to her to complain. Management essentially told her to be quiet. (26). Nurses get fired when they make a lot of noise. She wanted to get out of there. (27). They did have agency staff work at the facility at night. (29). Nursing homes have staffing issues, some worse than others. (30). She only worked with Bill two or three times. She did not see anything that would send alarms off. (32). She heard House 6 was a difficult house. She heard the residents were hard to work with. Residents have their preference for staff members, (35). [redacted]. (36). She prioritizes resident care. She cannot document everything. (37). There are accidents in charting. Missed charting is not always intentional. (38). The problem with electronic charting is sometimes you cannot go back and fix charting. (39). Universal workers do not have to have medical training. She was not used to working with those people. (40). She believes that they used universal workers because it was a financial decision. They did not have to pay them as much. Universal workers are not the same as nurse assistants. (41). Universal workers don't have medical training. She prefers CNAs. (42). Universal works do not have the medical training such as feeding and hydration. (43).

- **Lindsey Clyburn (former Administrator at the Arkansas State Veteran's nursing Home)**

He is currently the Administrator at the Barnes Healthcare nursing home in Lonoke, Arkansas. (8). He had been a nursing home administrator for many years. (9). He was the administrator at the Arkansas State Veteran's Nursing Home beginning in September 2016. (10). There are two State Veteran's nursing homes, one in Fayetteville and the one in North Little Rock. (11). He had been a Certified Nursing Assistant but was never a nurse. (13). When he started as the administrator at the Arkansas State Veteran's Nursing Home, they were finishing construction and it was not open at that time. (16). [redacted]. They were trying to open the nursing home in 2016 but had to push it back. (19). The first residents moved into the nursing home in February 2017. It had eight houses with a kitchen and twelve rooms in each house. There was a maximum of twelve residents per house. As the administrator he normally worked 8 a.m. to 5 p.m. (20-21). There was a Registered Nurse Supervisor who was in charge on the weekends. He was responsible for having staff, but the Director of Nurses did the scheduling of staff. (22). He was responsible for the residents' well being and he had to help build census. (23). To be eligible for the nursing home, the resident had to have some type of military service. (25). **The brochure that they use for the nursing home says that they will provide high quality service.** (28). He usually arrived at 8 a.m., made rounds, and he could tell if they were short staffed. They staffed well. (29). After his staff meeting, he would meet with the Director of Nurses. (30). They used electronic charting, and he would not review all of the charting. He would review incident reports. (31). He did not regularly look at charting and would not review the Medication or Treatment charting or the Activities of Daily Living charting by the CNAs. (32). They referred to CNAs as universal workers. Universal Workers did everything including cooking meals, cleaning, and providing care to residents. They tried to have

three universal workers assigned to each house. (35). He wanted to have a nurse in each house and there were some shifts where there was only one nurse to multiple houses. The Veteran's Home was required to have sufficient staff to meet the needs of residents. (37). They were subject to the federal OBRA nursing home regulations. (38). They were also subject to the State of Arkansas nursing home rules and regulations. **He expected staff to follow their own policies and procedures**. (39). He expected staff to follow the applicable rules and regulations. (41). Resident Rights is a basic set of rights to which all residents are entitled to in a nursing home. This includes the right to adequate and appropriate health care; to be treated fairly and courteously etc. (42-43). They had policies in place. Their Quality-of-Life policy mirrors the Arkansas Resident Rights Act. (44-45). The definition of neglect is in their policy. (47). Universal Workers were required to document in the Activities of Daily Living section and the system would flag it if they did not document. (49). At one point they had a wound nurse who would treat wounds and do skin assessments. (51). He expected all documentation to be accurate. Documentation is a communication tool, and it should be accurate. (52). A Care Plan is a summary of the care to be provided to meet the needs of residents. A comprehensive assessment is done on admission and is used to identify problem areas. Regulations require Care Plans. (53). **A Care Plan is reviewed every quarter and as a resident's needs change. They were supposed to review and possibly change interventions.** (54). A care plan is supposed to be individualized to meet the needs of residents. (55). Pressure ulcers can form on bony prominences. Want to make sure that if a resident comes in without pressure ulcers that they remain free of pressure ulcers. (57). Failure to properly chart on a resident can lead to problems. If there is charting on a resident when the resident is not in the facility, that is unethical and improper. (59). Not having sufficient staff could be neglect. Universal workers provided the majority of care to residents. Universal workers are the backbone of the facility. The Arkansas State Veteran's Nursing Home was budgeted through the State of Arkansas. Budget had to be approved by legislature. (62). He worked under budget constraints. He had no control over the budget. (63). [redacted] (69).

He doesn't really remember Bill Jones. (70). He does not recall Bill's family. (72). It was not recommended that the Universal Workers not fill in the chart. (74). ADLs were part of the communication tool used at the nursing home. He does not recall Bill [redacted]s at the State Veteran's nursing home. (77). Universal Workers only document on the ADLs. (79). [redacted]t. (80). The Arkansas State Veteran's Nursing Home was a beautiful facility. (81). Veterans loved the facility. He did not have a hard time filling the census. (82). They trained staff for months before the facility opened. Administration in a nursing home is different than at a hospital. (83). Residents of nursing homes have changed. Residents are much sicker now. (84). [redacted]s with a nursing home resident. (85). The

wound care nurse that they used was an in-house person. (86). They also hired a nurse practitioner. Residents could have their own doctors come in and see them. (87). He had a great relationship with Nate Todd. (88). The eight houses they had were to be like homes. They had private rooms for the residents. (89). They tried to do patient centered care. Residents are allowed freedom to decide what time to go to bed and eat meals. (90). The nursing home makes a choice to accept a resident or not. They do not have to accept all residents. (92). After he left, they created a dementia home. (93). The wound care nurse would have been there every day. (94). The wound care nurse could talk with staff. Communication is the key. Doctors are not there every day. (95). A doctor comes by once a week. (96). The doctor is required to look at the resident's chart and they rely on the chart. (98). If something is documented, it should be correct. Workers are not just documenting for themselves but for others as well. The ADLs have some holes in them. (99). Skips are not acceptable. (100). Not acceptable to chart on a resident when the resident is not in the building. (101). Care provided to residents should be documented. (102). The Arkansas State Veteran's Nursing Home had a policy to have complete and accurate charting. It is there to protect residents and ensure good care. (104). Nurse Practitioner rounded once a month. Staff can call a doctor at any time. (105).

- **Dr. Keith Miller (Claimant's expert physician)**[1]

Attached is his CV / resume. (73). Dr. Miller completed his undergraduate work at Baylor University and then attended medical school at the University of Arkansas in Little Rock which included a family residency program. He graduated medical school in 1985 and then did a three-year residency in family medicine. Following completion, he returned home to Texas. Dr. Miller has been practicing medicine for 35 years and seeing nursing home patients during that time including seeing patients at nursing homes. He received training at the VA hospital in Arkansas. (74). He has been the medical director of nursing homes in Texas. He has served as a consultant to the Texas Medical Board and served as a Board member on the Texas Medical Board for six years. (75). He has treated veterans and has started seeing more veteran patients recently. He is part of the only facility around that treats veterans. He has treated veterans with the same medical issues as Bill Jones. (76). He is board certified in family medicine and in hospice and palliative care. Board certification comes from the American Board of Medical Specialties. To become board certified, you must practice in that area and then take extensive examinations. (78). He assists families in making the decision to place their loved one on hospice. Hospice is a decision based on life expectancy for the patient. Hospice decision in Texas is the same as the hospice decision in Arkansas. The standards to qualify for hospice are the same in both states. With hospice, he must make life expectancy decisions. (78).

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[1] In this summary, Claimant will start with the examination by Claimant's attorney as it will set forth Dr. Millers' opinions in a way to better understand his testimony.

He has treated patients in the same type of setting as the Arkansas State Veteran's nursing home. He uses the same type of records and worked with the same type of nursing professionals. The standard of care applicable to this case is what a reasonable healthcare provider would do in the same or similar circumstance with the same or similar patient. The state and federal regulations reflect the standard of care. (79-80). He is familiar with the same or similar policies applicable to this case. The policies reflect the standard of the nursing home. (81). Dr. Miller does expert work because he believes that all medical providers need to do what is I the best interest of patients and because they need to policy themselves. (82). He is frequently retained by the defense or the medical provider to provide expert testimony. He reviews plaintiff cases and defense cases. He does not advertise his expert services. He has testified as a medical expert in Arkansas in Courts and in arbitrations. (83).

He did a report for this case involving Bill Jones that reflects his opinions and the

[redacted]

[redacted]. Bill's military service was impressive. He deserved good care at the nursing home. (102). His testimony has never been excluded from court. (104). [redacted] (106).

In front of him at his deposition is his report and the pages cited in his report. (7). He received the medical records in this case electronically. He printed off the pages he refers to in his report. He provided his federal court expert witness list. He has been paid $4,800 for review of materials which was sixteen hours. (8). He has reviewed additional documents including the deposition transcripts. He has another eight to ten hours in reviewing the materials. He has an additional $3,000 in time that is not billed. (9). The nursing home is paying $1,800 for his deposition. He does not plan on doing any additional work on this case unless he is asked. The depositions supported his initial opinions in this case. (10). He does not plan to do additional reports. He has not spoken with any employees or other experts in this case. He did his medical training at UAMS and spent time in the Little Rock system. (11). He has been to Fort Roots Hospital. As a medical student and resident, he would rotate through the UAMS and Fort Roots hospital. (12). He reviewed medical records from the Arkansas State Veteran's Nursing Home, MEMS, the death certificate, and other documents. He has not reviewed any OLTC paperwork. (13). He is very familiar with treating veterans. He sees veterans in his practice and is very familiar with the care of veterans and the veteran's health system. His is the only facility in miles that sees veterans. He has five areas of concern in this case: [redacted]. Staffing issues and being frequently understaffed is well documented by the nurses. (15). In Mary Ann's deposition, she stated that she didn't realize some of the problems that Bill was having at the Arkansas State Veteran's Nursing Home until he got to the VA hospital. This included [redacted]. She attributed [redacted] at the Arkansas State Veteran's Nursing Home. (16). His concerns with staffing were supported by the testimony of Nurse Byrd and Nurse Page. No testimony of a specific incident involving Mr. Jones. (18). Based on his education, training, and experience, he can deduce what did or did not occur regarding

the result that Mr. Jones' suffered. He has the experience of seeing patients for over 30 years. (19). He cannot specifically say what employees did or did not do something. He is not speculating in his opinions as he is basing them on his education, training, and experience. The reason Mr. Jones was admitted to Arkansas State Veteran's Nursing Home was because Mary Ann needed more help. (20). He agrees that [redacted]).

He has testified in the past to the medical standard of care. (39). He does not advertise his services as an expert witness [redacted]

Bill's medical records should be very dynamic and ongoing. The records should reflect an ongoing process to address his issues. (56). The purpose of medical records is to improve patient care. He would expect to see the staff document if they were having Bill. (58). He is critical of the records being deficient of stating problems with to Bill. (59). There was also a lack of information on the from the Arkansas State Veteran's Nursing Home. Once Bill got to the VA hospital that is when the records reflect . He did not see any evidence of abuse. H He would defer to a nurse for nursing standards. (63). The regulations do not set the standard of care but reflect that his opinions are about those regulations are widely held. (64). Dr. Miller has other cases with counsel for the claimant. He cannot point to specific days that were short staffed. (65). The Arkansas State Veteran's Nursing Home's nurses both stated that they were short of staff. (66). This nursing home should have been able to care for Mr. Jones. If Bill had not suffered at the nursing home, he would have lived another four to five years. He needed nursing home care because o – he physically could have lived another four to five years. (67). He testifies about life expectancy because he sees these issues in his practice and in hospice care. (68). His opinions are based on his education, training, and experience. He has not published articles on life expectancy. (70). He has training in hospice and palliative care. If he had lived another four to five years, his quality of life would have been adequate. Staff discussed how he was happy, and he smiled when his name was said. (71). After he was admitted to the hospital, . (72).

- **Luanne Trahant (Claimant's nursing physician)**

Nurse Trahant's testimony will be supplemented once her deposition transcript is received.

Respectfully submitted,

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ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK **RESPONDENT**

CLAIMANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT

1. Oscar "Bill" Jones joined the United States Army at age 17 and had a very long and distinguished military career that included two tours of duty in Vietnam, over 1,000 jumps out of aircraft, and being part of the Special Forces as a Green Beret.

2. Bill Jones had three children, Cynthia Bartlett, a d[redacted]a son; and Rhonda Brostrom, a daughter.

3. Bill Jones married Mary Ann Jones in 1979 and remained married until his death in January 2019.

4. He was loved by his wife and children.

5. On April 12, 2018, Oscar "Bill" Jones was admitted to the Arkansas State Veteran's Nursing Home in North Little Rock, Arkansas.

6. Upon admission into the Arkansas State Veteran's Nursing Home, Bill Jones was[redacted].

7. During his residency at the Arkansas State Veteran's Nursing Home, Bill Jones had[redacted].

8. In September of 2018, Bill Jones needed [redacted]

9. By December of 2018, Bill Jones w[redacted]

10. [redacted]

[redacted] U[redacted]

[redacted] "[redacted]

[redacted] [redacted]

[redacted] B[redacted]

15. Bill Jones was 86 years old when he died.

16. Since Bill Jones' death, his wife and children have grieved his loss and continue to grieve his loss and untimely death.

17. As a result of the [redacted] Bill Jones endured pain and suffering during his life and prior to his death.

18. During his residency at the Arkansas State Veteran's Nursing Home, the Arkansas State Veteran's Nursing Home had staffing issues including needing more staff to provide care to residents.

19. That at the time of his death, Bill Jones has a life expectancy of four to five years.

PROPOSED CONCLUSIONS OF LAW

1. The Arkansas State Veteran's Nursing Home had a duty to their resident veterans, including Oscar "Bill" Jones, to provide them with good quality nursing home care.

2. The Arkansas State Veteran's Nursing Home had a duty to their resident veterans, including Oscar "Bill" Jones, to provide them with the care and treatment to meet their needs.

3. The Arkansas State Veteran's Nursing Home had a duty to their resident veterans, including Oscar "Bill" Jones, to provide them with the care and treatment that a reasonable nursing home would have done in the same circumstances.

4. The Arkansas State Veteran's Nursing Home had a duty to Oscar "Bill" Jones to keep complete and accurate medical records.

5. The Arkansas State Veteran's Nursing Home had a duty to Oscar "Bill" Jones to provide him with a Care Plan and interventions to address his specific needs.

6. The Arkansas State Veteran's Nursing Home had a duty to Oscar "Bill" Jones, to update and change his Care Plans as his needs changed.

7. The Arkansas State Veteran's Nursing Home had a duty to Oscar "Bill" Jones, to provide and protect Bill Jones' Resident Rights.

8. The Arkansas State Veteran's Nursing Home had a duty to care for Oscar "Bill" Jones in a dignified manner.

9. The Arkansas State Veteran's Nursing Home breached the duty to care owed Oscar "Bill" Jones by:

a. failing to update his Care Plan as his needs changed;

b. failing to keep complete and accurate records of the care and treatment Bill Jones was provided by staff at the Arkansas State Veteran's Nursing Home;

c. [redacted]

g. failing to have sufficient staff to meet the needs of Bill Jones.

10. The breaches of duty by the Arkansas State Veteran's Nursing Home caused Bill Jones to suffer from:

[redacted]

11. That the Estate of Bill Jones is entitled to damages for:

a. The nature, extent, duration and permanency of the injury to Bill Jones;

b. The pain and suffering endured by Bill Jones; and

c. Bill Jones' loss of life.

12. That the wrongful death beneficiaries, including his wife and three children, are entitled to damages for their mental anguish and grief suffered as a result of the wrongful death of Bill Jones.

13. As a result of the actions of the Respondent, the Estate of Oscar "Bill" Jones is entitled to a total award of $_____.

14. As a result of the actions of the Respondent, the wrongful death beneficiaries of Oscar "Bill" Jones are entitled to an award of $_____ for each of the four wrongful death beneficiaries for a total wrongful death beneficiary award of $_____.

1 IN THE ARKANSAS STATE CLAIMS COMMISSION

2
OSCAR ODELL "BILL" JONES,
3
Claimant,
4
vs. No. CC-200817
5
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
6
Respondent.
7

8 _____

9 DEPOSITION OF JERRIE ANN STOKES
TAKEN ON BEHALF OF THE DEFENDANT
10 ON APRIL 19, 2023, BEGINNING AT 8:57 A.M.
IN BRYANT, ARKANSAS
11 REPORTED BY MIKE WASHKOWIAK, CCR

12 APPEARANCES:

13 On behalf of the PLAINTIFF

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18 On behalf of the DEFENDANT

19 Jordan Broyles
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23 Also present: Mary Ann Jones

24

25

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STIPULATIONS

It is stipulated that the deposition of JERRIE ANN STOKES may be taken pursuant to agreement and in accordance with the Arkansas Rules of Civil Procedure on APRIL 19, 2023, before Mike Washkowiak, CCR.

1 JERRIE ANN STOKES,
2 after having been first duly sworn, deposes and says in
3 reply to the questions propounded as follows, to-wit:
4 DIRECT EXAMINATION
5 BY MS. BROYLES:
6 **Q Can you please state your name for the record?**
7 A Jerrie Ann Stokes.
8 **Q Ms. Stokes, my name is Jordan Broyles. We met**
9 **off the record before we started. I represent the**
10 **Veterans Home where your stepfather resided for a period**
11 **of time. Obviously we're here today to talk about the**
12 **lawsuit that your mother has filed, and you're here as a**
13 **witness to kind of tell us what you saw, heard, remember,**
14 **a little bit about him and things of that sort, okay?**
15 A Yes, ma'am.
16 **Q I do not anticipate we're going to be here long,**
17 **but if you need to take a break for any reason, just let**
18 **me know. If you need water, get up and stretch your legs.**
19 **Sometimes, because we're used to doing this, I can sit at**
20 **my desk for long periods or sit here for a long period of**
21 **time. Other people who have more mobile jobs tend to want**
22 **to get up and walk around, so if that becomes a need, just**
23 **let me know, okay?**
24 A Thank you.
25 **Q The other thing is I don't know what you know,**

so sometimes a question may seem out of the blue, or you may not know an answer to it, and "I don't know" is a perfectly acceptable answer. I'm not asking you to guess or try to remember something you really don't know about, so it's not like you have to have an answer to every question I ask, okay?

A Understood.

Q And if I ask a question, which I certainly will, that is confusing or doesn't make sense to you, please let me know, and I can clarify so that once we get back the transcript at the end, we can know that you understood the question I asked so that we can rely on your answer, okay?

A Yes, ma'am.

Q The last point is, as you can probably tell, Mike is taking down everything you and I say. You're doing a very good job of answering out loud, but as we get going, sometimes it's tempting to nod our head up and down or shake our head side-to-side and not to answer out loud. So I may have to remind you to do that; I'm not getting on to you. I'm just making sure that we have a clear record. Otherwise, sometimes uh-huhs and huh-uhs or just "nods head" will come through, okay?

A Yes, ma'am.

Q All right. Any questions for me before we get started?

A No.

Q Okay. Can you please tell me your date of birth?

A [redacted]

Q What is your address?

A [redacted]

Q Who lives with you at that address?

A No one.

Q Do you have any children?

A Yes, ma'am.

Q Are they over the age of 18?

A They are, yes.

Q I just remembered we're in Claims Court, so it doesn't matter so much. Are you married?

A No, ma'am.

Q How many children do you have?

A Two.

Q What are their names?

A Robert Alexander Stokes. Caroline Victoria Stokes.

Q Do they know about the lawsuit?

A Yes, ma'am.

Q Any expectation that they'll be testifying at all?

1 A None whatsoever.
2 Q **Okay.**
3 MR. PRIEBE: No.
4 MS. BROYLES: I just wanted to make sure before
5 we get going.
6 Q **(BY MS. BROYLES) Who are your parents?**
7 A Mary Ann Jones, Gerald Fay Reynolds. Those are
8 both my biological parents.
9 Q **So Mr. Jones was your stepfather?**
10 A Yes.
11 Q **Did Mr. Jones have any children?**
12 A Yes.
13 Q **Did he have any biological children? Let's**
14 **start there.**
15 A Yes.
16 Q **Who were they?**
17 A Rhonda Brostrom, _____, Cindy Jones, that
18 is her maiden name. I apologize, I don't know her current
19 married name. He has three children.
20 Q **Do you know where they live?**
21 A Yes.
22 Q **Where do each of them live?**
23 A _____; Rhonda,
24 a daughter, Wisconsin.
25 MS. BROYLES: Let me say one thing real quick.

Mrs. Jones, because you're in here, which is totally fine, I have no issue with it, the one thing that you're going to have a tendency to do, because I would too, is to correct something she says that may be right, wrong, or you want to add to.

What I normally do, Jeff, if you'll give her a piece of paper, if you're okay with it, she can write it down if she wants to correct it later, or we can do it later.

MR. PRIEBE: We'll do it later.

THE WITNESS: Yeah, I'm going off the best of my knowledge the last place they lived.

MS. BROYLES: That's good. We'll double check with you. I know it's hard. The only reason I say that is because you're not sworn in, and two, then Mike has to put in more people on the record. Just try to keep a mental note, and we'll make sure to cover it.

Q (BY MS. BROYLES) So Rhonda, the last you knew Wisconsin?

A I believe so.

Q And what about Cindy?

A Florida.

Q When was the last -- well, before I get there, do you have siblings?

A Yes.

1 Q So these would be more stepchildren of
2 Mr. Jones?
3 A Yes.
4 Q What are their names?
5 A Her name is Karen Lynn Garson, G-A-R-S-O-N.
6 Q So just one sister for you?
7 A Yes.
8 Q Her mother is also Mrs. Jones?
9 A Yes.
10 Q Where does she live?
11 A Germantown, Tennessee.
12 Q So Ms. Rhonda Brostrom; is that right?
13 A Yes, ma'am.
14 Q Do you know her last contact with Mr. Jones
15 prior to his passing?
16 A No, I know the last time she was in Arkansas. I
17 do not know the last time she was in contact with her
18 father.
19 Q Okay. Did they have a relationship with him
20 towards the end of his life that you know of?
21 A That daughter, yes, she did.
22 Q What about _____?
23 A He had a relationship. Bill Jones, his only son
24 was -- [redacted]. And the oldest child

1 Cindy, [redacted]

[redacted] They're older than myself. We were not

3 close stepbrothers and sisters.

4

6 Q Okay, who was Bill?

7 A I apologize. Bill Jones is my stepfather.

8 Oscar Jones.

9

17 A Yes, I apologize, yes, ma'am. I called my

18 stepfather by his common nickname, Bill, not Dad.

19 Q Gotcha. Sorry, I got confused there for a

20 second.

22 Q Do the three of them know about the lawsuit to

23 your knowledge?

24 A No, ma'am.

25 Q Do you know why they haven't been notified?

1 A [redacted]

7 **Q Did any of them to your knowledge visit him at**

8 **the VA?**

9 A [redacted]

11 **Q I assume, but correct me, were they notified of**

12 **the funeral?**

13 A [redacted].

14 **Q You said you recall the last time that Rhonda**

15 **was in Arkansas. What was that occasion?**

16 A The funeral.

17 **Q Okay, so she did come?**

18 A She was in Arkansas. [redacted]

20 **Q Do you know why?**

21 A Yes, ma'am.

22 **Q Can you tell me about that?**

23 A [redacted]

1 [redacted]

[redacted]

3 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

16 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

1 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

7 Q How would you describe that relationship?

8 A Awesome.

9 Q Did she visit regularly? Did they have any

10 routine communication or visits?

11 A No, but she did visit. I would say on average

12 every couple of years.

13 Q What was their birth order? I think you said

14 Cindy was the oldest of the three?

15 A I believe she's the oldest, and I believe [redacted]

[redacted] is in the middle, and Rhonda is definitely the

17 youngest.

18 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

1 **Q Were any of his three children in the military**
2 **to your knowledge?**
3 A No. Oh, wait, excuse me, excuse me. His
4 daughter Cindy was Air Force for a brief period of time.
5 **Q Did they all have the same mother?**
6 A Yes.
7 **Q I'm going to get a little more background on**
8 **you. If you could, just kind of tell me where you grew**
9 **up, where you went to school, things like that.**
10 A Born in Little Rock, Arkansas, grew up for the
11 most part in North Little Rock. Mr. Jones is my mother's
12 third husband, but her second husband lived in Heber
13 Springs. I finished high school in North Little Rock, and
14 then got a college degree from the University of Little
15 Rock, majored in finance. I left the state of Arkansas
16 for several years. I was a flight attendant, so that took
17 me away, and then I married and lived in South Carolina.
18 When I divorced in '97, I made the choice to move back to
19 Arkansas, and I've been back since then.
20 **Q Are you currently employed?**
21 A Yes.
22 **Q Where do you work?**
23 A Edward Jones Investments.
24 **Q How long have you been there?**
25 A Thirteen years in June.

1 **Q What do you do for Edward Jones?**
2 A My title is senior branch administrator.
3 **Q Did your kids move back to Arkansas with you?**
4 **I'm just curious.**
5 A They did in '97, yes.
6 **Q Where do they live?**
7 A Currently?
8 **Q Yes.**
9 A Atlanta, Georgia. My daughter lives in Atlanta,
10 Georgia. My son resides in Boulder, Colorado.
11 **Q Did either of them visit Mr. Jones when he at**
12 **the Veterans Home?**
13 A Yes, ma'am.
14 **Q Just for clarification because we may be**
15 **confused, I know he was at the nursing home side and then**
16 **also the hospital, so I'll call the VA Home nursing home**
17 **side, VA Hospital, kind of hospital specific. Does that**
18 **distinction make sense to you?**
19 A Yes.
20 **Q Sometimes it can get a little confusing in**
21 **timelines. Do you have any medical training?**
22 A No.
23 **Q I assume, then, you've never worked in a nursing**
24 **home or any kind of medical facility?**
25 A No, ma'am.

1 **Q All right, so your parents -- well, for our**
2 **purposes I'll just say the Joneses. The Joneses, they**
3 **married 40 years ago. Were you still living -- I guess**
4 **you would have been graduated by that time or had**
5 **graduated?**
6 A They married in November of 1979. I graduated
7 high school in May of 1979, so I was not in the home, per
8 se.
9 **Q But you were, I guess, if they lived -- where**
10 **did they live at the time they married?**
11 A Little Rock, Arkansas.
12 **Q And you were going to UALR?**
13 A Yes.
14 **Q What about your sister Karen, was she still**
15 **living at home?**
16 A She was.
17 **Q How much younger is she than you?**
18 A One year.
19 **Q Close.**
20 A A year and eight months, so at that time she
21 would've been a senior in high school.
22 **Q Did she have any additional education after high**
23 **school?**
24 A Probably equivalence of an associate's degree.
25 **Q Do you know if she finished with any kind of**

1 **particular general studies degree?**
2 A I do know.
3 **Q Okay, tell me about that.**
4 A She did not finish with any.
5 **Q What school did she attend?**
6 A UALR.
7 **Q Tell me about Karen after leaving UALR just**
8 **generally, kind of her if she got married, things like**
9 **that.**
10 A She got married. She got married.
11 **Q Where does she live now?**
12 A Germantown, Tennessee.
13 **Q I'm sorry, you told me that earlier. I forgot.**
14 **When did she move out of Arkansas?**
15 A '88, 1988.
16 **Q Is she employed?**
17 A No, ma'am.
18 **Q Is she married?**
19 A Yes.
20 **Q Does she have children that live in Arkansas?**
21 A I'm sorry?
22 **Q Does she have children?**
23 A She has one child.
24 **Q Does that child live in Arkansas?**
25 A No, ma'am.

1 **Q So she has not lived in Arkansas since 1988?**
2 A Correct.
3 **Q Did she have any -- I guess did she come over**
4 **and visit Mr. Jones at all?**
5 A She did.
6 **Q Did she attend the funeral?**
7 A Yes.
8 **Q Do you know if her child would have come to**
9 **visit Mr. Jones?**
10 A She did not.
11 **Q Is Karen married?**
12 A Yes.
13 **Q What is her husband's name?**
14 A David Burton Garson.
15 **Q Did he come over to visit Mr. Jones.**
16 A No, ma'am.
17 **Q Other than the family members that we've kind of**
18 **talked about that would've visited Mr. Jones at either the**
19 **Veterans Home or the hospital, do you know of any other**
20 **regulars that might have come to visit him?**
21 A No one regular. We have a cousin in North
22 Little Rock. I know she visited.
23 **Q What is her name?**
24 A Linda Wamsley, W-A-M-S-L-E-Y.
25 **Q Do you know if she regularly brought anyone with**

her, a husband or a child? Friend?

A She did not.

Q So moving towards -- I guess have we covered all the children, kind of their general backgrounds that you can think of? No other kids we've missed anywhere?

A No, ma'am.

Q I know that Mr. Jones came to the Veterans Home in April of 2018, so kind of talking to the time period prior to that, are you familiar with his health history?

A Yes.

Q Tell me what you know about his health history prior to April 2018.

[redacted]

[redacted]

1 [redacted]

7 Q Did you ever go to any doctors' appointments

8 with him?

9 A Yes, ma'am.

10 Q What appointments did you usually attend? I

11 should say not type, but the facilities or specific

12 doctors, if you remember the names?

13 [redacted]

1 [redacted]

16 **Q It doesn't list you there, but I just wanted to**

17 **--**

18 A I don't recall that.

19 **Q Okay. When he was in the Veterans Home, were**

20 **you present for any doctors' visits?**

21 A No.

22 **Q Did you know he was having visits by physicians**

23 **while he was in the Veterans Home?**

24 A I never witnessed any, but I made an assumption

25 that doctors were checking in.

1 [redacted]

24 **Q Was your house close to theirs?**

25 A It's next door.

1 **Q Okay. I thought so because I recognized the**
2 **street.**
3 A Yes.
4 **Q So how -- I know we've seen some pictures. It**
5 **looks like there's kind of a property. How far away are**
6 **your houses situated from one another?**
7 A I'm terrible with feet, but they are next-door.
8 They're very close.
9 **Q Not like an acre or something in between the**
10 **two?**
11 A No, no. No, ma'am.
12 [redacted]
24 **Q Do you know when he stopped driving?**
25 A Not exactly, but he wasn't driving in 2018. It

1 could have been a couple of years prior to that.

2 **Q What about his -- let's just say by January of**

3 **2018, so a few months before, could he be left home alone?**

4 A In my opinion, no.

5 [redacted]

17 [redacted]

24 [redacted]

[redacted]

8 [redacted]

13 **Q Would he voice being hungry and want to sit down**
14 **and have a meal, or do you know if he just had routine**
15 **meals throughout the day?**
16 A I didn't live with them, so I really don't know
17 their meal prep habits or their meal eating habits. But
18 when I did visit and have a meal with them, he ate a
19 normal amount. He ate with us. It seemed perfectly
20 normal. She was married to him 40 years, and I knew him
21 40 years. In general, it just seemed like a very -- none
22 of that seemed odd. None of that seemed off.
23 **Q What kind of was the catalyst or what was really**
24 **going on that required him then to be moved to a facility**
25 **as opposed living at the house?**

1 [redacted]

10 [redacted]

18 **Q How did you come to know that that was a**

19 **decision that was made?**

20 A I was told. My mother told me she -- the way I

21 remember it, [redacted]

25 **Q Do you know how long it was between their**

1 **recommendations to when the decision was finally made?**
2 A No.
3 **Q So what's the next thing that you kind of become**
4 **aware of in his transitioning from the house to the**
5 **Veterans Home? I should ask this too. Was he in a**
6 **facility shortly before he went to the Veterans Home?**
7 A No.
8 **Q He went straight there?**
9 A Correct.
10 **Q Okay, good. I couldn't remember.**
11 A I don't -- I just remember the decision was
12 made. I don't remember any pre-visits or anything like
13 that by myself. I didn't attend any of those. The
14 decision was made to go to this facility in North Little
15 Rock, and I drove them. We were -- we had a checklist of
16 things to bring, a set number of T-shirts, a set number of
17 socks and shirts and jeans, things like that, his
18 personal. Don't bring your whole house, but here's a list
19 of things to pack and bring. So we did that, and we drove
20 over and checked him in.
21 **Q Was he in kind of an apartment style, or what**
22 **was the style of his room?**
23 A The facility at that time was, I believe, brand
24 new. It was -- aesthetically it was beautiful, very
25 pretty, clean. You walk in the front door, and it's

almost like a really large family room. It looks very inviting. There's a kitchen area. Everything is open. And then the rooms are -- they're not dorm rooms, but they're off individually. There's a door, and you just enter those rooms.

Throughout this cottage, I think they called them cottages or houses, they're numbered, several numbers. From what I remember, there was a maximum of 12 residents in these homes. A very large eating area or gathering area for all the residents to have their meals together. A kitchen area was open, a large TV, large sitting area, so it was designed to look like a home. Like I said, you had your own room. Much nicer than any dorm rooms I've ever seen, even at Princeton. They were very nice. It was very, very, very, very nice.

Q Was it a type of room where you would take any of your own furniture, or was it mostly just personal belongings?

A We did not. There was a chair in there and a bed. I don't think they recommended large pieces of furniture being moved in. They may not have objected to it, but I don't recall that they encouraged that.

Q I noticed that, in the intake records at least, the plan for the stay would be permanent. Was that your understanding?

1 A Absolutely, yes.
2 **Q It wasn't going to be a place he would be for a**
3 **short period of time and come back home?**
4 A Correct.
5 **Q When you took him to the Veterans Home, did you**
6 **have any meetings or kind of introductory discussion with**
7 **anyone in the home about how things worked or anything**
8 **like that?**
9 A On check-in day, no, ma'am. I didn't.
10 **Q Was it your understanding that had all already**
11 **more or less taken place?**
12 A I'm sorry, could you repeat?
13 **Q I guess was it your understanding that that kind**
14 **introductory discussion would have already taken place**
15 **before the decision to come in?**
16 A It was my understanding that my mother was
17 involved with that. It wasn't what I needed to know, so
18 to speak. I wasn't -- I'm not the spouse.
19 **Q Did anyone else go with you and your mother to**
20 **move him in?**
21 A No.
22 **Q Were any doctors there that you met at the time?**
23 A No.
24 **Q What about any particular nursing staff, did you**
25 **meet anyone that you can recall?**

1 A No. I remember my mother interacting with one
2 woman at a table. For the most part I helped get them
3 there, helped assist getting the items in, sat there with
4 him while she was one-on-one with some individual. I do
5 not know the capacity of that individual or that
6 individual's name. We viewed the room. That's all I
7 recall.
8 MS. BROYLES: Can we take a short break real
9 quick?
10 THE WITNESS: Yes.
11 (BREAK FROM 9:43 TO 9:46)
12 **Q (BY MS. BROYLES) Okay. So as far as any**
13 **meetings with the facility prior to and on the day of**
14 **check-in, your mom handled all of that stuff?**
15 A Yes.
16 **Q Anything you recall her telling you about those**
17 **meetings?**
18 A No.
19 **Q Kind of a similar question, anything you recall**
20 **her telling you about doctors' appointments he had near**
21 **April 2018 prior to moving in, like things doctors had**
22 **said about his condition, anything of that sort?**
23 A No, ma'am. I don't remember anything.
24 **Q This is a very broad question because I don't**
25 **know where exactly to start, so after the initial**

check-in, if you can tell me how things were going, how often you visited, and I can intermittently ask some questions, but if you'll just kind start with your first interactions with going and visiting with him, and we'll go from there?

A At the time in 2018, I was working a full-time job with my current employer and then an additional part-time job retail. So I was clocking 60 to 65 hours a week. I was able to visit him every other week, for the most part on Sundays. I signed in every time I visited.

Q So you said, sorry, every other Sunday, is that?

A If you wanted to nail a routine, yes, ma'am. There were a few more than that, but as a rule just due to my schedule.

Q What was your -- so I take it you were working for Edward Jones?

A Yes, ma'am.

Q What was the part-time job?

A Hobby Lobby, retail, nights and weekends retail.

Q When you went to visit him during that time period, did your mom usually go with you?

A Yes, as much as she could. There might have been a couple of occasions she did not go, but yes. And again, that was the intent behind it was to drive her. It's a distance from door to door.

1 [redacted]

[redacted] She's been a homemaker outside of the workforce

17 for at least 35 years, maybe longer. [redacted]

[redacted] I would, again, do everything I

22 could, just like any other family member would with loved

23 ones. [redacted] I believe the day right

24 before he went in. His birthday is [redacted] so he had

25 just had his [redacted], so we had celebrated

that. So I do remember having that going on, and then his move happening, [redacted] and so that was a couple of weeks, whatever time frame that was, from April 9th through the 18th. Does that help?

[redacted]

Q How long was it your routine to visit, I'm just calling it every other Sunday, I know there might have been a few more times in there, but how long did that routine last for you?

A From April through the end of December of '18.

[redacted].

Q That's hard for the Bryant-Benton area.

A Thank you.

Q How long had she been staying in a five-mile range?

A Bryant's grown quite a bit since the '80s, and she was able, they were able to pretty much maintain all their daily activities and community activities outside of

1 the necessary doctors in Little Rock that just were
2 unavailable in Saline. So that had been going on for
3 quite a while. Just the community was serving them well.
4 **Q Do you know how often your mom was going to**
5 **visit him without -- was she going to visit him without**
6 **you?**
7 A She may have gone once or twice without me, but
8 for the most part I took her.
9 **Q So again, this is kind of broad because he was**
10 **there for a period of time, so tell me about things that**
11 **stick out in your mind, observations. You know, some**
12 **people think of things in time chunks, like a month at a**
13 **time. Some people it's just kind of one big blur, you**
14 **know, one big event that they don't necessarily --**
15 A One big memory?
16 **Q Yeah. So not knowing how you remember things,**
17 **kind of just tell me a little bit about what you recall,**
18 **and then if I have a question I can break in.**
19 A It obviously would have been springtime, so
20 April, the days were longer, so to speak, the daylight
21 hours are longer. We went from April through December,
22 which would have been Christmas and shorter daylight
23 hours. In April he seemed pretty happy. He was in two
24 houses, if you don't know that. He was in number seven,
25 then he moved to six, or he moved from seven to eight, I

1 don't recall the exact numbers. But he was -- he started
2 in, I believe, House 7. It, again, seemed very nice, very
3 pretty. There weren't a lot of residents. I don't
4 recall. We did meet a few others. I only can recall two
5 other gentlemen that were there.
6 When I attended, we went often around mealtime,
7 so the staff was very hospitable. They offered that time
8 frame to sit and eat with him, and we did. Whatever they
9 were having that day, pizza or just whatever it was, you
10 know, we were offered the same meal. So we would, for the
11 most part, go right around that time or lunchtime and have
12 a meal with him, sit out in the dining area and eat with
13 him. That was usually when we showed up. And then after
14 that we would move into the living area where there was a
15 huge television. You could sit on the sofa and visit, if
16 you will, with him or watch television with him, just like
17 you would do at home if you had lunch and then you moved
18 into the den.
19 We didn't spend -- I didn't spend any time
20 inside his room, what you call his bedroom where the bed
21 was. I did go in there. I know it was like a hospital
22 bed, which kind of surprised me. But nonetheless, it was
23 a hospital kind of bed, that metal frame type of hospital
24 bed. There was a bathroom, but I didn't go in there
25 really much. For the most part we stayed around the

1 dining area and the living room TV area.

2 **Q The hospital bed was one that can kind of be**

3 **moved and adjusted?**

4 A I think so. I never saw it do that. Again, it

5 didn't -- you know, I just didn't go in there to pry

6 around. I know it was a bed, a dresser, I believe a

7 television was on the wall. There was a large bathroom, a

8 handicap bathroom, if you will, and they also had covered

9 patio areas where you could go sit out in a screened-in

10 porch, so we would move there sometimes. He liked being

11 outside more than he liked being inside, so we just -- I

12 mean, we didn't necessarily leave and walk around the

13 grounds. We didn't do that. I don't remember ever doing

14 that, [redacted]. And to be honest with

15 you, [redacted]

[redacted].

19 So even though the days were kind of nice, we

20 just felt it was best -- if we walked outside with him,

21 we're going to be dragging him back in the door. [redacted]

1

1 [redacted]

23 Q I noticed the primary contact for the home was

24 your mother, so anything that they needed to call and

25 report or ask questions about, things of that sort, she

1 **was the primary contact?**
2 A Yes.
3 **Q If I remember correctly, I think you were the**
4 **second, secondary?**
5 A Yes.
6 **Q Prior to November, then, do you remember them**
7 **ever calling you to make any kind of report, request, or**
8 **anything of that sort?**
9 A I did get a call, and I don't recall what
10 timeframe or what it was for, if they were trying to reach
11 my mother and couldn't. I know there was an occasion
12 where my stepfather wanted to leave. [redacted]
[redacted] That may have been the reason, or they just
16 couldn't find my mother. Again, I'm sorry, I didn't make
17 a good note of that, but I think I was contacted one time
18 trying to find her.
19 **Q Do you think it was related to a time where he**
20 **wanted to leave, or do you remember?**
21 A I don't remember. It could have been to confirm
22 a doctor's appointment. I'm sorry, I don't remember.
23 **Q Again, it's not --**
24 A But I can tell you that they had my name and
25 phone number, so your information is correct. Why they

used it, I can't recall, but I can tell you that they had access to it.

Q I assume primarily that they almost always got a hold of your mom so they never needed to follow up with you?

A Yes.

Q So even through December, then, do you have any recall of a call to you, either trying to reach your mom or of some other nature other than that one time?

A No, no, no, none whatsoever.

Q Anything that sticks out to you where your mom let you know after the fact the home called and told me X? Anything like that stick out to you?

A I attended a meeting with my mother. It was early on. I believe he was still in the first house, and there was a group of individuals, a nurse, either Helen or Ellen, and people I saw one time, a bunch of administration type individuals that had questions. I want to call it a family meeting, so I went and that stands out. I would say about October, about, he'd been in there about six months, looking back, is probably when it looked like, you know, [redacted] I may have my dates a little off, but something like that was happening. He was -- usually when

1 we arrived, he was fully dressed and just sitting in a
2 chair.
3 **Q So he was fully dressed in his clothes?**
4 A He was dressed, he wasn't always dressed in his
5 belongings or his clothes, but he was dressed. Yes, he
6 was dressed.
7 **Q You think they may have gotten his clothes mixed**
8 **up with another resident's?**
9 A I know they did. This was happening long
10 before. There might have been three or four people there,
11 and he was wearing other people's clothes.
12 **Q Did y'all let them know?**
13 A Yes.
14 **Q Were they respectful to you in responding to**
15 **that?**
16 A They took note of it.
17 **Q But they were at least receptive to you pointing**
18 **it out?**
19 A Yes, they wanted to know in this family meeting,
20 and we pointed out the missed doctor appointments. I was
21 told that they would not only care for him 24/7 but that
22 they would see to his doctor appointments so that myself
23 and my mother didn't have to come pick him up and take him
24 away and go to those doctor appointments, whether they
25 were dentist appointments or doctor appointments, an eye

appointment, a heart appointment. It didn't matter, any appointment whatsoever, and that wasn't happening. They were being missed. I was told they have a system where they put it in a system, and it tells them that resident's schedule. In other words, it's just a calendar for that resident, and somehow there was a big disconnect.

Q Let me back up a little bit. So this discussion about missed appointments, that was during the family meeting you mentioned?

A Yes.

Q So when was the family meeting, what time period?

A I'm going to guess May. I'm not really sure when it was. I just remember it was in the first home, first house.

MS. BROYLES: I need to take another break.

(BREAK FROM TO 10:11 TO 10:13)

Q (BY MS. BROYLES) Okay, so the family meeting was sometime around May?

A I believe so.

Q And a subject of the meeting was issues with clothes?

A More than clothes. The family meeting was --

Q Sorry, one of the things discussed was clothes?

A Yes.

Q And another was?

A I kind of understood it as an onboarding, if you will, them to meet us, us to meet them. And then -- and that may not have been why it happened. There may have been -- you can ask my mother. Maybe she thought she needed to point things out. I don't really know. I just know I was there, and they wanted to understand; he wasn't wearing his clothes, the missed appointments, the things that I'd say were promised or were told were going to be taken care of, we did share that with them, and this was in House 7. Again, he didn't stay in that House 7.

Q So if it was May?

A I think it was May.

Q And he got there on April 12th, how many missed appointments had there been in just, you know, maybe a month period?

A I honestly don't know. My mother probably could tell you because she would get the calls, the no-show calls. I think that might have been the reason that I stepped up and took him to subsequent dental appointments because if they weren't going to do it, I was.

[redacted]

1 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

17 [redacted]

[redacted]

[redacted]

[redacted]

21 Q So you kind of called this in your words an
22 onboarding, so it sounds like maybe this meeting wasn't
23 necessarily called in response to something, but may be
24 kind of a you've been here a month or so and this is our
25 kind of, not introductory, but check-in?

1 A It could have been put together for either of
2 those reasons or all.
3 **Q Was it on a Sunday --**
4 A No.
5 **Q -- when you were usually there?**
6 A It was not on a Sunday. It was a Monday through
7 Friday middle of the day event where these individuals
8 don't work on weekends, I gathered that. They probably
9 worked Monday through Friday.
10 **Q Do you mean the people specifically in that**
11 **meeting?**
12 A Yes, outside the nurse that worked in that home.
13 **Q So have we talked about everything related to**
14 **the family meeting?**
15 A That was the only one that occurred.
16 **Q Okay. Was it a positive meeting, or how did you**
17 **feel leaving that meeting?**
18 A The nurse in that home was there, Ellen or Helen
19 was her name, and these other individuals --
20 **Q Eleanor Helen?**
21 A It's Ellen or Helen.
22 **Q Ellen or Helen.**
23 A I'm sorry, it's one of those two names. She was
24 there. The other four, maybe, individuals wanted to know
25 about the [redacted]; they wanted to know about

1 wearing other people's clothing; they wanted just to
2 review things from what I recall, and they were very --
3 wanted exact dates of everything, which I just happened to
4 have at the time, and I told them everything I knew and
5 what was going on. I can tell you that all of that and a
6 little bit more is the reason my mother made a decision to
7 move homes, meaning from seven to eight or seven to six.
8 Again, I don't remember, but he went from House 7 to
9 another house number. And there weren't many residents in
10 seven at the time, and we would show up and he would be in
11 someone else's clothing, clothing we've never seen. We
12 didn't want that responsibility. I don't know how well
13 that clothing fit him. Where did his clothes go? Were
14 they lost? Were they damaged? No idea.
15 Missed appointments. He's 86 years old. His
16 doctors' appointments are important. If you can't do it,
17 call the day before and tell us. I'll take off work and
18 come do it. The constant calls after for no-shows is
19 annoying and unacceptable. If your computer system is
20 failing, let's get a whiteboard and write it down in front
21 of you, his appointments. Tell us what we can do to help
22 you. We want him to get to these doctor appointments.
23 Those things were important to us, and they weren't
24 functioning correctly right off the bat.
25 **Q Okay. So for that reason he moved to House 8?**

A Yes.

Q So then that's just in the first April to May period, and then anything between -- you said you started noticing a change sometime in October-November?

A That would have been his just general overall health. So when he moved to seven, I don't recall a lot of wearing other people's clothing or missed doctor appointments. So that just kind of -- it seemed that way. I don't recall that. If there was something going on, then I would have been told. But I don't recall anything once he got to House 8. He was, I think I'm correct in saying, he was the first resident of House 8. If he wasn't the first, he was the second because I visited him there. They moved him, by the way. They didn't require us to pack him up and move him. They moved him next door, and it was just him and maybe two people in that whole house. So he had it to himself. That didn't last very long.

[redacted] I don't recall him wearing other people's clothing once he moved next door, but what I do recall is at some point Octoberish, Novemberish [redacted] and

1 [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted] We were all sitting. It
14 wasn't like, you know, I'm in a group of people sitting
15 and I've got one individual bopping up and down. We were
16 there to sit next to him and visit, so he had a reason to
17 be sitting.
18 [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
25 **Q Do you have a complaint about that? I know**

you're talking about it as an observation. I guess I want to --

A Just more an observation.

Q Okay.

A He never had one at home. He's never had one in his entire life. It was a change. I'm trying to draw some notes to the changes. Not so much that a [redacted] is a bad thing. It was just a change for him.

Q You said you eventually learned what a [redacted] was. Did you learn that in connection with Mr. Jones?

A No, that's the first time I've ever heard that word today, from you.

Q Okay. You said then there was a -- he went downhill. So kind of let's draw a line so I know we've covered everything above. Any other complaints, concerns, observations, conversations that stand out prior to where we're getting into this kind of November time period that you can recall?

A Yes. We were given -- well, my mother was given a booklet, I believe at check-in, that gave you, like if you wanted to mail him a package, he has out-of-state children, if they wanted to mail him a card, anything, we were given an address and a phone number. If you wanted to call and talk to him or them or anyone in that house, it might as well have been a disconnected phone number

because it would just ring, ring, ring. No one ever answered it. It never worked for me.

Q Did he have a cell phone?

A Did he?

Q Yeah.

A Not at that time, not at that time. He wouldn't have understood how to use it. And there was no direct phone in the room, like in his bedroom, his room. There was just a main, from what I understand, a main phone somewhere in that -- somewhere in the house there's just a main phone.

Q So she got a booklet and it talked about how to mail things or call, and the phone number never worked?

A Yes. There was a sign-in sheet, and I would always sign in. Those are the things that stood out. I mean, the facility was always well groomed and clean, the landscaping was manicured, you didn't walk in and see trash lying everywhere. It was bright and sunny in terms of window lighting.

Q So you don't have any complaints about the facility from a cleanliness perspective?

A No, no.

Q Did y'all get, I genuinely don't know, sometimes there's like a monthly report about various things?

A I never saw anything like that.

1 **Q Or a newsletter?**
2 A I never saw anything like that. That's a great
3 idea. I never ever saw anything like that or was aware
4 that it was an option.
5 **Q Okay. So kind of going back to that question,**
6 **anything, I know we've talked about the booklet now and**
7 **everything else, so anything else prior to November that**
8 **you have any complaints, concerns, observations that we**
9 **haven't talked about, or conversations?**
10 A No, we've covered up to November. We've covered
11 it.
12 **Q That's kind of how I try to do it because**
13 **otherwise I don't want you to have to reanswer the same**
14 **question multiple times. That just seems to be the**
15 **easiest way to try to delineate time periods because**
16 **otherwise, if you don't, you get this written transcript**
17 **at the end, and you can't ever remember or figure out what**
18 **periods of time you're talking about.**
19 **You mentioned your cousin came to visit and**
20 **maybe Karen came?**
21 A Yes. My two children.
22 **Q Your two children. Would they be there when you**
23 **were there as far as the four of them?**
24 A Yes.
25 **Q Okay. Were they ever there when you were not**

1 **present?**
2 A No.
3 **Q So anything that you would have observed or**
4 **heard, they would have, if they remembered, they would**
5 **have the same information as you?**
6 A Correct.
7 **Q Okay. I just wanted to make sure that if**
8 **they've gone and visited on every Wednesday that they had**
9 **different memories than you would have. So it sounds like**
10 **y'all went around the same times?**
11 A Our schedule was predictable.
12 **Q Okay. Let's go to -- let's just stick with**
13 **November, and then we'll go to December. So November,**
14 **tell me what you remember about that time period.**
15 A It was hectic. I was working a second job in
16 retail, so getting home at midnight was a common thing,
17 just on a personal note. I still tried to maintain the
18 every other Sunday visit with him. [redacted]

1 [redacted]

2 Q Prior to the last six weeks, when you would

3 spend time with him did he ever moan? Groan? Complain?

4 A [redacted]

10 Q Like a stinger?

11 A [redacted]

15 Q Was that when he was eating or would y'all just

16 be maybe sitting around?

17 A [redacted] Again,

25 I'm trying not to be a ping-pong ball.

1 **Q No, you're fine.**
2 A But I don't really -- I wasn't the first go-to
3 with the information. [redacted] I
5 became aware after all of that was said and done. I
6 didn't get a notification or a call, oh, we're taking your
7 stepdad to the hospital. Anything that -- a lot of what I
8 was told was after everything was already done. So I know
9 that happened. When we visited he seemed, like I said, he
10 looked like he was, again, I thought he's just not getting
11 out in the sun enough.
12 We visited Christmas Eve or Christmas Day, I
13 think it was both. My children were in town, they went.
14 That was tough. [redacted]
20 There was a time we spent with him before that,
21 and we went over at mealtime again. We were getting him
22 to eat, and I just remember a nurse saying oh, good, you
23 know, let him eat anything. [redacted] They were like, it doesn't matter, just get him to
25 eat if he's eating. He would eat, when we were there, he

1 would eat. I don't know what to say. I never saw him not
2 eat.
3 **Q Did they talk to you about they were changing**
4 **his -- they had to make changes to his, and it may have**
5 **been to your mom, but** [redacted]
11 **Q So you're not saying -- I mean, the records show**
12 **what was done, that it was done. You just don't know**
13 **about all of that?**
14 A Correct.
15 **Q Have you ever looked at the medical records in**
16 **the case?**
17 A No, ma'am.
18 **Q Did you review anything for your deposition?**
19 A No, I'm struggling to try to think back as we
20 speak.
21 **Q That's okay. I take it, then, you didn't keep**
22 **any diaries or notes?**
23 A I did not.
24 **Q I realize in talking with you the over time**
25 **deterioration. Any other complaints, concerns,**

1 **observations that we haven't talked about in that**
2 **remaining time period that you have?**
3 A I can't really recall anything else that we
4 haven't covered. You know, just his overall care was
5 always our concern and my concern.
6 **Q But there's nothing, I mean, no specifics that**
7 **we haven't already discussed?**
8 A I don't think so. I don't think so.
9 **Q It sounds like once he was moved to House 8 any**
10 **issues related to the family meeting were resolved.**
11 **Anything that either persisted or anything similar to**
12 **those things that you all discussed or even weren't**
13 **occurring until --**
14 A He might have been in someone else's clothes one
15 time at the other house, but it wasn't as frequent. I
16 think the laundry issue seemed to get resolved. I can
17 tell you that we felt moving him, because why would we
18 move somebody if you just make matters worse, we felt
19 moving him to this second house that those concerns would
20 get better, and they seemed to get better. But his health
21 didn't get better. The biggie didn't get better. The
22 real big concern didn't get better; it got worse. I'd
23 rather have him here right now in someone else's clothes
24 sitting next to me in someone else's clothes than what I
25 saw.

Q But as far as any specifics, you don't have any specific things you can point to regarding his health and the care that he -- does that make sense?

A Nothing was shared with me. It wasn't shared with me. And I may not be -- maybe it should be shared with me, so I'm just telling you what I observed, what I saw, what little I know. I just wasn't privy to his entire health records and things like that.

MR. PRIEBE: Are you asking her for her complaints?

MS. BROYLES: Yeah, that's what I -- yeah.

MR. PRIEBE: Okay, sorry, go ahead.

MS. BROYLES: Yeah, I think I've said complaints, concerns, observations like ten times.

Q (BY MS. BROYLES) Any other complaints you have whatsoever about the Veterans Home?

A Honestly, I think that place is a complete fraud, at least while he was there. I'm just telling you what I think. I think they knew we would show up on a Sunday afternoon, and [redacted]. And if I had showed up on a Wednesday afternoon, my feelings are he [redacted]. I think they knew our routine. I think we were fools not to mix our routine up and to check in a whole lot more, maybe some surprise visits. There was a lot of trust. We

1 honestly thought moving him from seven to eight was going
2 to make his life better. It did just the opposite.
3 **Q I understand that's your impression --**
4 A Yes.
5 **Q -- and your assumption, but you don't have**
6 **anything specific beyond what we have discussed already as**
7 **a basis of that opinion that you carry?**
8 A No, I mean, I never saw anyone hit him or push
9 him down.
10 **Q When you visited did you see a bunch of bruises**
11 **or scrapes?**
12 A I never saw any. He was always in long sleeves
13 and pants, socks and shoes, dressed, you know, from the
14 neck down. So no, ma'am, none of that outside of his chin
15 up was visible.
16 **Q What about his hands, any scrapes? Cuts?**
17 A His hands were visible, but again, I never saw
18 him restrained. I don't recall anything on his hands.
19 **Q And nothing on his head or face?**
20 A There was a few times when he wasn't shaved, and
21 so I know that was brought up in that family meeting, now
22 that you bring that up. [redacted]
[redacted] Thank you for
25 bringing that up. That was another concern at that family

1 meeting. [redacted]

[redacted]. I mean, we

4 don't know, but I'm just saying. That was all in that

5 family meeting, so that, what I just told you, was the

6 catalyst for moving him to House 8.

7 **Q Were you aware of him fighting with the staff**

8 **and hitting other people, biting people?**

9 A No, someone -- no.

10 [redacted]

[redacted]

16 [redacted]

[redacted]

1 [redacted]

1 [redacted]

16 **Q I take it you, then, you don't remember any**
17 **conversations with any of the medical care providers at**
18 **the hospital, or you didn't have any?**
19 A Just -- no. I mean, he just -- not one-on-one.
20 I don't recall anything one-on-one. There might've been
21 something, like I said, because we were aware he had
22 [redacted] That's what I was told.
24 **Q Okay. This again is just kind of a wrap-up**
25 **question, but anything else about, you know, sometimes as**

far as taking depositions before I come in I think about things I want to ask you, and probably before you come in you think of things you want to remember to say. So with respect to the April to January time period, April 18 to January 19, anything else you can recall or want to tell me that I haven't asked specifically about?

A I recall that his situation was probably, late December, probably New Year's Eve day or New Year's Eve, it was obvious he wasn't ever going to go back to North Little Rock. I left with my son and went and retrieved as many of his personal belongings from the home and packed up as much of his identifiable objects and told somebody that he wasn't coming back. But I can't tell you her name. I can describe her, but I can't tell you her name.

Q What does she look like?

A She was probably 5'3", 5'4", probably in her 60s, African-American lady. She said -- for some reason she wanted me to know that she had put in her resignation, and I told her who I was. I had never seen her before in my life, and I told her I was there to collect Mr. Jones's personal belongings, and in my mind, we were going to have to get him well and find another healthcare facility to move him to.

Q Any complaints you have about -- I mean, I know generally about what we've talked about, but any specific

1 **complaints about any of the workers at the facilities --**
2 **excuse me, at the Veterans Home?**
3 A Personally I never saw the same face repeated.
4 There was only maybe one individual that I saw pretty much
5 that I knew who she was. I don't know if I could put a
6 name to that face. But I wasn't there to make friends. I
7 wasn't really there to, you know, I wasn't checking in on
8 them. But to tell you that I'd see the same individuals
9 working there, no. Did I see a lot of them, no. I
10 remember there was usually someone in the kitchen, like
11 cooking. They were either preparing a meal or they were
12 cleaning one up. That individual I never spoke to him. I
13 could just see him working. And then there was a nurse, a
14 head nurse there. She had a little office. And then the
15 residents. For the most part I saw the residents, men and
16 women in there.
17 **Q So we've covered everything, then, about the**
18 **Veterans Home?**
19 A Yes, ma'am.
20 **Q So then just a confirmation of things, I assume,**
21 **then, that Mr. Jones wasn't providing you any financial**
22 **support?**
23 A Mr. Jones wasn't what? I'm sorry.
24 **Q Providing you any financial support for**
25 **anything?**

1 A Oh, no. No, no, he never has.
2 **Q Prior to him [redacted]**
[redacted] **I know you said that he was a hobbyist for sure,**
4 **and I know from just reading about him that he had some**
5 **engineering background and obviously had been in the**
6 **military and had extensive service that we'll talk to Mrs.**
7 **Jones about that. But tell me about him prior to his**
8 [redacted] **or even kind of through the period**
9 **where he could do all of his hobbies.**
10 A Yes. He had already retired, was retired
11 Special Forces when he married my mother. He took a job
12 in electronics communication with, I want to say, RCA and
13 worked in Alaska and Saudi Arabia. They hired him to do
14 some telecommunications work. He then finished that up,
15 and he went into what's called civil service, which is not
16 military but it's a government job, and they moved to
17 Georgia, Fort Stewart, Hinesville, Georgia, and he did
18 that job for a number of years until he obtained a
19 so-called retirement age. I don't know if that was 65.
20 Or no, it was in 1995, and I can do the math, but at some
21 point he decided he was ready to really retire from
22 working outside the home. He always worked around the
23 home, but to cease employment.
24 And they moved back to Arkansas, and he built a
25 shop. And he was so productive and able to repair a car,

build a house. They actually remodeled the home that they bought here in Bryant. They took that on, and he was always really active. He was always very helpful. My grandmother was still alive at that time and local here in Bryant. She had four, because she had my mom's hands on deck, and she had his hands on deck, so to speak, to help out with her. And they just happily enjoyed a little travel here and there. He was, again, always busy with jukebox repair or car repair or remodeling a home, building something, painting something. He was really good at it, and he just stayed productive, even in retirement.

Q Anything else whatsoever you want to tell me that I haven't specifically asked about?

A No. I do know that when his health started going bad, he was 100 percent disabled through the military, through the VA. They gave him that rating; we didn't. So somewhere along the line they realized there were some health issues caused from his time in service.

[redacted]

[redacted]

Q Okay. Was there an estate that needed to be distributed?

A Not to my knowledge.

Q Does he have any living siblings?

A Siblings, no, I don't believe there are any.

Q Were any living 2018 or 2019?

A Probably not. I'm not a hundred percent sure. He came from a large family. I don't remember when his sister died, if she died before or after him, the last known sibling that I'm aware of.

Q Cynthia Bartlett, so that was Cindy we talked about her?

A Yes, that's it, yes.

Q [redacted]

A [redacted]

[redacted]

A I think you're okay.

Q Okay. Rhonda Brostrom, that's the other daughter we talked about?

A Yes.

Q And it looked like based on the probate documents there wasn't an estate to distribute. I think probably everything went to your mom because she was still living. Do you remember there being any kind of probate matter that had to go to court?

A No, ma'am.

Q To your knowledge did your mom ever have to pay for any medical care out-of-pocket that wasn't covered?

A I wouldn't know. She didn't complain about paying for anything, if she did. She didn't mention it, I should say. She just didn't mention it.

MS. BROYLES: I think that's all the questions that I've got. Let me look through something real quick. We'll go off the record, and y'all can walk around and do something, but I think that's going to be everything.

(BREAK FROM 11:07 TO 11:10)

MS. BROYLES: I do not have any further questions for you, so I'll pass the witness.

CROSS EXAMINATION

BY MR. PRIEBE:

[redacted]

MS. BROYLES: Object to the form.

1 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

15 **Q Listen to my question.**

16 A No, it --

17 **Q Listen to my question. You're not listening.**

18 **Hold on, listen to me.** [redacted]

[redacted]

[redacted]

21 MS. BROYLES: Object to the form.

22 **Q (BY MR. PRIEBE) Go ahead.**

23 [redacted]

[redacted]

[redacted]

1 [redacted]

[redacted]

[redacted]

4 MS. BROYLES: Object to the form.

5 [redacted]

[redacted]

[redacted]

8 MS. BROYLES: Object to the form.

9 [redacted]

[redacted]

11 MR. PRIEBE: Thank you. Ms. Jordan may ask you

12 some more questions now.

13 REDIRECT EXAMINATION

14 BY MS. BROYLES:

15 [redacted]

[redacted]

[redacted]

[redacted]

19 MR. PRIEBE: When?

20 MS. BROYLES: At any point in time.

21 [redacted]

22 MS. BROYLES: That's all I've got.

23 MR. PRIEBE: We're good. All right, you're

24 done.

25 (DEPOSITION CONCLUDED AT 11:15 A.M.)

1 C E R T I F I C A T E

2 STATE OF ARKANSAS)
) SS:
3 COUNTY OF WASHINGTON)

4 I, Mike Washkowiak, Certified Court Reporter
5 within and for the State of Arkansas, do hereby certify
6 that the above-named JERRIE ANN STOKES was by me first
7 duly sworn to testify the truth, the whole truth, and
8 nothing but the truth, in the case aforesaid; that the
9 above and foregoing deposition was by me taken and
10 transcribed pursuant to agreement, and under the
11 stipulations hereinbefore set out; and that I am not an
12 attorney for nor relative of any of said parties or
13 otherwise interested in the event of said action.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and official seal this 27th day of April, 2023.

16

17 MIKE WASHKOWIAK, CCR

18

19 State of Arkansas, No. 654

20

21

22

23

24

25

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1 IN THE ARKANSAS STATE CLAIMS COMMISSION

2
OSCAR ODELL "BILL" JONES,
3
Claimant,
4
vs. No. CC-200817
5
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
6
Respondent.
7

8 _____

9 TELEPHONIC DEPOSITION OF _____
TAKEN ON BEHALF OF THE RESPONDENT
10 ON JUNE 28, 2023, BEGINNING AT 10:30 A.M.
TAKEN VIA TELEPHONE CONFERENCE
11 REPORTED BY MIKE WASHKOWIAK, CCR

12 APPEARANCES: (All via phone conference)

13 On behalf of the CLAIMANT

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23

24

25

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2 Page

3 Direct Examination by MR. BRASCHER 3

4 Cross Examination by MR. PRIEBE 16

5

6 STIPULATIONS

7 It is stipulated that the deposition of

8 may be taken pursuant to agreement and in accordance

9 with the Arkansas Rules of Civil Procedure on JUNE 28,

10 2023, before Mike Washkowiak, CCR.

11

12

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1 _____

2 after having been first duly sworn, deposes and says in

3 reply to the questions propounded as follows, to-wit:

4 DIRECT EXAMINATION

5 BY MR. BRASCHER:

6 Q _____, my name is Justin Brascher. I have

7 with me my associate Jordan Broyles. We are the attorneys

8 representing the State on this case. Before we start,

9 could you please state your name?

10 A _____.

11 Q _____, are you familiar with the deposition

12 process?

13 A Somewhat.

14 Q Okay. I just want to make a few things clear so

15 we're on the same page. I am going to do my best to not

16 speak over you. If you'd do your best not to speak over

17 me, we've got a court reporter who's typing everything

18 down, so obviously it's a lot easier for him to get

19 everything down if we're not talking at the same time.

20 Does that make sense?

21 A Agreed.

22 Q Okay. You understand that you're under oath to

23 tell the truth?

24 A Yes.

25 Q Also, if I ask any questions that seem vague or

1 don't make any sense to you, then I probably just didn't
2 ask a good question. That's fine, just tell me and I'll
3 just rephrase, okay?
4 A All right.
5 Q Also, I'm sure Mr. Priebe told you this, but you
6 can -- if at any point you want to take a break for a few
7 minutes, you're more than welcome to do so, okay?
8 A Yeah.
9 Q All right. I'll start with how familiar are you
10 with this case?
11 A Well, from what I hear from my sisters and then
12 from Mr. Priebe.
13 Q Okay. Did you go over any documents to prepare
14 for this deposition today?
15 A No.
16 Q So to the best of your understanding, what is
17 this case about?
18 A It's about negligence that caused the death of
19 my father.
20 Q So I have to start from the beginning here and
21 just lay a little foundation. What was your relationship
22 to Oscar, or Bill, Jones?
23 A That's my father.
24 Q Who is your mother?
25 A Helen Einsiedel.

1 Q How old were you when your parents got divorced?
2 A Roughly, probably 16.
3 Q Okay. When they got divorced, who did you go
4 and live with?
5 A The United States Marine Corps.
6 Q Okay. How long were you in the Marine Corps?
7 A I enlisted for five years.
8 Q Well, thank you very much for your service, sir.
9 What kind of relationship did you have with your
10 father after the divorce with your mother?
11 A Excellent as always.
12 Q Did you stay in touch and communicate?
13 A Of course.
14 Q How often would you say --
15 A I probably talked to him two or three times a
16 week.
17 Q Okay.
18 A I was his only son.
19 Q Sure, sure. How long did that communication go
20 on? Did that stay the same through the course of your
21 life?
22 A [redacted]
[redacted]
24 Q Sure, sure. Okay, so you would say you guys
25 talked two or three times a week, and then about 2014 or

1 2015 is when there started to be some issues. When did
2 you first hear about [redacted]?
3 A From Ann, my stepmother at the time, his wife.
4 Q Okay. So Ann told you he was having [redacted]
5 [redacted] Do you remember when she told you that,
6 approximately?
7 A No, not exactly.
8 Q Would 2016 be a fair ballpark?
9 A You could say that, but I don't keep time
10 references like that, you know.
11 Q Sure, I understand. Did you -- sorry, go ahead.
12 [redacted]
19 Q Do you know whether she took that advice?
20 A I think she did.
21 Q Okay. Did you have any in-person contact with
22 your father?
23 A Of course.
24 Q How often do you think you saw him in person?
25 A When are we talking? What periods of time?

1 Q Sure. Let's say from 2010 to 2015.

2 A

I think I

4 probably made two trips down to see him. One specifically

5 I wanted to know if he was saved; i.e., believed in God.

6 Q Sure.

7

1 [redacted]

2 Q What was your relationship like with Ann?

3 A It was great up and to the point that my dad

4 died.

5 [redacted]

16 Q Sure, sure. Did you -- well, after that visit,

17 I think you said about 2015 or so, did you visit him

18 again?

19 A Yes.

20 Q When was the next time that you visited him?

21 A I'm not sure, but it was the last time I saw

22 him.

23 Q Okay. Would that be before or after he went

24 into the nursing home?

25 A Probably about, I'm going to guess at this,

1 maybe eight to ten months before.

2 Q **Okay. So 2017?**

3 A I mean, if you say so. Again, I don't have a

4 reference of time.

5 Q **Sure, that's fine. What did you notice about**

6 **him the last time that you saw him?**

7 [redacted]

12 Q **I'm sure. I can't imagine going through that.**

13 **So the discussion of putting him into the**

14 **nursing home, were you a part of those discussions?**

15 A Yes.

16 Q **What was being discussed?**

17 A Well, Ann, I also had constant communication

18 with Ann, like on a weekly basis and, you know, she would

19 tell me different things that were happening that he was

20 doing and [redacted] Then my

22 sister went down to visit, and my sister told me, you

23 know, how it was going there, and she also agreed that,

24 you know, at some point in time he might have to have some

25 nursing home care.

1 Q Okay. And so were the three of you, you and
2 your two sisters, were you guys in agreement that this is
3 probably the decision that needed to be made?
4 A Yes.
5 Q It sounds like it wasn't an easy decision?
6 A Of course not. [redacted]
10 Q Sure. And then when he first went into the
11 nursing home, from that point forward, did you ever see
12 him in person at the nursing home?
13 A No.
14 Q Did you contact him over the phone at the
15 nursing home at all?
16 A Yes, one time I was able to get through. The
17 very first -- I'm going to guess it was the first month.
18 And after that it was not possible to get in touch.
19 Q And when you say "not possible," what happened?
20 A What I say is I called a thousand times and you
21 couldn't get an answer. I then called the administrators
22 of the VA, and you also couldn't get a return call. I
23 left so many messages it's ridiculous. No one ever called
24 me back.
25 Q Sure. So you were able to have one

1 conversation. Did he say anything to you about the care
2 he was receiving or anything like that?
3 A No, no. It was very generic. Hey, how are you
4 doing? How's it going? You know, I mean I can't tell you
5 exactly the wordage, but again when I last saw him, [redacted]
8 Q Okay, okay. In terms of information about the
9 care that he was receiving, you were getting all of that
10 from Ann?
11 A Yeah, 99.9 percent of that, yep.
12 Q Okay. What sort of information were you getting
13 from her?
14 A Well, she would tell me anytime they had an
15 incident or something happened, you know, there, she
16 said -- one time she called me, she said well, he got in a
17 fight or got violent with one of the nursing staff or
18 something.
19 Q Okay. Do you remember anything specifically
20 about what she told you about that?
21 A I don't know what you mean, what specifically.
22 [redacted]

1 [redacted]

13 Q Did you -- when did you find out that your

14 father had passed away?

15 A Probably an hour after he died.

16 [redacted]

19 [redacted]

1

21

1 [redacted]

10 Q I believe you. Did you have any sort of
11 relationship with Ann's two daughters?
12 A I knew them both.
13 Q Did you have any sort of communication with them
14 while your father was in the nursing home or afterwards?
15 A No.
16 Q Did you -- I want to make sure. While your
17 father was alive, particularly maybe the last ten years or
18 so, were you financially independent of him?
19 A Uh-huh.
20 Q Okay. So you weren't receiving any money from
21 him or anything like that?
22 A No, no.
23 Q Okay. I just have to be clear for our court
24 reporter. The "Uh-huh," you mean yes by that?
25 A That's correct.

1 Q You personally, did you ever speak to any of
2 your dad's doctors?
3 A No.
4 [redacted]
7 Q Did Ann talk to you about this lawsuit or ask
8 you if you wanted to participate in this lawsuit?
9 A No.
10 [redacted]
14 Q Okay.
15 MR. BRASCHER: If you could just give me one
16 second, I'm going to make sure that I've asked you
17 everything that I've wanted to.
18 (SHORT BREAK AT 10:51)
19 Q (BY MR. BRASCHER) Just a couple of more
20 questions for you. If money was awarded in this lawsuit,
21 do you think that Ann should receive any of it?
22 MR. PRIEBE: Object to the form.
23 A She was his wife. Yes, I do.
24 Q (BY MR. BRASCHER) How do you think the money
25 should be distributed?

1 A If it were up to me, and I don't guess it is,
2 but I would have to say the fairest thing would be
3 equally.
4 **Q Between you, your two siblings, and her?**
5 A Correct.
6 MR. BRASCHER: Thank you, sir. I pass the
7 witness.
8 MR. PRIEBE: Hey, ____ this is Jeff. I've just
9 got a couple of questions for you, okay?
10 THE WITNESS: All right.
11 CROSS EXAMINATION
12 BY MR. PRIEBE:
13 **Q Mr. Brascher was asking you about a claim being**
14 **made against the Arkansas State Nursing Home. If the**
15 **evidence reflects that your father was neglected at the**
16 **Arkansas State Nursing Home, would you want them to be**
17 **held accountable?**
18 A Absolutely, to the full extent of the law.
19 **Q And if evidence reflects that their neglect**
20 **caused him injuries and/or contributed to his death, would**
21 **you want them to be held accountable?**
22 A Absolutely, 100 percent.
23 **Q This may --**
24 A The fact --
25 **Q Go ahead, I'm sorry.**

1 A No, go ahead. I'm sorry.

2 **Q I said this may sound like a silly question, but**

3 **since your father's passing, have you grieved the loss of**

4 **your father?**

5 A Yeah, that's a dumb question. Every day.

6 **Q I'm sorry, ____ but I do appreciate it.**

7 MR. PRIEBE: That's all the questions I have,

8 Justin.

9 THE WITNESS: We all good here?

10 MR. PRIEBE: Hold on. Justin?

11 MR. BRASCHER: I have nothing further. Thank

12 you very much, ____

13 (DEPOSITION CONCLUDED AT 10:54 A.M.)

14

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1 C E R T I F I C A T E

2 STATE OF ARKANSAS)
) SS:
3 COUNTY OF WASHINGTON)

4 I, Mike Washkowiak, Certified Court Reporter
5 within and for the State of Arkansas, do hereby certify
6 that the above-named _____ was by me first duly sworn
7 to testify the truth, the whole truth, and nothing but the
8 truth, in the case aforesaid; that the above and foregoing
9 deposition was by me taken and transcribed pursuant to
10 agreement, and under the stipulations hereinbefore set
11 out; and that I am not an attorney for nor relative of any
12 of said parties or otherwise interested in the event of
13 said action.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and official seal this 7th day of July, 2023.

16 MIKE WASHKOWIAK ARKANSAS SUPREME COURT NO. 654 CERTIFIED COURT REPORTER

17 MIKE WASHKOWIAK, CCR

18

19 State of Arkansas, No. 654

20

21

22

23

24

25

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1 IN THE ARKANSAS STATE CLAIMS COMMISSION

2
OSCAR ODELL "BILL" JONES,
3
Plaintiff,
4
vs. No. CC-200817
5
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
6
Defendant.
7

8 _____

9 REMOTE DEPOSITION OF CYNTHIA BARTLETT
TAKEN ON BEHALF OF THE RESPONDENT
10 ON JUNE 28, 2023, BEGINNING AT 9:44 A.M.
TAKEN VIA ZOOM
11 REPORTED BY MIKE WASHKOWIAK, CCR

12 APPEARANCES: (All via Zoom)

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23

24 Also present on Zoom with Ms. Bartlett: Elliott Bartlett

25

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STIPULATIONS

It is stipulated that the deposition of CYNTHIA BARTLETT may be taken pursuant to agreement and in accordance with the Arkansas Rules of Civil Procedure on JUNE 28, 2023, before Mike Washkowiak, CCR.

CYNTHIA BARTLETT,
after having been first duly sworn, deposes and says in reply to the questions propounded as follows, to-wit:
DIRECT EXAMINATION
BY MR. BRASCHER:
Q Good morning, ma'am. My name is Justin Brascher. I've got my associate Jordan Broyles, she's barely on the camera here, she's waving her hand. I'm just going to ask you some questions about your dad Oscar, who I know also went by Bill. What I want to start with is, could you please state your name for the record?
A Cynthia Bartlett.
Q And just so that we're completely clear, you're on here as it says "Elliott Bartlett" down at the bottom. I'm assuming that's your son that's with you?
A It is.
Q Okay. Have you ever been deposed before, Ms. Bartlett?
A No.
Q So I just want to walk you through a few steps so that you know exactly what's going on. The court reporter, Mr. Washkowiak, is typing down everything that gets said. So I won't talk over you, and then if you won't talk over me, then he can get a clean copy of everything that gets said. Does that make sense?

A Yes.
Q And of course we're on Zoom, which means that sometimes there's a lag of a second or two, so I'll just be aware of that. Just be aware that there might be a little bit of a delay here or there.
A Okay.
Q You understand that you're under oath to tell the truth?
A I do.
Q If any of the questions I ask don't make sense or they seem vague, just tell me. I probably didn't ask a good question, and I will rephrase it in a way that makes more sense, okay?
A Okay.
Q And then if it any point, and I'm sure Mr. Priebe has talked to you about this, if you want to take a break at any point, you're more than welcome to, and then we'll just come back in a few minutes, okay?
A Okay.
Q I'll start with how familiar are you with this case?
A Well, I know that my father passed away due to some neglect issues, and I imagine that Ann now is suing the home that he was in.
Q Did you go over any documents or anything to

1 **prepare for this deposition today?**
2 A No. I don't have any documents.
3 **Q That's totally fine. It's just one of those**
4 **questions I have to ask to make sure.**
5 **So it's your understanding this case is about**
6 **your father and the care he received at the nursing home?**
7 A Right.
8 **Q I'll start from the beginning here. Some of**
9 **these questions might seem obvious, but I have to kind of**
10 **set the foundation. What was your relationship to Oscar**
11 **"Bill" Jones?**
12 A I was his oldest daughter.
13 **Q Okay. If I may ask, how old are you?**
14 A Sixty-seven.
15 **Q Who is or was your mother?**
16 A Helen Jones. Well, Helen Einsiedel and then
17 Jones.
18 **Q How long were Helen and Bill together?**
19 A Almost 23 years. Between 21 and 23 years, yes.
20 **Q And then they got divorced?**
21 A They did.
22 **Q Were you out of the house by the time they had**
23 **gotten divorced?**
24 A Yes.
25 **Q How old were you?**

A I was 21. I had just moved to Germany, and my mother -- my mother was German, and so when she remarried, her husband was also in the military. They get stationed in Germany too, in Stuttgart.

Q Okay. So you ended up being kind of in the same area as your mom afterwards?

A Well, because I was -- that was my first marriage, and my husband was also stationed in Germany.

Q Are you currently married?

A I am not.

Q You're not, okay. You said your first husband. You're not with him anymore. Did you divorce?

A That was a three-year marriage, but my other marriage was for 28 years, and then eight years ago I divorced him.

Q Okay. I see you have one son with you. How many kids do you have?

A Two.

Q Okay. I obviously didn't know your father. For someone that didn't know him, what was your father like?

A He was an amazing, talented, wonderful person. I loved my dad. We had a really, really close relationship. He was from the deep South, and he had a lot of strong moral character, and I loved him a lot. All of us kids did. He was good to us. We lived in Germany

for 19 years back and forth. He was in the military, my mom was German, and so we just traveled. We had seven duty tours back and forth.

Q Wow. And when you say "we," you're saying while Oscar was in the military?

A It would be like three years in Germany, a year in the States and then right back because my mother never drove, she didn't speak a lot of English, and she wanted to be with her family, so we had that many. He was able to do that because he was Special Forces, Green Beret, and he was able in communications, so he was needed. So we were lucky that we were able to be transferred there.

Q That is great that it worked out that way.

So if I fast-forward, then, to they get a divorce; you're still living in Germany. Did you maintain a relationship with your father after that?

A I did.

Q How often did you see him, would you say?

A Since we were stationed in Europe, we came back to the States twice to visit, and I believe that's the time we met Ann when their relationship then began.

Q Okay. So I'm trying to remember exactly when they met. Would you say that was in the 1980s when that occurred?

A No.

Q No, okay.
A '70s.
Q '70s?
A (Witness nods head.)
Q Okay. So you made it a couple of times. When did you come back to the States from Germany?
A That time, that was three years later, so I think that was '78, I believe 1978, '79, and then I went into the Air Force myself.
Q Okay. Thank you so much for doing that, for your service. Appreciate it.
All I'm trying to do is get an understanding of the relationship that you had with your father in terms of how often you saw him and that sort of thing, so if I go from, say, 1990 forward or so, did you have sort of "I saw him this many times a year" or anything like that?
A They lived in Georgia. I married a Florida boy who was also in the military, so we were here in Florida. And whenever we traveled, you know, back and forth we did see them. They came to my son's christening, they came for my daughter, and then -- oh, one time they did move not too far from each other in Hindsville, Georgia, so whenever we went to see my mom, they were just up the street. So there was a cordial relationship between the four of them, between my dad and his wife and my mother

and her husband.

Q So did that continue when they moved back to Arkansas?

A No, we did not see them -- I definitely did not see him as much because then, you know, I had my two children and I was obligated here, but we definitely still communicated for a while.

Q Sure. How long did that communication go on?

[redacted]

1 [redacted]

7 **Q Sure. Okay, so the communication, you got it**
8 **through your sister, and that communication was happening**
9 **2015, 2016, that sort of time?**
10 A '18 all the way to '19, yes.
11 [redacted]

18 **Q So when your father was placed into the nursing**
19 **home, was there a discussion about whether to do that?**
20 A We knew that Ann was not going to be able to
21 take care of him, that it was out of her hands, that she
22 definitely needed help with him, so yes, the three of us.
23 **Q Okay. What were some of the factors that go**
24 **into that determination?**
25 A I don't know all of those factors. All I know

1 is that [redacted]

[redacted] She did the thing, you

4 know, that was going to hopefully benefit both of them.

5 **Q Sure. Did you know any details about kind of**

6 **what your father's condition was or what were some of the**

7 **issues he was having?**

8 A I did learn about those, yes.

9 **Q Can you describe for me what some of those**

10 **issues were?**

11 A [redacted], you mean?

12 **Q I'm referring to the issues that he had while he**

13 **was -- while this decision was being made whether to put**

14 **him in the home or not while Ann was trying to take care**

15 **of him, what some of those issues were.**

16 [redacted]

20 **Q So when the decision was made, "okay, we're**

21 **going to put him in the home," how did you feel about that**

22 **decision?**

23 A I thought it was the right one. I didn't have

24 any direct input. The three of us discussed it and said

25 yes, we think that's the best avenue, you know, under the

1 circumstances. I mean, she was not able to do that, so
2 that's what we have caretakers for, to help.
3 **Q Sure. Okay, and then did you learn -- learn is**
4 **the wrong word.**
5 **What was your knowledge of the care that he was**
6 **getting at the nursing home while he was in the nursing**
7 **home?**
8 A That it was not very good.
9 **Q And when did you -- did you hear these things**
10 **from Cynthia -- I'm sorry, from your sister?**
11 A Yes.
12 **Q So what sort of things were you hearing from**
13 **her?**
14 A Well, that he wasn't being visited a lot, that
15 he wasn't being cared for, that he was alone a lot when he
16 shouldn't have been. All of us have been in the medical
17 field, and we know, you know, just a little bit about
18 patient care, and it was not there. It was not like it
19 should have been.
20 **Q Okay. So obviously the issue in this case is**
21 **the care that he was receiving at the nursing home, so I'm**
22 **trying to drill in a little bit on the details here. So**
23 **from your understanding of the conversations you had, what**
24 **specifically were some of the issues?**
25 A That he was left alone when he should not have

been left alone. I mean, I don't know; I wasn't there. So I only have -- I don't have the broad knowledge of what all the details are, just that it wasn't what it was supposed to be.

Q Just that it wasn't what it was supposed to be. Are there any specific instances you're aware of, or is it more of a general feeling?

A Just a general. I mean, because Rhonda was able to visit him more than any of us, so through her is what I heard how he was faring.

Q Is it your understanding that Rhonda was visiting him in the nursing home?

A I believe it was there or the VA, one of the two. The VA hospital, I think that was towards the end, so probably the nursing home. We have pictures of her with him.

Q Sure, okay.

MR. BRASCHER: Jeff, if I could get, if you have those pictures, if I could get some of them I would really appreciate it.

MR. PRIEBE: Cindy, do you have those pictures?

THE WITNESS: Rhonda does.

MR. PRIEBE: Okay. Justin, I'll work with Rhonda to try to get those pictures.

MR. BRASCHER: Great, thank you.

1 MR. PRIEBE: You're welcome.

2 Q (BY MR. BRASCHER) [redacted]

[redacted]

25 [redacted]

1

17

1 **Q Sure.**

2 MR. BRASCHER: If you will just give me one

3 moment, if we want to go off the record I just want to

4 make sure that I've asked you everything that I wanted to,

5 okay?

6 (BREAK FROM 10:02 TO 10:03)

7 **Q (BY MR. BRASCHER) Okay, Ms. Bartlett, I have**

8 **just a few more questions.**

9 **While your father was alive, were you**

10 **financially independent? It sounds like you were.**

11 A Yes.

12 **Q So you were not receiving any money from him?**

13 A No.

14 **Q Did you ever speak to any of his doctors while**

15 **this was going on?**

16 A No.

17 [redacted]

21 **Q Also, you mentioned Ann and that Ann had two**

22 **stepdaughters.**

23 A No, she has two daughters.

24 **Q I'm sorry, I'm sorry, two daughters, yes. So**

25 **they were Bill's stepdaughters?**

A Right.

Q What was your relationship like with them, if there was any?

A I only knew them from when they were younger, you know, when our parents first got together because I lived in Germany. We were stationed in Germany, so I didn't see them then, and then when I was in the Air Force myself, when I came back I was stationed everywhere else too, so I did not see them much. It was pretty good. We liked each other.

Q [redacted], do you think that that's attributable to them, or is it more attributable to Ann?

A No, not to the girls.

Q Did Ann talk to you at all about filing this lawsuit before she did it? Were you ever asked to participate in the lawsuit?

A No.

MR. BRASCHER: I pass the witness.

MR. PRIEBE: Hey, Cindy, I just have a few questions, okay?

THE WITNESS: Okay.

CROSS EXAMINATION

BY MR. PRIEBE:

Q Can you hear me?

A I can.

Q Cindy, Mr. Brascher asked you about the lawsuit. If your father was neglected at the Arkansas State Nursing Home, do you want that facility to be held accountable?

A Yes.

Q If the Arkansas State Nursing Home neglected your father that caused him injuries and/or his death, do you want them to be held accountable?

A Yes.

Q Since the passing of your father, have you grieved his loss?

A Yes.

Q Do you miss your father?

A Yes.

Q Did you love your father?

A I did, yes.

MR. PRIEBE: Cindy, thank you so much. That's all the questions I have. Mr. Brascher may have a couple more, okay?

MR. BRASCHER: I don't have any other questions, so I think that we are done.

(DEPOSITION CONCLUDED AT 10:07 A.M.)

C E R T I F I C A T E

STATE OF ARKANSAS)
) SS:
COUNTY OF WASHINGTON)

I, Mike Washkowiak, Certified Court Reporter within and for the State of Arkansas, do hereby certify that the above-named CYNTHIA BARTLETT was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid; that the above and foregoing deposition was by me taken and transcribed pursuant to agreement, and under the stipulations hereinbefore set out; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of July, 2023.

MIKE WASHKOWIAK, CCR

State of Arkansas, No. 654

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1 IN THE ARKANSAS STATE CLAIMS COMMISSION

2
OSCAR ODELL "BILL" JONES,
3
Claimant,
4
vs. No. CC-200817
5
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
6
Respondent.
7

8 _____

9 REMOTE DEPOSITION OF RHONDA BROSTROM
TAKEN ON BEHALF OF THE RESPONDENT
10 ON JUNE 28, 2023, BEGINNING AT 9:08 A.M.
TAKEN VIA ZOOM
11 REPORTED BY MIKE WASHKOWIAK, CCR

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23

24

25

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STIPULATIONS

It is stipulated that the deposition of RHONDA BROSTROM may be taken pursuant to agreement and in accordance with the Arkansas Rules of Civil Procedure on JUNE 28, 2023, before Mike Washkowiak, CCR.

RHONDA BROSTROM,
after having been first duly sworn, deposes and says in reply to the questions propounded as follows, to-wit:

DIRECT EXAMINATION

BY MR. BRASCHER:

Q Good morning, Ms. Brostrom. My name is Justin Brascher. I also have, she's barely on the camera, my associate Jordan Broyles. We're just going to be asking you some questions today about your dad Oscar Jones, or I know he went by Bill.

A Yes.

Q And so I wanted to start with have you ever been deposed before?

A Have I ever been where?

Q Deposed, meaning has your deposition ever been taken before?

A No.

Q Okay. I just want to walk you through kind of how this process works. It should be pretty straightforward. I will do my best to not talk over you, and then you do your best not to talk over me because there's a court reporter, the guy with the Washkowiak there, he's typing down everything that's said. So as long as we don't talk over each other, then he can get everything that's said by both of us.

A Okay.

Q Also, because we're on Zoom, there might be a little lag of a second or two, so just be aware of that, and I'll do the same to be aware of that as well.

A Okay.

Q You understand that you just took an oath to tell the truth, right?

A Yes.

Q Okay. Also, if a question I ask sounds vague or doesn't make any sense, that's totally fine; I probably screwed up. Just tell me that it doesn't make any sense, and I will ask it differently, okay?

A Okay.

Q Okay. Also, you are allowed -- if you need to take a break at some point, I'm sure Mr. Priebe has talked to you about this as well, you can ask for a break; that's totally fine.

A Okay.

Q So what I want to start with is, how familiar are you with this case involving Mr. Oscar Jones?

A I didn't really know anything about it until Mr. Priebe called.

Q Okay. Have you gone over any documents to prepare for this deposition today?

A No. I mean, I don't really know what documents

to go over. I'll just tell the truth of everything I know. I don't really have any documents.

Q That's totally fine. It's simple a question I kind of have to ask, so no worries.

A Okay.

Q What I'll start with is to the best of your understanding, what is this case about?

A About my father's death and how he died and what happened to him.

Q Okay. I guess what I'll start with is some of these questions might sound obvious, but we just kind of have to set the foundation here. So what is your relationship to Oscar, or Bill, Jones?

A I'm his youngest daughter.

Q And if I may ask, how old are you?

A I'm 62.

Q Who is or was your mother?

A Helen Jones. My stepmom was Ann.

Q Okay. How long were Oscar and Helen together?

A I think my mom and dad were married 21 years, I believe.

Q Forgive me for not knowing. Did they divorce or did someone pass away or how did that relationship end?

A No, they divorced.

Q Okay. So growing up, was Oscar around a lot

while you were growing up?

A Oh yes, of course, my whole life that I was growing up, and then -- yeah, yes.

Q Okay, that's totally fine. What sort of involvement did he have in your life while you were growing up?

A A lot of involvement. They, Ann and my dad, moved to the same neighborhood that my mom and Joe lived in, and so we all got along fine, which was wonderful for us kids.

Q That is wonderful. Did you live with both parents?

A I did. When my mom and dad got divorced, I moved to Arkansas with my dad because my mom was in Europe.

Q Sure, okay. How old were you when they got divorced?

A I was 16.

Q Okay. So you were almost out of the house at that point?

A Yeah, almost.

Q Okay. What did you do, when you turned 18 and graduated high school, what did you do?

A I got married, like a dummy.

Q Okay. Are you still married to that person?

A No.

Q That's too bad. So after 18, what sort of -- did you still have a relationship with your father once you got married?

A Oh yeah, sure. I went to visit my dad often. Me and my -- I mean, they lived right down the street from my mom, so I lived with her for a while when I got divorced because I had two little girls. And so, I mean, we went there all the time. We had a good relationship.

Q You have two daughters?

A I do.

Q So you had a good relationship with both parents. I guess to fast-forward some, when did you first become aware of sort your dad's medical condition?

A Well, I went to visit him. My husband and I went to visit him several times because he was a duck carver too, and my husband was as well. So we were there several times. [redacted]

Q Do you remember around when that conversation happened in terms of what year?

A Oh, gosh, let's see. 2019 my husband --

1 probably 2017. I don't know. I mean, we went to see my
2 dad quite often.
3 **Q Okay. Would you say a couple of times a year,**
4 **or --**
5 A Yeah.
6 **Q -- or more than -- a couple of times a year?**
7 A At least, yeah.
8 **Q So maybe 2017 or so you're aware. What did you**
9 **notice about him that kind of indicated to you that he**
10 **might** [redacted]
11 [redacted]
16 **Q What was your relationship like with Ann?**
17 A It was fine. You know, I mean, a stepmom, you
18 know, you don't have the greatest relationship. I had a
19 very good relationship with my mother, and I loved my mom
20 to pieces. But they got along too, so it was okay.
21 **Q You found this out about your dad** [redacted]
[redacted] **Were you involved at all in his medical**
23 **care?**
24 A Well, not really because I lived so far away,
25 you know. But I did go see him more often because he did

1 [redacted], so, you know, we went down and we bought
2 an RV and we took him to the store and stuff like that, so
3 yeah.
4 **Q Okay. How far away? Where did you live**
5 **compared to him?**
6 A Well, he lived in Arkansas, and I live in
7 Minnesota.
8 **Q Okay, that is quite a distance.**
9 A Yeah, we got there as often as we could.
10 **Q Sure, sure, I totally understand. When did you**
11 **become aware that he was going to move into the nursing**
12 **home?**
13 A I guess Ann -- [redacted]
20 **Q Sure. Would you say that was in 2018?**
21 A Probably, probably so. Because he had it maybe
22 even 2017. He was in the nursing home about a year, I
23 guess, and he had it maybe a year before that. I don't
24 remember exactly.
25 **Q Okay.** [redacted]

1 [redacted]

3 **Q So that happened in 2017 is when that was**
4 **starting to go on?**
5 A Either 2017 or 2018. I'm not exactly sure.
6 **Q In 2018 is when they put them in the home,**
7 **right?**
8 A I believe so because he was in there about a
9 year.
10 **Q Did you -- were you there when he was moved from**
11 **his house into the home?**
12 A No. No, because my husband was a pilot flying
13 back and forth to Afghanistan, and so I have three dogs
14 and I'm a groomer. So I didn't have as much leeway to be
15 able to go without my husband here, so I didn't get to go
16 that year. But I was on my way to see him. I didn't know
17 that he was as bad as he was.
18 **Q Sure. Were you ever able to visit him in the**
19 **nursing home?**
20 A No. No, because that was first -- you know,
21 that was the year he was working. But I was on my way to
22 visit him, and then he died.
23 **Q I'm sorry. I hate to prod into this. When was**
24 **the last time that you saw him, if you can remember?**
25 A Right before, right before he was put into the

nursing home.

Q Okay. Like maybe a couple of weeks before? Are we talking a couple of months before?

A Yeah, I mean, maybe a month or so before because, you know, Ann wanted to make sure that we all agreed that that's where he needed to be.

Q Okay. So prior to when he was put in the home there had been some talks about whether to do that?

A Yes.

Q You talked to Ann maybe a month or so before about whether this was something that should be done?

A I mean, we had been talking about it a little bit and a little bit because, you know, it was getting harder and harder for her to take care of him.

Q Okay. And then when she finally made the decision to do that, did she talk to you about that?

A Yeah, we all -- we all talked about it.

Q And then once -- you said you were on your way to visit him when he passed away?

A Yes.

[redacted]

1 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

8 [redacted]

[redacted]

[redacted]

[redacted]

12 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

21 **Q Oh, I'm sorry.**

22 MR. BRASCHER: I appreciate you walking through

23 this with me. If you just give me one second, I'm just

24 going to make sure that I've covered everything that I

25 wanted to cover, okay?

1 THE WITNESS: Okay.

2 (BREAK FROM 9:22 TO 9:23)

3 Q (BY MR. BRASCHER) Rhonda, thank you so much. I

4 just want to confirm one thing. So was everybody in

5 agreement that it was a good idea to put Oscar in the

6 home?

7 A I mean, everybody, you know, it was so hard,

8 nobody wants to put their dad in a home, but there was no

9 way that I could take him here and take care of him, and

10 it was getting hard for Ann too. So reluctantly, I think

11 we all just thought that would probably be the best thing.

12 Q When you say "we all," would that be you, and

13 who else was part of that decision-making process?

14 A Well, me, my brother, and my sister, you know,

15 we all talked about it.

16 Q Okay. So all three of you, so you and then it

17 would be ____ and Cynthia; is that right?

18 A Yes.

19 Q So you all kind of reluctantly, yeah, we think

20 this is probably what needs to happen?

21 A Yeah, I guess. I know reluctantly we did. I

22 wish that I could have taken him here.

23 Q Have you known other people who [redacted]

[redacted]

[redacted]

1 **Q Okay. So you've seen it all?**
2 A I have.
3 **Q Okay.**
4 MR. BRASCHER: I think that that is all I have
5 for you, Rhonda. Thank you so much. I know this wasn't
6 the most fun thing to do, but I really appreciate it.
7 Thank you, and I will pass the witness.
8 THE WITNESS: Yes, I'm glad something is started
9 for my dad, thank you.
10 MR. PRIEBE: Rhonda, I have a few questions,
11 okay?
12 THE WITNESS: Okay.
13 CROSS EXAMINATION
14 BY MR. PRIEBE:
15 **Q Are you doing all right?**
16 A I am.
17 **Q Mr. Brascher asked you about the claim that's**
18 **being made against the state nursing home, okay. Remember**
19 **those questions?**
20 A He asked me about the claim?
21 **Q Yes, he asked you were you aware of the claim.**
22 A Yes.
23 **Q If the state nursing home, if they neglected**
24 **your father, would you want them to be held accountable?**
25 A Yes, of course.

1 **Q If their actions led to his injuries and/or**
2 **death, would you want them to be held accountable?**
3 A Yes, absolutely.
4 **Q Since your father's passing, have you grieved**
5 **the loss of your father?**
6 A Of course.
7 **Q Did you care about your father?**
8 A I loved him very much.
9 **Q Let me make sure, I've got to ask that question.**
10 **Did you love your father?**
11 A Yeah, very much.
12 MR. PRIEBE: Rhonda, I do -- sorry to ask you
13 those hard questions. I know that you've been -- you got
14 a little emotional, and I appreciate that, but that's all.
15 THE WITNESS: Sorry.
16 MR. PRIEBE: No, don't apologize. That's all
17 the questions I have. Mr. Brascher may have some more,
18 okay?
19 MR. BRASCHER: Thank you, Rhonda, I just have a
20 few more questions, okay, and you'll be out of here pretty
21 soon.
22 REDIRECT EXAMINATION
23 BY MR. BRASCHER:
24 **Q Were you financially independent from your**
25 **father, meaning you weren't receiving any money or**

1 **anything from him?**
2 A Yes, yes, I made it.
3 **Q Yeah. You said your husband was a pilot and**
4 **stuff to, so I had to check.**
5 A Yeah.
6 **Q You said earlier you don't really have any**
7 **specific knowledge about the specific facts of this**
8 **lawsuit or anything like that, right?**
9 A No, I mean...
10 **Q Nothing but simply the broad strokes about**
11 **something may have happened at the nursing home?**
12 A Right, right.
13 **Q And then -- so any information that you would**
14 **have gotten, that would have come from Ann, right?**
15 A Yes.
16 **Q Okay. You don't have any specific knowledge**
17 **about his medical care at the nursing home; that all came**
18 **from Ann, right?**
19 A Yeah.
20 MR. BRASCHER: That's all I have. Thank you so
21 much, Rhonda. I pass the witness.
22 THE WITNESS: You're welcome.
23 MR. PRIEBE: All right, Rhonda, you're done.
24 THE WITNESS: Okay, I'm good now. I can go back
25 to gardening.

1 (DEPOSITION CONCLUDED AT 9:30 A.M.)
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C E R T I F I C A T E

STATE OF ARKANSAS)
) SS:
COUNTY OF WASHINGTON)

I, Mike Washkowiak, Certified Court Reporter within and for the State of Arkansas, do hereby certify that the above-named RHONDA BROSTROM was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid; that the above and foregoing deposition was by me taken and transcribed pursuant to agreement, and under the stipulations hereinbefore set out; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of July, 2023.

MIKE WASHKOWIAK, CCR

State of Arkansas, No. 654

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1 BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS
2
MARY ANN JONES, as Special)
3 Administrator of the Estate of)
Oscar Odell "Bill" Jones,)
4)
CLAIMANT,)
5) CLAIM NO. 20-00817
VS.)
6)
ARKANSAS DEPARTMENT OF VETERAN)
7 AFFAIRS d/b/a NORTH LITTLE)
ROCK - VETERANS AFFAIRS f/k/a)
8 ARKANSAS STATE VETERANS HOME)
AT NORTH LITTLE ROCK,)
9)
RESPONDENT.)
10
11 ----------
12 ORAL DEPOSITION OF
13 ROSALIND PAGE
14 July 27, 2023
15 ----------
16
17 ORAL DEPOSITION OF ROSALIND PAGE, produced as a
18 witness at the instance of the CLAIMANT, and duly
19 sworn, was taken in the above-styled and numbered
20 cause on the 27th day of July, 2023, from 3:14 p.m. to
21 4:04 p.m., before Dana Hayden, CCR in and for the
22 State of Arkansas, RMR, CRR, CRC, reported by machine
23 shorthand, at the Rainwater Holt & Sexton, 2701 TP
24 White Drive, Jacksonville, Arkansas 72076.
25

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ALSO PRESENT:

Ms. Brianna McDonough

I N D E X

July 27, 2023

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WITNESS: ROSALIND PAGE

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EXHIBITS

NO.	DESCRIPTION	MARKED
Exhibit 1	Subpoena	4
Exhibit 2	Notice to Take Deposition	4

ROSALIND PAGE,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. PRIEBE:

03:14PM Q. Would you state your name for the record.

A. Rosalind Page.

Q. I understand sometimes you go by Rosa?

A. Yes, but I was going to say everyone calls me Rosa.

03:14PM Q. Rosa, what's a good home address for you?

A. [redacted]

Q. Where are you working now?

A. Right now I'm working at the CAVHS, which is on

03:14PM the opposite side of the street, Central Arkansas Veterans Health Systems.

Q. Well, we appreciate you being here today. I know we had to -- you had to work on your schedule a little bit.

03:14PM A. Yeah.

(Exhibit 1 marked for identification.)

(Exhibit 2 marked for identification.)

Q. I'm going to show you what I've labeled as Exhibit 1 and 2, which is a copy of your notice and

03:14PM the subpoena.

A. Okay.
Q. Did you get a copy of these?
A. Yes, I have that copy.
Q. Yeah. You were served with this?
03:14PM A. Yes.
Q. And it came with a witness fee check?
A. Yes, it did.
Q. Okay.
A. 37.25.
03:14PM Q. All right. That's something we have to do under the law. She'll take those.
A. Okay.
Q. So that's why there was a check.
A. Oh, okay.
03:15PM Q. Are you a nurse?
A. Yes. I'm a LPN.
Q. How long have you been a LPN?
A. Thirty-three-plus years.
Q. Oh, wow. Congratulations.
03:15PM A. Thank you.
Q. Did you ever have a chance to work at the Veterans Home in North Little Rock?
A. Yes, I did.
Q. When did you work there?
03:15PM A. I started there in, I want to say August 2016, I

1 believe? Yes.
2 Q. 2017 maybe?
3 A. 2017. Yes, 2017.
4 Q. And then how long did you work there?
03:15PM 5 A. I worked there about two years. I left in
6 August of 2019 -- July of 2019.
7 Q. Okay. And when you worked there, did you have a
8 specific shift that you worked primarily?
9 A. Yes. I was the night shift. There were times
03:15PM 10 when I did 12 hours but, again, it would be 7:00 p.m.
11 to 7:00 in the morning, so --
12 Q. We used to call it the graveyard shift.
13 A. Yes, the graveyard shift.
14 Q. Would you be assigned to either one specific
03:16PM 15 house or more than one house?
16 A. Yes. I -- when I started there, I was started
17 in this Cottage 1 and then Cottage 2. Eventually I
18 picked up House 3 and 4 on the night shift; but then
19 there were times when I would have to work House 4 and
03:16PM 20 5 or House 4 and 8.
21 Q. Typically how many houses would you be assigned
22 on a night shift?
23 A. Typically I would be assigned two houses. There
24 were times when I have worked three houses, but that
03:16PM 25 was, you know, when it was really, really, really

1 short shift, where somebody had to leave in the middle
2 of the night for whatever reason.
3 Q. Primarily what did you do on the night shift?
4 A. Of course, I oversaw the nurse assistants in
03:17PM 5 both of the houses. I would pass medications if
6 medications needed to be passed. I would do charting
7 and, like, different other various things that they
8 had us do like a care plan, review, going through the
9 documentation. It was just nursing stuff.
03:17PM 10 Q. When you gave a medication, would you document
11 that on the MAR?
12 A. Yes. We had a medication book. We also had,
13 was it -- I think it was electronic.
14 Q. PointClickCare?
03:17PM 15 A. Yes. We had PointClickCare, PointClickCare that
16 we also used.
17 Q. And so would you document electronically?
18 A. Yes. Everything was documented in
19 PointClickCare.
03:17PM 20 Q. Would you doc- -- every time you gave
21 medication, would you document that?
22 A. Yes, we had to because it was scheduled. If it
23 was something -- if it was that was either scheduled
24 or what's called prn, which is when the veteran would
03:18PM 25 request something, like, for pain or upset stomach.

1 But everything had to be documented.
2 Q. When you say "scheduled," you're talking about
3 narcotics?
4 A. No.
03:18PM 5 Q. Oh, no?
6 A. Outside of -- narcotics definitely always had to
7 be documented. We had to do a count at the beginning
8 of the shift, you know, with the next shift. It was
9 always two nurses that did that. But when I say
03:18PM 10 "scheduled," I mean something like an 8 o'clock blood
11 pressure medication, something that was scheduled.
12 Q. Gotcha. Something that had a physician's
13 order --
14 A. Yes.
03:18PM 15 Q. -- to be done at a specific time?
16 A. Yes.
17 Q. Like 8:00 a.m. and 8:00 p.m.?
18 A. Yes.
19 Q. 6:00 a.m., 6:00 p.m.?
03:18PM 20 A. Yes.
21 Q. That sort of thing?
22 A. Yes.
23 Q. And so have you heard -- or let me ask you this:
24 Was it the policy of the Veterans Home, to your
03:18PM 25 knowledge, to document when you gave medication?

A. Yes, that's policy because you had to -- the next shift would have to know. Like, say somebody's blood pressure was elevated and they could go back and say, "Well, Rosa gave the medication, you know. So
03:19PM now it's time to call" -- because we had nurse practitioners that work there.

So if the blood pressure was unusually high, that would be the first thing the nurse practitioner would ask: Were they given their blood
03:19PM pressure medication.

Q. Right.

A. The person who relieved me could go back and say, "Well, Rosa documented that she gave it." Or if, you know, say I didn't give it for whatever reason,
03:19PM they would say, "Well, I don't see where she documented."

Now, if I did not give a medication, I would also have to document the reason that it was not given.

03:19PM Q. If the resident refused a medication --

A. Right.

Q. -- the resident refused?

A. Right. Or if the blood pressure was, you know, lower than, you know, recommended, you wouldn't give a
03:19PM medication for various reasons. But whether you did

or did not give something, you had to document it. If you didn't give it, you definitely had to put a reason why you didn't give it.

Q. And you may have to call the doctor?

03:20PM A. Yes.

Q. And if you needed to get ahold of the doctor, could you call 24/7?

A. Yes. There was always a on-call nurse practitioner available.

03:20PM Q. Did you do wouldn't treatments; when I say "wounds," pressure sores?

A. I did not do it because I did not have any in my -- in the homes that I cared for. I want to say I had someone who had something very minor in House 3, I

03:20PM believe it was, but it was something like a wrap. It wasn't a actual wound. It was just a wrap because they had some swelling.

Q. Yeah.

A. Yeah.

03:20PM Q. But did y'all have a wound nurse?

A. The wound nurse, when I initially started there, no, there was not a wound nurse. But eventually Kayla Phillips, we were told that Kayla Philips was the wound nurse. She was going -- she was the one who was

03:21PM going to be doing the wounds, like, when someone was

1 admitted or, you know, or whatnot.
2 Q. And would the wound nurse also do the weekly
3 skin assessments?
4 A. I mean, yes, that's part of the job of a wound
03:21PM 5 nurse.
6 Q. I mean, after you -- they hired the wound nurse,
7 that wasn't your job to go do weekly skin assessments?
8 A. No, but if -- it's not your job as a staff
9 nurse. You have a -- you have the wound nurse. But
03:21PM 10 this is just me: A diligent nurse will still document
11 whether or not she saw changes and then she should
12 notify the wound nurse and she should document that.
13 Q. And you're not doing -- as an LPN on every
14 shift, you don't do full head-to-toe assessments every
03:22PM 15 shift, do you?
16 A. No. That's head-to-toe assessments are not
17 something that you do. You do that upon admission,
18 you know, or if there are some changes. But a
19 head-to-toe assessment is not something you would do
03:22PM 20 every shift.
21 Q. And the majority of ADL care, was that performed
22 by the universal workers, or the CNAs?
23 A. Yes, that was performed by the universal
24 workers.
03:22PM 25 Q. So if they were helping an incontinent resident

or bathing a resident, they may see a skin issue, right, and tell you about it?

A. Yeah, they would immediately come to me. Any kind of changes, we were. Now, we did have what's

03:22PM called monthly skin checks. So the nurse is responsible for looking at that person to see if there are any skin changes, if there are any bruises, you know, things of that nature.

Q. Skin tears?

03:23PM A. Yeah.

Q. Yeah.

A. That is something that, you know, you would do on a monthly basis.

Q. And did the universal workers at the Veterans

03:23PM Home, did they do documentation?

A. They -- yes, they did have documentation, now that I think about it. They had what -- it looked like a -- it just looked like a body, and it would be, like, the front of the body like this (indicating) and

03:23PM then, you know, of course, the back, you know.

So if they saw any changes or anything, they would, like, circle the area or whatever it was and, you know, they would let the nurse know.

Q. And would they also do ADL documentation?

03:23PM A. Yes, they're supposed to do ADL documentation.

Q. Was it your job to go back and review the ADL documentation?
A. Yes.
Q. Okay. You know what blanks and skips are, don't
03:23PM you?
A. Oh, yes. We call them "holes."
Q. Holes, what are holes?
A. Where there's no initials or anything where it should be.
03:23PM Q. There's no -- fair to say there's no documentation as to whether or not, let's say, they had a bowel movement or they were fed or something like that?
A. Right. It's like a -- it's a box, and the
03:24PM person would -- you know, they put some type of marking in there like a loose stool, formed stool, no bowel movement, you know, things of that nature. And then, like, in that column, whoever did it, they would initial it.
03:24PM Q. Right. And was it the -- to your knowledge, was it the policy that all the ADL -- all the blocks had to be filled in?
MS. BROYLES: Object to the form.
Q. Go ahead. Go ahead.
03:24PM A. Oh, yes. Yes. Yes, they would have to be done.

Q. And would you agree with me that documentation is a communication tool?
A. Yes, it is. Because, you know, say I had to leave early or whatever. Then again, the next shift
03:24PM that came after me, if I could not communicate with them, they could look at the document or go on PointClickCare or whatever and they could review what I put in there.
Q. Or if you're treating a resident that's not
03:25PM acting right, let's say they hadn't had a BM, you would want to go back and look the next -- the day before, maybe two days, and see if they had a BM the last two days?
A. Yes.
03:25PM Q. Because if they hadn't, then you may have to call the doctor or do something?
A. Right, get an order.
Q. And you've heard the old maxim, "not documented, not done," haven't you?
03:25PM A. Yes. I've heard that since I was in nursing school.
Q. I would say that was my next question. Were you taught that in nursing school?
A. Yes. If it's not charted, it wasn't done.
03:25PM Q. And are there times where you have stayed late

to finish your charting?
A. Yes, we -- you know, they would allow us to stay late if we had to, you know. We could. You know, of course, nobody wants to pay overtime constantly, but
03:25PM if you really needed to stay over, there was never any problem from them allowing you to do so.
Q. And I know it's important to give the care?
A. Mm-hmm.
Q. But would you agree with me it's also important
03:26PM to document the care?
A. It's definitely important to document care.
Q. Who was -- so there were times where -- is it fair to say majority of the time, you had two houses; sometimes you had three houses?
03:26PM A. Yes, yes.
MS. BROYLES: Object to the form.
Q. How many residents were in each house?
A. The maximum a house could hold would, on average, is 12. Now, we did have semiprivate rooms --
03:26PM not semiprivate. All of the rooms were private, but we had two rooms in each house that could actually hold an additional person. So we could push it to 14 because that would only be reserved for a husband and wife.
03:26PM Q. Gotcha.

A. But on average, if it was full, it was usually 12.
Q. How many universal workers would be assigned in each house, that you recall?
03:27PM A. On my shift, there would be two universal workers at night. There would be two universal workers in each home.
Q. Did you ever have concerns about the staffing levels there at the facility?
03:27PM A. Yes. Right bef- -- when I -- that last year that I was there, we started having, like -- we started having a staffing problem. I mean, this is something that happens in nursing quite often, but --
MS. BROYLES: Is that -- which part is
03:27PM the last year? Sorry to --
THE WITNESS: Oh, I'm sorry. From 2018 to 2019, when I left in 20- -- I left in 2019.
Q. So at the end of 2018, early 2019?
03:27PM A. Through the time that I left.
Q. Yeah.
A. Yes. Because I left in July.
Q. That's what she was asking. So --
A. Oh. Oh, okay.
03:27PM Q. So in 2018 and 2019?

A. Yes, yes.
Q. So go ahead.
A. Yes, the staffing levels had gotten really bad with universal workers, as well as with nurses. When
03:28PM I was on the night shift, I was the only staff nurse at night and that includes the nursing supervisors, who were also agency.
It would be me and -- so it would be me and four -- three other nurses because we had eight
03:28PM homes. So it would be one nurse to two homes, and the nursing supervisor would mean we should have had a total of five people, five nursing staff at night. But there were times when we -- it would only be, like, three nurses and --
03:28PM Q. Would you ever go talk to somebody about that?
A. I had brought -- I would bring it up in staff meetings, you know, about, you know, we had low staffing ratios. They were aware of it. You know, they were trying to hire people.
03:28PM I think at one time, they even had a nursing fair or something to try to get people, you know, to come, but for some reason we could not get staff. I mean, my personal belief is that it was the pay scale but, you know, we had a staff -- we had
03:29PM staffing problems.

Q. Did you ever talk -- you know Lindsey Clyburn?
A. Yes, I know Lindsey. He was very -- while he was there, he was very receptive. I can say that Lindsey was, in my eyes, you know, he was a person
03:29PM that you could go to and you could talk to him. He would listen. He would take your concerns.
He would actually, you know, try to follow up as best he could. I mean, I understand as an administrator, his hands were probably tied too
03:29PM but, yes, I know exactly who Lindsey is.
Q. Did you tell Lindsey about your concerns about needing more help?
A. Yeah. And his response was, "We're trying to get more staff," you know, "We're trying to get more
03:29PM staff, Rosa." You know, "We're trying to hire more people," you know. But it was, you know, if they didn't come, they didn't come.
Q. Well, but did you ever see them stop taking residents, new residents?
03:30PM A. No.
Q. Do you recall Mr. Jones? First of all, you and I, we talked briefly before this deposition. You and I never bet before, have we?
A. No, I've never met you before.
03:30PM Q. I know that you talked with Mr. Hopkins?

A. Yeah. He met me in my driveway.
Q. Yeah. And did -- was he nice to you?
A. Oh, yes. He was.
Q. And did he talk to you about the same things
03:30PM we're talking about today?
A. Yes. I believe I talked to him on the phone
initially and then I met him when, you know, he came
to subpoena me. But, yeah, we talked.
Q. But he's a nice guy?
03:31PM A. Yeah, he's pretty nice.
Q. And you understand that I'm here on behalf of
the family and the estate of Mr. Jones?
A. Yes.
Q. Do you remember Mr. Jones?
03:31PM A. Yes. I did not -- I do have to preface it with
I did not care for him. He was never a person that
was assigned to me. But, you know, again because I
was the only staff nurse at night, a lot of times I
would drift over to different houses, you know,
03:31PM because I know how it is being an agency nurse.
You kind of want to know if there's
somebody there that you can kind of rely on or
whatever. So I would just go over there, introduce
myself, ask them if there's anything I can help them
03:31PM with and if they need anything, I'm in House 4. So,

1 you know, that's really the extent of what I did.
2 I did meet Mr. Jones on a couple of
3 occasions and that was because I was staying over on
4 the day shift, and I had to -- it was -- we would have
03:32PM 5 meetings or things of that nature, something that --
6 you know.
7 Q. The records reflect he was admitted in April of
8 2018 --
9 A. Mm-hmm.
03:32PM 10 Q. -- and then stayed until December the 22nd,
11 2018.
12 A. Yes.
13 Q. Friday. December 22nd was a Friday, I believe.
14 Do you know anything about any of his medical
03:32PM 15 diagnosis or anything like that?
16 A. [redacted]
03:32PM [redacted]
03:33PM [redacted]

1 [redacted]

03:33PM 5 Q. Do you recall his family at all, his wife or his
6 daughter?
7 A. I remember his wife was -- the way they
8 described it to me, she was very overly involved.
9 That's what I was told, you know. She's one of those
03:33PM 10 overly involved family members.
11 Q. Well, is that better than having a family member
12 that's not involved at all?
13 A. To me it is, you know. I think when --
14 sometimes when nurses say "overly involved," it's just
03:33PM 15 that they, you know, feel like -- they feel like the
16 family is just not allowing them to do their job or
17 they don't trust them to do their job, you know. But
18 I didn't -- I don't take that kind of stuff personal.
19 That's neither here, nor there to me.
03:34PM 20 Q. But do you recall, did you ever have any
21 interactions with his family, his daughter or his
22 wife?
23 A. No. I've personally never had any interactions
24 with them, no.
03:34PM 25 Q. It's just based on what you were told?

A. Yes, what I was told. I do recall her being there when I stayed over in the morning, but she was just, you know, she was just with her husband, you know. At that time, it was in the morning. I'm like, 03:34PM well, you know, I can't really make of that. She was just with her husband.

Q. Yeah. And it's good to have families involved, right?

A. Yeah. Preferably.

03:34PM Q. Now, do you recall being summoned over to Mr. Jones's CNA?

A. Yes. I'm bad with names, so I don't recall the nurse assistant because, again, I did not work that house. But a nurse assistant called over to House 4, 03:35PM where I was working, and said that he had a -- his [redacted]. And I said, "Okay. You know, let his nurse know."

"Rosa, they're agency, and they're not going to do it."

03:35PM So I went over there, and he had -- he had [redacted]

Q. Okay.

03:35PM [redacted]

1 [redacted]

03:36PM [redacted]

03:36PM [redacted]

03:36PM [redacted]

03:37PM [redacted]

03:37PM [redacted]

1 [redacted]

03:37PM [redacted]

8 And the agency nurse, you know, I told
9 her what to do and, you know -- and I left it at that,
03:38PM 10 you know. I left, you know. But, I mean, of course,
11 I left after I told the nurse where all the supplies
12 was, to give her the supplies.
13 But I told Lisa that, "What are we
14 doing?"
03:38PM 15 Q. And who is Lisa?
16 A. She was the DON. She was the acting DON at that
17 time. Because I believe Christine -- I can't remember
18 Christine's name, last name, but Christine was the DON
19 and then Lisa Balencia was the ADON; but when
03:38PM 20 Christine left, Lisa was, like, the acting DON at that
21 time.
22 Q. Okay.
23 A. And so that's who I went to because Christine
24 wasn't available.
03:38PM 25 Q. And so I've looked at the nurses notes and, you

1 know, I don't see your name in there.
2 A. Whose name?
3 Q. I didn't see your name as charting on Mr. Jones.
4 A. No. I didn't. Because that staff, that agency
03:39PM 5 nurse was there, and I went immediately to Lisa and
6 told Lisa about it. Lisa said Kayla Phillips was
7 taking care of it. Kayla is the wound care nurse.
8 And she told me basically to leave it alone.
9 Q. Did Mr. Jones go to the hospital soon
03:39PM 10 thereafter?
11 A. Yeah. That was during the week when I saw it,
12 and I think it got close to the weekend. Maybe it was
13 the weekend; I can't remember. But I know it was
14 later on, after that, that he went to the hospital.
03:39PM 15 Q. And then so no more interaction with Mr. Jones
16 that you recall?
17 A. No, I had no more interaction with him. Like I
18 said, I didn't even -- [redacted] until the universal worker had said
03:40PM 20 something to me because, again, I didn't work House 6.
21 He was not a resident who was ever assigned to me.
22 Q. Okay. Why did you leave the Veterans Home?
23 A. I left because of poor staffing. I left for
24 various reasons. It was the poor staffing. Again, I
03:40PM 25 was the only staff nurse on the night shift.

The -- what do you call it -- the agency nurses would keep coming to me, asking me things. The nurse who was assigned from the agency who was the supervisor, they would start, you know, coming to me.

03:40PM It was just, it became too much, you know. The universal workers, they would start coming to me, making complaints and everything. So it was like everybody was coming to me on the night shift. But if I said something, people would get upset about

03:41PM it, you know. If I went to management, you know, basically, you know, like, "Rosa, be quiet."

Lindsey was gone at that time, so it wasn't Lindsey who was saying these things. When I left, it was a whole new management team. Lisa was no

03:41PM longer there. Kayla was no longer there.

The new ADON and DON who came there were from that nursing home that's right next to the vets home. I can't remember their name, but they basically had real bad attitudes. They didn't want to hear

03:41PM anything.

My take on it was this new management came in. Usually when new management comes in, they usually bring their own team in with them. So it was like, hey, I'm going to be out of here anyway; let me

03:41PM shut my mouth, you know. I'm going to do what I have

to do, to continue doing what I need to do to get out of here; I don't need to be fired.

And, you know, nurses get fired when they make a lot of noise. So I did all I could do.

03:42PM You know, it was like, hey, I'm getting out of here.

One of my coworkers who worked the afternoon shift, she ended up going across the street to the V.A. over at Fort Roots. She said, "Rosa, I'm over at Fort Roots. Why don't you come over here and

03:42PM put in an application," and I left.

Q. Ms. Rosa, thank you. This other lawyer's going to ask you some questions.

A. Sure.

EXAMINATION

03:42PM BY MS. BROYLES:

Q. Hello, ma'am.

A. Yes, ma'am.

Q. So we got to visit with Lindsey this morning.

A. Okay.

03:42PM Q. And he's great. He's a great guy.

A. He is.

Q. And he similarly -- you know, [redacted]

03:42PM Q. Yeah. And, you know, I've never met the guy,

but I liked Lindsey a lot.
A. Yes.
Q. When did the -- did the new management -- you know, Lindsey left December 31st, 2018.
03:43PM A. Yeah.
Q. Was new management coming up in 2019?
A. Yeah, they came right there in that January.
Q. Okay. So for the time period that we had good workers like you and Lindsey, that was Mr. Jones's
03:43PM time period, in 2018.
A. Yes.
Q. And the one thing that I was a little confused about is "agency nurse," I think I know what that is, but will you tell me what that is?
03:43PM A. Oh, I'm sorry. An agency nurse is like a staffing agency. So when -- say that you don't have enough staff or whatever, you can always call the agency, and they will send someone out temporarily to fill that spot. I'm sorry. I should have clarified.
03:43PM Q. So -- no, that makes sense. So when you said on certain occasions, you were the only staff nurse on night shift, there were agency nurses there?
A. Yes.
Q. But as far as an employee of the Veterans Home,
03:44PM you would --

A. I was it. I was it.
Q. Okay.
A. There were no other midnight employees for the State. I was the only employee. Everyone else
03:44PM nurse-wise, including the supervisor, were all from temporary agencies.
Q. And that was to do the best they could to get people there?
A. Just a warm body.
03:44PM Q. And in your experience in both -- have you worked in a hospital setting as well?
A. Yes.
Q. Okay. I thought you had. Nursing -- let me put it this way: Local nursing is constantly competing
03:44PM with travel nursing?
A. Yeah.
Q. And sometimes it's hard to get people to want to stay because travel nursing offers --
A. Yes.
03:44PM Q. -- usually quite a bit more money?
A. They do, they do. But you can find good -- you can find good pay rates here as well.
Q. But as far as the staffing challenges, it's not unique to this facility?
03:45PM A. No. That's something that happens -- that's

1 something that happens in nursing. Especially when
2 you start talking about long-term care, nursing homes
3 and those, they have staffing issues, some worse than
4 others.
03:45PM 5 Q. And in particular, some people have a strong
6 preference against or for the night shift?
7 A. Right. Night shift was always good for me
8 because my children, you know. I wouldn't have to
9 worry about babysitting, paying day care and whatnot.
03:45PM 10 So, you know, I have older daughter and, you know, she
11 would watch them.
12 My kids range from age 18 to 33, so --
13 but my older daughter, she was an adult. She would be
14 able to watch her two younger sisters, you know, so I
03:46PM 15 could drop them off and go to work. So it was always
16 better for me. And, plus, I could go to school or
17 whatever.
18 Q. I would have to be on the night shift because
19 I'm a night owl.
03:46PM 20 A. Me too.
21 Q. And so that's how I roll.
22 A. I love the night shift.
23 Q. I would be right there with you. So just kind
24 of going back and fleshing out some of the questions,
03:46PM 25 I know that this is a longtime statement of the, "If

it's not charted, it never happened"?
A. Correct.
Q. In the real world, is that true?
A. Realistically, it's not true, but for legal
03:46PM purposes and, you know, a lot of medical, you know, we
tap dance with the law. So it's kind of different
with medicine. You have to definitely.
Q. To protect yourself --
A. Yes.
03:46PM Q. -- in lawsuits like this?
A. Yes. And your license.
Q. Yeah. So have you had an opportunity to read
the plaintiff -- so, you know, I represent the home.
A. Of course.
03:47PM Q. Mr. Priebe represents the -- Ms. Jones, and they
filed a complaint in this case.
A. Okay.
Q. Have you had a chance to read it or review it?
A. I haven't read it, no.
03:47PM Q. So just reading from their words: During this
time he [redacted]
So as basis for that is the care he was
03:47PM provided. So they are complaining about basically

anyone who was involved in his care.

So in your interactions with him, would you say that any of your involved, whether that's care or observations, what have you, was neglectful or

03:48PM negligent?

A. From my observation, just seeing him, of course, you know, no. Like I said, I didn't work in that home. When I briefly went in -- like, the two or three times I went in there, I didn't see anything

03:48PM that would, you know, send alarms off until, you know, the universal worker was saying that he had [redacted]

I was like, what? You know, I didn't know the man, you know. So, but other than that, you

03:48PM know, no. I work night shift, so we don't get into the feeding and things of that nature. So as far as, you know, that, I can't speak to that.

Q. Okay. Do you know Ms. Beverly Byrd, or Hamelback?

03:48PM A. Yes, yes.

Q. Okay. She was here. We got to meet her earlier --

A. Yes.

Q. -- and she was his day shift LPN.

03:48PM A. Yes.

Q. Did you ever have occasion to work with her, whether that's, you know, taking handoff, things of that sort?
A. Yeah. I didn't -- I did not work with Beverly
03:49PM in House 6, but I have worked with Beverly. Beverly, she went to day shift. Beverly was working afternoons when I would have my interactions with her because I would be the nurse who would be relieving Beverly. So, yes, I did have interactions.
03:49PM Q. In interacting with her in a professional setting --
A. Oh, yeah.
Q. -- did you have any concerns that she was not keeping up with her universal work? And I don't mean
03:49PM that derogatory.
A. No, no, no. I know what you mean.
Q. In a supervising nature --
A. Yeah.
Q. -- did you have any concerns or worries that she
03:49PM was just --
A. Well, Beverly knows I love her. I love her, but Beverly has a hearing deficit, and at the time, you know, there would be times where she couldn't really hear, you know, what was going on, and I believe that
03:50PM the universal workers would take advantage of that.

And her keeping up with them, there were some difficult universal workers there. There were some difficult ones who were there.

So, again, I don't know that to be true, 03:50PM but those difficult universal workers that I was aware of, yes, I could see them taking advantage of her.

Q. Any reason to think that behavior by the universal workers or Beverly's hearing challenges that that caused any neglect to Mr. Jones?

03:50PM A. Her -- well, her hearing would not affect her nursing.

Q. Okay.

A. I mean, she might not be able to hear somebody if they are yelling out for help. I'll say that. She 03:51PM may not be able to hear that. But, again, if she's making her rounds and checking on people, you know, she should be, you know, abreast of what's going on.

Q. Sure. Okay. Just, in talking with her and in even talking with you just here, you are both 03:51PM proactive people?

A. Yes.

Q. And so it sounds like you were someone who people came to, to ask a bunch of questions?

A. Yes, they did.

03:51PM Q. It's not always the fun person to be, but you're

trustworthy obviously. So it sounds, too, that maybe you would be a person who people came and said, "Hey, I keep taking over this house and it's just --

A. Chaos.

03:51PM Q. And so I was curious if that was ever shared with you by rumor or formally with respect to Beverly or her house management, if that makes sense.

A. Well, I heard that House 6 was a difficult house.

03:52PM Q. Okay.

A. I did know I heard that the residents in House 6 were very difficult to work with. Me, you know, I don't know that to be true. But, yes, that was the rumor that House 6 and House 8 were the difficult

03:52PM houses to work with. House 8 was where a lot of demented patients were. So, of course, I can see that being difficult.

Q. One thing I talked to Beverly about was Mr. Jones, he, you know, and like many veteran,

03:52PM resident veterans they have, they have their preferences for who they like --

A. Yes.

Q. -- to be with and not.

A. And they did.

03:52PM Q. [redacted]

1 [redacted]

03:52PM [redacted]

03:53PM [redacted]

03:53PM [redacted]

18 Q. I take it you haven't read any of the medical
19 records in the case?
03:53PM 20 A. Oh, no, I definitely have not.
21 Q. Okay. And we talked about the agency nurse and
22 the [redacted]. With respect to the bandage and what
23 have you, we'll just have to talk to Kayla to figure
24 out what was going on there?
03:53PM 25 A. Mm-hmm.

Q. Is that a "yes"?
A. Oh, I'm sorry. Yes.
Q. You're good.
A. Yes, yes. She was the [redacted].
03:53PM Q. And back to the issue with charting, I know that it -- pose a question to you: If it comes down to patient care and getting something in the electronic chart, what do you prioritize?
A. I prioritize the patient.
03:54PM Q. Is it fair to say that you can't document every single interaction you have with a patient or every touch of the patient?
A. Oh, no, you can't -- you don't document everything. The thing that goes into the chart are
03:54PM things that are notable. You know, you wouldn't really just put every little interaction in there.
Q. Are you familiar with the "chart by exception" style?
A. Yes, yes. Yes.
03:54PM Q. Can you explain that?
A. Charting by exception just means, you know, you put in -- you document something that was out of the ordinary. If nothing happens, if it's a smooth shift, if it's quiet, nothing happens, then it's nothing to
03:54PM chart.

Q. Have you observed in your experience, whether at this facility or others, missed documentation?
A. Yeah.
Q. Is it part of human nature?
03:55PM A. Yes. We're not robots, so --
Q. And I will recognize I've been doing this type of stuff for eight years, but there's a -- there's accidents and intentional charting mistakes, or documentation?
03:55PM A. Yes.
Q. Would you agree that missed documentation or even wrong documentation is not always an intentional, a deliberate bad act, if that makes sense?
A. Yes. No, it makes sense. When you're saying,
03:55PM like, missed charting, like maybe charting in the wrong chart?
Q. That was one example --
A. Yes.
Q. -- I was going to say. Maybe --
03:56PM A. Yeah. That happens a lot.
Q. Is it fair to say there's not always an opportunity to go back and fix everything -- or not fix it but move it? There just may not be an occasion to correct it?
03:56PM A. I'm just, I'm going to say no. If you chart in

1 the wrong chart, you need to do something right then.
2 You don't have -- there's no opportunity to say "I'll
3 come back to that later." You make sure you go back
4 in there and get it struck out. Because I believe the
03:56PM 5 way PointClickCare is set up, you strike it out, and
6 lines go through it.
7 But you never leave something in the
8 chart and say "I'll get back to it later," especially,
9 I don't -- I'm old school nurse, okay? I don't like
03:57PM 10 electronic charting because of the fact that you
11 cannot go back. Like, we used to have the old paper
12 chart. You could go in there and, you know, you can
13 write it, do it right then.
14 With the electronic charts, depending on
03:57PM 15 who your IT team is and everything, it might be a
16 while before they go and strike it out. So that's the
17 problem that I have with electronic charts. But
18 nurses do not have the opportunity to say "I'll deal
19 with that when I come back." You have to deal with
03:57PM 20 that then. You have to put that ticket in immediately
21 so that comes off that chart.
22 Q. The universal workers are how they are referred
23 to --
24 A. Yes.
03:57PM 25 Q. -- at the Veterans Home are at other facilities

1 referred to as CNAs, but --
2 A. The universal workers, let's be clear because I
3 had to be clear about that. Universal workers are not
4 necessarily nurse assistants.
03:58PM 5 Q. Correct.
6 A. So I had a problem with universal workers up
7 front because they are not nurse assistants. I am not
8 used to working with people who can come in there and
9 work off the street, who have no medical training.
03:58PM 10 So all universal -- universal workers do
11 not necessarily have to be nurse assistants, and that
12 term should not be interchangeable because a CNA can
13 be a universal worker, but a universal worker cannot
14 be a CNA.
03:58PM 15 Q. Correct. And I -- that's one question I was
16 going to get to. So one thing about this facility is
17 it's not set up in the traditional --
18 A. No.
19 Q. -- in quotes, nursing home layout?
03:58PM 20 A. It's not.
21 Q. In certain ways, it's very beneficial to the
22 veteran because my understanding is it creates a more
23 home-like environment?
24 A. Mm-hmm.
03:59PM 25 Q. Which, is that a "yes"? Sorry.

A. Yes, it -- that's the belief. A nurse -- I do -- again, I do not agree with the universal worker philosophy because a nurse can make it a home. You don't remove nurses from this home-like situation.

03:59PM Nurse assistants can also make it a home-like situation. It depends upon how you train your staff and how you want your facility ran. I believe that it was a financial reason that they chose universal workers. You would have to pay a nurse

03:59PM assistant a little bit more than you would have to pay a universal worker.

Q. Any reason to believe that that led to any kind of neglect or anything in Mr. Jones's case?

A. Yes. Because a universal worker is not a nurse

04:00PM assistant. They won't know what kind of signs to look for. Even though a nurse assistant is not a nurse, most nurse assistants learn on the job and they learn on their feet.

So they would be able to notice a skin

04:00PM color change, and they will immediately tell you, "My nurses" -- the nurse assistants that have always worked up under me have always been my backbone because they have more eyes and ears. They have more of a forward-facing presence with the patient than

04:00PM even the nurse; and, of course, nurses have more of a

presence than the doctor.
So nurse assistants are extremely essential. They need to get rid of universal workers at that facility, number one, and they need to start
04:00PM having nurse assistants because nurse assistants can see things that change very quickly. They will see it before the nurse will. A universal worker, they are not trained medical.
Q. And I get what you're saying.
04:01PM A. Yeah.
Q. But with respect to this lawsuit --
A. Yeah, I believe that it did contribute to it because they are universal workers. They are not looking for anything.
04:01PM Q. But you can't say what it could have been in the sense of --
A. No.
Q. -- you've got to look at his chart or any of that stuff?
04:01PM A. Yeah, now that you're absolutely correct. I haven't looked at his chart, so I would not know.
Q. Your observations have been that your preference is toward the CNA style?
A. Yes. Yes, only because they can see things.
04:01PM They are the eyes and ears.

1 Q. But you're not aware of any report, instance,
2 complaint or what have you related to Mr. Jones, where
3 a universal worker was just totally caught phoning it
4 in, if you will, that --
04:02PM 5 A. Yeah, I -- again, I wouldn't know that, no.
6 Q. No, I totally understand your preference. I get
7 it. I get that.
8 You answered my question about the
9 agency nurses, so you got that.
04:02PM 10 A. I did want to say something. [redacted]
04:03PM [redacted]
04:03PM [redacted]
04:03PM [redacted]

1 [redacted]

04:04PM [redacted]

9 Q. So he liked strawberry yogurt, so she made a
04:04PM 10 point to keep that around. He liked orange juice
11 instead of milk, things like that.
12 A. Oh, okay.
13 Q. So not to mention --
14 A. Right.
04:04PM 15 Q. -- they get to write whatever they want in their
16 pleadings. It's just how it works.
17 A. Okay. No, I understand.
18 Q. But in general with respect to his eating habits
19 and things of that sort, that would commonly be during
04:04PM 20 the day?
21 A. Yes. Yeah, and I wouldn't be aware of that
22 anyway.
23 Q. Okay. I think that's all I have. I appreciate
24 it. Thank you so much.
04:04PM 25 A. Okay. Okay.

MR. PRIEBE: Thank you, Ms. Rosa.

(Proceedings concluded at 4:04 p.m.)

REPORTER CERTIFICATION

I, DANA HAYDEN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 07/27/2023, the witness, ROSALIND PAGE, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

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6) that signature of the witness is waived. This transcript is prepared at request of counsel for PLAINTIFF, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 20th of August, 2023.

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Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Rosa Page**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
3:00 p.m.

_____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

Date

EXHIBIT
1
ROSA PAGE
7/27/23

PROOF OF SERVICE

Rosa Page
SERVED ON (Print Name)

7-18-2023
DATE

[redacted]
PLACE

Hand Delivered
MANNER OF SERVICE

C. Jon Hopkins
SERVED BY (Print Name)

Investigator
TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/18/2023
DATE

C. Jon Hopkins
SIGNATURE OF SERVER

PO BOX 1751
Searcy, AR 72145
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Ark. R. Civ. Proc. 45(e), Claims Commission Rule 3.3.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Ark. R. Civ. Proc. 45(b). The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the Claims Commission. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Ark. R. Civ. Proc. 45(e). When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the Claims Commission may enforce the subpoena pursuant to Ark. Code Ann. § 19-10-207(d).

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones — **CLAIMANT**

v. — **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK — **RESPONDENT**

NOTICE TO TAKE DEPOSITION FOR ROSA PAGE

TO: Rosa Page
[redacted]

Please take notice that on **Thursday, July 27, 2023, beginning at 3:00 pm**, Claimant, Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, will take the deposition upon oral examination of the following person before a duly qualified court reporter:

ROSA PAGE

Said deposition is in accordance with Rule 30 the Arkansas Rules of Civil Procedure. Further, this deposition is to be taken before a court reporter authorized to administer oaths, will be stenographically recorded, and will begin at the time specified and continue until completed.

Date/Time: **Thursday, July 27, 2022 at 3:00 pm**

Place: **Rainwater Holt & Sexton**
2701 TP White Drive
Jacksonville, Arkansas 72076

COURT REPORTER: **Arkansas Realtime Reporting**
PH: 501-725-7963

EXHIBIT
2
ROSA PAGE
7/27/23

Counsel is invited to attend and cross examine.

Respectfully submitted,

By: _____

Jeff Priebe
Ark Bar No. 2001124
Jeff Priebe Law Firm
P. O. Box 7481
Little Rock, AR 72217
501-580-7890
jeff@jeffpriebelawfirm.com
jpriebe@rainfirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Jeff Priebe, hereby certify that on this 17th day of July, 2023 a true and correct copy of the foregoing has been served via electronic mail on the following:

Justin Brascher
Jordan Broyles
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
justin.brascher@arkansasag.gov
jordan.broyles@arkansasag.gov

_____
Jeff R. Priebe

1 IN THE ARKANSAS STATE CLAIMS COMMISSION

2
OSCAR ODELL "BILL" JONES,
3
Claimant,
4
vs. No. CC-200817
5
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS,
6
Respondent.
7

8 _____

9 DEPOSITION OF MARY ANN JONES
TAKEN ON BEHALF OF THE RESPONDENT
10 ON APRIL 19, 2023, BEGINNING AT 11:17 A.M.
IN BRYANT, ARKANSAS
11 REPORTED BY MIKE WASHKOWIAK, CCR

12 APPEARANCES:

13 On behalf of the CLAIMANT

14 Jeff R. Priebe
RAINWATER HOLT & SEXTON
15 801 Technology Drive
Little Rock, Arkansas 72223
16 501-868-2500
jpriebe@rainfirm.com
17

18 On behalf of the RESPONDENT

19 Justin Brascher
Jordan Broyles
20 ARKANSAS ATTORNEY GENERAL'S OFFICE
323 Center Street, Suite 200
21 Little Rock, Arkansas 72201
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22 jordan.broyles@arkansasag.gov
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23

24

25

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STIPULATIONS

It is stipulated that the deposition of MARY ANN JONES may be taken pursuant to agreement and in accordance with the Arkansas Rules of Civil Procedure on APRIL 19, 2023, before Mike Washkowiak, CCR.

MARY ANN JONES,
after having been first duly sworn, deposes and says in reply to the questions propounded as follows, to-wit:
DIRECT EXAMINATION
BY MR. BRASCHER:
Q Ms. Jones, could you please state your full name for the record?
A Mary Ann Jones.
Q Thank you. You heard the whole spiel when your daughter was testifying, but I just want to walk through it again. My name is Justin Brascher, and I represent the Veterans Home in this case. You're aware that you're here to give your deposition in this case involving your deceased husband, Mr. Jones; is that right?
A Yes.
Q The purpose of this is just so that I can get your side of the story and I can understand all the information. Does that make sense?
A Yes.
Q Okay. Are you fine? If you need water or anything like that, you understand you can stop if you need to go to the bathroom or take a break that that's okay?
A Yes, thank you.
Q Also, some of the things we are going to talk

about might not be very fun, right, or great things to talk about. If you need to take a break and compose yourself, that's totally fine too. Just let us know, okay?

A Yes.

Q The other part of that is you don't need to guess, right? If you don't know, just say "I don't know," and if I need to rephrase my question or ask it in a better way, just let me know, okay?

A Okay.

Q The last part of that is, is there any reason you can think of why you can't testify in your right mind today?

A No.

Q I just want to make sure.

MR. PRIEBE: Would you realize that?

MR. BRASCHER: Probably not.

MR. PRIEBE: That was a joke.

Q (BY MR. BRASCHER) So the first question I just want to ask you generally, to your understanding what is this case about?

A It's about the care that my husband did not receive.

Q Okay. Your husband, Mr. Jones, I have it written down as Mr. Jones. I also have it written down as

Oscar. Do you mind if I say Oscar from time to time? Is that okay?

A You can. We called him Bill.

Q Or Bill, okay.

A That was just the name he preferred. He didn't like Oscar.

Q Really, okay. Do you know where Bill came from?

A No, I don't, I really don't. That's how he introduced himself when I met him, and we just always went forward with Bill.

Q Okay, straightforward. Let me start by getting the background of both of you, okay? So when were you born?

A [redacted]

Q Okay. And where?

A [redacted]

Q Did you grow up in Arkansas?

A I did.

Q Where did you graduate from high school?

A Little Rock Central High.

Q Okay. Did you do any schooling after high school?

A Some at the University of Little Rock.

Q Okay. Did you ever get a degree from there or anything like that?

A No, I did not pursue it.
Q Were you married before you were married to Bill?
A Yes.
Q How many times?
A To him?
Q I'm sorry, were you married once before Bill? Twice before Bill?
A Twice.
Q Okay, twice. How long did those marriages last?
A The first one I was like 18. I'm thinking maybe four years.
Q Okay. Did that end in divorce?
A It did.
Q Okay. You said you were married a second time. About what time did that occur?
A I think it was July of '66.
Q That's a long way back to remember, I understand.
A We were married, like, ten years.
Q Okay. Did you have any children from either of those marriages?
A The first marriage, yes.
Q Okay. How many children?
A Two.

Q Two children. What were their names?
A Jerrie Ann Stokes and Karen Lynn.
Q Okay. Jerrie and Karen. I think Jerrie is sometimes a female name and sometimes a male name. Is that -- was Jerrie a boy or a girl?
A It was the one that was here, Jerrie.
Q Oh, I'm sorry.
A My husband's name was Gerald.
Q Got it.
A Went by Jerry, and so she was named after both of us, Jerrie but spelled with an I-E, and the Ann after my middle name.
Q Okay. And then Karen?
A Then Karen.
Q Okay. About how long after that second marriage ended did you get married to Bill?
A Maybe two years or a little less.
Q Okay. How did you meet Bill?
A I met Bill at the American Legion on East Capitol in Little Rock. They had a band and a dance. My mother and some friends went there, invited me over, and he was there with some friends of his that he had. And we met and more or less fell in love on that same time.
Q Right out of movie, huh?
A Yes, it was.

Q Okay. So you met, then you got married, and did you have any children with Bill?

A No.

Q So you had two children, Jerrie and Karen. How would you describe Bill's relationship with your children?

A Great. They looked at him as their dad.

Q How old were your children when you got married to Bill?

A Well, Karen was the youngest, which I'm thinking 16 going on 17. She hadn't had a birthday, I don't guess, but in that time frame, and Jerrie she was more 18, 19.

Q Yeah, I think we heard her say she was right around when she graduated high school, right? Does that sound about right?

A Right, right, yes.

Q Okay.

A I'm not sure if she graduated before we got married. It was in that time frame.

Q Right, okay, sure.

A I'd have to think a little bit.

Q That's okay. You said that you graduated high school, then you took some classes, never did get a degree. Do you have any medical experience working in the medical field?

A No.

Q What sort of jobs did you have following high school, if any?

A Let me think back. Well, in my second marriage, my husband had his own business, and I was involved in the business taking care of the bookkeeping, the accounting and whatever that was needed, licensing trucks, going to the bank, visiting with and talking with vice presidents, whatever was needed in his line of business.

Q Okay. Following the ending of that second marriage, did you have any employment after that?

A Yes. I worked for the Pulaski County Child Enforcement as an office manager. And then one time coming back later in Arkansas, which I guess we'll get to, I worked as a temporary personnel for GE Modular. They needed some help for a few weeks, but they kept me as long as they were able to, for almost three months, extended my stay there with them.

Q Sure, they probably loved you that much.

A Well, I don't know about that.

Q Okay. So you had that sort of employment, met Bill. Can you walk me through what you know about Bill and his history before he met you? Specifically, what was his military experience?

A Well, what I do recall, at 17 he enlisted in the Army --

1 **Q Okay.**
2 A -- and right after basic training they sent him
3 to Korea in live action.
4 **Q Okay.**
5 A Luckily he was okay through that.
6 **Q Yeah?**
7 A And he went back. Apparently they sent him back
8 for a second tour to Korea.
9 **Q Okay. This is Korea. I'm thinking probably mid**
10 **'50s?**
11 A He would've gone in, I'd say '49 --
12 **Q Oh, okay, early?**
13 A -- so it would be early '50s.
14 MS. BROYLES: Y'all are kind of talking over
15 each other a little bit. I think y'all are having a good
16 discussion down there at the end of the table.
17 THE WITNESS: He hasn't thrown anything at me
18 yet.
19 THE COURT REPORTER: I'll be okay.
20 THE WITNESS: I can move closer.
21 MR. PRIEBE: You're fine. What she means by
22 this is let him finish his question, and then you answer
23 because if you both talk at the same time he's going to
24 have a hard time.
25 **Q (BY MR. BRASCHER) Okay, so he was enlisted in**

1 **Korea for a period of time. You said he did two tours.**
2 **What happened after the second tour?**
3 A I don't know all the years involved because it
4 was 21-year span, but he did go to Germany.
5 **Q Okay. You said that he was part of the Special**
6 **Forces; is that right?**
7 A Yes, he was, Fifth Special Forces.
8 **Q Okay. What about before he enlisted in the**
9 **military? Do you know anything about his childhood or**
10 **upbringing or anything like that?**
11 A Yes, he came from a large family, and they were
12 farmers. They moved around the northern part of Alabama,
13 I believe between Georgia and Alabama, and he spent his
14 younger years on the farm, growing up on the farm.
15 **Q Okay. Do you know if he graduated high school,**
16 **or did he enlist before he graduated high school?**
17 A I don't know, but he did get some college.
18 There was sometime in between that he attended a college.
19 **Q Do you know if he got a degree from that**
20 **college?**
21 A I think he did. I don't know how that continued
22 on.
23 **Q Okay. You said he came from a large family. Do**
24 **you know if any of his siblings are still alive or were**
25 **still alive in January 2019?**

A They were not.

Q Okay. So he had the military background. How long was he in the military?

A Twenty-one years.

Q Okay. He did the two tours, you said he was in Germany. Was he stationed anywhere else?

A Well, he had two tours in Vietnam.

Q Okay.

A I don't know if I'm supposed to...

Q You can keep going, that's totally fine.

A Do you want to know what he did during that time?

Q Sure.

A That I was aware of, he was an instructor, which was quite interesting. He taught all ranks, top to bottom. I don't remember what the class was, but I do remember him talking about on each hour a new class, his aide would help him get into another set of whatever they wore, had to be creased, no break in the crease. He would stand on a chair and sit down or step down into these completely creased pants and shirt every class. He did not like being an instructor, but he was very well fit into that role. That was one part.

When he was in Germany -- let me back up. He was a bugle boy, and he used to play the bugle. Knowing

his talent, musician talent, which he could play any instrument, I'm sure it was a wonderful, beautiful thing he put his heart and soul into. He was in Germany. He was fluent in German, so he was an interpreter in the courts. I'm trying to remember what all he did. He entertained the troops. He went to Paris and learned to be either a magician or a hypnotist, but he was taught in both, which he entertained the troops. He was in a search for knowledge always and busy, always busy.

Q Okay. You said 21 years, right? Is that how long he was in the military?

A Yes.

Q So if my math is correct, then, he would have left military when he was 38. Does that sound about right?

A That sounds about right.

Q How old was he when you met him?

A He would have been 46.

Q Okay. Do you know what he was doing in that eight-year time period between when he left the military and when he met you?

A Part of that time he was in Alaska. He worked for -- I don't remember the name of the company, but he was there, so he lived in Alaska and worked there. I'm not quite sure how all that went, those years.

1 Q Okay. So he was in Alaska some. Do you
2 remember what company he was working for?
3 A No, I don't. I didn't know him then.
4 Q That's totally fine.
5 A Sorry.
6 Q No, that's fine. I think maybe your daughter
7 said something about RCA?
8 A Something close to that, maybe.
9 Q Okay. So you have that time window. Was he
10 married before you?
11 A Yes.
12 Q How many times was he married before you?
13 A One time.
14 Q Did he have any children from that marriage?
15 A Yes.
16 Q How many?
17 A Three.
18 Q What are their names?
19 A There's Cynthia Bartlett, [redacted]
20 [redacted], Rhonda Brostrom.
21 Q Okay. What was your relationship like with the
22 children that he had from his previous marriage?
23 A Well, for many, many years it was great. Rhonda
24 would send me cards every year, Mother's Day cards,
25 birthday cards, thanking me for always being there for

her. The other two, Bobby we called him, he wasn't around so much. He had his own thing going on at the time, it seemed, but we were okay together. As a matter of fact, our relationship was more on a religious relationship. We would talk about things like that.

Q Like the church and things like that?

A Yes, things of the Bible and such.

Q Okay. So that was a commonality that you were able to share?

A Right, that's what we shared together.

[redacted]

1 [redacted]
2 Through the years when they would come and visit
3 him or he could get to them, he would give them things of
4 his past, like Rhonda, at that time it was a projector,
5 movies that he would take.
6 **Q Oh, sure.**
7 A Reels and reels in the projector of their family
8 life and children growing up and whatever else. I don't
9 know. Same thing with Bobby, tools and whatever that
10 would interest him.
11 **Q Sure, okay.**
12 A With Cindy, before we married and Bill was going
13 to Georgia to work, he gave her all the furniture in his
14 house that he had at the time. The organ and the
15 furniture, she took that. And so if they asked for
16 anything, he more or less gave it to them. [redacted]
[redacted]
22 [redacted]
[redacted]

1

1 [redacted]
6 **Q Okay. One thing I wanted to ask was your**
7 **daughter had mentioned that Oscar smoked, or Bill smoked.**
8 **About how long did he smoke?**
9 A I think his early years started in Korea because
10 it was so cold. He said they smoked, put the smoke in
11 their hands to stay warm. He was smoking when I met him,
12 but somewhere in -- let's see, we married the end of '79,
13 so in '80, I'm thinking, he started having voice problems.
14 He was hoarse, and I had him see a doctor, and he had
15 polyps on his vocal cords, [redacted]

1 [redacted]

2 **Q Did he continue to smoke after that?**

3 A Never. He had quit before, actually, that.

4 **Q Okay. So he probably quit somewhere around**

5 **1980?**

6 A In the '80s, yes, early '80s.

7 **Q Okay. Did he have any injuries from his time in**

8 **the military?**

9 A [redacted]

[redacted] That is the only thing that I recall that he

11 had.

12 **Q Okay. For someone with four tours, that's**

13 **pretty lucky, honestly.**

14 A Right. He had some good stories.

15 **Q I'm sure he did. So any, maybe not visible**

16 **injuries or scars, but anything else about him that were**

17 **impacts from his time in the military? Maybe an example**

18 **would be like a joint issue or something like that. Can**

19 **you think of anything?**

20 A No, he was fine, healthy. He was active, busy.

21 **Q What did he do outside of work kind of**

22 **recreationally while you were married to him?**

23 A He loved to fish, so we would go fishing, Lake

24 Ouachita in Hot Springs. Arkansas River sometimes. We

25 had boats, and we'd take them out. He was more -- first

thing he did, when we married, I have to back up just to explain, we married, and then in '85 he went to Georgia for civil service for 10 years, and we came back in '95. So that ten years he was working he did not have as much time for hobbies and such, but in '95 on, he had a shop put up, got it set up, and he started working on our house. He added on rooms to our house and enlarged it, and then pursued hobbies of his own.

Q Okay. So let me drill down on that timeline. So you met him, if I remember correctly, you said in '79?

A I met him in '78.

Q Okay, you got married?

A '79.

Q And then from '79 to '85 you were in Arkansas?

A Correct, North Little Rock, Arkansas.

Q Okay. And then you moved to Georgia in '85?

A Yes.

Q What did he do in the civil service from '85 to '95?

A He was a supervisor over several of the different units. This was called TAS, training aid support for the Army, like PAO. Whatever they needed done, they would turn it over to TAS, and he worked under one person. He oversaw all these things, graphics, videography. I don't even know what all they were, but

several things.

Q Sure. And you said you were in Georgia during this time?

A Yes.

Q Where specifically in Georgia?

A Hinesville, Georgia, right out of Fort Stewart Georgia, which is where he worked.

Q So that was until about 1995. What motivated you guys to move back to Arkansas?

A Family in Arkansas.

Q Okay. What family was in Arkansas?

A My mother, who was up in age but doing okay, but I always was from Arkansas, so we came back to help her. Plus, I had a brother living there also right in the same area, [redacted] so we bought our house in [redacted] unseen because it was close to where my mother lived. And he said don't worry, whatever you don't like I can fix it, and so he was busy.

Q It sounds like he was a fixer-upper kind of guy?

A He was, many talents.

Q Did he retire in 1995?

A Yes.

Q So when you guys moved back to Arkansas, from '95 forward he was retired and spent his time on various hobbies and fixing up your house and such. Does that

sound about right?

A Correct. One of which is over there, the Jukebox Hero.

Q What year was that written, do you think?

A It's on the date. 2009, maybe. I'll tell you how that came about.

MR. PRIEBE: October 16, 2008.

THE WITNESS: In '8, okay.

A His shop, a large shop -- well, I think he had this out there at the time, but on the wall are many black frames for certificates all through the Army. Well, somebody had come to the shop, and I'm not quite sure who it was, but seeing all these things and talking to Bill, became very impressed with what he was able to do and told a writer at the Arkansas Democrat-Gazette there's somebody in Bryant you really need to go talk to and do a story on. We were contacted, just thank you, but, you know, we didn't think much of it. But she pursued it, and so she came out and she did a writeup. We did not know what she was writing. She took some pictures, and when the paper came out, that's what it was. She called him Jukebox Hero because he loved restoring old things, especially tube-type radios and jukeboxes, and he would bring them back from you wouldn't even believe what.

Q (BY MR. BRASCHER) That's great. Okay, so what

1 I kind of want to do is move forward now to kind of what
2 his medical history was leading up to 2018. My
3 understanding is that he was [redacted]
[redacted] Does that sound accurate to you?
5 A Around that time.
6 [redacted]
21 [redacted]

1 [redacted]

10 But prior to that, I think he was stressed out
11 because a few friends had come over to help on the house,
12 put some -- in the sunroom outside some heavy plastic
13 coverings. In doing so, they were going in and out of the
14 shop, and Bill's shop was his shop. And I think, looking
15 back, them going inside, the door open, they were trying
16 to find staples or different things, rummaging through
17 things. [redacted]

24 **Q This is in 2016?**
25 A Yes.

1 Q Okay.

2 [redacted]

11 Q Okay. And that was in 2016?

12 A Yes.

13 [redacted]

1 Q I will get into that process. I want to back up
2 just a bit to right around when he gets [redacted] Did he
3 have [redacted]
8 Q Okay. Give me one second here.
9 [redacted]

1 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

21 **Q Came back home, what was it like trying to care**

22 **for him by yourself?**

23 A We managed. We found hobbies he could do, work

24 on puzzles, things of that nature. I took him to the

25 senior citizens activities. He enjoyed that, just to keep

1 him out amongst people. Took him to the barbershop, kept

2 him groomed. And then [redacted]

14 **Q Okay, by 2016?**

15 A I think so.

16 [redacted]

1

1

1 [redacted]

5 **Q No, okay. What led to you putting him in the VA**
6 **Home? What was kind of --**
7 A The Veterans Home?
8 **Q Yes.**
9 A Well, I was told by the VA that was helping
10 coming out, the social worker that they had, the Veterans
11 Home, it was new in North Little Rock, opening up. They
12 could tell I was the primary caregiver, that I might be
13 interested in that. [redacted]

1 [redacted]

1 [redacted]

7 **Q Okay. So you had made the decision to put him**
8 **in the VA home prior to that fall; is that right?**
9 A Yes.
10 **Q What would you say you were the biggest --**
11 **sorry, I'm going to phrase that question correctly.**
12 **What would you say is the biggest reason you**
13 **decided to put him in the VA home?**
14 MR. PRIEBE: You're talking about the nursing
15 home?
16 MR. BRASCHER: Yes.
17 MR. PRIEBE: Because I don't think it's VA.
18 It's actually the state VA, not federal.
19 MR. BRASCHER: It's the -- we were calling it I
20 think --
21 MS. BROYLES: Veterans Home.
22 MR. PRIEBE: Sorry. I just want to make sure
23 we're on the same page.
24 MR. BRASCHER: Not a problem, not a problem.
25 THE WITNESS: Excuse me, would you ask the

1 question again?

2 **Q (BY MR. BRASCHER) Totally fine. What would you**

3 **say was the biggest reason you decided to put him the**

4 **Veterans Home?**

5 A [redacted]

13 [redacted]

1 [redacted]

11 **Q Oh, okay. You said you put him in the VA home.**
12 **Did you consider any other nursing home facilities?**
13 A Yes.
14 **Q Do you remember which ones?**
15 A There was one closer to me, I think in Benton,
16 had my daughter go check it out, come back and tell me
17 what she thought about it. It was not a good report. A
18 lot of patients, and it didn't seem like it was a place
19 for him at the time. So it seemed like the best thing for
20 his care was the Arkansas state veterans because he was a
21 veteran.
22 **Q Did you check out the Veterans Home facility**
23 **before placing Bill in it?**
24 A Somewhat, yes. We drove by it. I think there
25 were some things online we could look at to check it out

too at that time, some pictures and such. And it was new. It was new. They were still trying to get established, I guess.

Q Sure. Did you have to pay anything to place him into the Veterans Home?

A No.

Q Were you going to have to pay anything to place him in, say, the one in Benton?

A No.

Q Was that because of his veterans insurance?

A He was 100 percent service disability.

Q Okay.

A That's where the VA came into it.

Q Okay. Does that mean, and I apologize if I don't completely understand this, does that mean they were saying his disability was related to him being in the military?

A Yes, service-connected.

Q That's what I thought. I just wanted to make sure.

[redacted]

Q Okay, that makes sense. Was he aware that he was being placed in the Veterans Home?

A I doubt it because he trusted me whatever. If

1 it was a doctor's appointment, we were fine. You know,
2 he's always ready to go. We were close like that, and he
3 had no qualms about going over there at the time.
4 **Q Sure. About how many appointments a month would**
5 **you say you think he needed to be taken to?**
6 A A month?
7 **Q I just picked something.**
8 [redacted]
12 **Q Sure. I'm sorry, I should've asked this**
13 **question better. I'm thinking about in the year before**
14 **you put him in the home where I assume either you or your**
15 **daughter were taking him to his** [redacted]

1 [redacted]

4 **Q Sure, that make sense. Let's go forward to the**
5 **day you place him in the Veterans Home. Did he have a**
6 **reaction to going to the home?**
7 A Going over there, no. Leaving him maybe,
8 because I think it depressed him. We were so close. They
9 checked him in that day. Somebody came over from the main
10 house and did a thorough body check on him to see if there
11 was any type of bruises, cuts, anything. There were none.
12 **Q Okay. So there were no bruises, no cuts?**
13 A Nothing.
14 [redacted]

17 **Q Okay. At that point, then, you left, right, and**
18 **he stayed at the Veterans Home at that point?**
19 A Yes.
20 **Q Did he ever talk to you about wanting to leave**
21 **the Veterans Home or anything of that nature?**
22 A One time during his lunchtime or dinnertime, I
23 sat beside him at the table. I'm not eating; I'm just
24 sitting beside him to help him or whatever, being with
25 him. But he told me, let's leave. And I'm thinking, oh,

he's ready to leave. And so I just -- I told one of the aides or something when it came time for me to leave that he's wanting to leave, so I just kind of left, you know, without upsetting him.

Q Do you think -- what time was this? Was this in June or July, or about what time was this, do you think?

A Maybe in that time frame, June or July. He hadn't been there too long, but I think he decided maybe this is not where he really wanted to be. He wanted to be at home because that's where he was happy.

Q Do you think when he said that to you, was he saying that because he wanted to go back home, or was it he was having, you know, [redacted]

Q Did you ever see anything that gave you that indication?

A Not in front of me, but off to the room. I think it might have been around [redacted] I was

1 there, and we were sitting sort of in the eating area, and

2 [redacted]

10 Q Okay.

11 [redacted]

20 Q That's all right.

21 A Sorry.

22 Q No, that's okay. You're doing great. Don't

23 worry about it. I just want to be clear, you feel like

24 they probably did something or manhandled him. Did you

25 see anything?

1 [redacted]

12 [redacted]

22 Q Did that happen when you had the family meeting,

23 or when did that change occur from males to females? Let

24 me ask the question this way.

25 That incident that you're talking about, did you

tell the Veterans Home about this incident and that it concerned you in any way?

A I can't remember. I may have, but I don't recall the conversation at that time.

Q So was there ever a conversation with the Veterans Home that led to them saying okay, [redacted]

Q Okay.

A I think, I'm pretty sure, I addressed that to somebody.

Q Okay. You were in here, obviously, while your daughter was testifying or when we were having a conversation with her, and would you agree she described the area as a big kitchen kind of dining area in the Veterans Home? Does that sound right?

A That sounds correct.

Q And then some rooms that aren't quite dorm rooms, but they're rooms where each person would stay in?

A Their own private room, yes.

Q And it had a large bathroom as well, I think kind of a bed that was almost like a hospital bed. Does that sound right?

A Right, a small room with a bathroom and shower, each one.

Q And then kind of like an almost covered porch area. Does that sound right?

A That was one of them. That was screened in. The front porch was open.

Q Okay. Did you ever find Bill out on the front porch when you showed up?

A I did, and I was quite upset about it.

Q Okay. I think she said was that because he was wearing somebody else's clothes?

A It was because there was an incident where he [redacted] And then he would not come in. I called my daughter Jerrie, she was on her way home, and said can you go over there? Because I was quite upset about this, very upset about this. [redacted] So she went back. Well, at that time he had already come back in the house

1 and was fine. He ate his dinner. But I was very upset
2 through this whole ordeal. And then it wasn't just a few
3 weeks later we came to visit, came up the sidewalk, there
4 he was sitting out all alone on this open front porch
5 facing the street, the same one where he had escaped
6 through unsupervised.
7 **Q As far as you could tell there were no nurses or**
8 **anything around?**
9 A There was nobody. That's why I was so upset
10 because we had just gone through this incident where he
11 got out on the street. I was shocked that they would just
12 let him be out there alone. People were in the kitchen
13 doing their things. Nobody around, no eyes on him.
14 **Q Okay. Were you with Jerrie at that time? Was**
15 **she with you?**
16 A Yes, she drove. She always drove when we were
17 together.
18 **Q Okay. So you're saying you showed up, he was**
19 **sitting on the porch, no supervision at all. Were there**
20 **nurses inside? Was there anybody around?**
21 A As far as I know they were inside.
22 **Q Let's go back to the incident where he got out**
23 **and went across the street. How did you find out about**
24 **that?**
25 A They called me and told me that he was out and

they couldn't -- he did not want to come back in. This was early on. This was his early part of being in the house.

Q Okay. Would you say he'd been there only a few weeks?

A Probably.

Q So maybe May?

A Probably. Sounds about right.

Q Okay. Obviously we're reaching way back on this, I understand. So they called you, and your recollection, your understanding is that he went across the street. Do you know how he got out of the house?

A Walked out the door.

Q Okay.

A They did not have it locked. There was an open door. I mean, just --

Q And this is what they told you happened?

A They called and told me he wouldn't come in. He had left the house and he was out on the street trying to get in a car to leave, find an open door. And through all this time, we're on the phone, and the next thing I know I'm calling my daughter, can you go back? She was on the interstate. She turned around and went back. I'm in Bryant, she's working in Little Rock, he's in North Little Rock, so it was faster for her to turn around and go back.

And then he had just come in like a little garage, and then he went inside as soon as she got there.

Q Okay.

A But it was very upsetting.

Q Sure, I can understand that, absolutely. I guess I'm just trying to figure out the specific details of how he got out. So to you, you don't know, you just know that he got out?

A Right, just went out the front door is all I know.

Q Okay. When you visited him, your daughter said that you visited him every other Sunday. Does that sound right?

A At least, maybe sometimes every week we would go, or every other. It just depended on circumstances, but we always tried to be there all the time. I went one time. I took a bus. I think it was SCAT. I tried that. That didn't work out too well. They got me over there, but they wouldn't come get me. They said we will leave at 3:00; well, they never showed up. It was an ordeal, so I didn't want to do that anymore.

Q I wonder why? So they -- I lost my train of thought.

You visited him every other Sunday or every Sunday. Did you ever observe any behavior from the

nursing staff or anybody that was employed by the Veterans Home that you would consider to be abusive?

A Well, the first incident I told you about, the two men, that, to me, made me feel like he was manhandled somewhat. As far as physical abuse, I didn't see any physical abuse ever.

Q Okay. What about verbal abuse?

A No, no verbal.

Q As far as you know, is there another kind of abuse that you're thinking of?

A Well, in my mind the lack of care was an abuse. Let me just explain this. In House 7, the first house, I [redacted]

Q This was probably the first couple of months that he was there because this was in House 7?

A Yes.

Q So are we talking May and June, that sort of thing?

A Yes, sounds about right.

Q Okay. At what point was he moved from House 7

1 **to House 8?**
2 A I'm not sure if it was November. It was the
3 latter part. He stayed in House 7 longer, I guess.
4 **Q Okay. I think in talking to your daughter it**
5 **seemed like the move was made in maybe July or so?**
6 A No, I don't think so. I don't think he was
7 moved then. It was more or less that's when we had our
8 meeting, in that time frame that she was talking about
9 where the team, his team, the nurse and social worker and
10 the dietitian all came in to where we discussed these
11 things, and that's when I discussed the issues at hand at
12 that time.
13 **Q Okay. So at that time you brought up probably**
14 **the clothes, the grooming, the hygiene, that sort of**
15 **thing?**
16 A Yes, all of that. If the issue with him trying
17 to leave had already happened at that time, I'm sure I
18 brought that up too. I think I did. I don't have my
19 dates, I'm sorry to tell you, before or after. But all
20 those issues, and they were telling me what they could do.
21 The dietitian wanted to know what he liked to eat, and I
22 told her some things; he would like to have milk. My
23 observing every time I went it was punch or lemonade,
24 whatever they had that they did for all patients, it made
25 no difference. But they were going to have milk, but I

never saw that happen. Somebody that was in charge of activities, they wanted to know more about him, what he liked, his hobbies, and one of the things, he liked gardening, planting things, and he said we're talking about putting in a little garden or something, which would have been a good therapy for him. I didn't ever see that happen during that time.

Q Sure, okay. You met with them, and you're saying this happened about July?

A I think it was about July, a few months. He had been there a few months.

Q Okay. Your daughter had described it as almost sort of an onboarding sort of meeting. Would that be how you would describe it?

A Such as? Can you explain that?

Q Onboarding is like okay, he's here, he's been here a little bit, now let's get to know him and let's figure out the plan, or was this more as a result of some of the things that had been occurring?

A No, it would be more of the onboarding we were invited to come to. I got a letter or something, if I wanted they would have a meeting a certain day at a certain time, and we went to one in the middle of the week, whatever time was assigned, to discuss any issues.

Q Okay. Do you feel like at that meeting you were

1 **able to raise all of the issues that you had at that time?**
2 A Yes.
3 **Q And, at least from talking to your daughter, it**
4 **seems like following that meeting the issues with the**
5 **clothes and the grooming and stuff were largely fixed. Do**
6 **you agree with that?**
7 A [redacted] The
8 clothing not so much. He still had other people's
9 clothing. Everything of his was marked. We had to bring
10 everything marked, so I don't know how they -- and the
11 laundry problem, things would happen. They just went
12 wherever. His shirts were all -- when they went there,
13 were starched, ready-to-wear. They didn't iron things and
14 such, but I could spot some of his shirts because I knew
15 them, you know, on other people, just so you know.
16 **Q In your opinion the clothing issue, was that**
17 **ever fixed?**
18 A I don't think so. I don't recall them ever --
19 there was always some issues.
20 **Q** [redacted]
[redacted]
[redacted]
23 **Q Okay. And then your daughter said when he moved**
24 **to House 8 that there was maybe only one or two other**
25 **residents in House 8 and that there really weren't any**

issues with [redacted] or the clothes in House 8. Would you agree with that?

A Yes. There was only one or two. He might have been the first or the second. It was a new house they opened up right next to him. So it seemed like he was going to get good care, you know. They were taking him for walks, so he was getting exercise at the early onset of this transition to that house.

Q Okay. About what time would you say that was?

A I'm thinking later in the year around November, but I may not be -- I think. I think that's about when.

Q Okay, that's all right, that's okay. What were the changes in his behavior and disposition from when you first put him in the home to, say, July? Were there any changes?

A He didn't want to be there, that was one change. He was still walking on his own. Conversation was very little. Pleasant, though. He seemed pleasant, happy to see us.

[redacted]

1 [redacted]

7 **Q That's cool. So seemed pleasant still. At what**
8 **point in his time there do you think that shift occurred**
9 **where maybe you don't consider that he was pleasant**
10 **anymore?**
11 A To me he was always pleasant, and to my family
12 he was pleasant.
13 **Q Okay. You said that they had your number and**
14 **that the home would call you if there were problems or**
15 **anything like that?**
16 A Yes.
17 **Q How many times did they call you?**
18 A Maybe three, four times. I'm trying to remember
19 between the houses, too, who got what calls when.
20 **Q Okay. Do you remember specifically what those**
21 **calls were about?**
22 A Well, one was that he was trying to leave and
23 the car going out the front door. One time he fell out of
24 bed, said he was okay. I can't remember if it was a call
25 or if they told me when I went over to visit him about him

1 sitting up, this was the latter part of his stay, being in
2 a wheelchair sitting there, and he took his foot and
3 pushed it against the wall, and I think he fell over. He
4 was probably trying to get somebody's attention for some
5 reason because [redacted].
7 [redacted]
[redacted]
[redacted]
10 **Q So that happened. Were those -- are those the**
11 **reasons you can remember why he had to call or why the**
12 **home had to call you?**
13 A That they called me, yes. Other issues might
14 have been when I was there and talking to nurses or
15 whatever, but as far as phone calls, I remember those
16 calls.
17 **Q Okay. Did you feel like you could raise issues**
18 **with the nurses? If you had a problem or something that**
19 **you felt like needed to get fixed, do you feel like you**
20 **could talk to the nurses about it?**
21 A Yes.
22 **Q Did you ever get any contact from the Veterans**
23 **Home about Bill being aggressive towards any of the staff**
24 **or anything like that?**
25 A I don't recall a phone call.

1 **Q Any sort of communication?**

2 A I think one time there was something with one of

3 the aides or something that he pushed her, but he didn't

4 hurt her. But I think he pushed her shoulder or

5 something, so that was the only thing I ever was told.

6 **Q Okay. You were never told about any other**

7 **behavior towards the staff or anything like that?**

8 A No.

9 **Q Did anything about him change in the last few**

10 **weeks that he was in the Veterans Home?**

11 A Yes.

12 **Q What changed?**

13 A Well, my visits he was always fully clothed,

14 usually long sleeves, as my daughter stated, you know,

15 jeans or pants or whatever. This one visit towards the

16 end of his stay, I noticed his arm, [redacted]

1 [redacted]

5 **Q When you came on Sundays, would he eat whatever**
6 **was being provided by the facility?**
7 A It looked like he was. Yes, I would say pretty
8 much.
9 **Q Okay. Was he eating everything just like he was**
10 **eating everything when you guys brought him food, or did**
11 **he like the food that you guys were bringing him more?**
12 A Well, we didn't start bringing that much food
13 until the end when we wasn't sure about what was
14 happening, [redacted]. But what
15 they provided, with assistance towards the end they would
16 help him and cut things up for him, you know. He wasn't
17 able to take a knife and fork and cut up meats and such so
18 easily, so they would help him. And if they would help
19 him, he'd eat it.
20 **Q Sure, sure.**
21 MS. BROYLES: Let's take a little break real
22 quick.
23 (BREAK FROM 12:47 TO 12:50)
24 **Q (BY MR. BRASCHER) We talked about abuse. Did**
25 **you ever observe behavior by any of the staff at the home**

1 that you considered to be unprofessional?

2 A Well, one time [redacted]

11 Q Did you watch him? Was he able to --

12 [redacted] That wasn't good. So

15 I don't know if they corrected that later. I just saw

16 that one time.

17 Q Okay. I appreciate that. That's what we're

18 trying to find out.

19 [redacted]

23 Q Okay. I'm just making sure that I get

24 everything. To your memory he was admitted into the VA

25 hospital on December 27th. Does that sound about right?

A Yes.

Q So what was the last time you were with him before the VA hospital?

A We were there December 24th and 25th, and then I think stayed home the 26th calling around for other nursing homes to see what could be available, because when I saw him, I didn't recognize him. [redacted] That's the big change. It just -- he went fast.

Q Okay. How fast was it? Did he look like that in November?

A Not so much. Starting, he may -- well, the weight loss, I'm not quite sure when all I noticed that, late November, early December maybe.

Q Okay. Did you take or do you have any pictures of what he looked like in that last month or so?

A I don't know which ones I gave him.

MR. PRIEBE: You have all the pictures that she's given to us.

MS. BROYLES: I don't know if they have dates on them.

MR. PRIEBE: I don't think any of them do.
MS. BROYLES: So if you've got that folder, let's just make sure and see if she knows when things were, because without dates we can't really tell.
THE WITNESS: The ones I brought is just that one he's sitting in the chair.
Q (BY MR. BRASCHER) So there's this picture here. When was that taken?
(WHEREUPON, Exhibit 1 was marked for identification.)
A This was sometime earlier on in House 7. He was sitting in the recliner chair.
MS. BROYLES: I'll hand you some exhibit stickers, so let's do --
MR. BRASCHER: Exhibit 1.
MR. PRIEBE: You have the other ones too, right?
MR. BRASCHER: Yes, but I don't think we brought them with us, but I do remember you sending them to us, yes.
MR. PRIEBE: Since I'm a good sport.
THE WITNESS: I don't know why my phone did not pick up the dates.
MR. PRIEBE: No, you don't --
MR. BRASCHER: You're okay.
MR. PRIEBE: I believe that's all the ones we've

produced previously.

MR. BRASCHER: Great.

MS. BROYLES: So this one, do you know?

THE WITNESS: That was early on, the first few months in House 7 when he first went in.

MR. BRASCHER: So if we want just want to mark that as Exhibit 2.

MR. PRIEBE: Those are all Bates numbered.

MR. BRASCHER: Good point.

MR. PRIEBE: The ones I just handed you are Bates numbered. Exhibit 1 is not because we just got that today.

Q (BY MR. BRASCHER) So I'm handing you what's been Bates numbered as OOJAVA 002861. When was that picture taken?

A That's a terrible picture, isn't it? My daughter took that one. Looking at the layout, that looks like when he was in House 7 the way the kitchen was.

Q If you don't know, that's okay.

A I'd just be guessing, I'm sorry. You have to ask her. She took it.

Q That's totally okay. I've got here what's been marked as OOJAVA 002866. Do you have any idea when that picture was taken?

A [redacted]

1 [redacted]

2 **Q This is OOJAVA 2868. Do you know when that**

3 **picture was taken?**

4 A I'm not sure. It seems like most of these are

5 going to be in House 7, except there is one I could tell

6 you a date on. It was taken from afar. Do you have one?

7 **Q This is OOJAVA 002864.**

8 A This was in the first house, seven. He was

9 walking around. There's one picture that I sent. Can I

10 see those just quickly, and I can see if I can help you

11 with the date. I don't see that picture in here.

12 **Q Okay. That's all right.**

13 A Well, it was taken right around the time of

14 December, the ending of December when he was in [redacted]

[redacted]

19 That was the end of December, the 23rd, 24th.

20 MS. BROYLES: Can you send us that if you've got

21 it?

22 MR. PRIEBE: We'll look, see if we can find it.

23 **Q (BY MR. BRASCHER) When he went to the hospital,**

24 **so that would be in late December early January, what were**

25 **your thoughts at that point?**

1 [redacted]

9 **Q So your thought process was, at first at least,**
10 **that maybe they could save him?**
11 A Yes, that was my hopes.
12 **Q Sure. You think maybe the doctors thought that**
13 **too at first?**
14 A Well, at first whoever talked to us at first
15 thought maybe there was a chance, but things didn't go
16 well. [redacted]

20 **Q Sure, right.**
21 A Toward the end. I finally just had to say okay,
22 and he didn't last 24 hours and it took him.
23 **Q Thank you. I'm sorry that you had to go into**
24 **that.**
25 **I'm just checking to make sure I didn't miss**

anything that I wanted to ask you. Did you, I don't know, do you have a Facebook account?

A Facebook?

Q Yeah.

A Not really.

Q That's totally fine. If you did, I was going to ask you if you had posted or said anything about this?

A No.

Q Okay, let me go through here. These are things -- were you ever able to call the VA Home on the phone?

A They never -- it just rang. It never ever answered at the house. I had to call the main office until I was given a phone number by one of the nurses where I could call.

Q And then were you able to call after that?

A Sometimes, yes.

Q Was it a nurse who would answer, or who would answer?

A Yes.

Q Okay.

A As far as being able to have a phone in the house like was there, they never answered it. They had issues, they said, with the phones.

Q Okay. And then your daughter had talked about

1 [redacted]

23 Q Okay. I believe that's all I have. Is there

24 anything that you want to tell me that I haven't asked you

25 about?

1 A Well, I trusted them that they were going to
2 take good care of him, better than I could give him, and
3 they let me down; they didn't do it. When he got over to
4 that last part, that House 8, as the house seemed to fill
5 up with more patients, I don't know what happened. But
6 [redacted]
16 [redacted]
18 **Q Okay.**
19 [redacted]
25 **Q Okay. Thank you for telling me that. I do have**

1 one more question, which is just did you have to pay for
2 any of this care that had been given to him?
3 A No, but I was about to get sued from some of his
4 [redacted]
13 [redacted]

1 [redacted]

4 MR. PRIEBE: As long as we keep this under the

5 protective order, just the amounts, if that's okay.

6 MS. BROYLES: Yes, I guess.

7 MR. PRIEBE: Go ahead, tell him.

8 [redacted]

15 A I've got it written down probably somewhere.

16 We're going back to 2018.

17 MR. PRIEBE: I can tell you this. If we make a

18 claim for that, then we will provide all those numbers.

19 MS. BROYLES: Okay.

20 MR. PRIEBE: As we're sitting here, I don't

21 think I can or I will make a claim for that.

22 MS. BROYLES: Okay.

23 MR. PRIEBE: If we do, if that changes, I will

24 provide you all those numbers.

25 MR. BRASCHER: Sure, great.

1 MR. PRIEBE: Is that good?

2 MR. BRASCHER: Yes, that's fine. Thank you, I

3 appreciate that.

4 MR. PRIEBE: No worries.

5 MR. BRASCHER: I believe, then, that I will pass

6 the witness.

7 CROSS EXAMINATION

8 BY MR. PRIEBE:

9 **Q A few questions, Mrs. Jones. You told these**

10 **nice attorneys about the** [redacted]

11 A Correct.

12 **Q** [redacted]

1 Q That's my next question. It's my understanding
2 you said -- you told these nice attorneys that he was
3 [redacted]
7 MS. BROYLES: Object to the form.
8 Q (BY MR. PRIEBE) Well, let me ask, she objected.
9 To your understanding, what caused his death?
10 MS. BROYLES: Object to the form.
11 [redacted]
15 Q Do you blame the death of your husband on the
16 Veterans Home?
17 A I do.
18 Q You told these lawyers about some of the reasons
19 why you put him in there, put him at the Veterans Home.
20 Was one reason that you felt that he needed 24/7 nursing
21 care?
22 A Yes.
23 Q Have you grieved the loss of your husband?
24 A I still am.
25 Q You were talking about his military service, and

1 **I just want to make sure, I understand he had over 1000**
2 **jumps?**
3 A Correct, he loved airplanes and jumping.
4 **Q And you brought these with us today. He also**
5 **got a Purple Heart?**
6 A He was wounded. [redacted]
7 **Q Okay. I just wanted to make sure we were all on**
8 **the same page.**
9 [redacted]
[redacted]
[redacted]
12 **Q Did you have concerns about -- I know you said**
13 **you had concerns about the care and treatment. Did you**
14 **have concerns about whether or not the Veterans Home had**
15 **sufficient staff to take care of the veterans? And I'm**
16 **talking about numbers.**
17 A Was I concerned about it? Yes, he needed more
18 care, apparently.
19 MR. PRIEBE: That's all the questions I have for
20 you, Mrs. Jones. They may have to ask you some more,
21 okay?
22 MR. BRASCHER: No, I don't have anything further
23 for you. Thank you.
24 (DEPOSITION CONCLUDED AT 1:10 P.M.)
25

C E R T I F I C A T E

STATE OF ARKANSAS)
) SS:
COUNTY OF WASHINGTON)

I, Mike Washkowiak, Certified Court Reporter within and for the State of Arkansas, do hereby certify that the above-named MARY ANN JONES was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid; that the above and foregoing deposition was by me taken and transcribed pursuant to agreement, and under the stipulations hereinbefore set out; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 27th day of April, 2023.

MIKE WASHKOWIAK, CCR

State of Arkansas, No. 654

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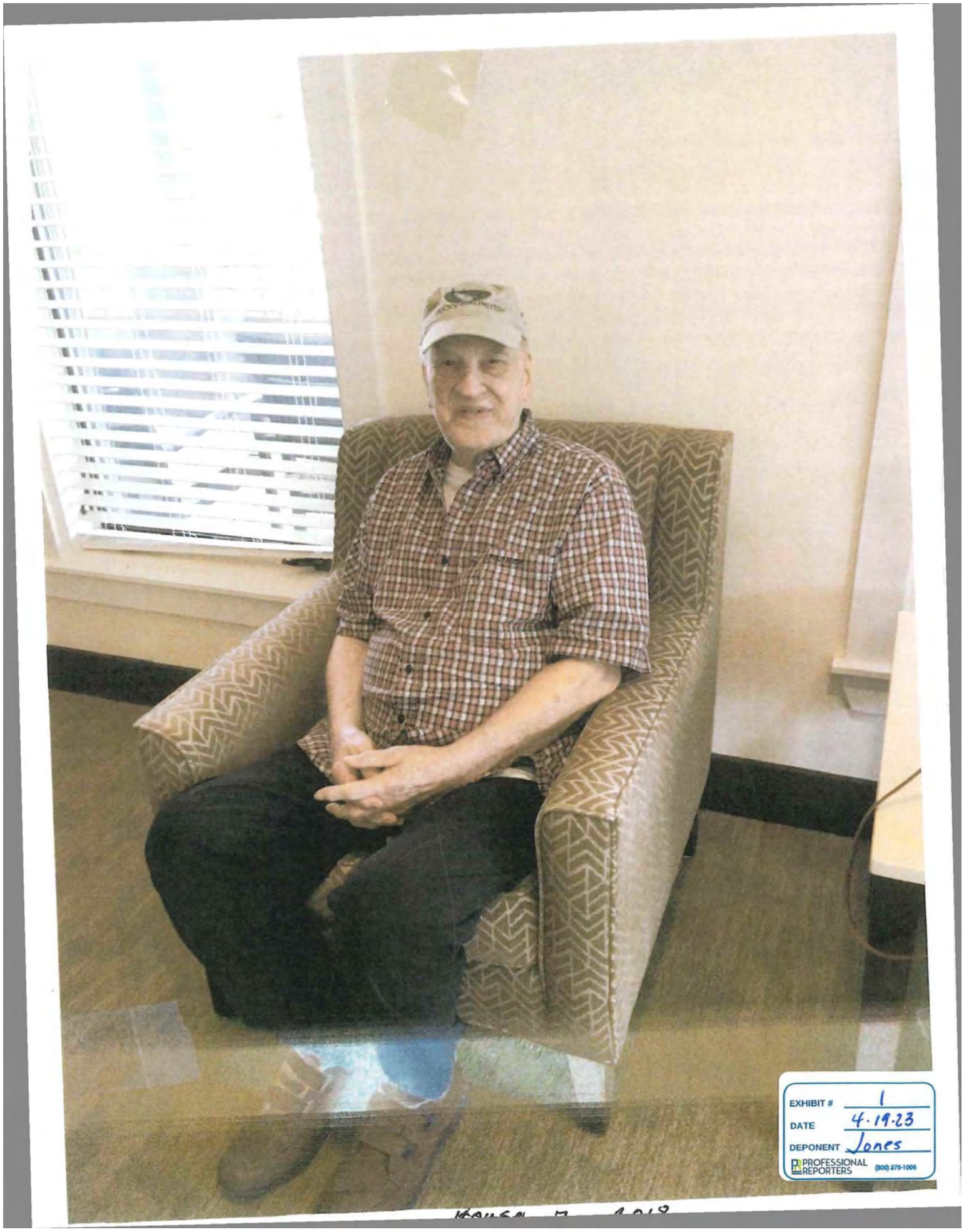
EXHIBIT # 1
DATE 4·19·23
DEPONENT Jones
PROFESSIONAL REPORTERS
(800) 276-1005

1 BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS
2
MARY ANN JONES, as Special)
3 Administrator of the Estate of)
OSCAR ODELL "Bill" JONES,)
4)
PLAINTIFF,)
5 VS.) CLAIM NUMBER
ARKANSAS DEPARTMENT OF VETERAN) 20-00817
6 AFFAIRS, d/b/a NORTH LITTLE ROCK)
VETERANS AFFAIRS, f/k/a ARKANSAS)
7 STATE VETERANS HOME AT NORTH LITTLE)
ROCK,)
8)
DEFENDANT.)
9)
)
10
11 ----------
12 ORAL AND VIDEOTAPED DEPOSITION OF
LINDSEY CLYBURN
13 July 27, 2023

14
15 ORAL AND VIDEOTAPED DEPOSITION OF LINDSEY CLYBURN,
16 produced as a witness at the instance of the
17 PLAINTIFF, and duly sworn, was taken in the
18 above-styled and numbered cause on the 27th day of
19 July, 2023, from 10:08 a.m. to 12:16 p.m., before
20 Tammie L. Foreman, CCR in and for the State of
21 Arkansas, RPR, CRR, reported by machine shorthand, at
22 the Attorney General's Office, 323 Center Street,
23 Suite 200, Little Rock, Arkansas, pursuant to the
24 Arkansas Rules of Civil Procedure.
25

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Garrett Smelley, Videographer

I N D E X

July 27, 2023

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WITNESS: LINDSEY CLYBURN

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THE VIDEOGRAPHER: We are now on the record. Today's date is July 27th, 2023; and the time is 10:08. This deposition is taking place at 323 Center Street in Little
10:08AM Rock, Arkansas, in the matter of Mary Ann Jones versus Arkansas Department of Veterans Affairs, et al., claim number 20-00817 before the State Claims Commission of the State of Arkansas.

10:09AM The deponent is Lindsey Clyburn. If counsel will introduce themselves, the witness will then be sworn.

MR. PRIEBE: Jeff Priebe on behalf of plaintiff.

10:09AM MS. BROYLES: Jordan Broyles on behalf of ADVA.

THE COURT REPORTER: Would you raise your right hand, please, to be sworn?

LINDSEY CLYBURN,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. PRIEBE:

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

10:09AM A. Lindsey Clyburn.

Q. Mr. Clyburn, my name is Jeff Priebe. You and I met for the first time just a few minutes ago, did we not?
A. We did.
10:09AM Q. All right. And you understand that I'm here to take your deposition?
A. Yes, I do.
Q. And I understand that you've had -- you've done a deposition before?
10:09AM A. I have.
Q. How long ago was that?
A. Less than two years ago.
Q. Okay. And what was the context of that deposition?
10:09AM A. It was an insurance claim. I was administrator of a facility. We had -- the City was doing construction work on our property. We -- they had placed rock and dirt all over our property.
Anyway, we had a big rain. The stuff that
10:10AM they had placed on our property funneled water directly into our building and flooded our building. So the insurance company paid us, obviously, and then they went after the City contractor because they did not put up proper screening and things like that. So
10:10AM I was called as a witness and did a deposition.

Q. Was that -- or which facility?
A. That was Barnes, South Carolina.
Q. Okay. Were you the administrator?
A. Yes.
10:10AM Q. Okay. Well, I appreciate you telling me that. Just a few ground rules so you and I are on the same page. I need to ask you some questions to find out what you know, what you remember, okay?
A. Okay.
10:10AM Q. While the videographer can take everything down, head shakes and huh-uhs or uh-huhs, the court reporter cannot.
A. Right.
Q. So if I ask you today, Mr. Clyburn, is that a
10:11AM yes or is that a no, I'm not getting on to you. I just want to make sure the record reflects your testimony. Okay?
A. Okay.
Q. If at any time today you don't understand me, I
10:11AM talk too fast, talk too slow, if you don't understand my question, just let me know. Okay?
A. Yes.
Q. All right. If you need to take a break, we have a little bit of ground to cover. I don't think we're
10:11AM going to be here that long. But if you need to take a

break, stretch your legs, answer a phone call, just let me know. Okay?
A. Okay.
Q. All I'd ask is if there's a question on the
10:11AM table, let's get that answered before we take a break.
A. Okay.
Q. From time to time today, you may hear myself or these other lawyers say "objection" or "objection to form." We have to do that because we don't have a
10:11AM judge or the commissioner is not sitting right here making rulings. However, even though we may say "objection" or "objection to form," you can go ahead and answer. Okay?
A. Okay.
10:11AM Q. That's just a bunch of lawyer talk. All right?
A. Okay.
Q. All right. Give me your home address, please.
A. [redacted]
Q. Date of birth?
10:11AM A. [redacted]
Q. Okay. Where are you currently employed?
A. Barnes Health Care, Lonoke, Arkansas.
Q. Your title?
A. Administrator.
10:12AM Q. How long have you been administrator for Barnes

Health Care?
A. Going on five years. So four and a half, somewhere in that range.
Q. Barnes, how many beds is it?
10:12AM A. Licensed for 141. I have census of 60.
Q. Dual-certified beds?
A. Dual. Yes, sir.
Q. And who is your boss? Who do you answer to at Barnes?
10:12AM A. I have a director of operation, Cheryl Nichols, based out of Oklahoma. MarshPointe Management.
Q. Yeah. I know Barnes has changed ownership quite a bit in the last year.
A. It has. Originally, it was my family owned it
10:12AM for 41 years.
Q. Oh, really? Really. Outstanding. So you've been the administrator there since when?
A. Started January -- it could be off a day or two. But from what I recall, January 21st, 2019.
10:13AM Q. Okay. From January 21st, 2019, until today, have you had any other jobs?
A. I teach martial arts.
Q. Nice.
A. Yeah. So I've done that concurrent.
10:13AM Q. Okay. Have you ever stepped aside as the

administrator of Barnes Health Care in that time --
A. No.
Q. -- has there been a interim?
A. I have not.
10:13AM Q. Prior to January 21, 2019, I understand you were the administrator of the Veterans Home in North Little Rock?
A. I was.
Q. Okay. And how long had you been the
10:13AM administrator there?
A. I was hired -- again, the dates could be off just a little bit.
Q. That's fine.
A. But September -- some day in September 2016.
10:13AM Q. Okay.
A. And I was employed there -- again, this is as close an estimate that I can remember -- around late December, after Christmas, maybe 31st, of 2018.
Q. Okay. And we'll talk about that in just a
10:14AM little while.
A. Right.
Q. Prior to -- for purposes of today, do we call it the Veterans Home in North Little Rock, or do you have another name for it?
10:14AM A. I call it State Veterans Home. That's what I

1 call it, although there are two of them.
2 Q. One in Fayetteville, right?
3 A. Yes.
4 Q. So today, for purposes of this deposition, can
10:14AM 5 we just call it the State Veterans Home?
6 A. We can.
7 Q. And we'll be referring to the facility in North
8 Little Rock?
9 A. Yes.
10:14AM 10 Q. Perfect. Prior to being the administrator of
11 the State Veterans Home in North Little Rock, what had
12 you done?
13 A. Well, like I said, my family owned the facility
14 I'm currently at in Lonoke. It was Golden Years Manor
10:14AM 15 at the time. Grandparents opened it in the late '60s,
16 operated it in the '70s; my parents, '80s and '90s.
17 I purchased the facility with a partner in
18 2003. A gentleman out of Searcy, Joey Wiggins,
19 Convacare Management at the time -- he had a couple of
10:15AM 20 homes. We formed a partnership. We operated from
21 2003 until 2012. We sold at that point.
22 At that point, I was telling Jordan, I
23 took a year off, taught martial arts, realized I kind
24 of missed health care, been in it my whole life. So
10:15AM 25 took a job with Reliance Health Care as interim

1 administrator, worked there --
2 Q. Where?
3 A. I was at a different facilities. I was interim.
4 So I was Alcoa Pines, which is in Benton. I was down
10:15AM 5 in Mont- -- not Monticello. Warren, what used to be
6 Wagnon Place. And then I was in Ash Flat, Eagle
7 Crest. I was all over the place.
8 Q. Who was your boss, Brandon or Brian?
9 A. Yeah. Brandon and Brian obviously owned it.
10:15AM 10 Brad Hartley was the director of operations for me.
11 Q. Who did y'all sell Barnes Health Care -- I mean,
12 the facility that was Barnes Health Care?
13 MS. BROYLES: Golden Years.
14 A. Golden Years was sold, actually, to Elite, which
10:16AM 15 was Global Health Care. And the president of Global
16 was Chris Brogdon at that time. He's no longer.
17 There is a little bit of confusion as to who actually
18 owns it right now.
19 Currently, if you -- if you go by the
10:16AM 20 record, it would still be Global technically owns it,
21 but they do not manage it. It's managed by MarshPoint
22 Management.
23 Q. (By Mr. Priebe:) Is Joey, is he involved with
24 MarshPoint?
10:16AM 25 A. No. Joey was -- had nothing to do with

MarshPoint at all.
Q. I'm familiar with the players, as you would imagine.
A. Yeah.
10:16AM Q. Okay. I appreciate that. Where did you grow up?
A. I grew up in Carlisle.
Q. When did you become a licensed administrator?
A. '96.
10:16AM Q. Okay. Have you ever been a CNA?
A. I did have a CNA license.
Q. When was the last time you had a license?
A. I mean, my mother made me do it, to be honest with you. She said, "If you're going to be
10:17AM administrator, you need to be a CNA too."
Q. That's awesome.
A. So she made me get my license, which I did appreciate. So I was a CNA. It was good for 10 years. I just didn't renew it at that time. Just say
10:17AM I practiced as a CNA, like I said, it was something she wanted me to go through. I did work the floor some just to get the experience. But I was not what I would consider like they are, working CNAs.
Q. Ever been a nurse?
10:17AM A. Never been a nurse.

Q. Okay. And I take it at your time in the Veterans Home that you never worked there as a CNA?
A. No.
Q. Never counted on the staffing as a CNA?
10:17AM A. I did not.
Q. Let's talk about what you did to prepare for today's deposition.
A. Okay.
Q. What did you do?
10:17AM A. I came in at 8:30 today, met with Ms. Jordan. And just it's been a while since, you know, I even thought about the State Veterans Home. So really, we just kind of talked about what to expect today. She did tell me that you would, you know, be the attorney
10:18AM and I did share with her my bad experience. So...
Q. That was with another attorney, right?
A. Yeah.
Q. Okay.
A. So basically, we really didn't get into any
10:18AM details. We didn't talk about the person, let's see, Mary Ann Jones or, I assume, her husband.
Q. It's Bill Jones, yes.
A. We didn't really discuss those kind of things.
Q. Did you look at any of his records?
10:18AM A. No, I did not.

Q. Did you look at any records of the Veterans Home?
A. No.
Q. Okay. So I appreciate that. I hope your
10:18AM experience is much better than your last one.
A. I'm hopeful. I'm hopeful.
MS. BROYLES: I promised him. So, Jeff, you know --
A. I tell you, Jeff, that other guy started out
10:18AM really nice.
Q. (By Mr. Priebe:) What's that?
A. He started really nice. He was a good old boy. He was a country boy and, you know, from a country town. And it was going good till it didn't.
10:19AM Q. Well, I'm from -- I grew up 15 miles outside of town and on dirt roads, so --
A. Okay.
Q. As I said, I do have to ask you some tough questions about some stuff that happened.
10:19AM A. Sure.
Q. I mean no offense by anything I ask you today, but I've got to find out what you know.
A. Sure.
Q. So when you were the administrator at the State
10:19AM Veterans Home, were you considered a state employee?

A. I was.
Q. Okay. Have you ever been a state employee besides then?
A. I have not.
10:19AM Q. Okay. Tell me -- you started in 2019. Is that when the State Veterans Home opened?
A. I started at Barnes in 2019. I started at the State Veterans Home 2016, in September.
Q. Let me ask the question again. And I apologize,
10:19AM Mr. Clyburn. When you started in 2016 in the State Veterans Home, was the home just newly opened?
A. It was not opened yet.
Q. Okay.
A. It was finishing construction. The majority of
10:20AM the buildings were built. They were finished. Did not have roads. It was dirt roads going through.
So it was -- we had no staff, no employees. It was just -- I was really -- I guess, would have been the first employee hired.
10:20AM Q. And who hired you?
A. I was hired, went through a process of interview with Kathie Gately. Kathie Gately was actually the original administrator hired for the State Veterans Home and started the process when it was being built.
10:20AM They decided, for whatever reason -- and I

1 don't know -- to move her to a director of operations
2 kind of over the two facilities, Fayetteville and
3 North Little Rock. So she was my initial interview.
4 I passed that interview and then was actually hired
10:21AM 5 by, at the time the director, Matt Sneed.
6 Q. And Matt Sneed was the director of what?
7 A. Director of the Department of Veteran Affairs.
8 Q. And at that time, was Department of Veteran
9 Affairs under DHS or the Department of Human Services?
10:21AM 10 A. No. It was its own -- it was its own
11 department. It was not -- to my knowledge -- to my
12 knowledge, not connected with that at all.
13 Q. At some time, did the State Veterans Home come
14 under the part of DHS?
10:21AM 15 A. To my knowledge, no. But thinking back through
16 this, we did come under DF&A. DF&A. That was during
17 my last year there, and I can't recall exactly when.
18 I'm going to say midyear 2018.
19 Q. Department of Finance & Administration?
10:21AM 20 A. Uh-huh.
21 Q. Yes?
22 A. Yes. Sorry.
23 MS. BROYLES: Yeah.
24 Q. (By Mr. Priebe:) No. You're fine. You're
10:22AM 25 doing fine. So who was your -- when you were the

administrator, who was your -- let's look at 2018, your last year there.
A. Okay.
Q. And I believe the records reflect, and we'll
10:22AM talk about them, that your last day -- official day was December 31, and I think the last day you actually worked was December 28. But we'll look at that.
A. Okay.
Q. But just for purposes of today and these
10:22AM questions, in 2018, who did you report to?
A. In 2018, I had still -- Kathie Gately -- actually, I take that back. Kathie Gately had moved into a different position. In 2017, Kathie Gately would have been my direct supervisor.
10:22AM Q. Okay.
A. Kathie Gately -- and I don't remember what position she moved to, but, like, a compliance. So she was no longer over two facilities. And that took place, I don't know, maybe early 2018. I'm just
10:23AM guessing on that.
So in 2018, I would have -- my direct supervisor would have been, should have been, Director Nate Todd, who replaced Matt Sneed as the director. That took place sometime in 2017.
10:23AM Q. Okay.

1 A. However, there was a person that was hired -- I
2 have to get some water -- Chris Tafner, that, I
3 believe, March of maybe 2018, was hired as an interim
4 deputy director. And he started working his way into
10:23AM 5 oversight over me to some degree.
6 [redacted]
10:23AM [redacted]
10:24AM [redacted]
19 Q. That's fine. So let's talk. So when did the
10:24AM 20 State Veterans Home open for clients?
21 A. I was thinking about that on my way here. We
22 had a target date of November 2016. There were some
23 issues that we had that we had to push it back. It
24 had to do with the overhead lifts. We had to make
10:24AM 25 some modifications to those. So it pushed it back. I

1 believe February of 2017 is when we took our first
2 patients, if I'm not mistaken.
3 Q. And I understand that the Veterans Home in
4 Little Rock is kind of a -- was, at the time, kind of
10:25AM 5 a new design. The pod design, separate house design.
6 A. Yeah.
7 Q. Is that fair?
8 A. Yes. The VA required that for new construction.
9 Q. Instead of having one big facility, it had, I
10:25AM 10 think, seven different --
11 A. There were eight pods or eight homes.
12 Q. Houses they called them, I think.
13 A. Yeah. We called them State Veteran -- our hero
14 homes is what we called them.
10:25AM 15 Q. And in that each home -- take me through the
16 layout of each home. Did it have a kitchen, beds?
17 A. It did. It was a beautiful designed facility.
18 They look like a home and had a nice porch, kind of
19 wrap-around porch that was screened in, utilized quite
10:26AM 20 a bit.
21 Then they -- you went into a open room
22 that had a dining room, kitchen, a little sitting area
23 back behind. And then it basically made a U-shape
24 around the back of the kitchen, two hallways going
10:26AM 25 down, coming around, connecting 12 rooms.

Q. And in those rooms, were those double rooms or single rooms?
A. Private rooms with the exception, each -- each home had the ability to have two rooms that could be
10:26AM for couples.
Q. Outside of couples, then, it would only be 12 -- a maximum of 12 residents per --
A. It's 12 regardless. Right.
Q. Okay. So you had 12 residents per -- the
10:26AM maximum would be 12 residents per house?
A. Yes.
Q. Okay. As the administrator, what were your normal hours?
A. I worked 8:00 to 4:30-ish, 5:00, somewhere in
10:27AM that range. 8:00 to 5:00 at the most.
Q. You were salaried?
A. I was salaried, yes.
Q. And I understand you were on call all the time. You may get a phone call.
10:27AM A. Right.
Q. At least you may come in early, stay late. But generally, you were there 8:00 to 5:00, Monday through Friday; is that fair?
A. Yes.
10:27AM Q. When you weren't there, who was in charge?

A. Well, the State Veterans Home, to me, it was unique in that it had -- we had RN supervisors that were there. We had a weekend supervisor, and then we had an RN supervisor too. So there would be an RN, a
10:27AM nurse, a clinical person that was in charge on the weekend when I wasn't there.
Q. And would that clinical person be in charge of all the homes?
A. Yes.
10:27AM Q. Okay. What did you see your duties as the administrator -- once it was opened. I'm talking about 2018, it's up and running. What did you see your duties as the administrator, duties and responsibilities?
10:28AM A. The initial one was to hire all the staff, which I did. And I had to staff it. Once we opened, you know, as the administrator, the, you know, financial responsibility, obviously. Financial oversight. Budget controls.
10:28AM Staffing. Staffing in a sense that, you know, I'm over staffing, but yet I'm not the one that's necessarily staffing. It's my responsibility to ensure that we're staffed properly. It's the DON's responsibility to create the schedule, to, you know,
10:28AM put people in place as far as that goes.

I'm also responsible for the well-being of all my residents. The State Veterans Home used a holistic approach, you know, mind, body, spirit. That would fall under me to ensure that we, as a facility, 10:29AM were meeting our objectives.

Also to build census, which I had to do from zero, which I had guidelines given to me by Director Todd how many residents we should take, on what, and where we should be at this time, you know, 10:29AM six months, nine months, a year.

And then also grounds. The facilities themselves. That was my responsibility, to ensure that the buildings, the homes were in working order.

Q. I saw some projections. I saw some 10:29AM documentation. You had a payor mix that you had to work on too?

A. We did. There was -- I don't know if you're familiar, but there is service-connected veterans. I don't know if y'all understand that. If you want me 10:30AM to tell about it.

Q. No. Go ahead. Yeah, please.

A. So if you have a service-related disability of 70 percent and above deemed by the federal VA, then the VA would pay 100 percent of your stay. Not only 10:30AM would they pay for your stay, whatever assets that you

owned personally, your house, cars, maybe you had military retirement, State, you could have 8-, $9,000 a month come in, you could keep all of that and the VA would pay for your stay. So --

10:30AM Q. That's a better deal than Medicaid.

A. It's phenomenal. But you had to be 70 percent or above. It had nothing to do with how distinguished you were as a military veteran, whether or not you had served twenty years or two years. In fact, we had

10:31AM some veterans that only served a year, got injured and were service connected 70 percent.

We had others that had served 22 years and maybe had a Bronze Star that did not get injured in duty and were not. Therefore, they fell under

10:31AM traditional para source like what you're familiar with a nursing home. You're either Medicaid, private pay, or if you're lucky enough to have long-term care insurance.

If not, you were going to be a Medicaid

10:31AM veteran and you were going to get your $40-a-month spending money and you were going to have to sell off assets. So that part was honestly kind of hard to watch. We had one veteran here and another one here. So yes, there was a payor mix. We wanted so many service-connected --

MS. BROYLES: Are you saying payor mix?
THE WITNESS: Payor mix.
MS. BROYLES: Payor mix. Okay. That's what I thought.
10:31AM A. Yeah. Payor mix meaning -- and the reason being because you had -- you had to forecast. Your financial forecast had to be based on, okay. Well, the VA is going to pay maybe, I'm just estimating, $400 a month -- $400 a day and your Medicaid rate may
10:32AM be $250 a day. So if you were going to forecast, you needed to know how many of each one you were going to have. So yes, there was a mix.
Q. And it's my understanding that to be eligible to be at the Veterans Home in North Little Rock, you had
10:32AM to have some type of service?
A. You had to have some type of service. We had --
Q. Which means you had to serve?
A. You had to serve.
Q. Right.
10:32AM A. It didn't have to -- like I said, it didn't have to be anything fancy. There was people that were one year served. But if you had a DD2 that showed that you were honorably discharged or medically discharged -- you couldn't be dishonorably
10:32AM discharged -- then you could qualify to be there. We

had to vet that through the VA.
Q. Are you a veteran?
A. I am.
Q. Okay. In what --
10:33AM A. And I was one of the ones that didn't serve that long. I joined -- enlisted two weeks after 9/11, desired to serve my country. I was working in Lonoke at the time and just felt this desire to serve.
So I was injured, fractured my hip, in
10:33AM AIT. And then it took a while to process out. So I was in less than two years.
Q. What branch?
A. Army. Army Guard.
Q. Honorable discharge?
10:33AM A. Honorable discharge.
Q. Thank you for your service.
A. I appreciate it. It was cut short, but I appreciate it.
Q. Did y'all -- strike that.
10:33AM Did the Veterans Home offer PT, ST, and OT?
A. We did. It was outsourced. We had a company.
Q. Would they -- would they -- would they do the therapy inside the homes or did they have a --
10:33AM A. They would. We had -- so the community center

that we had housed my office. It housed four veteran service officers, which was a separate. But it was housed in our facility and then all the administrative staff. And then we did have a therapy room, and we
10:34AM had a big room that we would host events, veteran or maybe senator, you know, whatever would come and use that room.

But to answer your question, yes. Had therapy. But the majority of therapy took place in
10:34AM the home. That was the design was to do as much in home as we could.

(Exhibit 1 marked for identification.)

Q. I want to show you something I've been provided. I am going to mark this as Exhibit 1, Mr. Clyburn, if
10:34AM you will take a look at it.

And I'll represent to you that there is highlighting on there that I highlighted myself, just to speed things up a little bit.

A. Okay.

10:34AM Q. Do you recognize what I've labeled as Exhibit 1?

A. I do. I mean, not maybe necessarily in this format. But obviously, this logo -- I think I was actually part of creating that and ADVA and the pictures, of course. And then basically what you've
10:35AM got highlighted, I've seen that.

Q. This was a brochure that was used by the Veterans Home?
A. Right.
Q. Okay.
10:35AM A. I couldn't remember where that was. But yes, now that you mentioned it, yeah.
Q. And there's -- on that front page, you talk about living the ADVA values, high quality service that you were to provide, outstanding service to those
10:35AM who served us, correct?
A. Yes.
Q. Accountability. Unquestionable integrity in all that you did, correct?
A. Yes.
10:35AM Q. Compassion that you would consistently demonstrate care and empathetic concern for veterans and to one another?
A. Yes.
Q. Communication to provide accurate and timely
10:35AM two-way communication?
A. Yes.
Q. And that's all -- those things is what ADVA strived to do for all your veterans, correct?
A. Yes.
10:36AM Q. Okay. Now, as part of your -- take me through

your day-to-day duties. Monday, you get to ADVA home in 2018. Just take me through your day.

A. Well, I would start with -- I get there at 8:00. I would make a round of all the facilities, all the

10:36AM homes. It was a pretty good-size campus. We sat on 27 acres. So it was just a good way to kind of just, you know, say hello, start everyone's day. I like to set the tone, go in say hello to the veterans. It was quick. It was meant to be a quick round.

10:36AM I'd go in from home one all the way -- no. Not all the homes were open. We had -- so, you know, depending on what time there may have been two or three open or four open. Make my rounds, say hello to everyone, make sure, you know, just a quick glance. I

10:37AM could see real quick if they were short-staffed, which they weren't. We were always staffed really well.

Three -- three universal workers, a nurse. Make sure my veterans were okay. Say hello. Get back to my office.

10:37AM Within 30 minutes or so, we would have what we'd call our staff meeting, morning meeting, where all the department heads would come together. We would talk about -- that's where we would communicate needs, concerns, things of that nature.

10:37AM Events that may be planned. Come back to my office

after that -- that would take anywhere from 30 minutes to an hour. It depended on the day, you know. So typically 10:30, I'm back in my office.

I typically would meet, at that point, a
10:37AM second meeting with my DON. We'd meet 15, 20 minutes just kind of discussing -- not really clinical things, but the DON/administrator really are kind of a tandem. They really manage, in my opinion, the home. So it would be like my right hand.

10:38AM So we'd meet and we'd discuss whatever needed to be discussed. We'd get close to lunchtime, I'd like to go each of the homes at lunch to kind of -- that was a good time to visit. I might sit down at the dining room table and eat with the residents.
10:38AM That was encouraged. We encouraged the staff. We cooked the meals. They would eat, but they'd like me to come in and eat with them.

And then typically I'd get back after that, and there was a lot of -- it wasn't, like,
10:38AM micromanagement. But being a State entry or VA, there was -- there was reports that had to be done, had to be sent, things like that. That's when I did that, answered emails; each day is different.

So, you know, end of my day was typically
10:39AM always troubleshooting whatever needed to be

1 troubleshooted. It didn't mean it was bad.
2 Maintenance guy may have some or something, and I'm
3 helping with that. And then I'd like to make a round
4 before I left at the end of the day. That's a typical
10:39AM 5 day. Every day changes.
6 Q. Absolutely. In 2018, did y'all have electronic
7 charting.
8 A. We did from the beginning.
9 Q. PointClickCare?
10:39AM 10 A. Yes. PCC.
11 Q. Would you review the charting?
12 A. So not charting. The only thing that the
13 administrator really is going to review would be INAs.
14 Q. Right.
10:39AM 15 A. So if there's an INA, then yes. You are going
16 to look at that.
17 Q. INA is incident and accident report?
18 A. Yes.
19 Q. Internal?
10:39AM 20 A. Yes.
21 Q. That you have to keep pursuant to the regs?
22 A. Right.
23 Q. And I appreciate you telling me that. However,
24 you wouldn't go in on a daily basis and look at the
10:40AM 25 charting on each resident, would you?

A. No. I would not.
Q. You would go in looking at the MARs, the TARs, the ADLs?
A. No. No. Because I'm not -- you know, even
10:40AM though I stated I was a CNA, CNAs don't do that either. Now, I've been long removed from that. I didn't consider myself a clinician. Maybe some administrators are. Maybe they're a former nurse and maybe they would.
10:40AM That was not in my scope. So therefore, I did not. Only thing I would do is -- and not every facility has this. The State was -- the Veterans Home was trying to get the GL aspect of PointClickCare really working so I could go in and see financial
10:40AM things.
You know, where I'm currently at, that's integrated very well. So I do spend time in PointClickCare looking at my financials. But at that time, they didn't have that really set up well.
10:41AM Q. But you would look at Point- -- so I guess I just want to make sure. You wouldn't go in on a regular basis in PointClickCare and look at the electronic charting for the residents?
A. No, I did not.
10:41AM Q. Okay. And I've seen some descriptions in some

of the documents. You and I are familiar with CNAs.
A. Right.
Q. LPNs, RNs. But I think y'all called them --
A. Universal workers.
10:41AM Q. And what was a universal worker for the Veterans Home?
A. Well, a universal worker -- because we did not -- the State Veterans Home did not elect to use the greenhouse model, if you're familiar with that.
10:41AM Q. Yes, sir.
A. That is a trademarked model. So there was another way you could do it, which was small-home model. Basically, the same thing.
Greenhouse model refers to that worker
10:41AM that we're getting ready to discuss as a Chahbaz. I don't know if you've ever heard of that. It's kind of a weird term.
We, in the regulations -- office of long-term regulations, I believe it was maybe Section
10:42AM 900, they talk about they have provision for the small-house design and it's referred to as universal worker, so that's what -- the term we used, universal worker.
And what they did was you did not have a
10:42AM housekeeping staff, you did not have dietary staff.

1 You didn't have laundry. They performed all of those
2 duties. CNA, they cooked the meals, they cleaned the
3 clothes, cleaned the rooms, cleaned the dining. And
4 the reason for that, Jeff, was it was supposed to
10:42AM 5 mimic what you would have at home. A caregiver at
6 home would do all those things.
7 Q. Traditional nursing home, you have your food
8 service. You have your laundry or --
9 A. Yeah. Housekeeping.
10:42AM 10 Q. Your CNAs and your nurses.
11 A. Right.
12 Q. Universal workers at Veterans Home, it was kind
13 of a CNA that did everything?
14 A. It was. And so when we hired a CNA, they had
10:42AM 15 to -- you know, so CNA skill set, you're going to
16 train them to do the rest.
17 Q. On a specific shift, how many CNAs were assigned
18 to each home?
19 A. Three universal workers assigned. A nurse --
10:43AM 20 now, this is what I -- I can't say what they are now,
21 Jeff, because there was fight as to whether or not we
22 could get by with one nurse per two homes. I wanted
23 one nurse per home. That's what we had.
24 But there were some financial issues with
10:43AM 25 that because that's one extra person. But in 2018, we

1 would have one nurse per home for 12 residents, three
2 universal workers. We would have had an RN supervisor
3 that floated amongst the homes. We would have had an
4 ADON and a DON would have been the clinical team.
10:43AM 5 Q. During the day shift, right?
6 A. During the day shift.
7 Q. Let's talk about the evening shift.
8 A. Evening shift, we went down a universal worker
9 to two. We still had a nurse and we still had an RN
10:44AM 10 supervisor.
11 Q. And then the night shift?
12 A. RN supervisor. Now, this is not required with a
13 Medicaid home or a state regular nursing home. The VA
14 required 24/7 RN coverage. So that's why we were
10:44AM 15 required to have a RN there around the clock. So you
16 would have that. We'd still have your nurse, and you
17 would still have two universal workers.
18 Q. Per home?
19 A. Per home.
10:44AM 20 Q. And on the night shift, you had one RN that
21 covered the whole facility?
22 A. Whole facility.
23 Q. And you staffed or scheduled two universal
24 workers per home on the night shift?
10:44AM 25 A. Yeah.

Q. Tell me the hours of each shift.
A. You know, we ran three -- we ran three shifts. It's been a while since I remember. But I feel like we were not standard. Standard is going to be 7:00 to
10:45AM 3:00. I feel like we were 2:00 to 6:00. I could -- I mean, we were running -- you know, they get there at 6:00, work till 2:00.
Q. 6:00 a.m. to 2:00 p.m.?
A. I feel like we were. I could be wrong. It's
10:45AM been a while. But eight-hour shifts.
Q. Now, the nurses that were there during the day and the evening shift -- I'm not talking about the RN supervisor, but the nurses that were assigned to each house, were those typically LNPs?
10:45AM A. They were LPNs. I did not have any RNs, to my knowledge, working the actual -- that role.
Q. Two --
A. Well, we were already required to have the RN, so it was required LPNs is what we had.
10:45AM Q. Now, was there any time, to your recollection, in 2018 where an LPN had to cover more than one home during the day or the evening shift?
A. I think it was possible. Even though it wasn't staff, I'm sure there was some point that, you know,
10:46AM there was a call-in or something of that nature. You

1 know, by standard, we could have gone one per two
2 homes. I just wanted -- like I said, I fought for
3 that. I wanted one in every home.
4 Q. The goal was to have one nurse per home. You
10:46AM 5 may have shifts where you didn't have that; is that
6 fair?
7 MS. BROYLES: Object to the form. You
8 can answer if you can.
9 A. I'm sure that there had to have been some that
10:46AM 10 we had to share one per two.
11 Q. (By Mr. Priebe:) Now, earlier, you said
12 staffing, you were -- you made sure they had
13 sufficient staffing?
14 A. Right.
10:46AM 15 Q. Did y'all -- was ADVA home subject to the Office
16 of Long-Term Care rules and regulations when it comes
17 to staffing?
18 A. The universal workers is just different. It's a
19 different thing. It is -- to be honest, it's been a
10:46AM 20 while. But you're not subject to what those typical
21 ones are. It's to meet the need -- I think it refers
22 to meet the needs.
23 Q. Right.
24 A. Right.
10:46AM 25 Q. Typical nursing homes, there is -- or there used

to be state minimum staffing requirement?
A. Right.
Q. You have to have -- it was a floor of the number of CNAs, number of nurses, depending on the number of
10:47AM residents and all that stuff?
A. Right.
Q. But with universal workers, the federal and the state regs required that y'all have sufficient staff to meet the needs of the residents?
10:47AM A. To meet the needs. Right.
Q. Would you -- would you do in-services, teach in-services?
A. I didn't teach in-services. I do now. I didn't then. I mean, so that's not always the case. But at
10:47AM State Veterans Home, I did not. I can't recall a single one that I taught.
Q. Now, would you agree with me that in 2018 that the State Veterans Home was subject to both the OBRA regs -- you are familiar with those, right?
10:48AM A. I am.
Q. The federal rules and regulations that govern long-term care?
A. Yes.
Q. Did you have a watermelon book?
10:48AM A. I did.

Q. Good reason, right?
A. Yeah.
Q. Were you also subject to the state Office of Long-Term Care rules and regulations?
10:48AM A. We were.
Q. And in addition to the federal and state regs, you also had your own policies and procedures that were in place, right?
A. Right. And we were under VA rules as well.
10:48AM Q. But your policies and procedures that y'all put into place, you expect those to be followed by your staff, right?
A. Yes. Every facility is required to have a set of policies.
10:48AM Q. Right.
A. Which could vary, you know, obviously, from home to home.
(Exhibit 2 marked for identification.)
Q. Absolutely. I am going to show you what I am
10:48AM going to label and attach as Exhibit 2 to your deposition. I will represent to you this is the provider agreement that we've been provided for the State Veterans Home that was in station from 2017 to -- I think it's still in place today.
10:48AM A. Okay.

Q. You are familiar with this, aren't you?
A. Uh-huh. I am. Yes.
Q. And I've highlighted -- again, on the front page, I've highlighted just for simplicity's sake, in
10:49AM order to be a licensed long-term care facility in the state of Arkansas you have to sign this document, right?
A. Yes.
Q. And by section F, by signing this, you agree to
10:49AM comply with all rules and regulations that govern long-term care?
A. Yes.
Q. And you expected your staff to follow those federal and state regulations, didn't you?
10:49AM A. I did. Yes.
Q. And then --
MS. BROYLES: Do you need some more water?
THE WITNESS: I will here shortly.
10:49AM MS. BROYLES: Okay.
Q. (By Mr. Priebe:) And you're also familiar with the Arkansas Residents' Rights Act, aren't you?
A. I am.
Q. And what is that?
10:49AM A. A basic set of rights that we are required to

make sure that every resident has, the right to receive their mail or right to choose their physician or their pharmacy or right to privacy. It's just, yeah, a standard set.

10:50AM Q. There's a whole -- there's a whole list of -- would you agree with me that the Arkansas Residents' Rights Act is a whole list of rights that all residents of all long-term care facilities, including the State Veterans Home, are entitled to while they're

10:50AM a resident?

A. Yes.

(Exhibit 3 marked for identification.)

Q. I am going to show you Exhibit -- attach -- what I am going to label and attach as Exhibit 3 to your

10:50AM deposition. And I'll represent to you, Mr. Clyburn, this is the Arkansas Residents' Rights Act. This is the act that sets forth the rights.

A. Okay.

Q. And let's go to the second page, if you don't

10:50AM mind.

A. Okay.

Q. In the middle of that, I've highlighted, "The facility must continue to provide other services the resident agrees to in accordance with the resident's

10:50AM care plan." You agree with that, right?

A. Yes.
Q. And that "All residents are entitled to receive adequate and appropriate health care."
A. Yes.
10:51AM Q. Let's go to the next page -- or the last page.
A. Okay.
Q. Number 21 -- or second to the last page. I'm sorry.
A. Okay.
10:51AM Q. Section 21, that "All residents have the right to be treated courteously, fairly, and with the fullest measure of dignity."
A. Absolutely. Yes.
Q. And you agree with that right?
10:51AM A. I do.
Q. And those rights are also set forth in the state regulations, aren't they?
A. Yes.
(Exhibit 4 marked for identification.)
10:51AM Q. Let me show you Exhibit Number 4.
A. Thank you.
Q. Yes, sir. And I'll represent to you, Mr. Clyburn, this is part of the Office of Long-Term Care -- oh, I butchered that. Strike that.
10:51AM Mr. Clyburn, I'll represent to you that

this Exhibit Number 4 is part of the rules and regulations set forth by the Office of Long-Term Care that govern nursing homes.
A. Yes.
10:52AM Q. You recognize those, don't you?
A. I do.
Q. And let's go to page -- down at the bottom, you'll see page 42.
MS. BROYLES: So this a excerpt of
10:52AM selected pages from it --
MR. PRIEBE: That's correct.
MS. BROYLES: That aren't in order.
Okay.
Q. (By Mr. Priebe:) You see Section 312?
10:52AM A. I do.
Q. Okay. And you would agree with me that this is the state regulations that also -- that kind of mirror the state law on residents' rights?
A. Let me look at it real quick.
10:52AM Q. Yeah. Go ahead.
A. Yes.
Q. Okay. Perfect. And you would agree with me that all residents of the Veterans Home were entitled to receive these rights?
10:53AM A. Yes.

Q. And y'all did your best to ensure that your residents did receive these rights, correct?
A. Yes.
Q. Did you -- were you responsible for putting in
10:53AM the policies and procedures?
A. I was not.
Q. Who was?
A. I referred to earlier, we had -- I don't know the exact title she was given. I'm going to say
10:53AM director of operations, but it was a different title. But it was Kathie Gately who was the one that put together the policies and procedures.
Q. And I take it y'all adopted those policies and procedures?
10:53AM A. We did adopt them. Policies and procedures are typically purchased. You know, you're going to purchase them. And then if there's -- what should happen is a modification to make sure it fits your needs, and that's what Kathie Gately did.
10:54AM I know -- I personally know she went in, she wanted to make sure that instead of it saying resident, she wanted it to say veteran. She went in and made those changes.
I can't speak to all the changes she may
10:54AM have made. But that is what we adopted was the ones

1 that she came up with.
2 Q. Well, I have been provided copies of the
3 policies and procedures that were in effect in 2018 at
4 the Veterans Home. Okay? I want to go through some
10:54AM 5 of those with you.
6 A. Okay.
7 (Exhibit 5 marked for identification.)
8 Q. I am going to hand you what I am going to label
9 as Exhibit 5 to your deposition.
10:54AM 10 A. Okay.
11 Q. And would you agree this is a quality of life --
12 a dignity policy?
13 A. Yes. I'm sorry. My vision is terrible.
14 Q. That's all right. If you can't read something,
10:54AM 15 just let me know.
16 A. No. That's fine. My contacts, I need to
17 replace them, so...
18 Q. But this policy for dignity, "Each resident
19 shall be cared for in a manner that promotes and
10:55AM 20 enhances quality of life, dignity, respect, and
21 individuality," correct?
22 A. Yes.
23 Q. And this kind of mirrors dignity regards -- kind
24 of mirrors the residents' rights, doesn't it?
10:55AM 25 A. It does.

(Exhibit 6 marked for identification.)
Q. Okay. I am going to show you what I am going to label as Exhibit 6 to your deposition.
A. I don't know if it's okay to add anything, but I
10:55AM feel like this particular copy was the original copy that we started before we opened. But I do know that when we opened, anywhere where it said "resident" was changed to "veteran."
So there could have been some other
10:55AM changes. This strictly reads "resident" throughout, and I know we went through -- the one that we operated with said "veteran" throughout. So I just wanted to state that. It could have been a little different from this.
10:56AM Q. But even if it says "veteran," it's -- the same policy still applies.
A. I would say with this one that you gave me, no question. Whether or not there was another one that was modified a little bit, don't know.
10:56AM Q. Perfect. Let me show you what I am going to label and attach as Exhibit 6 to your deposition. Do you recognize this policy?
A. Yes.
Q. Okay. Abuse and neglect. As the administrator,
10:56AM you have to be on the lookout for suspected abuse

and/or neglect, correct?
A. Yes.
Q. Okay. And this policy provides the definition of both abuse and neglect?
10:56AM A. Yes.
Q. The neglect means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness?
A. Yes.
10:56AM Q. And is that the definition that was employed -- that was employed by ADVA during 2018?
A. Yes.
Q. Okay. And again, the policy may be changed to say "veteran" versus --
10:57AM A. Yeah.
Q. But the same --
A. But that part, I would say, would have been the same, yes.
(Exhibit 7 marked for identification.)
10:57AM Q. I'm showing you what I am labeling and attaching as Exhibit 7.
A. This probably was changed because this is not going to refer to -- it's going to refer to, like, a facility instead of homes. So there could have been
10:57AM some changes to the policy that we operated with that

reflected that we were not a traditional home.
Q. But the same definitions would still apply?
A. Yes. Yes.
Q. I am going to show you Exhibit 7. Tell me if
10:57AM you recognize that, Mr. Clyburn.
A. Yes.
Q. Charting and documentation policy, "All services provided to the resident or any changes in the resident's medical or mental condition shall be
10:57AM documented in the resident's medical record"?
A. Yes.
Q. And then under the policy interpretation, "All observations, medications administered, services performed, et cetera, must be documented in the
10:58AM resident's clinical records"?
A. Yes.
Q. And this would apply to both nurses and universal workers, correct?
MS. BROYLES: Object to the form.
10:58AM Q. (By Mr. Priebe:) Let me ask you this: Would this policy apply to both nurses and universal workers?
MS. BROYLES: Object to the form.
Q. (By Mr. Priebe:) Go ahead.
10:58AM A. Nurses, yes. Universal workers are not going to

chart on certain things that nurses would. So, you know, they're going to chart mainly on ADLs, activities of daily living. Did they eat, did they have a bowel movement, things like that, they're going
10:58AM to report on that. The nurses would be -- like, a change of condition would come from a nurse reporting that.

Q. Typically -- you tell me if I'm wrong. But universal workers, or CNAs, whatever you want to call
10:58AM them, they would typically document on the ADLs?

A. Right.

Q. Activities of daily living?

A. Yes.

Q. Like what you said, bathing, bowel movements,
10:59AM incontinence, transfers, those sort of things?

A. Yes.

Q. And they will do that on the PointClickCare system?

A. Yes.

10:59AM Q. Not only would they do it, they were required to document, correct?

A. Yes. They would flag in the system if they didn't.

Q. Right.

10:59AM A. It would show up red. If they didn't document,

1 even if nothing took place, it would show up red on
2 PointClickCare so the nurse would see it. So they --
3 you know, there was a failsafe to that.
4 Q. Right. If there was a -- let's use bowel
10:59AM 5 movement.
6 A. Okay.
7 Q. If the resident had a bowel movement during
8 their shift, the universal worker would document they
9 had a bowel movement?
10:59AM 10 A. Yes.
11 Q. Whether it was continent or incontinent?
12 A. Right.
13 Q. If they didn't have a bowel movement, they would
14 still document no bowel movement?
10:59AM 15 A. They would.
16 Q. And that's what you were referring to?
17 A. Right.
18 Q. That's kind of the limit of what the CNAs or
19 universal workers were documenting?
11:00AM 20 A. Yes.
21 Q. The nurses -- on the other hand, MARS, TARs,
22 nurses notes, skilled notes --
23 A. Yes.
24 Q. -- anything along those lines?
11:00AM 25 A. Yes.

Q. Did y'all have a wound nurse as well?
A. At one -- one point, we did. I can't say for sure we had it the whole time. But we definitely did at one point, we had a wound nurse.
11:00AM Q. And what would that wound nurse do?
A. She would -- I mean, that was her primary role and function would be the TAR. You know, so she would probably do all the documentation with the TAR. Now, if we didn't have one, the nurse was picking up that.
11:00AM The TAR treatment --
Q. Administration?
A. -- administration record. She would also do daily rounds and perform the treatment on if there was a -- you know, if there was a wound, skin tear,
11:00AM whatever it was. Anything related to skin integrity, that would fall under her.
Q. And would that wound nurse also do the weekly skin assessments?
A. Yes.
11:01AM Q. And no matter if it's a nurse documenting or a universal worker documenting, you expected all that documentation to be accurate and correct?
MS. BROYLES: Object to the form.
A. Correct.
11:01AM Q. (By Mr. Priebe:) Well, let me ask you. She

1 objected. Did you expect that the universal workers
2 would document accurately?
3 A. My expectation would be that it was -- I mean,
4 any documentation, you would want it to be accurate.
11:01AM 5 So yes.
6 Q. Documentation is a communication tool, isn't it?
7 A. Yes.
8 Q. From the CNAs to the nurses, from the nurses to
9 the doctor to the DON, everybody, right?
11:01AM 10 A. Yes.
11 Q. And that's why it's important for it to be
12 accurate, so that there's appropriate and accurate
13 communication taking place?
14 MS. BROYLES: Object to the form.
11:01AM 15 Q. (By Mr. Priebe:) Would you agree?
16 A. I agree 100 percent in theory, yes. It should
17 be accurate. Obviously, you're talking humans that
18 are doing it, so -- but yes, the expectation would be
19 that it's accurate.
11:01AM 20 Q. Right. And complete?
21 A. Yes. And complete.
22 Q. Okay. You know what a care plan is, don't you?
23 A. I do.
24 Q. What is a care plan?
11:02AM 25 A. Well, it's a tool. It's basically a summarized

1 version of what care we are providing individualized
2 for that resident so that we can meet their needs.
3 Q. When a resident is first admitted into a -- or
4 strike that.
11:02AM 5 When the resident was first admitted into
6 the ADVA home in 2019, a comprehensive assessment was
7 done, wasn't it?
8 A. Yes.
9 Q. And in that assessment, it's going to -- the
11:02AM 10 staff will identify potential issue areas?
11 A. Yes.
12 Q. And those issue areas could be things like
13 dehydration, malnutrition, elopement, pressure sore
14 risk, fall risk, all kinds of things?
11:03AM 15 A. Yes.
16 Q. And the regulations would require the staff to
17 put into place a care plan that was specific to each
18 resident to address those areas of concern?
19 A. Yes. We had so many days to create what they
11:03AM 20 called an initial care plan.
21 Q. And then that care plan, in coordination with
22 the MDS and all that other stuff. But you put in to
23 take place an initial care plan, which also puts in
24 place -- which also lists the interventions that were
11:03AM 25 going to take place to address that issue?

A. Yes.
Q. And that care plan, it's reviewed as needed, but typically every quarter, right?
A. Yes.
11:03AM Q. And if a resident's condition changes --
A. It would be reviewed again and changes would take place as needed.
Q. Such as if a resident is a fall risk and the resident continues -- starts falling, maybe they hurt
11:03AM themselves, maybe they don't. But you're going to change -- you potentially change the interventions that you would do?
A. Yes. Required to create new and unique interventions, change the care plan, whereas the CNAs
11:04AM have access to that through PointClickCare. Or Point of Care is what their version is.
Q. Similar to, like, a pressure sore. If a resident is at risk of pressure sores and has pressure sores, then the interventions will need to be changed
11:04AM to address those --
A. Yes.
Q. -- treatments and that sort of thing?
A. Right.
Q. And those care plans are to be individualized to
11:04AM meet the needs as to the specific resident, correct?

A. Yes.
(Exhibit 8 marked for identification.)
Q. I want to show you Exhibit Number 8, which is the care plan policy that I've been provided.
11:04AM A. Okay.
Q. And would you agree this kind of discusses the same things you and I just talked about?
A. Yes.
Q. How it's set up, how the interventions, and how
11:04AM it's changed, right?
A. Yes.
Q. Okay.
MS. BROYLES: Oh, here's an extra one.
THE WITNESS: Could I get some water?
11:05AM MS. BROYLES: Yeah. Yeah. Let's take a quick break real quick.
MR. PRIEBE: And I'll ask, when you get up, take this off.
THE WITNESS: Okay.
11:05AM THE VIDEOGRAPHER: Time is 11:05. We're off the record.
(Recess from 11:05 a.m. to 11:14 a.m.)
THE VIDEOGRAPHER: Time is 11:14. We're now on the record.
11:14AM (Exhibit 9 marked for identification.)

1 Q. (By Mr. Priebe:) Mr. Clyburn, I'm going to show
2 you and hand you what I am going to label as Exhibit 9
3 to your deposition. Tell me if you recognize that
4 document.
11:14AM 5 A. Yes.
6 Q. And was this policy, or a very similar policy,
7 in place in 2018 at ADVA?
8 A. Yes.
9 Q. "Pressure ulcer risk assessment," and I
11:15AM 10 highlighted some areas there, "are formed when a
11 resident remains in the same position for an extended
12 period of time causing increased pressure or a
13 decrease of circulation blood flow to that area which
14 destroys tissue." You agree with that, don't you?
11:15AM 15 MS. BROYLES: I am only going to object
16 that he already said he's not a clinician.
17 So he can read you what it says, but, I
18 mean, he's not a medical expert. So...
19 Q. (By Mr. Priebe:) Anyway, you agree with that,
11:15AM 20 won't you?
21 A. Yes.
22 Q. And that the most common sites of pressure
23 ulcers is where the bone is near the surface including
24 the back of the head, around the ears, elbows,
11:15AM 25 shoulder blades, back bones, hips, knees, heels,

ankles, and toes?
A. Bony prominences.
Q. Including your tailbone?
A. Yes.
11:15AM Q. Okay. All right. And that's why, when the resident was admitted into ADVA, there would be a risk assessment that would be done on pressure ulcers, to determine what level of risk and, again, what interventions to put in place?
11:16AM A. Or whether or not they came in with a pressure ulcer because sometimes they do.
Q. That's right. And there's a -- that's why, when you're also admitted, there's a full-body assessment done to determine are there any skin tears, are there
11:16AM any reddened areas, any pressure sores?
A. Absolutely. You need to do that really well.
Q. And that's also why y'all did a weekly skin -- or wound or skin assessment to keep track of residents?
11:16AM A. Yes.
Q. To say if they came in clean, you want to make sure that they remain without pressure ulcers?
A. Yes.
Q. All right. I lost my outline. Just a second.
11:17AM Here it is. You said earlier -- you mentioned

1 incident and accident reports, which the regulations
2 require to be filled out if there is suspected abuse
3 and/or neglect, correct?
4 A. Right.
11:17AM 5 Q. And once that -- who would fill those out for
6 you?
7 A. The INA typically would be the first point of
8 contact. Not the CNA, but it would be the nurse
9 typically would be the one that initiates the INA.
11:17AM 10 Q. And there would be an investigation done,
11 correct?
12 A. There would be an investigation and an
13 intervention put in place.
14 Q. And then you would review those INAs, right?
11:17AM 15 A. I would review it. The medical director should
16 review it, should be required. Nurse and DON.
17 Typically, four people.
18 Q. And one reason why you would review it is to
19 determine whether or not it would rise to the level of
11:18AM 20 being reported to the State of Arkansas?
21 A. Yes. Primarily. Yes.
22 Q. And that would include suspected abuse and/or
23 neglect, correct?
24 A. Incident of unknown origin, of course. But any
11:18AM 25 incident, even if it was reported, you still have to

1 investigate, hey, I saw this, still need to make sure
2 that the person that saw it didn't do it. So yes,
3 you're going to -- you're going to investigate
4 thoroughly every incident to the best of your ability.
11:18AM 5 Q. And we went over the definition of neglect
6 earlier about the failure to provide goods and
7 services?
8 A. Right.
9 Q. Would you -- would you agree that failure to
11:18AM 10 properly chart on residents, that that could be
11 neglect?
12 MS. BROYLES: Object to the form.
13 Q. (By Mr. Priebe:) Go ahead.
14 A. In theory, if there's a breakdown of
11:19AM 15 communication, it could cause something down the road.
16 Absolutely.
17 Q. What about charting on residents when they're
18 not in the facility, would you consider that neglect?
19 MS. BROYLES: Object to the form.
11:19AM 20 A. Unethical.
21 Q. (By Mr. Priebe:) Improper?
22 A. Improper. Make me question what kind of
23 charting they're doing on a daily basis, of course.
24 But I mean, I -- I don't know that I can answer that
11:19AM 25 without --

Q. Sure. Would you agree that not having sufficient staff to meet the needs of residents could be considered neglect?

MS. BROYLES: Object to the form.

11:19AM A. Yes, it could be. I mean, if it was missing critical staffing, meaning I've only got one CNA taking care of twelve people or one nurse taking care of forty. Sure, in that situation.

Q. (By Mr. Priebe:) Would you agree with me that

11:20AM during your time at the Veterans Home that the staff -- that the CNAs or universal workers, whatever you want to call them, that they provided the majority of hands-on care to the veterans?

A. Yes.

11:20AM Q. I know the nurses did as well. They would do their TARS and, I mean, but --

A. The hands-on, no question. A CNA or universal worker is going to do 80 percent of hands-on in any facility.

11:20AM Q. And would you agree that they know their residents?

A. They should know them very well.

Q. They know their habits; they know -- they get to know them, right?

11:20AM A. Yes.

Q. And do you value CNAs, or universal workers?
A. Absolutely. Backbone of the facility.
Q. You value their -- their opinions?
A. Yes.
11:20AM Q. Value their communication?
A. Encourage it.
Q. I've always been told they're kind of the frontline workers.
A. They are. And in this situation, even more so.
11:21AM Q. Why is that?
A. They're doing all the work. The housekeeper is going to be -- have knowledge, in a traditional facility, because they're in the room a lot, you know. They're -- but when you take a universal worker,
11:21AM they're doing all of it, then yeah. They're doing -- they're going to know it even better than a traditional CNA.
Q. That's right. The universal worker is actually going to have more interaction and more hands-on care
11:21AM with the residents than a typical CNA?
A. Yes. Absolutely.
Q. At, like, a Barnes Health Care?
A. Yes.
Q. That's not a criticism of Barnes Health Care.
11:21AM A. It's just a different model. But yes.

Q. You talked about budgeting earlier and about the financial side.
A. Yes.
Q. Was ADVA funded by the State of Arkansas?
11:21AM A. Yes. I mean, we -- obviously, our revenue stream had multiple streams. But our budget was -- went through the budget process of the State.
You know, I don't recall that process. But it's -- it goes through legislation. And so yes,
11:22AM I would say that financially, we were under State of Arkansas.
Q. And whether it be DF&A or whatever agency, that budget had to go through the budget process --
A. Yes.
11:22AM Q. -- and had to be ultimately approved and signed off by the legislature?
A. It did.
Q. Would you have to go lobby for your budget?
A. I did not. We had a finance -- I don't know her
11:22AM title, but she was under Department of Veteran Affairs and she was the one -- like, the chief financial officer, basically. And she may have had a different title, but she was the one that lobbied for that for us. She had to go in front of legislature.
11:23AM Q. And you would have to -- in preparation for

that, you would have to prepare your budget, talk about --

A. I would have communication with her so that she could act -- you know, accurately go and say, hey, they need this or that.

11:23AM

Q. But ultimately, your hands were tied to whatever budget was passed; is that fair?

MS. BROYLES: Object to the form.

A. I definitely had to work under the constraints of the budget I was given, yes.

11:23AM

Q. (By Mr. Priebe:) Right. You couldn't exceed your budget; is that fair?

MS. BROYLES: Object to the form.

A. We -- I didn't have the kind of control that I would have in a traditional nursing home. There's procurement officers. Everything goes through a bidding process.

11:23AM

It's not like I could, at State Veterans Home, just order things maybe like I could at a traditional home. So there was a lot more people involved in those things.

11:24AM

Q. (By Mr. Priebe:) Red tape?

A. Red tape. But I just wasn't in control of those kind of things like I would be in a traditional nursing home.

11:24AM

1 Q. I want to move to talk about why you left.
2 Okay?
3 A. Okay.
4 [redacted]
11:24AM [redacted]
11:24AM [redacted]
11:25AM [redacted]
17 (Exhibit 10 marked for identification.)
18 Q. Let me show you what I am going to label and
19 attach as Exhibit 10.
11:25AM 20 A. Okay.
21 Q. Mr. Clyburn, do you recognize that?
22 A. I was on vacation when it happened, so I don't
23 know that I -- I don't know that I actually ever saw
24 this.
11:25AM 25 Q. Okay.

1 [redacted]

11:25AM [redacted]

11:26AM [redacted]

11:26AM [redacted]

11:26AM [redacted]

11:26AM [redacted]

1 [redacted]

11:27AM [redacted]

8 Q. Okay.

9 A. There was no mention of survey. We had a

11:27AM 10 pretty -- I felt like we had a good regulatory, you

11 know, compliance. We were pretty good while I was

12 there.

13 [redacted]

11:27AM [redacted]

16 Q. I mean, you're familiar with the survey process.

17 A. Uh-huh.

18 Q. Yes?

19 A. Yes. Sorry.

11:27AM 20 Q. No. I'm --

21 A. Yes.

22 Q. You are familiar with -- I take it during your

23 time as administrator -- even before ADVA, you were

24 familiar with Office of Long-Term Care. They can come

11:27AM 25 in and they can perform a survey and review records?

A. Yes.
Q. Talk with staff, and they ultimately make a decision whether or not they believe that the facility is either following or not following the federal or
11:28AM state regulations?
A. Yes. With issuing of deficiencies and --
Q. A 2567?
A. Right.
Q. And in that 2567, if they determine that there
11:28AM is a deficiency, they're going to assign it a letter --
A. Yes.
Q. -- scope and severity?
A. Yes.
11:28AM Q. Starts with A being your lowest level?
A. Which I've never seen an A, but yes.
Q. I think most they usually assigned, but on the --
A. But yes.
11:28AM Q. Theoretically, the lowest level can be an A and the highest can be an L?
A. Yes.
Q. And the I, the J, K, L, those are immediate jeopardy tags?
11:28AM A. Yes.

Q. IJ tags.
A. Immediate jeopardy.
Q. And it's my understanding, in February of 2019, after you left, that there was a significant survey
11:28AM that was done and that 2567 set forth more than one IJ tag?
A. Yes. Three IJs.
Q. Were you blamed for that survey?
A. No. No. If you read it, it was abuse and
11:29AM neglect allegation that took place after I was gone. So it wasn't related to anything prior to. It was a particular incident that took place a couple of weeks after I left. So no, I was not.
Q. That's your understanding, right?
11:29AM A. That was my understanding. And that was just reading the newspaper, so...
Q. Have you ever seen that 2567?
A. No.
(Exhibit 11 marked for identification.)
11:29AM Q. I guess I have it, but it's about 75 pages long. It's a long one.
I am going to show you what I am going to label and attach as Exhibit 11, Mr. Clyburn. Do you recognize that document?
11:29AM A. Uh-huh. I remember typing it. Yes.

1 [redacted]

11:30AM [redacted]

11:30AM [redacted]

11:30AM [redacted]

17 Q. Who was the DON?

18 A. Lisa Valencia. What year did you say?

19 Q. At the end of your tenure.

11:30AM 20 A. Lisa Valencia.

21 Q. Do you know what happened to her?

22 A. Meaning where she is now or --

23 Q. Yes.

24 A. She's in Texas. She was from Texas. I don't

11:31AM 25 know exactly what she's doing now, but...

Q. Do you have any communication with her?
A. I haven't in years. We kind of stayed in touch. She worked for Blue Cross Blue Shield afterwards. But at this point, I do not know where -- I just know
11:31AM she's in Texas.
Q. All right. You know, I'm here on behalf of the Estate of Oscar Bill Jones?
A. Yes, sir.
THE VIDEOGRAPHER: The time is 11:31.
11:31AM We're now off the record.
(Recess from 11:31 a.m. to 11:32 a.m.)
THE VIDEOGRAPHER: The time is 11:32.
We're now on the record.
Q. (By Mr. Priebe:) Mr. Clyburn, you understand
11:32AM I'm here on the behalf of the estate and family of Oscar Odell Bill Jones?
A. Yes.
Q. Do you recall Mr. Jones?
A. I did know the name when I got the call, and I
11:33AM have -- I am trying to place Mr. Jones. And I know I was pretty close to all my residents. And I don't know if I'm just five years removed, but I'm struggling to remember details about Mr. Jones, to be honest.
11:33AM Q. Do you recall any details about him?

A. I feel like I picture -- if it's okay just to feel like what I remember, that he was -- if I'm remembering correctly, maybe a white Caucasian gentleman, kind of heavyset. That's just -- that's
11:33AM just me trying to go back through my memory.
Q. That's fine. I'll represent to you that, according to the records, he was admitted on April the 21st of 2018, and was there until he was discharged on December the 27th, 2018.
11:33AM A. And I think, Jeff, that's why there's a little bit of a struggle with him, because in the spring of 2018, I had to do interim work for the other Veterans Home. I was gone for about two months around that time.
11:34AM We'd have to go back and look. I'm sure there's a record of it. But they lost their administrator. Mac Todd asked me to fill in for them, and they put Kathie Gately in my spot for a couple of months. So -- and I feel like it was around that
11:34AM time. That may be why I'm struggling a little bit to recall him, if he was admitted while I was gone.
Q. But as we sit here today, you don't have any specific recollection of any of his medical conditions, comorbidities, or anything like that?
11:34AM A. I'm just struggling to remember.

Q. That's fine. Any recollection of his family, his wife, his children?
A. I'm sorry. I just don't.
Q. No. That's fine. In the scope and course of
11:35AM your employment as the administrator, you could get on the PCC system and look at the charts, couldn't you?
A. With certain facilities, you know, there's -- there's controlled access. So you're going to have what's called a super user. I'm not sure who all it
11:35AM was. Actually, ours was the DON.
Say, basic PCC super user is going to go in and create access, checking boxes what you have access to. I cannot recall what I -- I currently have access to that right now and I feel like I probably
11:35AM had access if I wanted just to get in there and nose around, I could have.
Q. And you've been an administrator for a long time. You've probably -- you've probably looked over charts quite a bit, certain parts?
11:36AM MS. BROYLES: Object to the form. He's already said he didn't look at any of the charts in this case, doesn't remember him well enough to, and he's not a doctor.
MR. PRIEBE: Object to form is fine.
11:36AM Q. (By Mr. Priebe:) As you've been an

administrator not only at the ADVA facility but others, you've looked at ADLs before, haven't you?
A. Yes, I've looked at charts before.
(Exhibit 12 marked for identification.)
11:36AM Q. Okay. I am going to show you Exhibit Number 12, and this is the -- I'll represent to you these are the ADLs for Mr. Jones in December of 2008 -- or December of 2018. Okay?
A. Okay.
11:36AM Q. And I have highlighted -- the highlights are mine.
A. Okay.
Q. You recognize this type of document, don't you?
A. I do.
11:36AM Q. You've seen it many times, haven't you?
A. Not printed. But yes, I mean, I'm familiar with the document.
Q. On the screen, it looks similar than -- this is a printed version that you would see off these?
11:37AM A. Right.
Q. And on this first page, you see blanks and skips, don't you?
A. Yes.
Q. And these blanks and skips are times when the
11:37AM CNA would not fill out the charting, correct?

MS. BROYLES: Object to the form.
A. I'm honestly not -- I can't really say. I mean, it's missing.
Q. (By Mr. Priebe:) Someone didn't chart on that
11:37AM shift, correct?
MS. BROYLES: Object to the form.
A. It appears that.
Q. (By Mr. Priebe:) And that's not acceptable, is it?
11:37AM MS. BROYLES: Object to the form.
A. Would not be recommended.
Q. (By Mr. Priebe:) 'Cause earlier, you said that there -- it would actually be red flagged? If it wasn't filled out, it would be red flagged and the
11:37AM nurse would be told, right?
A. It shows red -- green or red on what's called Point of Care, which is the CNA's -- they're not -- they don't have PointClickCare. They have Point of Care, which is connected to it, but it's a separate --
11:38AM separate version for them, it's called.
And so it's going to show up green or red. Green if they've done it; red not. Yes, it will escalate to the nurse at some point. I can't say exactly when. But at some point, it's going to
11:38AM escalate to say, hey, missed so and so. Missed

1 whatever charting.
2 Q. Like on here, the ADL bathing offered, right?
3 A. Right.
4 Q. And if you look at this ADL charting, let's say
11:38AM 5 Saturday, December 1st, on the day shift, that first
6 box. You see that, don't you?
7 A. Yes.
8 Q. And there's a 4-2 which if you look down at the
9 log, it means that
11:38AM
13 Q. And the DS are the initials of the universal
14 worker?
11:39AM 15 A. Yes.
16 Q. And at 1453, that's the military time --
17 A. Correct.
18 Q. -- for when the universal worker actually put in
19 this documentation?
11:39AM 20 A. Yes.
21 Q. So we know that at 2:53 p.m. in the afternoon of
22 the 1st, that's when that was documented?
23 A. Correct.
24 Q. And if we look over here, you see -- let's go to
11:39AM 25 the 3rd. You see NA, Monday, October -- Monday,

1 December 3rd, NA/ -- NA, NA?
2 A. Yes.
3 Q. Which means what to you?
4 A. I'm not actually sure on that one.
11:39AM 5 Q. Either the resident may not have been there?
6 They may have been out of the facility or something
7 like that? Not available?
8 A. Could have been, yes.
9 Q. Okay. Let's go over here to the 27th. Do you
11:40AM 10 see that?
11 A. Yes.
12 Q. And you see on the day shift, there's a blank,
13 correct?
14 A. Yes.
11:40AM 15 Q. On the evening shift, RA, correct?
16 A. Yes.
17 Q. Which is resident absent maybe, right?
18 MS. BROYLES: Do you know?
19 THE WITNESS: I don't know.
11:40AM 20 Q. (By Mr. Priebe:) Okay. Let's look down at the
21 night shift. On the night shift of the 27th, what is
22 documented?
23 A. The first one, 3-2.
24 Q. Which means on the night shift of the 27th, he
11:40AM 25 was --

1 _____

_____

3 Q. And then if you go through these other ADLs,
4 there's other ADLs for bathe, bed mobility, hygiene,
11:40AM 5 toilet use, that sort of thing, right?
6 A. Yes.
7 Q. And this is part of your -- this was part of the
8 communication tool at ADVA, correct?
9 A. Yes.
11:41AM 10 Q. _____

_____

12 MS. BROYLES: Object to the form.
13 A. I don't. I'm struggling to remember him. So
14 I'll be honest, I cannot recall.
11:41AM 15 Q. (By Mr. Priebe:) I just want to make sure, as
16 we sit here, Mr. Clyburn -- and I'm not getting -- I'm
17 not being critical of you.
18 A. Right.
19 Q. If you don't remember, that is fine. But I just
11:41AM 20 want to make sure you don't remember Mr. Jones. You
21 don't know his care and treatment. You don't remember
22 anything regarding whether he had _____ or
23 not?
24 A. I don't.
11:41AM 25 Q. We would have to look at the records to make

that determination, right?
A. Yes.
Q. Okay. Mr. Clyburn, earlier, I know you were a little -- you had a bad experience in your prior
11:42AM deposition. This been okay?
A. It's been okay.
Q. Have I been professional and courteous to you?
A. You have.
Q. Any complaints about my actions today?
11:42AM A. No.
Q. And have you understood my questions today?
A. I have.
Q. And if you didn't understand my questions, did you tell me?
11:42AM A. Yes.
MR. PRIEBE: Okay. Mr. Clyburn, I do appreciate your time. Thank you for coming in. And that's all the questions I have.
THE WITNESS: Okay. Thank you.
11:42AM MS. BROYLES: I've got a couple for you.
THE WITNESS: Okay.
EeXAMINATION
BY MS. BROYLES:
Q. So, Mr. Clyburn, you were just talking about
11:42AM some of the charting here, and I think you were just

shown really page 1 of -- I'll tell you the records, there's hundreds of pages of medical records in this case.
A. Okay.
11:42AM Q. So the Exhibit 12 is made up of 11 pages regarding ADLs.
A. Okay.
Q. Do you see that?
A. Yes.
11:42AM Q. Okay. And are there multiple places in the chart for caregivers to document, to your knowledge?
A. Caregivers meaning the caregiver team?
Q. Universal workers, I guess I should say.
A. Universal workers are going to document -- like
11:43AM I said, it's called Point of Care. They're going to document strictly on -- which is really just their ADL documentation. That's where they document.
Q. So I need to ask a better question. So basically, what I'm getting at is just because it's
11:43AM not in that square doesn't mean it's not in the chart in another place? Like a for-instance, there's various LPN documentation in a narrative version of a note that's going to describe the shift.
And so information that may not be
11:43AM visible in this -- in a particular box on this chart

may be available on another page of the hundreds of records. Is that possible?

A. It is. It is possible that on the meds, ADLs, that maybe there is a nurse that had information on it

11:44AM that documented it. Yes.

Q. And again, you have not undergone any review of any of the medical records for Mr. Jones?

A. No.

Q. And I take it further that with respect to any

11:44AM of his family members that may or may not have visited, you wouldn't be able to call from memory any of those individuals?

A. I'm sorry. I don't.

11:44AM

11:45AM

11:45AM MR. PRIEBE: Form.

1 [redacted]

11:45AM 5 Q. (By Ms. Broyles:) And you talked to us about
6 your family business being in long-term care. Can you
7 just kind of talk about your experience, your feelings
8 about this particular facility, and your opinions on
9 it with respect to comparison to other facilities that
11:46AM 10 you've worked in?
11 MR. PRIEBE: Form.
12 A. Yes. Beautiful facility. I did grow up in
13 long-term care. I've spent over 30 years of my life
14 working in nursing homes. Worked in all capacity from
11:46AM 15 maintenance as a kid to dietary to housekeeping, did
16 have my CNA license for a short period. So yeah,
17 long-term care is something that I have a passion for
18 and know very well. And I've seen a lot of
19 facilities, of course.
11:46AM 20 The State Veterans Home was a beautiful
21 facility. To me, it was as good as you can get in the
22 State of Arkansas. It's a very expensive facility to
23 build. It was on a beautiful piece of property. The
24 idea of the greenhouse or small-home design with
11:47AM 25 patient-centered care being the focus, holistic care.

I mean, it was -- it was, in my opinion, a beautiful thing. Veterans, I loved it. Residents, veterans family, loved them having private rooms. They loved they could come and visit. They could eat
11:47AM with their family members at the big dining table. I mean, it just felt like home, more so than any place I had ever been. It resembled a home.

Q. (By Ms. Broyles:) Was there a long line of people -- I mean, did you have a hard time filling it,
11:47AM I guess, when you were on the front end of bringing in the census?

A. No. It -- well, it took a while, but it was designed to take a while. So we -- you know, going too fast too quick has its issues.

11:47AM So no, it was a lot of people that wanted to be in. But you still had to vet them. So you might have 300 people on the waiting list, but some may not qualify, so...

Q. Did you feel like the people that you worked
11:48AM with, ranging from the administrative side to the care team side, shared in the goal of servicing the veterans in this time period of their life?

A. It did. We made sure that they understood because we did have a few veterans that worked there,
11:48AM but most weren't. But we indoctrinated them into that

lifestyle.

We took them out to Camp Robinson. We took them to a military museum. We really wanted them to feel a sense of who they were taking care of. And
11:48AM then we spent a long time -- we trained for months on this idea of holistic care and small-home design. We hired the staff. We literally trained them for almost four months before they started taking care of residents.

11:49AM Q. What is the difference between a -- just from an administrative standpoint and in your observation, between a hospital-style setting and a long-term-care-style setting?

A. Well, I know it fairly well. My niece is vice
11:49AM president at Baptist. So she grew up long-term care and then went to the hospital side, so I've seen her side of it.

It's completely different. Nursing home sides are -- even though there are -- we're taking --
11:49AM it's health, but it's much more personal health care. There's no question.

Administrators, I mean, let's be honest. Administrator of a hospital is not going to, you know, walk outside to pick up trash. I would do that. I
11:49AM mean, it's just a different -- you can't even compare

the two. It's -- I mean, my mom was in the hospital just recently, and I just feel like in a hospital, residents or people that are there are -- I don't want to say they're numbers, but they're not there long.
11:50AM So you're not going to get close to them. It's just not designed for that. But a nursing home is the complete opposite. They're there long term.
Q. And what does the long-term part of the facility mean with respect to --I mean, you know, it's a --
11:50AM would it be fair to say more of a -- I'm not saying palliative care, per se, but more end-of-life-type facility in long-term care?
A. It varies. It's changed. Jeff probably knows this. The standard nursing home patient that we used
11:51AM to get back in the '80s and '90s is totally different than the ones you get now. You're taking care of sicker people now. It used to be your typical grandma that was back. And so it was always primarily female dominated. You know, had more women than men.
11:51AM But now, it's different. You're taking care of sometimes younger people. You're taking care of sicker people. Just different. But still, probably your average stay at a nursing home, when you say long term, it's not 20 years long term. That's
11:51AM not -- and it's not Hospice either. So, you know,

1 you're going to be, on the average, probably two to
2 five years in a nursing home, on average.
3 Q. And with respect -- Mr. Jones came into the
4 facility because his -- _____ that had
11:52AM 5 [redacted]
11:52AM _____ I mean, let's face it, still the majority
11 of the people -- it's still a small percentage of the
12 people that are that age that are going to end up in a
13 nursing home, so you are talking a smaller percentage.
14 And they're coming to a nursing home for a reason.
11:52AM 15 You know, they have things that were going
16 on that they could not -- they could no longer care
17 for themselves at home. So they're coming because
18 they're sick or, like you said, _____. They're
19 compromised to begin with in some capacity.
11:52AM 20 Q. Would it be fair to say that the _____
_____
_____
_____
_____
11:53AM 25 Q. Again, not from a clinical standpoint, but just

an admissions standpoint.
A. Yeah. Like comorbidities is what they refer to that. So, you know, you can't just say one person may have dementia but may be completely mobile and kick
11:53AM around good, good. They're still going to deteriorate, but theirs may go a little bit slower.
Somebody else comes in that's diabetic and has all these other issues and Alzheimer's or dementia, yeah. They're going to, just by the nature
11:53AM of that, probably decline quicker.
Q. The wound care nurse that we talked about earlier just briefly, was that individual an employee of the facility or was she out -- not outpatient, but outsourced, more or less?
11:53AM A. You know, I can't -- well, to answer the question, yes. She would be inhouse. And I can't remember whether or not we had outside service. Like where I am currently, we have a wound nurse, but we also contract with a wound company.
11:54AM So we have a wound specialist that comes in, meets with our wound nurse. She rounds, you know, once every couple of weeks to give an additional layer.
I can't really recall whether or not we
11:54AM had that in State Veterans Home. We may have; we may

1 not have. But, you know, I was thinking about this
2 and I didn't mention it. We did also have a nurse
3 practitioner, which most nursing homes don't. But we
4 did hire one. That was an additional layer of
11:54AM 5 clinical oversight that we did have.
6 Q. I saw in the records -- and I can't remember
7 them all by name. But a number of physicians came in
8 to the facility to see Mr. Jones. Did y'all contract
9 with any specific physicians or was that a
11:54AM 10 patient-by-patient basis?
11 A. No. I mean, you're required to have a medical
12 director, which we had a medical director. But then
13 depending on if he was -- and I can't recall. But
14 let's say VA-service connected, then he may have VA
11:55AM 15 doctors that would come and see him as well. Maybe a
16 psych doctor or some type of specialist that his VA
17 status provided for.
18 Q. So patients could be seen by physicians both in
19 facility and on a outpatient basis, depending on their
11:55AM 20 arrangement?
21 A. Yes. Pretty much all of them were seen by --
22 you know, we did have appointment, you know, at UAMS.
23 But primarily, most of them were seen at the VA.
24 Q. Let me make sure I got everything. We talked
11:56AM 25 some about Nate Todd, the director?

A. Uh-huh.
Q. Tell me about your relationship with him.
A. Like I said, I was hired by Matt Sneed and I had a really good relationship with him as well. I can't
11:56AM really recall what exact details why he left, but Nate Todd came in as his replacement. He had extensive health care management background. He had operated at Walter Reed, a big military facility. He had been CFO of the VA at one point.
11:56AM So he just came in -- and a 38-year retired colonel with excellent leadership guidance. And probably, no questions, best mentor I ever had. Really held me to a higher standard and helped me get there. So yeah, I have great things to say about
11:57AM Nate Todd.
Q. And we kind of covered this. I want to make sure we did. But on the -- kind of the hierarchy of staffing, there were the three universal workers, one nurse, and then a RN unit manager that floated around.
11:57AM And then also an assistant DON and a DON?
A. Yes. And then we did hire a nurse practitioner.
Q. And a nurse practitioner?
A. Right. And then, of course, medical director. Even though they're not on, but they would be the top
11:58AM of that in theory.

Q. You talked about -- or when we met, we talked about the outlay of the facility and the benefits of the style of the homes. Can you talk about the visibility that those permitted?

11:58AM A. Well, yeah. The home -- first of all, the home was sitting on a beautiful piece of property. It used to be a golf course. It was designed to be like a neighborhood. So, you know, you had the eight homes. You had walking trails around, flowers. Just a

11:58AM beautiful campus.

The eight individual homes, like I said, were designed to be like homes. They looked like homes. And people were always like, oh, my gosh. This is nicer than the home I live in. So just that

11:59AM by nature.

But then most people going to a hospital -- it's changed a little bit now. But when you think of long-term care, you think, I'm sharing a room. They had private rooms. They had overhead

11:59AM lifts, which I had never seen before. Instead of, you know, having to put in equipment rolling in, we tried to minimize equipment so it felt more like a home. So you'd have these overhead lifts.

They had wonderful showers in each room.

11:59AM They had -- there weren't med carts or things like

that. That would be more institutional hospitalized.
So inside each room, they had a cabinet
that was locked by the nurse was where the meds were
kept. It was just a really cool concept that I felt
12:00PM like residents just flourished. And the staff did
too. I mean, it was just a fun place to work.
Q. What about the -- you told me about
patient-directed care. Can you talk about that?
A. Yeah. Patient -- patient-centered care. It's
12:00PM what every home should strive to do. But the
small-home design really hammered that. And it just
basically means that here's the resident. They're the
center. And everyone else, we work around their
needs.
12:00PM And you'd like to think it's always that
way, but it's not, unfortunately. But there it was.
So hey, I want to -- I don't want to get up and eat at
8:00. I want to sleep until 11:00. Okay. Well, you
can sleep until 11:00. Well, I want my breakfast when
12:00PM I get up. I want my lunch at 2:00. I want my dinner
at 11:00.
I want to take my meds here and there.
They were allowed to do that. We had to come up with
a plan to work around what they wanted. That's what
12:01PM the patient-centered care is.

It still had to meet, you know, all of the regulatory guidelines. But we wanted them to have a say as much to our ability as we could.

MS. BROYLES: I think that's all the questions that I have. So we may be done.

MR. PRIEBE: No. We've got some more.

THE WITNESS: Okay. I am going to have to quit drinking water.

MR. PRIEBE: I don't have that many.

12:01PM THE WITNESS: Okay.

MR. PRIEBE: If you need to get up, just let me know.

THE WITNESS: No.

FURTHER EXAMINATION

12:01PM BY MR. PRIEBE:

Q. Jordan was asking you some questions about residents.

A. Okay.

Q. And it's my understanding, you tell me if I'm wrong, is that when a resident -- when a family would like to place a resident at ADVA --

A. Right.

Q. -- there's a process that the facility goes through, correct?

12:02PM A. Yes.

Q. And ADVA makes a determination on whether or not to accept that resident?
A. Yes.
Q. You don't have to accept every resident, do you?
12:02PM A. We don't.
Q. That's a choice that's made?
A. Right.
Q. And you make that choice determining on whether or not you feel that you can meet that resident's
12:02PM needs?
A. Absolutely. That's the terminology we used.
Q. That's right.
A. Yeah.
Q. And as those residents' needs change, y'all have
12:02PM a continual -- on a continual basis, y'all make that determination, can we meet that resident's needs, right?
A. Yes. And there's been a few times -- not a lot, but there's been a few times in my career that I've
12:02PM had to say, "We no longer can care for that resident. We're just -- we're not equipped." Maybe they get too specialized care, maybe we just can't do it.
Q. And that -- not only do you do that, but that's also mandated by the regulations, isn't it?
12:02PM A. Yes.

Q. That if you can't meet their needs, then you have to start the discharge process?
A. Yes. Thirty-day discharge process.
Q. Yes, sir. That's when you'll have a
12:03PM conversation with the family --
A. Yes.
Q. You're just not going to kick them out on the curb.
A. No. No.
12:03PM Q. Okay. But it's a choice that the facility makes on whether or not to accept the resident?
A. Upon admission, yes. And then as the care continues, yes.
Q. And did ADVA -- did it have numerous residents
12:03PM that had dementia?
A. Add first, no. We had a few. Now, after I left, and I'm just speaking from what I know, they created a dementia home after I left.
Q. That was after?
12:03PM A. But we didn't have that at the time.
Q. Any dementia home would have been done after you left --
A. After I left.
Q. -- in the December of '18?
12:03PM A. Yeah. From what I understand, they did create

one. But at my time, initially, we didn't have many with dementia. As we started filling up, we did get a few. I mean --

Q. Again, that was a choice that y'all made?

12:03PM A. Yes.

Q. Now, Ms. Jordan asked you about a wound care nurse?

A. Yes.

Q. Somebody coming in from the outside?

12:04PM A. Right.

Q. Was that person there every day?

A. A wound care nurse would have been, yes.

Q. The outside person?

A. No.

12:04PM Q. That's what I'm talking about.

A. And I can't even remember -- I hate to say it whether or not we outsourced. Like I said, we do now. But if I'm just using an example now, they come in maybe once every two weeks, sometimes once a month

12:04PM just for oversight. Kind of like a medical director would come in.

MS. BROYLES: He was saying --

Q. (By Mr. Priebe:) Fair to say that in 2018, you don't know whether or not you had an outside wound

12:04PM care?

A. I can't remember. Yeah.
Q. And that's fine.
A. Yeah.
Q. Do wound care nurses rely on charting?
12:04PM MS. BROYLES: Objection to form.
A. They are -- do primarily the charting in the TAR, absolutely.
Q. (By Mr. Priebe:) And does a wound care nurse have the availability to look at other parts of the
12:05PM chart?
MS. BROYLES: Object to the form.
A. I would think they would, yes.
Q. (By Mr. Priebe:) Do the wound care nurses have the ability to go talk with CNAs or universal workers?
12:05PM A. Yes.
Q. Do they have the ability to go talk to other nurses?
A. Yes.
Q. Communication is key, isn't it?
12:05PM A. Yes.
Q. Okay. Are doctors -- in your experience at ADVA, do doctors see every resident every day?
A. No. Well, they're not there every day. So, you know, a medical director is going to come once a
12:05PM month. Now, they are -- they review charts or they

1 have -- they may have a APN that reviews charts.
2 That's acceptable, for their APN to review charts.
3 But no, a medical director is not going to come but
4 once a month.
12:05PM 5 Q. And the physician that -- if the resident has a
6 different physician than the medical director, that
7 physician is not going to come every day either, is
8 it?
9 A. No.
12:06PM 10 Q. And the APN or the nurse practitioner, they're
11 not going to be there every day, are they?
12 A. Well, not the doctors one, no. They will
13 typically come once a week. Now, we hired --
14 MS. BROYLES: Let him finish.
12:06PM 15 A. We hired our own nurse practitioner, so we had a
16 nurse practitioner that was there every day. But the
17 one that was associated with the nurse -- I mean, the
18 doctor, is going to come once a week. The doctor is
19 going to come once a month.
12:06PM 20 Q. (By Mr. Priebe:) What was the nurse
21 practitioner's name that y'all hired?
22 A. Oh, my gosh. We had two, actually. One was a
23 retired colonel. I can't recall. I mean, it's
24 record. You can find it. But there was two different
12:06PM 25 ones.

Q. They're a state employee?
A. Yes.
Q. They were employed by ADVA?
A. The first one was an interim, was like in an
12:06PM interim role. They're hired by the state, but they're
not technically a state employee. They're contracted.
Q. But ultimately, they answer to you?
MS. BROYLES: Object to the form.
A. No. The nurse practitioner did not answer to
12:07PM me.
Q. Okay.
A. They fell kind of like under the medical
director. The medical director does not answer to me
either. They were kind of independent.
12:07PM Q. Did they have the ability to look at charts?
A. Absolutely, they do.
Q. Does the physician that comes in once a month or
once a week, do they have the ability to look at
charts?
12:07PM A. Yes.
Q. In your experience, do they rely on what's in
the chart?
MS. BROYLES: Object to the form. It's
outside the scope of his --
12:07PM MR. PRIEBE: No, it's not. I'm asking

him what he knows.
A. I mean, medical director is required, either them or the APN, to sign off on INAs. So they are required to look at the chart, no question.
12:07PM Q. (By Mr. Priebe:) But let me ask you my question again. In your experience, can a -- can a resident's physician or their nurse practitioner, do they have access to that resident's chart at the facility?
A. Yes.
12:08PM Q. And can they look at that chart?
A. Yes.
Q. And do they rely on what's in that chart?
MS. BROYLES: Object to the form. It's speculation.
12:08PM MR. PRIEBE: That's fine. Just object to the form.
A. I mean, I can't speak for them but I would think they would have to rely -- you know, if they're providing care, they need the information that they
12:08PM need, which would be in the chart.
Q. (By Mr. Priebe:) Which is why your policy is that the charting needs to be complete, accurate, and correct, right?
MS. BROYLES: Object to the form.
12:08PM A. Correct. I mean, to me, that's just kind of

self-explanatory. If you document it, it should be correct.
Q. (By Mr. Priebe:) That's just basic, isn't it?
A. Yes.
12:08PM Q. Because when that nurse or that CNA, they document, they're not just documenting for themselves. They're also documenting for that patient so the patient's other health care providers knows what's going on, right?
12:08PM A. Yes.
Q. Now, I believe Ms. Jordan asked if you -- if y'all gave good care? Do you recall those questions?
A. I don't know if she said it, but, I mean, I'll say it. I thought we gave excellent care. I mean, I
12:09PM stand behind the care we gave. Absolutely.
Q. Let me show you Exhibit Number 12 again. Do you consider blanks and skips in ADLs to be good care?
MS. BROYLES: Object to the form.
A. I think it's -- it's a small piece of a big
12:09PM puzzle. If I could give an analogy, my wife will find the one thing I did wrong and not look at the 100 I did correct.
So I think this is just two -- it is one piece, no question. And this one piece, obviously,
12:09PM has some holes. But it is a small piece.

Q. (By Mr. Priebe:) Is that acceptable to you?
A. I would not like to see any skips.
Q. Why not?
A. Well, to me, I would prefer it to be 100 percent
12:10PM completed. And even though there may be a reason for
this skip and it may be documented somewhere else, it
could be. I'm not saying it's not.
As she stated, maybe the LPN, there was a
situation that caused the LPN to want to make maybe a
12:10PM detailed progress note. I can't say 'cause, I mean,
I'm just --
Q. You're speculating?
A. I'm speculating. I personally would prefer for
it to be filled out.
12:10PM Q. And you taught your employees to fill it out
completely, didn't you?
MS. BROYLES: Object to the form.
A. I didn't, no. Because that would be clinical
direction. I'm not. I did not teach staff how to do
12:10PM ADLs or do charting for ADL.
Q. (By Mr. Priebe:) Would you expect the DON to?
A. That would have been under her scope, yes.
Q. Would you expect the DON to teach the staff to
fill out all of the ADLs?
12:11PM MS. BROYLES: Object to the form.

A. I think it would have been under her scope of practice. So therefore, the expectation for me would have been that they were trained to do so. Yes.
Q. (By Mr. Priebe:) Is it acceptable to chart on
12:11PM Mr. Jones when he's not in the facility?
MS. BROYLES: Object to the form.
A. It is definitely an error.
Q. (By Mr. Priebe:) Is it acceptable?
MS. BROYLES: Object to the form.
12:11PM A. It -- it is incomplete charting. Therefore, you know, like I said, my expectation would be that it's done accurate 100 percent. So in my opinion, yes, it should have been charted. So it wouldn't be acceptable.
12:11PM Q. That's not accurate, is it?
A. It would have some discrepancies.
MS. BROYLES: Object to the form.
Q. (By Mr. Priebe:) Yes.
A. To our knowledge, yes. We don't know what else
12:11PM was charted on at that time.
Q. Absolutely. That's why we can look at other parts of the chart, right?
A. Yeah. And maybe there was.
Q. Yeah. And maybe it wasn't, correct?
12:11PM A. I don't know.

Q. You just don't know?
A. I truly don't know.
Q. The point is, of these questions, Mr. Clyburn -- and I'm not being critical of you because you're not
12:12PM the one filling out these charts.
A. Right.
Q. But the whole point is that the care that's provided to a resident should be documented, should it not?
12:12PM A. Yes.
Q. And your nurses and CNAs were taught -- strike that.
We'll start with this. Your nurses were taught that if it's not documented, the standard is it
12:12PM wasn't done, correct?
MS. BROYLES: Object to the form on the pronouns. They are not his nurses. He's already said that they were not within his purview, per se, with respect to the
12:12PM clinical things they provided. So if you want to say something more appropriate, that's fine. But that's -- I'm objecting to that question.
Q. (By Mr. Priebe:) Go ahead.
12:12PM A. Could you repeat the question?

Q. Yeah. You've heard the phrase --
A. I've heard the phrase, yes.
Q. -- not documented, not done?
MS. BROYLES: Object to the form of the
12:12PM question.
Q. (By Mr. Priebe:) Have you heard that phrase before?
A. I've heard the phrase. Of course. I mean, if you've been in health care, you've heard the phrase.
12:12PM Yes.
Q. Yeah. Because it's taught in nursing school, isn't it?
MS. BROYLES: Object to the form.
A. I wasn't in nursing school, but I've heard the
12:13PM phrase, yes. I've heard the phrase.
Q. (By Mr. Jackson:) You teach in-services now, don't you?
A. I don't teach nursing in-services.
Q. Do you teach CNA in-services?
12:13PM A. I don't -- a typical in-service I might give is abuse and neglect. You know, what they should report, what they shouldn't report. I might also do a life safety. I might do a active shooter.
I do not teach clinic. I'm not a
12:13PM clinician, so I wouldn't teach anything related to

what they should or shouldn't chart or how they should chart it. That's not something I've ever done.
Q. Okay. But the point is that the policy of ADVA was to have complete and accurate charting on all its
12:13PM residents?
A. Yes.
Q. And that policy is in place in order to protect the residents, isn't it?
A. Yes.
12:13PM Q. And ensure that the residents got good care?
A. Yes.
MR. PRIEBE: Thank you, Mr. Clyburn.
THE WITNESS: I appreciate it.
MR. PRIEBE: Any more questions?
12:14PM MS. BROYLES: Just one in particular.
FURTHER EXAMINATION
BY MS. BROYLES:
Q. We talked a bit earlier about the differences between a nursing home and a hospital.
12:14PM A. Yes.
Q. One of those is that, generally speaking, a doctor is not rounding like in the hospital setting on a daily basis?
A. That is correct.
12:14PM Q. That's not the expectation in this type of

1 setting; is that fair to say?
2 A. Well, it's not necessarily -- it's just a --
3 it's a requirement. The requirement is once a month.
4 Therefore, it's -- and that's what every facility is
12:14PM 5 going to do, is once month with the APN rounding once
6 a week. That is standard protocol in a nursing home.
7 Q. And if any additional needs are -- become
8 necessary, any nurse or whomever can call the RN on
9 call, the APN, anyone who may need to come into the
12:15PM 10 facility to provide the care?
11 A. Right. We have assessment rules. And if
12 there -- if it meets a certain situation, then if they
13 needed something, let's say the doctor is rounding
14 once a month, he would be sent out. They'd be sent to
12:15PM 15 the hospital to be seen by a doctor at the hospital.
16 MS. BROYLES: That's all the questions
17 I've got. Thank you.
18 FURTHER EXAMINATION
19 BY MR. PRIEBE:
12:15PM 20 Q. Your staff can call a doctor at any time about
21 any resident, couldn't they?
22 A. They -- they can call the hospital. Say they're
23 going to call a doctor, they would call the case
24 manager who will set up an appointment, yes.
12:15PM 25 Q. But in -- but in regard to a specific resident,

if you needed something addressed by that resident's doctor, your staff could call the doctor at any time, couldn't they?
A. Our medical director if that was their doctor. They're not required to have a doctor.
Q. Absolutely.
A. Right. Most of them do, are going to chose to have that one. I can't speak for him. But the majority of them, the medical director is their physician.
And yes, we -- they have to be available for us. And if they're -- sometimes they're gone on vacation so their APN may answer. But for the most part, they're supposed to be available to take calls.
Q. The whole point is is that if your staff need an order changed --
A. Absolutely, they can call.
Q. -- at any time?
A. At any time.
Q. 24 hours a day?
A. 24 hours a day.
Q. That's right?
A. Yeah.
Q. If they need it?
A. If they need it, yeah.

MR. PRIEBE: Thank you, Mr. Clyburn.

MS. BROYLES: Nothing.

THE VIDEOGRAPHER: This concludes the deposition of Lindsey Clyburn. The time is 12:16. We are now off the record.

12:16PM

(The deposition was concluded at 12:16 p.m.)

* * * * *

REPORTER CERTIFICATION

I, TAMMIE L. FOREMAN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 07/27/2023, the witness, LINDSEY CLYBURN, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

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6) that signature of the witness is waived.

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ACTIVITIES AT OUR HOME

Our Activity Director and Universal Workers lead a variety of activities throughout the day. Our activities include bingo, cookouts, musical entertainment, fishing, special performances, exercises, inspirational/Church Services, seasonal activities, poker games and more. Whatever your interest, you'll find lots of activities to keep you entertained throughout the day.

ADVA
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

We live the **ADVA** Values:

High Quality Service: Provide outstanding service to those who served us.

Accountability: Unquestionable integrity in all we do.

Compassion: Consistently demonstrate care and empathetic concern for Veterans and one another.

Communication: Provide accurate and timely "two-way" communication with our customers, customers, the public and key stakeholders, while fostering a culture of cooperation and collaboration with counties, other agencies, Veteran service organizations and businesses to connect Veterans to resources and promote the value of Veterans to Arkansas.

2401 John Ashley Drive
North Little Rock, Arkansas 72114-1825
(501) 683-2382
(501) 682-0357 (Fax)

Welcome Home

ADVA Docs. p. 1813

VETERANS!

ADVA
ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

Arkansas State Veterans Home at North Little Rock

EXHIBIT 4
WIT: Clayborn
DATE: 07.27.23
Tammie L. Foreman

OUR SERVICES

Our bottom line is the comfort and care of our Veterans and their family. Our staff to resident ratio exceeds the Office of Long Term Care's standards. We also provide 24/7 RN coverage, not provided by most skilled nursing facilities. We are committed to providing a warm, caring home for your loved one!

* Medical Director
* RN, LPN and Universal Worker skilled nursing around the clock in our "home-style" setting
* Physical, Occupational and speech therapy
* Social Worker
* Transportation available
* DirecTV
* Personal laundry done at no additional charge
* Designated smoking area
* Active Resident and Family Councils

MEET YOUR NEW HOME

Arkansas State Veterans Home at North Little Rock (ASVH-NLR) is a 96 bed skilled nursing facility. Utilizing the "home-style" concept of service delivery, the ASVH-NLR provides a comfortable and supportive atmosphere for our Veterans. We encourage family/friend visits and participation in activities held at the facility. There is also a Community Building for community meetings and other activities held at ASVH-NLR.

CRITERIA FOR ADMISSION

* Honorable discharge
* Have a medical need for skilled-nursing home placement & care
* Must be a Veteran, Veteran's Spouse or Gold Star Parent to apply for admission.

All veterans admitted to the Arkansas State Veterans Home in North Little Rock will be given a "big warm welcome" to their new home and a Community Binder with all information about our facility and its activities.

We also have multiple payment sources, one of which will work for you! For more information contact the Social Worker at (501) 682-4017.

ADVA Docs. p. 1814

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[redacted]

20-10-1204. Residents' rights.

(a) All long-term care facilities shall adopt and make public a statement of the rights and responsibilities of the residents of the facilities and shall treat the residents in accordance with the provisions of that statement. The statement shall assure each resident of the following:

(1) The right to be fully informed in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility;

(2) The right to examine at any time the results which the facility shall post of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility;

(3) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents;

(4)(A) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee but only to the extent of the funds held in trust by the licensee for the resident.

(B) The facility may not require a resident to deposit personal funds with the facility.

(C) However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

(i) The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles or regulations established by the Office of Long-Term Care, of each resident's personal funds entrusted to the facility on the resident's behalf;

(ii) The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than a resident;

(iii) An annual accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident; and

(iv) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act;

(D) An annual accounting of any transactions made on behalf of the resident shall be furnished to the resident or to the person responsible for the resident;

(5)(A) The right to freedom of choice in selecting a personal physician, to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act, and to obtain information about and to participate in community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record.

EXHIBIT 2
WIT: Clyburn
DATE: 07-29-23
Tammie L. Foreman

(B)(i) If a resident chooses to use a community pharmacy and if the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents.

(ii) If a resident chooses to use a community unit-dose system, and if the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides service delivery and stocks the drugs normally used by the long-term care residents;

(6) The right to be adequately informed of his or her medical condition and proposed treatment unless the resident is determined to be unable to provide informed consent under Arkansas law, the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being, and except with respect to a resident adjudged incompetent the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by the resident's physician and to know the consequences of such actions;

(7)(A) The right to refuse medication or treatment and to be informed of the consequences of such decisions unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record.

(B) The facility must continue to provide other services the resident agrees to in accordance with the resident's care plan;

(8) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services, if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency;

(9) The right to have privacy in treatment and in caring for personal needs, to close room doors and to have facility personnel knock before entering the room except in the case of an emergency or unless medically contraindicated, and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

(10) The right to receive notice before the room of the resident in the facility is changed;

(11)(A) The right to be informed of the bed reservation policy for a hospitalization.

(B)(i) The facility shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to thirty (30) days provided the facility receives reimbursement.

(ii) Any resident who is a recipient of assistance under Title XIX of the Social Security Act or the resident's designee or legal representative shall be informed by the licensee that his or her bed for which there is Title XIX reimbursement available will be reserved up to five (5) days but that the bed will not be reserved if it is medically determined by a physician that the resident will not need it or will not be able to return to the facility or if the agency determines that the facility's occupancy rate ensures the availability of a bed for the resident.

(C) Notice shall be provided within twenty-four (24) hours of hospitalization;

(12)(A) The right to be transferred or discharged only for medical reasons or for the welfare of other residents and the right to be given reasonable advance notice of no less than thirty (30) days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the facility or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act.

(B) For nonpayment of a bill for care received, the resident shall be given thirty (30) days advance notice.

(C)(i) A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes.

(ii) Admission to a facility operated by a licensee may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable.

(iii) Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver of a resident's rights as established herein is subject to disciplinary action as provided in subdivision (a)(16)(A)(ii) of this section.

(D) The resident and the family or representative of the resident shall be consulted in choosing another facility;

(13) For residents of Medicaid-certified or Medicare-certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. Part 488.12;

(14)(A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B)(i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

(15)(A) The right to retain and use personal clothing and possessions as space permits unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician.

(B) If clothing is provided to the resident by the licensee, it shall be of reasonable fit;

(16)(A)(i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours provided that such visitors are not disruptive or dangerous, and

overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

(ii) Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident. Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident.

(B) The resident has the right to deny or withdraw consent to access at any time by any entity or individual.

(C) Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

(i) Any representative of the federal or state government, including, but not limited to, representatives of the Department of Human Services, any law enforcement officer, any ombudsman, and the resident's individual physician; and

(ii) Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident;

(17)(A)(i) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, freedom from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(ii) The facility must allow any ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(B) The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents;

(18) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents;

(19) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents;

(20) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decisions which will not be infringed upon and the right to encouragement and assistance from the staff of the facility in the exercise of these rights; and

(21) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those

required to be offered on an as-needed basis.

(b)(1)(A) The licensee for each long-term care facility shall orally inform the resident of the resident's rights and provide a copy of the statement required by subdivision (a)(20) of this section to each resident or the resident's legal representative at or before the resident's admission to a facility.

(B) The written statement of rights must include a statement that a resident may file a complaint with the office or the ombudsman.

(C) The statement must be in boldface type and shall include the name, address, and telephone numbers of the ombudsman and adult abuse registry where complaints may be lodged.

(2)(A) The licensee shall provide a copy of the residents' rights to each staff member of the facility.

(B) Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section.

(c)(1) Any violation of the residents' rights set forth in this section may constitute grounds for action by the office.

(2) In order to determine whether the licensee is adequately protecting residents' rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards and consultation with the ombudsman in the area in which the long-term care facility is located.

(d) Any person who submits or reports a complaint concerning a suspected violation of the residents' rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from civil liability thereof unless that person has acted in bad faith or with malicious purpose or if the court finds that there was a complete absence of a justiciable issue of either law or fact.

History. Acts 1999, No. 1181, § 3.

AUTHORITY

The following rules and regulations for the licensure of residential long term care facilities are duly adopted and promulgated by the Arkansas Department of Human Services, Division of Medical Services, Office of Long Term Care, pursuant to the authority expressly conferred by the laws of the State of Arkansas in Arkansas Code Annotated § 20-76-201(b)(3), § 20-10-203 and § 20-10-224.

If any provisions of these rules and regulations, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions hereof are declared severable.

"The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and operated, managed and delivers services without regard to age, religion, disability, political affiliation, veteran status, sex, race, color or national origin."

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R. 08/01/07

EXHIBIT A
WIT: CLY Burton
DATE: 07-27-23
Tammie L. Foreman

3. Pets may be permitted in residential long term care facilities if sanitary conditions are maintained. Current records of inoculations and license, as required by local ordinance, must be maintained on file in the facility. Pets must not be allowed in food preparation, storage or serving areas.

4. A quiet atmosphere shall be maintained. Disturbances created within the facility will not be permitted.

5. Adult male and female residents must not have adjoining rooms which do not have full floor to ceiling partitions and closable solid core doors. Adult male and female residents must not be housed in the same room (except husband and wife of the same marriage, or consenting adults who request, and agree in writing executed by the resident, guardian or responsible party as appropriate and maintained by the facility, to share a room).

6. Residents may not perform duties in lieu of direct care staff, but may be employed by the facility in other capacities.

7. Residents shall not be left in charge of the facility.

8. The facility will keep a written record of life insurance policies purchased for the residents when the facility is named as a beneficiary.

9. There must be at least one telephone which is accessible at all times in case of emergency and must be able to access either "911" or "0" without use of coins. Residents must have access to a public telephone at a convenient location within the facility.

308 PERSONNEL ADMINISTRATION

308.1 Each facility must have written employment and personnel policies and procedures which will include, as a minimum, the following:

a. All employees caring for residents must be at least 18 years of age;

b. No person with a communicable disease or infected skin lesion that poses a direct threat to the health or safety of other individuals in the workplace shall be permitted to work in the facility;

c. No person who has been convicted of abusing, neglecting or mistreating individuals may be employed in the facility;

d. All employees must have a skin test for tuberculosis within the first two (2) weeks of employment and annually thereafter. Skin tests for tuberculosis are to be administered and read by the local Health Department or personal physician. The results of the test will be listed in the employee's personnel record;

e. A copy of all personnel policies and procedures must be available to all facility personnel and to OLTC personnel and any other Departmental entities having legal access authority;

f. Policies and procedures must be developed for personnel about fire safety standards;

g. Policies and procedures must be developed for smoking in the facility.

308.2 Sufficient staff must be present at all times to meet the needs of the residents, including preparation of nutritional meals, cleaning of the facility and provision of supportive services. Staffing requirements will be based on current census rather than licensed capacity. Required staff/resident ratios based on current resident census are for large and small facilities:

# Residents	Direct Care Staff Required Per Shift		
	Day	Evening	Night
1-16	1	1	1
17-32	2	1	1
33-49	2	2	2
50-66	3	2	2
67-83	4	2	2
84-above	5	3	2

a. Other staff requirements that affect small facilities (16 or fewer beds) are as follows:

a. Each staff person on duty may be counted as direct care staff even if they are currently involved in administrative, housekeeping or dietary activities;

b. The night person may be asleep in the facility.

308.2.2 Other staff requirements that affect large facilities (over 16 beds) are as follows:

a. For large facilities, the staffing table shown above shall apply to direct care staff only and does not include administrative, housekeeping or dietary staff.

b. The facility administrator shall not be scheduled as direct care staff for purposes of meeting minimum staffing requirements during normal business hours as referenced in Section 305.1.

c. In large facilities with 17 or more residents, staff involved in food and dietary services shall not be permitted to perform non-food or non-dietary services during the same shift.

d. In a multi-building facility, at least one direct care staff person must be on duty and awake during all hours. A relief direct care

verify that the balance being transferred in each resident fund account is true and accurate as of the date of transfer;

311.5.a.4 At change of ownership, the new owner must assume responsibility for account balances turned over at the change of ownership together with responsibility for all requirements of this Section, including holding of resident's funds in trust.

311.6 The facility must provide for inventory records and security of all monies, property or things of value which the resident has voluntarily authorized, in writing, the facility to hold in custody or exercise control over at the time of admission or any time thereafter.

311.7 If a legal guardian or payee fails to pay a residential care facility's charges or provide for the resident's personal needs, the facility shall notify the Department of Human Services, Division of Aging and Adult Services, Adult Protective Services.

312 RESIDENT RIGHTS

312.1 Policies and procedures required by the facility to assure resident's rights are as follows:

a The facility must have written policies and procedures defining the rights and responsibilities of residents. The policies shall present a clear statement defining treatment of residents by all who provide care or services to residents;

b Any policies of resident conduct which the facility has finalized and by which it expects residents to abide must be included in the statement of rights and responsibilities which the resident signs (refer to Section 309.2.c). These facility policies must be approved by the Office of Long Term Care;

c A copy of the synopsis of the Resident's Bill of Rights must be prominently displayed within the facility;

d Each resident admitted to the facility is to be fully informed of these rights and of all rules and regulations governing resident conduct and responsibilities. The facility is to communicate these expectations/rights both orally and in writing during the period of not more than two weeks before or five working days after admission. The facility must obtain a signed Resident Rights Statement from the resident and this statement must be maintained in the resident's record. A legal guardian or other person responsible for the resident may also sign. For purposes of this provision, the Resident Rights Statement shall be deemed appropriately signed by the resident if:

1. Resident capable of understanding: Signed by the resident before one witness and the witness also signs.

2. Resident incapable because of illness: The attending physician documents the specific impairment that prevents the resident from understanding or signing. The resident's responsible party and two witnesses sign.

3. Resident mentally incapacitated: The resident's legal guardian is read and explained the Rights. The legal guardian then signs the Resident Rights Statement before one witness, who also signs the statement.

4. Resident capable of understanding but acknowledge with other mark (X): Mark is made by the resident in front of two witnesses who know the resident and also sign.

e. Effective means shall be utilized to inform non-English speaking persons or persons with hearing or visual impairments of the Resident Rights;

f. Staff members will be provided a copy of the Resident Rights and must fully understand all rights. Staff must complete a written acknowledgement stating they have received, read and understand the Resident Rights. A copy of the signed acknowledgement shall be placed in the employee's personnel file;

g. The facility's procedures regarding resident's rights and responsibilities will be formally included in ongoing staff development programs for all personnel, including new employees.

312.2 The resident's right to know of services available shall meet the following conditions:

a. Each resident admitted to the facility will be fully informed, by the time of admission and as need arises during residency, of services available in the facility, including any charges for services;

b. Residents have the right to choose, at their own expense, a personal physician and pharmacist.

312.3 The resident's right concerning transfers and discharges:

a. The facility must develop and implement transfer and discharge policies and procedures as specified in Section 309.3;

b. The facility must give the resident reasonable written notice of changes in room or roommate when the change is not requested by the resident.

312.4 The resident's right to constitutional and legal rights are as follows:

a. Each resident admitted to the facility will be encouraged and assisted to exercise all constitutional and legal rights as a resident and a citizen including the right to vote. The facility shall make reasonable accommodations to ensure free exercise of these rights;

b. Residents may voice grievances or recommend changes in policies or services to facility staff or to outside representatives of their choice, free from restraint, coercion, discrimination, or reprisal;

c. Residents shall have the right to free exercise of religion including the right to rely on spiritual means for treatment.

312.5 Resident complaints or suggestions made to the facility's staff must be responded to within ten (10) days. Documentation of such response will be maintained by the facility administrator or his/her designee.

312.6 A representative resident council shall be established in each facility. The resident council's duties shall include:

a. Review of policies and procedures required for implementation of resident's rights;

b. Recommendation of changes or additions in the facility's policies and procedures;

c. Representation of residents in their complaints to the Office of Long Term Care or any other person or agency;

d. Identification of problems and orderly resolution of same.

a. The facility administrator must designate a staff coordinator and provide suitable accommodations within the facility for the resident council. The staff coordinator shall assist the council in scheduling regular meetings and preparing written reports of meetings for dissemination to residents of the facility. The staff coordinator may be excluded from any meeting of the council.

312.7 The facility shall inform resident's families of the right to establish a family council within the facility. The establishment of such council shall be encouraged by the facility. This family council shall have the same duties and responsibilities as the resident council and shall be assisted by the staff coordinator designated to assist the resident council.

312.8 The resident has the right to be free from abuse and neglect. Residents shall be free from mental and physical abuse, and from chemical and physical restraints. Restraints must not be used on any resident by staff of a residential care facility except during an emergency and only until appropriate action can be taken by persons outside the facility. The facility must seek assistance immediately. Additional clarifications of this provision are as follows:

a. Mental abuse includes humiliation, harassment and threats of punishment or deprivation;

b. Physical abuse refers to corporal punishment or the use of restraints as a punishment;

c. Drugs must not be used to limit, control or alter resident behavior for the convenience of staff;

d. Physical restraints include the use of devices designed or intended to limit the resident's total mobility. Full length bed rails are considered restraints and may not be used. The gates of facilities enclosed by a fence may not be locked to restrict the movement of residents.

a. Any abuse, neglect or exploitation must be reported as specified in Section 310.7.

312.9 Each resident is assured confidential treatment of all information contained in his/her records. The resident's written consent or legal appointee's written consent is required for the release of information to persons not otherwise entitled to receive it. The records shall be available to the Department as needed.

312.10 Each resident will be treated with consideration, respect and full recognition of dignity and individuality. Staff shall display respect and courtesy to residents when speaking with, caring for, or talking about residents, and shall seek to engage in the constant affirmation of resident individuality and dignity as a human being.

312.10.1 Each resident has the right to receive a response from a facility operator to any request of the resident within a reasonable period of time.

312.11 Each resident shall have the right to humane care and an environment which shall include but is not limited to:

a. The right to nutritional diets that follow the recommended dietary allowance set by the Food and Nutrition Board, including the right to have a diet which is consistent with any religious or health-related restrictions;

b. The right to a safe and sanitary living environment.

312.12 The resident's right to have control and receipt of health-related services shall include the following:

a. Each resident shall have the right to retain the services of his/her own personal physician;

b. Each resident shall have the right to select the pharmacy or pharmacist of his/her choice;

c. Each resident shall have the right to confidentiality and privacy concerning his/her medical conditions and treatment;

d. Each resident shall have the right to select the personal care or home health provider of his/her choice and the facility shall assure that all such providers selected by the resident have access for the purpose of delivering necessary services.

312.13 The resident shall have freedom of religion that includes the right to practice the religion of his/her choice or abstain from religious practices. Residents shall also be free from the imposition of the religious practice of others.

312.14 Each resident shall have the right to accept or refuse employment or to perform services for the facility. The resident has the right to accept employment and perform services for the facility if the following conditions are met:

a. The facility has documented its need for and the resident's desire to perform the work;

b. Compensation for services is at or above prevailing rates;

c. The resident agrees to the work arrangement;

Quality of Life – Dignity

Highlights	Policy Statement
	Each resident shall be cared for in a manner that promotes and enhances quality of life, dignity, respect and individuality.

Policy Interpretation and Implementation

Dignity and Respect

1. Residents shall be treated with dignity and respect at all times.

"Treated with Dignity"

2. "Treated with dignity" means the resident will be assisted in maintaining and enhancing his or her self-esteem and self-worth.

Grooming Preferences

3. Residents shall be groomed as they wish to be groomed (hair styles, nails, facial hair, etc.).

Clothing Preferences

4. Residents shall be encouraged and assisted to dress in their own clothes rather than in hospital gowns.

Choice of Activities

5. Residents shall be assisted in attending the activities of their choice, including activities outside the facility.

Respect of Private Space and Property

6. Residents' private space and property shall be respected at all times.
   a. Staff will knock and request permission before entering residents' rooms.
   b. Staff will not handle or move a resident's personal belongings (including radios and televisions) without the resident's permission.

Respectfully Addressing the Resident

7. Staff shall speak respectfully to residents at all times, including addressing the resident by his or her name of choice and not "labeling" or referring to the resident by his or her room number, diagnosis, or care needs.

Keeping Resident Informed and Oriented to Environment

8. Staff shall keep the resident informed and oriented to their environment. Procedures shall be explained before they are performed and residents will be told in advance if they are going to be taken out of their usual or familiar surroundings.

Confidentiality of Clinical Information

9. Staff shall maintain an environment in which confidential clinical information is protected, for example:
   a. Verbal staff-to-staff communication (e.g., change of shift reports) shall be conducted outside the hearing range of residents and the public.
   b. Signs indicating the resident's clinical status or care needs shall not be openly posted in the resident's room unless specifically requested by the resident or family member. Discreet posting of important clinical information for safety reasons is permissible (e.g., taped to the inside of the closet door).
   c. In the interest of public health, posting the resident's isolation status or Transmission-Based Precautions is permissible as long as the type of infection remains confidential.
   d. The display of the resident's name on the door or the presence of memorabilia among the resident's belongings is not considered a violation of the resident's privacy or dignity.

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EXHIBIT
WIT: CLYBURN
DATE: 07-27-23
Tammie L. Foreman

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Bodily Privacy During Care and Treatment	10. Staff shall promote, maintain and protect resident privacy, including bodily privacy during assistance with personal care and during treatment procedures.
Promotion of Resident Dignity	11. Demeaning practices and standards of care that compromise dignity are prohibited. Staff shall promote dignity and assist residents as needed by: a. Helping the resident to keep urinary catheter bags covered; b. Promptly responding to the resident's request for toileting assistance; and c. Allowing residents unrestricted access to common areas open to the public, unless this poses a safety risk for the resident.
Treatment of Cognitively Impaired Residents	12. Staff shall treat cognitively impaired residents with dignity and sensitivity; for example: a. Addressing the underlying motives or root causes for behavior; and b. Not challenging or contradicting the resident's beliefs or statements.

References	
OBRA Regulatory Reference Numbers	483.15; 483.15(a); 483.15(b)
Survey Tag Numbers	F240; F241; F242
Related Documents	
Policy Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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Abuse and Neglect – Clinical Protocol

Assessment and Recognition

1. The nurse will assess the individual and document related findings. Assessment data will include:

   a. Injury assessment (bleeding, bruising deformity, swelling etc.)
   b. All current medications, especially anticoagulants, NSAIDs, salicylate
   c. Other platelet inhibitors
   d. Vital signs
   e. Behavior over last 24 hours (bruise could be related to movement disorder or aggressive behavior)
   f. History of any tendency towards bruising
   g. All active diagnoses
   h. Any recent labs

2. The nurse will report findings to the physician. As needed, the physician will assess the resident to verify or clarify such findings, especially if the cause or source of the problem is unclear.
3. As part of the initial assessment, the physician will help identify individuals who have a history of being abused or neglected, or those who might have been abused or neglected; for example, individuals admitted from home or the hospital with multiple pressure ulcers and severe under-nutrition.

   a. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish."
   b. "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

4. The physician and staff will help identify risk factors for abuse within the facility; for example, significant numbers of residents with unmanaged problematic behavior, significant injuries in physically dependent individuals, problematic family issues, or problems related to staff knowledge, skill, or performance that might affect how the residents are being cared for.
5. Along with other staff and management, the Medical Director will help identify situations that might constitute or could be construed as neglect; for example, inadequate prevention or care of pressure ulcers, inattention to advance directives and inquiry into resident wishes, inappropriate management of problematic behavior, recurrent failure to provide incontinence care, failure to report or evaluate significant weight loss, repeated failure to check for correct application of restraints, etc.

   a. As needed, the physician will evaluate the resident or have them sent for evaluation; for example, to rule out sexual assault or fracture, or to assess the location and potential causes of bruises.

EXHIBIT 6
WIT: CLY
DATE: 07-27-23
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Cause Identification

1. The staff, with the physician's input (as needed), will investigate alleged occurrences

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of abuse and neglect to clarify what happened and identify possible causes.

2. The Attending Physician and/or Medical Director will be involved when medical issues arise; for example, assessing whether a medical condition or medication side effect could account for new bruises, identifying possible explanations for a fracture, or assessing cognition of an individual who alleges they were assaulted.
3. The Attending Physician will provide adequate documentation to clarify significant negative outcomes that have resulted from a resident's underlying medical illnesses or conditions, despite appropriate care.

Treatment/ Management

1. The facility management and staff will institute measures to address the needs of residents and minimize the possibility of abuse and neglect.
2. The management and staff, with the support of the physicians, will address situations of suspected or identified abuse and report them in a timely manner to appropriate agencies, consistent with applicable laws and regulations.
3. The physician will order measures required to address the consequences of an abuse situation, such as psychological evaluation or suturing of a laceration.
4. The physician and staff will address causes of problematic resident behavior where possible, such as mania, psychosis, and medication side effects.

Monitoring and Follow-Up

1. The staff and physician will monitor individuals who have been abused at least until their medical condition, mood, and function have stabilized, and periodically thereafter.
2. The Medical Director will advise facility management and staff about systems to ensure that basic medical, functional, and psychosocial needs are being met and that potentially preventable or treatable conditions affecting function and quality of life are addressed appropriately.
3. The Medical Director will advise the facility and help review and address abuse and neglect issues as part of the quality assurance process.

References	
MDS (CAAs)	Section G; Section O
Survey Tag Numbers	F223; F309; F385; F501
Related Documents	
Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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Charting and Documentation

Highlights	Policy Statement
	All services provided to the resident, or any changes in the resident's medical or mental condition, shall be documented in the resident's medical record.

Policy Interpretation and Implementation

Documentation Requirements	1. All observations, medications administered, services performed, etc., must be documented in the resident's clinical records.
Recording Entries	2. Entries may only be recorded in the resident's clinical record by licensed personnel (e.g., RN, LPN/LVN, physicians, therapists, etc.) in accordance with state law and facility policy. Certified Nursing Assistants may only make entries in the resident's medical chart as permitted by facility policy.
Recording Accidents/ Incidents	3. All incidents, accidents, or changes in the resident's condition must be recorded.
Confidentiality and Release of Resident Information	4. Information documented in the resident's clinical record is confidential and may only be released in accordance with state law and facility policy. Refer all requests for information to the Director of Nursing Services, Nurse Supervisor/Charge Nurse or to the business office.
Use of Abbreviations and Symbols	5. To ensure consistency in charting and documentation of the resident's clinical record, only facility approved abbreviations and symbols may be used when recording entries in the resident's clinical records.
Documentation Criteria	6. Documentation of procedures and treatments shall include care-specific details and shall include at a minimum: a. The date and time the procedure/treatment was provided; b. The name and title of the individual(s) who provided the care; c. The assessment data and/or any unusual findings obtained during the procedure/treatment; d. How the resident tolerated the procedure/treatment; e. Whether the resident refused the procedure/treatment; f. Notification of family, physician or other staff, if indicated; g. The signature and title of the individual documenting.

References	
OBRA Regulatory Reference Numbers	483.10(e); 483.60; 483.60(a); 483.75(l)(1)(i)-(iv); 483.75(l)(4)(i)-(iv)
Survey Tag Numbers	F164; F425; F514
Related Documents	Abbreviations and Symbols (*See CD-ROM*) Guidelines for Charting and Documentation (*See CD-ROM*)
Policy Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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EXHIBIT D
WIT: Clay Burn
DATE: 07-27-23
Tammie L. Foreman

ADVA 7222

Care Plans – Comprehensive

Highlights	Policy Statement
	An individualized comprehensive care plan that includes measurable objectives and timetables to meet the resident's medical, nursing, mental and psychological needs is developed for each resident.

Policy Interpretation and Implementation

Developing the Comprehensive Care Plan

1. Our facility's Care Planning/Interdisciplinary Team, in coordination with the resident, his/her family or representative (sponsor), develops and maintains a comprehensive care plan for each resident that identifies the highest level of functioning the resident may be expected to attain.

Basis of Comprehensive Care Plan

2. The comprehensive care plan is based on a thorough assessment that includes, but is not limited to, the MDS.

Purpose of Care Plan

3. Each resident's comprehensive care plan is designed to:
   a. Incorporate identified problem areas;
   b. Incorporate risk factors associated with identified problems;
   c. Build on the resident's strengths;
   d. Reflect the resident's expressed wishes regarding care and treatment goals;
   e. Reflect treatment goals, timetables and objectives in measurable outcomes;
   f. Identify the professional services that are responsible for each element of care;
   g. Aid in preventing or reducing declines in the resident's functional status and/or functional levels;
   h. Enhance the optimal functioning of the resident by focusing on a rehabilitative program; and
   i. Reflect currently recognized standards of practice for problem areas and conditions.

Triggered Areas of Concern

4. Areas of concern that are triggered during the resident assessment are evaluated using specific assessment tools (including Care Area Assessments) before interventions are added to the care plan.

Care Plan Interventions

5. Care plan interventions are designed after careful consideration of the relationship between the resident's problem areas and their causes. When possible, interventions address the underlying source(s) of the problem area(s), rather than addressing only symptoms or triggers. It is recognized that care planning individual symptoms or Care Area Triggers in isolation may have little, if any, benefit for the resident.

Interdisciplinary Process

6. Identifying problem areas and their causes, and developing interventions that are targeted and meaningful to the resident are interdisciplinary processes that require careful data gathering, proper sequencing of events and complex clinical decision making. No single discipline can manage the task in isolation. The resident's physician (or primary healthcare provider) is integral to this process.

EXHIBIT 8
WIT: Cly Burn
DATE: 5-17-23
Tammie L. Foreman

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Time Frame for Completing the Care Plan	7. The resident's comprehensive care plan is developed within seven (7) days of the completion of the resident's comprehensive assessment (MDS).
Revisions	8. Assessments of residents are ongoing and care plans are revised as information about the resident and the resident's condition change.
Reviewing and Updating	9. The Care Planning/Interdisciplinary Team is responsible for the review and updating of care plans: a. When there has been a significant change in the resident's condition; b. When the desired outcome is not met; c. When the resident has been readmitted to the facility from a hospital stay; and d. At least quarterly.
Resident's Right of Refusal	10. The resident has the right to refuse to participate in the development of his/her care plan and medical and nursing treatments. When such refusals are made, appropriate documentation will be entered into the resident's clinical records in accordance with established policies.

References	
OBRA Regulatory Reference Numbers	483.10(b)(4); 483.10(d)(2)&(3); 483.15(b)(1); 483.15(b)(3); 483.20(k)(1)&(2); 483.25
Survey Tag Numbers	F154; F155; F242; F279; F280; F309
Related Documents	Care Area Assessments Care Planning – Interdisciplinary Team Resident/Family Participation – Assessment/Care Plans
Policy Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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ADVA 7150

Pressure Ulcer Risk Assessment

Level III

Purpose

The purpose of this procedure is to provide guidelines for the assessment and identification of residents at risk of developing pressure ulcers.

Preparation

1. Review the resident's care plan to assess for any special needs of the resident.
2. Assemble the equipment and supplies as needed.

General Guidelines

1. Pressure ulcers are usually formed when a resident remains in the same position for an extended period of time causing increased pressure or a decrease of circulation (blood flow) to that area, which destroys the tissues.
2. The most common site of a pressure ulcer is where the bone is near the surface of the body including the back of the head around the ears, elbows, shoulder blades, backbone, hips, knees, heels, ankles, and toes.
3. Pressure can also come from splints, casts, bandages, and wrinkles in the bed linen.
4. If pressure ulcers are not treated when discovered, they quickly get larger, become very painful for the resident, and often times become infected.
5. Pressure ulcers are often made worse by continual pressure, heat, moisture, irritating substances on the resident's skin (i.e., perspiration, feces, urine, wound discharge, soap residue, etc.), decline in nutrition and hydration status, acute illness and/or decline in the resident's physical and/or mental condition.
6. Once a pressure ulcer develops, it can be extremely difficult to heal.
7. Encourage the resident to participate in active and passive range of motion exercises to improve circulation.
8. Ensure that the resident drinks plenty of fluids and eats a well-balanced diet.
9. Pressure ulcers are a serious skin condition for the resident.
10. Routinely assess and document the condition of the resident's skin per facility wound and skin care program for any signs and symptoms of irritation or breakdown. Immediately report any signs of a developing pressure ulcer to the supervisor.

Assessment

1. **Risk Assessment**. A pressure ulcer risk assessment will be completed upon admission, with each additional assessment; quarterly, annually and with significant changes.
2. **Skin Assessment**. Skin will be assessed for the presence of developing pressure ulcers on a weekly basis or more frequently if indicated.
3. **Monitoring**:
   a. Staff will maintain a **"skin alert,"** performing routine skin inspections daily or every other day as needed.
   b. Nurses are to be notified to inspect the skin if skin changes are identified.
   c. Nurses will conduct skin assessments at least weekly to identify changes.
4. Because a resident at risk can develop a pressure ulcer within 2 to 6 hours of the onset of pressure, the at-risk resident needs to be identified and have interventions implemented promptly to attempt to prevent pressure ulcers. The admission evaluation helps define those initial care approaches.

continues on next page

Assessment (continued)

5. In addition, the admission evaluation may identify pre-existing signs (such as a purple or very dark area that is surrounded by profound redness, edema, or

EXHIBIT G
WIT: 07-27-23
DATE: CLWburn
Tammie L. Foreman

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induration) suggesting that deep tissue damage has already occurred and additional deep tissue loss may occur. This deep tissue damage could lead to the appearance of an unavoidable Stage III or IV pressure ulcer or progression of a Stage I pressure ulcer to an ulcer with eschar or exudate within days after admission. (Some situations that may have contributed to this tissue damage include pressure resulting from immobility during hospitalization or surgical procedures, during prolonged ambulance transport, or while waiting to be discovered or assisted after a debilitating event, such as a fall or a cerebral vascular accident.)

6. Because it may be harder to identify erythema in an older adult with darkly pigmented skin, older adults with darkly pigmented skin may be more at risk for developing pressure ulcers. It may be necessary in a darker skinned individual to focus more on other evidence of pressure ulcer development, such as bogginess, induration, coolness, or increased warmth as well as signs of skin discoloration.
7. Multiple factors, including pressure intensity, pressure duration, and tissue tolerance, significantly affect the potential for the development and healing of pressure ulcers. An individual may also have various intrinsic risks due to aging, for example: decreased subcutaneous tissue and lean muscle mass, decreased skin elasticity, and impaired circulation or innervation.
8. The comprehensive assessment, which includes the Resident Assessment Instrument (RAI)/ Minimum Data Set (MDS), evaluates the resident's intrinsic risks, the resident's skin condition, other factors (including causal factors) which place the resident at risk for developing pressure ulcers and/or experiencing delayed healing, and the nature of the pressure to which the resident may be subjected. The assessment should identify which risk factors can be removed or modified.
9. The assessment also helps identify the resident who has multi-system organ failure or an end-of-life condition or who is refusing care and treatment. If the resident is refusing care, an evaluation of the basis for the refusal, and the identification and evaluation of potential alternatives is indicated.

Identifying Residents at Risk

1. Extrinsic risk factors for pressure ulcers include:
   a. Pressure – the resident is not capable of moving without assistance, is confined to bed, and/or requires a regular schedule of turning.
   b. Friction and shear – the resident slides down in the bed or is moved by sliding rather than lifting.
   c. Maceration – the resident is persistently wet (especially from fecal incontinence, wound drainage or perspiration).
2. Intrinsic risk factors for pressure ulcers include:
   a. Immobility
   b. Altered mental status
   c. Incontinence
   d. Poor nutrition
3. Medications that increase risk of pressure ulcers include:
   a. Antipsychotics
   b. Antianxiety agents
   c. Antidepressants
   d. Hypnotics
   e. Steroids
   f. Narcotics

continues on next page

Assessment (continued)

4. Diagnoses and Conditions that increase risk for pressure ulcers:
   a. Severe pulmonary disease
   b. Urinary incontinence

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c. Paraplegia/quadriplegia
d. Sepsis
e. Terminal cancer
f. Chronic or end stage renal, liver, or heart disease
g. Diabetes
h. Alzheimer's disease or other dementia
i. Multiple sclerosis
j. Edema
k. Depression
l. Hemiplegia/hemiparesis
m. Cerebrovascular accident
n. Comatose
o. Steroid therapy
p. Radiation therapy
q. Chemotherapy

Equipment and Supplies

The following equipment and supplies will be necessary when providing a pressure ulcer risk assessment:

1. Resident's medical record, including admission data;
2. Minimum Data Set (MDS) assessment form;
3. Assessment tools such as the Braden Scale or Norton Plus Pressure Ulcer Scale; and
4. Personal protective equipment (e.g., gowns, gloves, mask, etc., as needed).

Steps in the Procedure

1. Gather assessment tools and documentation and conduct the assessment in the manner most appropriate to the resident's condition and willingness to participate.
2. If necessary, allow the resident to take rest periods during the assessment.
3. When conducting a physical assessment of skin condition, provide for the resident's privacy.
4. Once risk factors have been identified, proceed to the Care Area Assessment, care planning and interventions individualized for the resident and their particular risk factors.
5. Document the procedure.

Documentation

The following information should be recorded in the resident's medical record:

1. The type of assessment conducted.
2. The date and time and type of skin care provided, if appropriate.
3. The position in which the resident was placed upon completion of the assessment.
4. The name and title of the individual conducted the assessment.
5. Any change in the resident's condition.
6. The condition of the resident's skin (i.e., the size and location of any red or tender areas).
7. How the resident tolerated the procedure or his/her ability to participate in the procedure.

continues on next page

Documentation (continued)

8. Any problems or complaints made by the resident related to the procedure.
9. If the resident refused the assessment and the reason(s) why.
10. Observations of anything unusual exhibited by the resident.
11. The signature and title of the person recording the data.

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12. Documentation of advance directives.

Reporting

1. Notify the supervisor if the resident refuses the procedure.
2. Report other information in accordance with facility policy and professional standards of practice.

References	
MDS (CAAs)	Section M; (CAA 16)
Survey Tag Numbers	F309; F314
Related Documents	Norton Plus Pressure Ulcer Scale (*See CD-ROM*) Skin Care Alert (*See CD-ROM*)
Risk of Exposure	Blood–Body Fluids–Infectious Diseases–Air Contaminants–Hazardous Chemicals
Procedure Revised	Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____ Date:_____ By:_____

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1 BEFORE THE STATE CLAIMS COMMISSION
IN THE STATE OF ARKANSAS
2
3
4 MARY ANN JONES, as Special Administrator
of the Estate of Oscar Odell "Bill" Jones CLAIMANT
5
v. CLAIM NO. 20-00817
6
ARKANSAS DEPARTMENT OF
7 VETERANS AFFAIRS d/b/a NORTH LITTLE ROCK-
VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS
8 HOME AT NORTH LITTLE ROCK RESPONDENT
9
10 ==========
11 ORAL AND VIDEOTAPED DEPOSITION OF
12 KEITH MILLER, M.D.
13 October 10, 2023
14 ==========
15 ORAL AND VIDEOTAPED DEPOSITION of KEITH MILLER, M.D.,
16 produced as a witness at the instance of the RESPONDENT, and
17 duly sworn, was taken in the above-styled and numbered cause
18 on the 10th day of October 2023, from 1:32 p.m. to 4:30 p.m.
19 (CT), before Julieta V. Avallone, CCR in and for the State
20 of Arkansas, RPR, CRR, reported by machine shorthand, via
21 Zoom videoconference, pursuant to the Arkansas Rules of
22 Civil Procedure.
23
24
25

APPEARANCES OF COUNSEL

All parties appeared via Zoom videoconference.

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EXHIBITS

1	Dr. Miller's Curriculum Vitae	74:13
2	Dr. Miller's Report	85:1
3	Certificate of Death for Oscar Jones	85:18
4	Progress Notes, Bates No. 636	91:17
5	Photo, Bates No. 2885	93:4
7	Progress Notes, Bates No. 816	95:11

(Exhibit 6 skipped)

KEITH MILLER, M.D.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. BROYLES:

Q. Can you please state your name for the record?

A. Keith, K-E-I-T-H, Edward Miller, M.D.

Q. Dr. Miller, again, my name is Jordan Broyles, and I represent the Veterans Home in this lawsuit, along with my co-counsel, Justin Brascher, who is here. We have no one else in the room with us.

Do you have anyone else in the room with you?

A. No.

Q. Have you -- well, I know you have given depositions before; is that true?

A. Yes.

Q. So I won't belabor all the points or rules. I'll just say that if you need a break, just let me know. I don't anticipate we're going to be here a long time, but I certainly don't mind if you need to get up and stretch your legs. And like we talked about off the record, if you can't hear me or it gets jumbly, let me know, and we'll see what we can do on our end to get that fixed, okay?

A. Sure.

Q. The last thing is I will certainly ask a question that

is poor, so please let me know when I have done that so that we can get your clear answer on the record, and I don't have to make assumptions that you understood down the road.

A. Yes.

Q. And I understand -- and correct me if I'm wrong -- you are not planning to attend the hearing in November in this case. Your deposition is just being submitted by a transcript?

A. If that's what plaintiffs' counsel does, yes.

MS. BROYLES: Is that -- Jeff?

MR. PRIEBE: Jordan, you cut out. I didn't hear all of your question. What did you say? Sorry.

MS. BROYLES: I was just saying, you're just submitting his testimony by deposition transcript. He's not coming in person to the hearing?

MR. PRIEBE: That is my plan. As I understand, that's what the commissioner desires.

MS. BROYLES: Okay.

Q (BY MS. BROYLES) So, Dr. Miller, in that sense, it will be important that, you know, we get through everything today since I probably won't have an opportunity to take your deposition again or to talk to you at a hearing in this matter, all right?

A. Sure.

Q. That said, any time that you may need to consult your

materials, records, and what have you, please let me know. I don't want to get down the road and you have not -- if you said that you didn't have an opportunity to look at something that you needed to in order to answer the question, okay?

A. Yes.

Q. Do you have any notes in front of you today?

A. The only thing I have in front -- well, I've got a couple of things. I've got your Notice of Deposition that you sent to me. I've got a copy of my report to refer to if we need to. I have -- did you receive the documents I sent in response to your notice? I have copies of those.

Q. Yes.

THE COURT REPORTER: Obviously, it's not me. We lost the doctor. He's frozen.

Doctor, you were frozen there.

Was it on my end, Mr. Priebe?

MR. PRIEBE: I can't hear what you're saying.

THE WITNESS: Yeah, I can't hear you, ma'am.

MR. PRIEBE: Yeah. Julie, it froze on your end, not ours.

THE COURT REPORTER: Okay. We will have to have the doctor repeat that, please, the answer.

THE WITNESS: Okay.

THE COURT REPORTER: There was a question about:

(The court reporter read back the last question and part of the answer.)

A. Okay. All right. Just a couple of things there. I have -- I have hard copies of the pages that I refer to in my report. Beginning several pages in, there's a section that begins "Significant Facts." And, typically, after every paragraph, I cite Bates numbers in the records. I have hard copies of those in case for some reason we need to refer back to those. I thought that would help us through that quickly without having to pull up the computer or something. So that's what -- that is everything that I have in front of me right now.

Q (BY MS. BROYLES) Okay. So I want to make sure that I understand. On the medical records, I saw in your report, like you said, where you referenced the page citation for the information that you relied on to make whatever statement, and so you have printed off in front of you any page, whether by range or specific page, that you have referenced in your report?

A. Correct. I thought that would help us to find that page if we needed to. Although, I suspect, by now, those are going to be familiar to us. But I've got those there in case we need quick reference to those.

Q. Any other pages of the medical records that you have in front of you beyond the ones that you have cited in your

report?
A. No. That's all that -- of course, I received all the records electronically, and -- and I don't have any -- I did not print off any other pages of those.
Q. Do you have access to those if you need to reference them during the deposition?
A. Yes. I could. Being a person of my age that's not very IT savvy, yeah, I didn't know -- that may take a little bit longer there. So in my old-fashioned way, I printed off a few hard pages that -- in case we need to refer to those. But, yes, I do have access to the electronic rec- -- all the records electronically.
Q. Okay. So for the documents that I received, I have your fee schedule in the case -- or, well, fee schedule in general, your expert fee schedule, and then a list of your sworn testimony history as an expert witness.
And that's about 18 pages?
A. Yes. The only -- the only list I have of cases that I have reviewed as an expert witness are -- is the list I keep for federal court requirements, that is, cases that have reached the level of sworn testimony. That's the only list I have, and that's what I sent to you.
Q. And then your compensation today in this case, which is $4800 for 16 hours of the review of materials in June and July of 2022?

A. Correct. They got me basically through the report -- Can you hear me now?
Q. I can hear you, yeah.
A. Okay. That got me basically through the report stage. Since that time, I have reviewed additional documents, that -- that being -- on page 3 of my report, I list all the documents that I had at the time of making my report. Since that time, I have received a deposition transcript, so -- let's see -- three employees, five family members, some wound care pictures. I think that's about it.

So since the -- my initial payment, I have eight to ten hours in re-reviewing the existing materials, reviewing new materials, preparing for the deposition today, preparing the documents you requested, and so forth. So that is time that I have not yet billed for or been paid for, and then, of course, the time that we spend in this sworn testimony today.

Q. Okay. So your typical fees, your rate by the hour is $300 per hour. So if you have basically up to ten hours of reviewing prep, you've got an additional 3,000 that you haven't billed for in reviewing and prep for your deposition, correct?
A. Correct. And plus whatever we spend in sworn testimony today. That should be my total outstanding amount.

Q. And for your deposition today, it's $600 per hour, so we would send an invoice for $1,800 for a minimum of a three-hour deposition, correct?
A. Yes.
Q. So if we go over that, it's $600 per hour over.
A. Correct, per hour.
Q. Okay. So that would be 7800, including your additional time in preparation and then an additional 1800 plus any additional time in the deposition?
A. Yes.
Q. Any other work that you intend to do on this case after your deposition?
A. No. Unless I'm asked by plaintiffs' counsel if new documents were to appear or something of that nature, which I doubt, of course. As we sit here today, I do not anticipate any other time spent on the case.
Q. Okay. And your report in this case is dated June 24th, 2022, and I understand from your testimony that you reviewed additional deposition transcripts from employees and family members, and then you reviewed -- had updated -- you know, reviewed your report and prepared for the deposition and reviewed some wound pictures.
Does any of that information require supplementation, revisions, what have you, to your June 24th, 2022, report?
A. No. It -- it supported my opinions as I read that,

1 but it does not require -- it does not change my opinions in
2 any way.
3 Q. So just to make sure, as you sit here today, there is
4 no expectation or at least need, based on any information
5 known today, that you would need to provide any additional
6 reports?
7 A. That's my belief. Obviously, if my opinions change
8 for any reason whatsoever, I'll immediately let counsel know
9 so he can notify you, but as we sit here today, I do not
10 anticipate that happening.
11 Q. Have you conducted any interviews of any employees or
12 any other personnel, medical personnel, for preparing your
13 report?
14 A. No.
15 Q. Have you had any discussions with any other expert in
16 this case, Luanne Trahant, or potentially any others
17 regarding forming your opinions in your report?
18 A. No.
19 Q. Have you reviewed the opinions of Luanne Trahant?
20 A. No.
21 Q. Have you been to the Veterans Home in Little Rock?
22 A. I -- as you see from my CV, my curriculum vitae, I
23 trained at the UAMS, and so as part of that, I sort of spent
24 quite a bit of time at the North Little Rock system. Now,
25 of course, what we are talking about, the Veterans Home --

the Arkansas State Veterans Home is adjacent to or next door to that. And it's my understanding, actually, that was not there at the time of my training and so forth.

So I was right next door to it, right adjacent to it, but, no, I have not been into it.

Q. Okay. So is it correct to say that you've previously been to Fort Roots?

A. Yes. Fort Roots, the hospital which Mr. Jones was admitted to at the end, I spent some time in that. All of the Fort Roots system -- Fort Roots is what we called it then, and it's still referred to it now, I suppose. And so as part of the training at UAMS, you routinely, as a student and a resident, will rotate through those areas, and I did that during the time of my training.

Q. So at Fort Roots and also at the VA Hospital beside UAMS?

A. Correct. And also the medical facility there in North Little Rock, too.

Q. Okay. Do you know a physician by the name of Scott Simmons that practices in Arkansas?

A. No, I don't.

Q. From the information contained in your report, the only other materials that you have reviewed are the medical records from the Veterans Home, MEMS -- M-E-M-S, the ambulance service -- the Veterans Hospital, and then the

complaint in this case and the death certificate; is that true?
A. Yes. That's the materials I had at the time that I made my report. And since that time, I have reviewed the materials that I mentioned a moment ago.
Q. So you have not reviewed any other materials in this case, including any Office of Long-term Care paperwork or anything else of that matter?
A. No. I don't recall seeing that.
Q. Have you reviewed the medical bills in this case?
A. No. I don't recall seeing those.
Q. And I take it from your report that you don't intend to offer any opinions about the damages in this case, that being any amount of money that you -- you believe should be paid to the plaintiffs?
A. As we sit here today, I do not.
Q. Do you normally do that?
A. Sometimes I do if I am asked. In my position, patients bring me medical bills every day, usually complaining about how high they are, and so I have familiarity with that. So sometimes I do if I'm asked to.
Q. Would it surprise you that all the medical bills have already been paid in this case, based on the fact that it is a Veterans Home case and he is a veteran?
A. No. That would not be surpris- -- that would not

1 surprise me in this situation, this being a Veterans Home
2 situation.
3 Q. Did you see in Ms. Jones's testimony that they have
4 not had to pay for anything out of pocket for any of his
5 medical care and treatment that relates to his time at the
6 Veterans Home or the VA Hospital?
7 A. Yes, I saw that. And I'm very familiar with the
8 practice of veterans. I see veterans in my practice, in
9 private practice, because we have no Veterans facility for
10 many miles where we are. We're the only facility in, I
11 think, about 50 or 60 miles that takes care of veterans. So
12 I'm very familiar with the care of veterans and the Veterans
13 Health System.
14 Q. The depositions of the employees, again, what about
15 their testimony supported your opinions in this case?
16 A. Well, they -- they tied in the issues that I brought
17 as criticisms or concerns in this case into my report.
18 You'll see that my concerns or criticisms are broken out
19 into five areas. We'll discuss that as much as you'd like,
20 and we'll get to that point. Without jumping ahead, those
21 areas are _____
_____
_____.
24 Now, on the outside or at its face value, you might
25 think these are five separate things. How do they relate?

1 How did they all come about? Was it just coincidence that
2 they all developed at the same -- roughly the same period of
3 time regarding Mr. Jones? And, no, it's not. And further
4 review and the testimony of the employees and the family
5 brought all those things together. And that is the thing
6 that links all of that and connects all of that,
7 unfortunately, is lack of -- lack of nursing and staff care
8 in this particular case.
9 It was well documented and it was particularly
10 concerning to see testimony from the -- testimony of
11 employees and former employees of the facility stating that
12 they were understaffed, that they frequently used agency
13 nurses who would refuse to do care for certain incidents,
14 such as _____
_____, and so forth.
16 So unfortunately, that was my finding in reviewing the
17 testimony of the employees, that they were frequently
18 understaffed, that some of the staff -- particular agency
19 staff that they used to fill in vacancies at times would not
20 do their jobs. They would not _____
_____ and so forth. And that
22 is something that tied together those concerns and
23 criticisms that I ultimately had.
24 _____
_____

1 _____
_____ and so on and so forth. So I
3 apologize, that's a little bit long rambling. If I'm not
4 responsive to your question, give me -- give me another shot
5 there. But that is what I did get from the deposition
6 testimony of the employees and the family members, also.
7 Q. So in my reading of the deposition testimony -- well,
8 not reading, I was there -- but the testimony of Mrs. Jones
9 and her daughter, his stepdaughter, they had no criticisms
10 that they could point to of the nursing home; is that true?
11 A. Well, actually, in the case of Mrs. Jones --
12 understandably so, Mrs. Jones stated in her testimony that
13 she did not realize that some of these problems had
14 developed until Mr. Jones got to the hospital after leaving
15 the nursing home, particularly _____
_____, and
17 so forth.
18 She was very aware that _____
_____. And so becoming aware
20 of those -- once she was aware of those things, it's -- it's
21 my understanding of her testimony that, unfortunately, she
22 did relate these or attribute these to the poor care at the
23 nursing home.
24 Q. And she's not a doctor or a nurse or anything of that
25 sort, right?

A. True.
Q. And if I remember correctly, she did not have any criticisms of any particular medical care provider, true?
A. True, yes. She did not find out about those things until later on. So obviously, she did not know which specific person might have been responsible for those.
Q. And as far as what she told us at the deposition was that when she came in, she didn't observe anything wrong or anyone doing anything wrong to Mr. Jones, true?
A. I'm sorry. I couldn't hear the first part of that question. Would you ask me that one more time?
Q. She did not observe anyone providing poor care to her husband, true?
A. Correct. Like I said, she was not aware of some of the problems until later on when Mr. Jones had left the nursing home.
Q. With respect to the family members, I guess, his two children -- or three children, did you see the conflicting testimony on who actually saw him in the hospital -- or excuse me -- in the Veterans Home?
A. Yes. It looks -- it certainly looked like most of the time that family members saw Mr. Jones was Mrs. Jones, of course, and then one of the children. Others did not see him during that time.
Q. With respect specifically to Lindsey Clyburn, I

1 realize that you said there was some testimony on staffing
2 issues.
3 Did you -- but there was nothing in his deposition
4 testimony specific to staffing issues that related to an
5 incident with Mr. Jones; is that true?
6 A. Correct. But my concerns with staffing issues were
7 from Ms. Page, from Ms. Byrd, and that just fit the outcome
8 in the case.
9 Q. So Ms. Hamelback, she did not testify that there were
10 any instances specific to Mr. Jones, true?
11 A. I don't recall any. That's true.
12 Q. And that's the same for Rosa as well?
13 A. Right. That -- my understanding of that came from the
14 sources I just mentioned.
15 Q. Right. So there were general concerns but nothing as
16 it dealt specifically related to an incident with Mr. Jones,
17 true?
18 A. I think that's a fair statement, yes.
19 Q. As far as what I need to get to today is in your
20 report, you essentially look at -- or come to the
21 conclusions of on the first day he got there, he was in X
22 condition, and by December, he was in Y condition. And so I
23 need to know the ins and outs and in-betweens of those
24 because you can't just jump to conclusions.
25 Would you agree with that?

A. Well, not necessarily. As you just pointed out, there's -- there's no documentation from specific employees or people having seen certain things that's done during that time. But the fact that -- the fact that if something wrong was done and it was not documented, that does not give someone the -- that does not give somebody a way out or an excuse for not having done that.

And the fact that it's -- the fact that it's not there does not completely excuse that. It certainly would have been better if documentation would have been there. And you could say that something can be possible that may have caused that incident, but, again, we're not here to talk about possibilities. We are here to talk about probabilities.

And so the probability is, based on my education, training, and direct experience, that when you begin with something, you end with something else and there is no other reasonable explanation for what may have intervened during that period of time, then it is a reasonable assumption to say that the end result was caused by what -- what is likely to have occurred. And what was likely to have occurred has been the things that I have seen in over 30 years of taking care of nursing home patients.

Q. So is it going to be your testimony today that you can't tell me on what occasion or which employee shouldn't

1 or should have done something differently?
2 A. No. Not when there's -- when nothing is documented as
3 to which employees were there, responsible -- when it's not
4 said who did not do something, then, no, I mean, I can't --
5 I can't make any further judgments on that.
6 Q. So you can't tell me, then, which employees did or did
7 not do something wrong on a particular date?
8 A. No.
9 Q. So are you having to speculate, then, as to when an
10 incident began or didn't begin to occur?
11 A. No. I don't speculate on my opinions. I make expert
12 opinions based on reasonable judgment based on my education,
13 training, and experience of many years of taking care of
14 nursing home patients.
15 Q. Okay. So he was there from April to December of 2018,
16 true?
17 A. Yes.
18 Q. Okay. Well, we'll go through and see what you can
19 pinpoint or not pinpoint, okay?
20 You said you have your report in front of you?
21 A. Yes.
22 Q. You saw in Mrs. Jones's testimony that Mr. Jones had
23 reached a point in his _____
_____?
25 A. Yes. That was the chief reason that he came into the

1 nursing home.
2 Q. And did you also see that he had required to be at the
3 _____?
4 A. Yes.
5 Q. And he had _____, true?
6 A. Yes.
7 Q. And _____
_____?
9 A. Yes.
10 Q. He also had a _____
_____?
12 A. Right.
13 Q. _____
_____?
15 A. Yes.
16 Q. You also saw, too, then, that he had _____
_____?
18 A. Right.
19 Q. Is it -- would you agree that in your experience with
20 patients with _____ upon admission to a facility, they
21 can struggle significantly?
22 A. I'm sorry. I didn't hear that question.
23 Q. Patients with _____ upon being admitted to a
24 facility, can have significant adjustment challenges.
25 Would you agree with that?

1 A. Yes.
2 Q. What are those challenges that you have observed?
3 A. Well, difficulties are becoming reoriented to a new
4 location and becoming familiar with their surroundings.
5 That's all often difficult to patients with
6 Q. At any point in time in Mr. Jones's stay, do you think
7 he should have been restrained?
8 A. No. Not in a sense of what -- and I'm not trying to
9 anticipate your question, but in terms of some sort of
10 physical restraints, being tied down, no.
11 Q. So there were a couple of instances where he did fall
12 in his room, but you're not going to say that he should have
13 been restrained to his bed at any point in time, correct?
14 A. Correct. There are a number of things that can be
15 done that would be much better than anything such as that to
16 prevent falls in patients.
17 Q. Again, you have no intention of giving an opinion that
18 he should have been restrained physically in his bed,
19 correct?
20 A. That's correct.
21 Q. What about to his wheelchair? Should he have, at any
22 time, been physically restrained to his wheelchair?
23 A. No. Not physically restrained, but

1 _____

_____

_____

_____

5 Q. So can you point to any time when he was not being
6 properly supervised by a staff member?
7 And you understand this facility is not a one-to-one
8 facility, correct?
9 A. Yes. He did not need one-to-one care --
10 Q. Okay.
11 A. -- and nursing homes are not one-to-one facilities.
12 Q. Okay. So can you identify at any point in time where
13 he was not -- now, I acknowledge there are unwitnessed falls
14 in his bedroom. But, again, he wasn't -- you would agree
15 that when patients or residents are in their bedroom, they
16 are not observed 24/7, correct?
17 A. Correct. Nor do they need to be.
18 Q. And they're not on camera, right?
19 A. Right.
20 Q. There's a lot of issues with restraining and cameras
21 in nursing homes.
22 Would you agree to that?
23 A. No. That's not a -- that's not the best way to
24 provide care.
25 Q. So can you identify in the records any time where he

1 was improperly supervised?
2 A. Well, as we sit here -- I would have to go back unless
3 you recall an incident, but I was thinking that there was
4 perhaps at least one episode when -- during one of
5 Mr. Jones's at least seven falls that he had while he was at
6 the nursing home there; that there was one of those episodes
7 when he fell out of a wheelchair or it was related to a
8 wheelchair in some way.
9 So to me, as I just mentioned earlier, _____
_____. And so
11 that would be -- that would be one instance that he was not
12 properly supervised, if, indeed, that's the case. As I
13 said, I would have to go back and look for sure, unless you
14 recall that, but I thought I recall that at least one of his
15
_____.
17 Q. Okay. So I've got his _____
_____
_____
_____.
21 So that wouldn't be what you were talking about,
22 correct?
23 A. Probably.
24 Q. _____
_____

1 _____

2 Are you aware of that?

3 A. Yes.

4 Q. Okay. _____

_____

6 _____

_____

_____

_____

10 Q. And it's not going to be your testimony that those

11 falls, in and of themselves, contributed to his death, true?

12 A. That's true. I do not have that testimony. I do

13 think, unfortunately, that as a result of that _____

_____

_____, which we

16 learned much about. But I do not have an opinion that that

17 had a direct impact on his death.

18 Q. Did you see in every instance of _____

_____

_____

21 A. Right. But the problem with that is -- well, I'll

22 just mention, my chief concern is that when that happens

23 over and over and over again, it -- it does really matter.

24 If you don't necessarily see pain afterwards or you can do

25 neuro checks afterwards or do whatever you want to

1 afterwards, but by that time, the horse is out of the barn,
2 you might say, and it's too late.
3 [redacted]
9 Q. Are you -- hold on. Because you're -- you're going
10 way off of my question.
11 So are you going to be testifying that Mr. Jones had a
12
16 But it's also --
17 Q. Did you --
18 (Simultaneous speaking.)
19 A. -- also -- also my -- also my opinion, that I said
20 earlier on, I don't think it had a direct impact on his
21 death -- or I have no opinion of that. But that is my
22 opinion in that matter.
23 Q (BY MS. BROYLES) Did you have -- did you review
in this case?
25 A. Did I review what?

1

16

1 _____

_____

3 Is that fair to say?

4 A. Right, that's fair. I mean, by the time Mr. Jones got

5 to the hospital, there were -- there were bigger fish to fry

6 by that time than worrying about _____.

7 Q. The one time that I saw where _____

_____

_____

10 Is that the one time that you were talking about?

11 A. It could be, yes.

12 Q. And you're aware that his wife and the physicians were

13 notified of that?

14 A. Sure.

15 Q. Did you see in Mr. Jones's medical records that he

16 suffered from _____

_____

_____

_____

_____

21 _____

_____

_____

_____

_____

[redacted]

Q. And you would agree that, in these instances, there is a level of protection of the resident where the employees cannot force certain things upon them?

Maybe that -- they can't hold them down or force them to take medication, true?

A. True.

Q. Even if they have a doctor's note, they can't restrain them or do anything of that sort to prevent them from being able to freely ambulate?

A. Well, right. Neither should they.

Q. And there's no evidence of any of that done in this case, true?

A. [redacted], that's correct.

1 Q. And then part of your opinions, you have in here that
2 there was intentional conduct of the facili- -- of the
3 personnel that caused damages to Mr. Jones or injury to
4 Mr. Jones.
5 What intentional conduct are you referring to and by
6 whom?
7 A. Okay. Did you say that's in my report?
8 Q. Yes.
9 A. Do you recall where that is, so --
10 Q. Page 20.
11 A. Okay. Well, intentional act is one that you -- that
12 you intend to do. For example, we just discussed the
13 situation with the wheelchair. There was no accident that
14 no one was there around the wheelchair when Mr. Jones fell
15 out of it or had the fall related to that. So they intended
16 to have him around the wheelchair or using a wheelchair
17 without proper supervision being there, so that's -- that's
18 all I mean. An intentional act is something you intended.
19 It's not an accident.
20 Q. So they intended to let him fall out of his chair?
21 A. No. They intended to not be there at the time that
22 Mr. Jones had a wheelchair at his disposal. And a
23 reasonable, prudent nursing home staff should have known
24 that _____ should not be allowed to have free
25 access to wheelchairs, walkers, or assistive devices,

1 because if they do, more likely than not, they are going to
2 suffer injuries related to those, as happened in this case.
3 Q. Do you know what is the standard for causation in the
4 state of Arkansas?
5 A. No. Not being an attorney -- I've listed some
6 definitions of -- I have listed definitions of negligence,
7 proximate cause, and, I think, ordinary care. But not being
8 an attorney, I don't know that.
9 Q. Do you know the difference between something that's
10 negligence and intentional?
11 A. No.
12 Q. So your -- your take of an intentional act is that
13 they intended to be somewhere else so that he would suffer
14 an injury?
15 A. No. It's exactly what I have said twice already, I
16 think. They -- he was not left alone in a wheelchair by
17 accident. They made a conscious choice that it would be
18 okay to leave him in and around and have free access to
19 wheelchairs. And any reasonably prudent -- or any
20 reasonably trained nursing home staff should know not to do
21 that on _____.
22 Q. How do you know he was alone? That fall --
23 (Simultaneous speaking.)
24 A. There is no indication in the medical records he
25 wasn't.

1 THE COURT REPORTER: I'm sorry --
2 Q (BY MS. BROYLES) That fall, in particular, is -- are
3 you aware whether it's classified as witnessed or
4 unwitnessed?
5 A. [redacted]
10 Would you agree that patients can take sudden action
11 that even if they are being observed cannot be prevented?
12 A. Although it's possible, it's really not probable, and
13 it was not probable in this case.
14 Q. It is not probable for a patient to -- to try get out
15 of the wheelchair and fall? That's not probable in your
16 mind?
17 A. No. That's -- that's not what I understood your
18 question to be. And I think I've said several times over
19 and over again, the same answer to the same question, which
20 is a patient such as Mr. Jones who has [redacted]
24 because he is very likely to suffer
falls, as has occurred in this case.
25 Q. When was he left to his own accord?

1 A. When he -- when he fell out of a wheelchair.
2 Q. Okay. So other than that, he was, to your knowledge,
3 never left to his own accord?
4 A. No. He -- he was left on his own accord a lot. As
5 you said -- give me just a moment.
6 For example, beginning on page 21 of my report -- now
7 we're in the section talking about injuries related to
8 falls. Beginning on page 21, I enumerate a number of
9 different things -- let's see, A. through I., however many
10 letters that is -- [redacted]

[redacted] When those things are not
20 present or those things are not provided by the staff of
21 that facility, then I would call that leaving Mr. Jones on
22 his own to get by and to not suffer falls and their related
23 injuries. That's what I call being left alone.
24 Q. You have already told me that they are not restrained
25 in bed, true?

A. Correct. I did not see any reason why Mr. Jones should have been physically restrained at any time.
Q. Do you know what time the first fall was on April 15th of 2018?
A. Well, I think what happened -- excuse me -- when you look down or if you've got your hand in your face, that's when I really can't hear you very well. If you kind of look toward the mic, it does -- it works pretty well.
So let me get that last question one more time.
Q. Okay. Do you know what time the fall was on April 15th of 2018?
A. What time of the day? No, I don't.
Q. I assume -- can you tell me in regard to that fall how any of the things you have listed in A would have prevented the fall from occurring?
A. Well, and, again, not -- not knowing and some of these falls not being witnessed and not knowing more specific details because it's not documented in the medical records exactly how the fall occurred, it's impossible for me to pick out which of these things would have been the most important thing to prevent that fall.
In fairness to you, I feel like all I can do is to say had all of these things been put into place, then more likely than not, Mr. Jones would not have fallen and suffered injuries at that particular time.

1 So that's the best I can do, and that's what I feel I
2 need to do to be fair to you to say all of these things
3 should have been put into place, and had they, it's my
4 opinion that more likely than not, he would not have
5 _____.
6 Q. Well, in fairness to you, being general doesn't help
7 because I need to know what would have prevented falls and
8 who did something right or wrong. So the documentation of
9 all the falls starts on page 1447 and goes through -- excuse
10 me -- 1430 to 1449.
11 So is it fair to say that you don't remember the
12 documentation of the falls? Because there is a detailed
13 account of it.
14 A. No. I recall the documentation of falls having
15 occurred, but what I don't recall is seeing these specific
16 interventions having been implemented that I list in my
17 report, which, had they been in place, would most likely
18 have prevented the falls.
19 Q. How does a call light prevent a fall if the patient
20 doesn't use it?
21 A. Well, a call light would not prevent a fall if a
22 patient does not use it. But, again, you're trying to
23 single out each of these things, which I've told you more
24 than once, you know, can't be done. All of these things --
25 because, again, we don't know the details of each fall. We

1 don't know specifically which of these items were most
2 responsible for the fall because we don't have that
3 documentation in the medical records.
4 However, it is my opinion that had these things -- and
5 it's certainly not an infinite list of items by any means.
6 These are the standard interventions that you put in place
7 with nursing home patients, especially nursing home patients
8 _____. And if you do that and properly
9 implement those things, more likely than not, these patients
10 will not suffer falls and the injuries associated with them.
11 Q. Okay. Can you please go to 1447.
12 A. All right. You're talking about a document in the
13 medical record -- a page in the medical record?
14 Q. Yes.
15 A. Okay. And you're telling me a Bates number for it?
16 Q. Yes.
17 A. Okay. I think I've got it.
18 Q. Okay. So when you look at "Description," in
19 particular, do you see where _____
_____?
21 A. I'm sorry. I didn't hear the last part of your
22 question.
23 Q. _____
_____
_____

1 [redacted]

1 Q. Can you say that if he had had shoes on or something
2 to that effect, that this fall would have been prevented?
3 A. I'm saying my opinion is that had all of those
4 interventions been put into place that I have discussed
5 several times now, that more likely than not, this fall
6 would not have happened.
7 Q. That's just based off of your assumption?
8 A. No. No. It's not based on my assumption or my
9 speculation or my guess or anything else. It's based on
10 over 30 years of experience of caring for nursing home
11 patients, education, training, direct experience in these
12 areas and knowing that those are the standard interventions.
13 All of those things that you mentioned are things to
14 be done after the fact. They have nothing whatsoever to do
15 with preventing falls in patients. That's my concern. In
16 my opinion, in regard -- the interventions that are well
17 known to prevent falls in nursing home patients, and that's
18 what I would have wanted to have seen documented in this --
19 in this situation. That's fine to document what was done
20 after the fact, but that's never going to prevent anything.
21 Q. Is it your testimony that every fall in a nursing home
22 can be prevented?
23 A. No.
24 Q. Have falls occurred in the nursing homes where you
25 have worked?

A. I'm sorry?
Q. Have falls occurred in the nursing homes where you have worked?
A. Sure.
Q. Do falls happen in the absence of any negligence of a medical care provider?
A. It's possible.
Q. And do falls occur absent any intentional bad act or inaction of a medical care provider?
A. That's possible.
Q. Do you know that the standard of causation is to a reasonable degree of medical certainty?
A. That sounds right. It's just being relayed to me. But, again, not being an attorney, that's something I don't practice.
Q. But you are an expert, correct?
A. I am.
Q. And you have to testify as to what is the standard in the legal-medical field, correct?
A. In the medical field, yes --
Q. And so --
A. -- not the legal field.
Q. Well, medical-legal is what you're doing right now, your expert work. That's medical-legal.
Have you ever gone to any expert witness classes or

1 seminars?
2 A. No.
3 Q. Do you advertise your services?
4 A. I do not.
5 _____
_____
7 Do you recall that?
8 A. I'm sorry. What did you say the date was?
9 Q. July 1st.
10 A. Yes. I see it.
11 Q. Okay. And you see, then, that _____
_____
_____
_____
15 Do you see that?
16 A. Yes.
17 Q. Can you attribute that to any negligence of any
18 personnel for the facility?
19 A. Well, a patient _____, such as Mr. Jones, _____
_____
_____
_____
23 I also don't know -- there's no documentation about
24 what kind of footwear he had during that time or any of the
25 other interventions that I have described there. So I can't

say specifically. All I can say is with each of these incidents, that had the interventions been put into place that I have described, that more likely than not, Mr. Jones would have not fallen.

Q. The standard is not more likely than not; it's to a reasonable degree of medical certainty.

So you're testifying that this fall, to a reasonable degree of medical certainty, was the result of the negligence of the personnel at the facility?

A. Yes. That's my testimony.

Q. Can you identify what person?

A. Can I identify what?

Q. Can you identify who?

A. Who what?

Q. Who was negligent?

A. No. What specific member of the staff? No, I cannot.

Q. Okay. Do you have any criticisms of the follow-up assessments and treatments that are done after any of the falls?

A. No.

Q. Again, for all the falls, you cannot identify any person to whom you attribute either an intentional action or inaction or a negligent action or inaction, true?

A. Well, you -- that -- that is true.

THE WITNESS: Good time for a break?

1 MS. BROYLES: If you need one, sure.
2 THE WITNESS: Yeah. We've been going about an
3 hour.
4 MS. BROYLES: Okay.
5 THE WITNESS: It won't take me but -- five,
6 ten minutes is long enough for me.
7 (Recess from 2:35 p.m. to 2:45 p.m.)
8 THE COURT REPORTER: Back on record.
9 Q (BY MS. BROYLES) Dr. Miller, did you have any calls or
10 communication with Mr. Priebe over the break?
11 A. No, I did not.
12 Q. Did you consult or review any materials over the
13 break?
14 A. No, I did not.
15 Q. Based on the medical records and your -- well, based
16 on medical records, would you agree that there were no falls
17 experienced by Mr. Jones when _____
_____?
19 A. I -- I don't recall seeing those -- that.
20 Q. Did you see any incident in which Mr. Jones fell and a
21 physician was not notified?
22 A. I don't recall seeing that.
23 Q. And, in fact, the records show that every time a fall
24 incident occurred, Mrs. Jones and a physician were both
25 notified, true?

1 A. Okay.
2 Q. You don't have any reason to disagree with me?
3 A. No.
4 Q. Did you see any incidents -- you've got under H. here
5 on page 22 that medical records should be accurate.
6 Did you see -- I mean, I guess I'm just trying to
7 understand where any inaccuracies appear with regard to the
8 fall section?
9 A. Well, those -- H and I. are both similar to the other
10 things. I can't -- I can't point to one instance where any
11 of these specific interventions were necessarily not put
12 into place. But, again, as -- my opinion is that based upon
13 experience and training and -- that had all of these things
14 been put into place, then more likely than not, he would not
15 have suffered the falls and continued to suffer the falls.
16 What would have been important about H and I --
17 Q. Listen, you're -- I -- you don't -- you're not coming
18 to the hearing, okay? And so you have got criticisms in
19 here that are so general that I cannot identify who you are
20 applying them to.
21 So as a for instance, again, you have in here things
22 that should be taken -- _____
_____, but there weren't any
24 falls that occurred in that regard. And so, two, you've got
25 here that -- to notify Mr. Jones's physician, but, again,

1 you just agreed that there wasn't an incident where that
2 occurred. And so now I'm going to H., maintain accurate
3 medical records.
4 You have no evidence that with respect to the falls,
5 that adequate medical records were not maintained, true?
6 A. No, not true. And as I was about to say before you
7 cut me off on that, in this case, when you have repetitive
8 falls occurring over and over again, the purpose of medical
9 records is not to -- to close the barn door after the horse
10 is already gone.
11 You've pointed out every time after every fall all the
12 things that were done afterwards, and I have no disagreement
13 to that, I have already said multiple times. That doesn't
14 prevent anything, you know, what is done after the fall.
15 The fall has already occurred.
16 What would be the benefit of medical records in this
17 case is, with good documentation -- there is documentation
18 of things that were done after the fall, but what was not
19 done after the second or third falls is to say, "Hey, wait a
20 minute. This gentleman is having a fall a month here, and
21 he keeps having them. You know, we see that because the
22 medical records are seeing -- are showing that to us now,
23 rather than just coming in after the fact each time and
24 saying what was done."
25 The better purpose of medical records would have been

1 to say, "Hey, wait. Look. See how many falls he's had here
2 in the records. We need to do something to prevent these
3 falls, to put interventions -- new interventions into place
4 that would have prevented further falls." That would have
5 been a good use of medical records in this situation that
6 was not done.
7 There was no time where they sat down and there was a
8 discussion documented in the medical records, "Mr. Jones has
9 had two falls in two months, three falls in three months.
10 Wait, we need to do something else instead of keep doing the
11 same thing over and over again."
12 Someone said the definition of insanity is to keep
13 doing the same thing over again, expecting a different
14 outcome. That would have been a good purpose for good
15 medical records in this case.
16 Q. Again, you have no example that you can point to in
17 the record of inaccurate charting; is that correct?
18 A. No. And, again, what I just said is missing from the
19 medical records that had it been done, more likely than not,
20 would have prevented future falls.
21 Q. And, again, more likely than not is not the standard.
22 So is your testimony that to a reasonable degree of
23 medical certainty, what would have made a difference in this
24 case?
25 A. To a reasonable degree of medical certainty,

1 documentation in the medical records a consideration of the
2 past falls which would have caused a reasonable facility to
3 implement new interventions to prevent future falls. That
4 is not in the medical records. That's what should have been
5 there.
6 Q. And the list of interventions that you think would
7 have prevented any incident of a fall in this -- excuse
8 me -- every fall in this case is listed in your report?
9 A. To a reasonable degree of medical certainty, yes.
10 Q. When was the last time you looked at the complete
11 medical records in this case?
12 A. Oh, I've looked over them, I guess, over the past
13 couple of weeks in anticipation of the deposition.
14 Q. You have an opinion that Mr. Jones was
15 correct?
16 A. Yes.
17
19 Q. What month?
20 A. Don't know.
21 Q. Under whose care?
22 A. I'm sorry?
23 Q. Under whose care?
24 A. Under the care of the staff of this nursing home.
25 Q. What staff members?

1 A. Don't know.

2 Q. What was done to cau- -- what was done to cause him to

3

19

Also, I recall the testimony of Mrs. Jones,

25 Mrs. Mary Jones, saying that she did not think that the

1 staff was spending adequate -- _____.
2 Because with
_____.
4 Q. So your opinion is based on applicable fact,
5 basically, the end result.
6 You can't tell me what contributed to the _____
7 specifically. You just look at the end medical records?
8 A. There is only one thing that causes .
_____.
10 Q. But you can't tell me whose alleged negligence or
11 intentional act caused his _____ true?
12 A. What specific person at that nursing home, no.
13 There's no documentation of _____.
14 Q. Is your testimony that there is no documentation of
15
_____
_____
_____
19 Q. Is that your testimony?
20 A. No.
21 Q. So, again, you cannot tell me at what point he became
22 true?
23 A. No. Not -- not a specific time during his stay at the
24 nursing home.
25 Q. Okay. And so then you can't tell me how long he was

1 allegedly _____ true?
2 A. True.
3 Q. You told me about his lab results, obviously. But
4 would you agree with me that lab results can change in days
5 to a -- to a week -- in the course of a day to a week,
6 depending on the lab result?
7 A. Yes.
8 Q. Would you agree with me, as well, that a death
9 certificate is not dispositive for a cause of death?
10 A. Well, all the information in this case, lab results,
11 death certificates, statements of physicians, everything
12 else, these are pieces of a puzzle. And they all have to be
13 looked at in the general context of everything else to see
14 how much -- or to see how they fit with the other pieces of
15 the puzzle and to see what agreement there is with other
16 information in the case. So not one piece of a puzzle is
17 definitive. Everything has to be looked at in context with
18 everything else.
19 Q. And my problem with this is what you are giving me in
20 general. And what happens at the Claims Commission is
21 people review your testimony to understand and make a
22 decision in this case, and so my goal is to provide them
23 with specifics so they can evaluate your testimony.
24 And so what I'm hearing repeatedly is you can't point
25 to any specifics in the medical records.

1 A. Well, here's the problem with your argument. You
2 know, your argument over and over and over again has been,
3 you know, what I cannot point to in the medical record. And
4 if there's no documentation, you can't point to anything. I
5 mean, by your reasoning, your logic, I, as a physician,
6 should never write anything down. I should never put
7 anything in the medical record.
8 And then I'll say, "All right. Well, show me where I
9 did something wrong in the medical record. And you can't do
10 it, well, I'm off the hook." That does not get you off the
11 hook of the standards of care that you're obligated to
12 follow just because you don't put anything down in the
13 records.
14 I -- I don't know how else to say it, but, you know, I
15 can't point to a specific instance for these things because
16 there is nothing -- there is nothing down, you know,
17 documented who -- who was not doing their job, who was not
18 _____
_____. I -- it's quite obvious, I
20 think, the staff did not want to implicate themselves, and
21 there's nothing down there just saying that. So, no, of
22 course, you can't say that.
23 Sorry for the ramble.
24 Q. Sure. The longer we go, I mean -- I guess we're
25 getting close to our three-hour limit. So you got more

1 money to come through the pipeline.
2 A. I can tell you my opinions in a hurry in this case.
3 And I -- I'm sorry. I thought they were clear. But, again,
4 I'm here to clarify anything that I can, and I will not
5 leave here today until you've heard my opinions very clear,
6 I believe.
7 Q. My point is the absence of documentation can be a
8 concerning factor, and what you have not identified for me
9 are the places where there is even an absence of
10 documentation regarding _____
_____
_____.
13 So your -- your statement that it's absent from the
14 record as a whole is untrue. So what I'm asking of you is:
15 Have you reviewed the _____ to see what is missing
16 on certain days or what is inadequate on certain days so
17 that I can know what your allegations are with respect to
18 personnel who caused his _____
19 And the answer I keep hearing is, no, you cannot tell
20 me that information.
21 A. Because that information is not there. My -- my
22 criticism is what's not in the chart. And I'm sorry. I'm
23 sorry. I know you don't like that. I don't particularly
24 like it either, but that's -- that's the way it is. And so
25 if it's not there, it's not there.

1 Q. What days is it not there for?
2 A. Well, it's not there for the time when it should have
3 been there. I -- you know, it's a question that just can't
4 be -- I don't know any other way to answer that. You know,
5 there's -- there's no documentation that -- how much time
6 was spent trying to _____.
7 Most likely, _____
_____
_____
_____. That is -- to a reasonable degree of
11 medical certainty, that is what happened in this case. And
12 a staff member, probably to not implicate themselves, did
13 not document that.
14 Q. Where is that -- where are you not seeing that
15 information? I mean, because it should be in the chart, so
16 where are you looking to not find it? Have you -- because
17 it's in there.
18 So on what days is it missing?
19 A. Well, I didn't see that anywhere in the medical
20 record, you know.
21 Q. Okay.
_____
23 When did that begin?
24 A. You know, my answer is going to be the same on all of
25 these -- this same line of questioning. You are wanting me

1 to point in the medical record where something was not done.
2 That's -- that's an impossible -- that's a rhetorical
3 question. That's impossible to answer, you know, and so I'm
4 sorry. But the evidence in the record is clear to me that
5 to a reasonable degree of medical certainty, certain
6 standards and interventions were not implemented and were
7 not put into place, that had they been, Mr. Jones would not
8 have _____ and the other things that he
9 did.
10 Q. What interventions were not provided, and when should
11 they have been?
12 A. Again, I think I've answered this same question over
13 and over, and I just -- I don't know how to say it any
14 clearer, that to a reasonable degree of medical certainty,
15
_____
_____
_____
_____
_____
_____
_____
_____
24 A. To a reasonable degree of medical certainty, those
25 occurred more toward the end of his stay, as the -- the

1 _____
_____. So it would have been
3 worse near the end than it was at the beginning, but I
4 didn't see documentation of that.
5 _____
_____
_____
_____
9 Q. So you can't say when it started?
10 A. It started at -- during his stay at the nursing home,
11 and it continued to the end.
12 Q. Would you agree that _____ can occur in the
13 absence of negligent care?
14 A. That is possible.
15 Q. Would you agree that _____ can occur in the
16 absence of negligent care?
17 A. That's possible.
18 _____
_____
_____
_____
_____
_____
_____

1 _____
_____
_____
_____
_____
_____
_____
_____
_____
9 A. I don't -- I don't have any criticisms of that.
10 Q. But did you see in the records that once _____
_____ there was significant concern that he had not
12 been _____
_____
14 A. I'm not sure I understand exactly what you're asking.
15 I don't -- I don't have any -- I don't have any opinions
16 about that.
17 Q. You have it here, "There is no evidence in the nursing
18 home records that the staff consistently and adequately
19 notified Mr. Jones' physician of _____
_____."
21 You would agree, as demonstrated by the fall records,
22 that a physician and Ms. Jones were contacted every single
23 time, true?
24 A. Right. But my concern is not really what happens
25 after each of the falls. As I have said, my concern is that

there's no documentation saying, "Hey, Doctor, Mr. Jones has fallen four times in four months. Do you think, perhaps, we need to consider implementing different interventions doing something differently to prevent this fifth fall before it heard -- before it occurs."

That's what I would like to have seen and also notifying the family of that same thing.

Q. Would you agree that the doctor can say that I'm going to order X, Y, and Z?

A. It is possible. But, again, the doctor is there a very limited amount of time compared to the staff. The staff is the eyes and ears of that doctor. So, yes, it is possible that he could have done that.

But, again, it's the -- that does not relieve the nursing home staff of their obligation. They can also point out that, "Doctor, this is a repetitive thing, and perhaps we can look at some new interventions to put into place to prevent this from continuing to happen."

Q. But you didn't see the doctor put in any orders with regard -- with request to interventions?

A. No, I didn't.

Q. Okay. So when you say there's no evidence in the record of them adequately notifying him, and we talked about the falls.

And what other instances would you have expected

1 different documentation in the records than was provided?
2 A. Well, what I would have expected is that -- the
3 medical record should be a very interactive, very dynamic,
4 ongoing thing. After the first fall, after the second fall,
5 after the third fall, "Hey, Doc, you know, Mr. Jones is
6 falling, you know, on an average, once a month here. You
7 know, is there something else that you think we can do?"
8 And the doctor would have said, "Okay. Well, let's try
9 interventions A, B, and C."
10 After another fall, then the nursing home staff says,
11 "You know, Doc, you know, he's still falling. We think A
12 and B are helping, but I don't think C is doing so much."
13 Then the doctor will say, "Okay. Well, now let's put in D
14 and E." After another month, the same thing.
15 That's what you would expect to see in the medical
16 record, a very dynamic, interactive, ongoing process, not
17 just one thing put into place and then hoping that helps.
18 And despite having a similar bad outcome over and over
19 again, not changing what you are doing to -- to change the
20 outcome.
21 Q. Outside of the falls, where is there consistently
22 inadequate documentation with respect to poor hydration
23 status?
24 A. Well, again, what you would expect to have seen
25 knowing that Mr. Jones was _____ that he was

1 _____ you would expect to have seen, as I have said,
2 that most likely
_____
4 A medical record that said a nursing staff said, "_
_____
_____
_____ Hey, Doc, here's what happening. What
8 can you suggest we do to change -- to change this process?"
9 And the doctor says, "Okay. Let's implement these
10 measures, you know, one, two, three." You try those. You
11 reassess those. You put in new interventions. You assess
12 the effectiveness of those things and on and on. That's the
13 way medical records, you know, should work, not just
14 documenting a bad result, you know, what happens after a
15 fall, and that's it.
16 The purpose of medical records is to improve patient
17 care for most. That's what you would expect to have seen in
18 the case of _____, also, and
19 none of that is there. Something -- something was wrong
20 with his _____. And there's no
21 indication, first of all, of what the problem was, most
22 likely, not providing -- _____
_____.
24 That would have been the start of the documentation,
25 and it should have gone from there. None of that is present

1 in the medical record. And the fact that none of that is
2 there does not excuse the outcome. The outcome we know,
3 clearly, there was something wrong with the way he got
4 _____ in this nursing home.
5 Q. Are you done?
6 A. Yes. Sorry for the ramble. But I think the point is
7 well-taken.
8 Q. It doesn't answer the question.
9 So, again, you have no example in the record of any
10 absence of documentation in response to a finding? I mean,
11 there is _____ there. And there's
12 information where they have involved doctors, and he has
13 been given _____, all that kind of
14 stuff. So there is information there.
15 What I want to know is of that information, what do
16 you criticize, if you can at all?
17 A. My criticism is the lack of information about
18 Mr. Jones _____ and what
19 would have been done about it.
20 Q. _____

_____

_____

25 A. Well, there's -- there's nothing in the nursing home

1 records specifically that really gives detail. When he gets
2 to the hospital after his stay, [redacted]

1 Q. Would you agree that _____ can occur in the absence
2 of negligence?
3 A. It is possible, yes.
4 Q. Would you agree that even despite -- I understand you
5 criticize the care provided, but would you agree even under
6 the circumstance of standard of care -- of standard medical
7 care being provided, that _____?
8 A. That is possible, yes.
9 Q. And similarly, they can occur in the absence of
10 intentional bad conduct or inaction, true?
11 A. That's possible, yes.
12 Q. And just to cover something else, you saw no evidence
13 or any concerning information that he was abused or anything
14 of that sort, and even Ms. Jones is not making that
15 allegation in this case, correct?
16 A. I -- I did not see any evidence of abuse. I have no
17 criticisms of that in this case.
18 Q. And did you see that in the medical records, at least,
19 there were no criticisms of a nursing home personnel by the
20 VA physicians?
21 A. I did not see that in the record.
22 Q. Would you agree that _____ can -- well, _____ can
23 occur in a patient in the absence of negligence?
24 A. That is possible, yes.
25 Q. Would you agree that ____ are one of the _____

1 [redacted]

13 Q. I think you -- I can't remember if I asked you this.

14 But [redacted] can occur in the absence of negligence?

15 A. That's possible, yes.

16 [redacted]. As I said, I

19 think my concern is more likely than not and to a reasonable

20 degree of medical certainty, there was probably an

21 accumulation over time, an accumulative effect of a

22 [redacted] Although, I have no opinion that

23 that had any impact on his death.

24 Q. Okay. And in your report that I was provided, you

25 never gave any opinion that he had a [redacted]

1 true?
2 A. Well, we talked about _____ that you
3 cited, that there's a very real possibility that that would
4 not show any evidence of that, given the time frame that
5 these things occurred on, so correct.
6 Q. Is it true that a patient can develop _____
_____ absent the negligence of a medical care provider?
8 A. That could be possible.
9 Q. And that it could reach the point of death, again, in
10 the absence of a medical care provider?
11 A. Sure.
12 Q. Is it fair to say that you cannot say for how long at
13 any point in time Mr. Jones was _____
_____?
15 A. That's -- that's basically true for the reason I have
16 said, that there is not adequate documentation of assessing
17 those -- those issues during the stay that he was there.
18 So, no, I can't say exactly when those things began.
19 Q. Is it true that a patient can develop _____
20 in the absence of negligence by a medical care provider?
21 A. That can be true, yes.
22 Q. The plaintiff has also retained a nursing expert in
23 the case, and you defer to her on the nursing standards of
24 care?
25 A. Yes. I know I'm not a nurse. I don't practice as a

nurse. I'm not a nursing expert in any sense. I know the care that nurses should give to my patients. In terms of being a nurse expert -- that is, talking about how nurses go about doing their jobs, how they write care plans, how they assess ADLs, and so forth -- I do not have any opinions on those things because I'm not a nurse expert. I know the final result. I know the care that they should give to my patients to that extent. But, no, I am not a nursing expert.

Q. With respect to the identified CFRs and such in your report, you understand that these items don't set the standard of care. The standard of care is set by physicians?

A. Right. And --

MR. PRIEBE: Hold on, Doctor. I'm going to object to the form of the question.

Go ahead.

A. Yeah. In the paragraph or two prior to that, I give a little preamble saying that those are not listed there for that purpose, to establish the standard of care. The only reason I'm listing those things there is to demonstrate that my opinions in this case are widely held and are reflected in the standard of care, therefore, just showing that my opinions in this case are widely held.

But you're correct. The legislative statute does not

1 establish the standard of care, and I'm not relying on those
2 for my opinions in any way.
3 Q (BY MS. BROYLES) I'm just going -- some of this is
4 repetitive, so I'm just going through what we have already
5 talked about.
6 Based on your -- as to the case list that you
7 provided, you've got nine cases with Jeff Priebe.
8 Does that sound right?
9 A. What -- the list will speak for itself. Whatever it
10 says there would be correct.
11 Q. And you have worked with other attorneys at his office
12 like Eric Wewers?
13 A. Yes.
14 Q. There is an allegation that we talked about a little
15 bit earlier that there was a lack of sufficient staffing.
16 Can you tell me on what days there was insufficient
17 staffing for Mr. Jones?
18 A. No. I cannot pin that down, the specific days. And
19 my opinion in that case would be based on the fact, like I
20 said, that the areas of criticisms that I have regarding
21 this case for Mr. Jones, in my opinion, to a reasonable
22 degree of medical certainty, have to do with care not being
23 provided by the staff at this nursing home. And there's
24 only two choices here, you don't have enough staff, or the
25 staff there simply did their job. And unfortunately, both

1 are -- both are very, very unfortunate there. So beyond
2 that, I don't have any opinions to specific days. I also
3 based that opinion on the testimony of the -- on the two
4 employees, Ms. Page and Ms. Byrd.
5 Q. And, again, they didn't give any specific testimony as
6 to Mr. Jones, true?
7 A. Any specific testimony as to what?
8 Q. Mr. Jones. Incidents with Mr. Jones.
9 A. I'm sorry. I'm not understanding. What incident of
10 Mr. Jones?
11 Q. They did not give any testimony about examples of --
12 A. Oh.
13 Q. -- insufficient staff regarding coverage of Mr. Jones?
14 A. No. I don't think so.
15 Q. Did you see in Ms. Byrd's -- let's see -- Hamelback --
16 I can't remember which -- she had recently changed her name.
17 I can't remember. I think it was Hamelback. But she
18 brought Mr. Jones his own special yogurt that he liked?
19 A. Yes.
20 Q. Is it your opinion that Mr. Jones was _____
_____?
22 A. No.
23 Q. _____
_____
_____

1 _____
_____
_____.

4 Q. I understand that you have an opinion in this case
5 regarding life expectancy?
6 A. Yes.
7 Q. And what is that opinion?
8 A. I would expect that had it not been for the _____
_____at this
10 nursing home, that Mr. Jones would have lived for another
11 four to five years.
12 I based that on the fact that he entered this nursing
13 home, as we pointed out at the very beginning of this,
14 because of his _____ _____
_____, and him coming to the
16 facility _____
_____
_____
_____. So based
20 upon that, I would have expected he could have lived for
21 another four or five years.
22 Q. _____
_____
_____

25 Q. Would you agree that it can occur that a patient have

1 a course similar to that of Mr. Jones in the absence of
2 negligent care being provided?
3 A. I -- I'm sorry. Do that question one more time,
4 please.
5 Q. Would you agree that a patient could experience the
6 course of Mr. Jones in the absence of any negligent care
7 being provided?
8 A. Yes. That is possible.
9 Q. Have you consulted any peer-reviewed scientific
10 research on which to base your life-expectancy opinion?
11 A. No. My opinions are based on my education, training,
12 and experience, particularly the fact that being board
13 certified in hospice, we deal with lots and lots and lots of
14 _____, particularly toward the end of life,
15 including _____ and so forth; and so
16 that's what I base my opinions on, but not any new research.
17 Q. Do you hold yourself out as a life-expectancy expert?
18 A. No. Only to the degree that those problems are seen a
19 lot in family medicine and, particularly, in hospice and
20 palliative care.
21 Q. Would you agree that life expectancy is termed on an
22 average, not a guarantee?
23 A. I didn't hear the last part of your question.
24 Q. Would you agree that life expectancy is based on an
25 average rather than guaranteed additional years?

A. Sure.
Q. Do you ever provide life-expectancy analysis as part of a life care plan or damages?
A. No.
Q. Did you conduct a formal analysis of Mr. Jones's risk factors for death where you consulted different types of charts or data sets in order to come to your conclusion?
A. No. My criticisms and concerns in this case are very basic. They're very fundamental of care for nursing home patients. They are the types of things that physicians who care for nursing home patients know and deal with every day. I did not rely on anything other than my education, training, and experience.
Q. Did you consult any life tables where it took into consideration Mr. Jones's gender, race, or age?
A. No.
Q. Did you undertake any research into mortality risks?
A. Well, mortality risk, yeah -- I mean, sure. I mean, that's probably what you think about when thinking about the life expectancy of people.
Q. Did you do any research on it?
A. No, I did not.
Q. Did you look at his factors and adjust them against the general population life tables?
A. No. I did not review any charts, documents, tables,

1 or anything like that.
2 Q. Did you look at any statistical analysis or
3 calculations to come to your conclusion?
4 A. No. Those -- all of those things are things that are
5 a part of my education, training, and experience,
6 particularly, in [redacted] and so
7 forth. I did not do that to any new extent at all with this
8 case.
9 Q. Did you take any notes or otherwise document your
10 thought processes with respect to methods, tables, evidence,
11 practices, models, or other elements to evaluate life
12 expectancy for --
13 A. No.
14 Q. -- Mr. Jones?
15 A. No.
16 Q. Did you consult any standard life tables published by
17 the Center for Disease Control and Prevention or Department
18 of Justice, Department of Labor, any of those organizations?
19 A. No.
20 Q. Have you ever published any articles or research of
21 any type where you offered opinions on life expectancy?
22 A. No.
23 Q. Did you -- while you were in school or training, did
24 you have any specific training or statistics classes, things
25 of that sort, that would go toward life-expectancy

1 calculations?
2 A. Well, that is part of general training both in family
3 medicine but, specifically, more so for hospice and
4 palliative care, especially as it relates to _____
_____
6 Q. Did you take -- are you saying you did take statistics
7 classes or no?
8 A. No. It -- I don't recall taking a class specifically
9 for that, but it's certainly a general part of the training
10 of those medical fields.
11 Q. Can you say what would have been Mr. Jones's quality
12 of life had he lived five more years?
13 A. I just recall the employees' deposition testimony and
14 Mrs. Jones's testimony about although he was _____
_____, him
16 being a happy person. I remember one of the employees
17 talking about how Mr. Jones enjoyed hearing singing or
18 music. And when his name was mentioned to her, she got a
19 big smile on her face during her testimony, indicating that
20 he was a pleasant person to be around.
21 So to the extent that someone can do _____
_____, that's not up to us to say. But as far as we
23 can tell from external signs and symptoms, he seemed to have
24 an adequate quality of life at the time that he entered the
25 nursing home.

1 Q. Did you see in the VA records that [redacted]

10 Q. Would you agree that you could not -- that you have
11 had to resort to speculation in order to say that Mr. Jones
12 wouldn't have died in other normal complications even within
13 the next three years?
14 A. No. And I don't speculate. I make opinions based on
15 my education, training, and experience. And my opinions are
16 that [redacted] at the
17 nursing home, he probably would have lived another four or
18 five years.
19 Q. Again, that's not based on any tables or articles,
20 things of that sort.
21 That's just your opinion?
22 A. Well, my education, training, and experience is based
23 upon articles and tables. And prognostication is a very big
24 part of hospice and palliative care, so that information is
25 something that I have had in my training. I did not rely on

those specifically in forming my opinions in this case, though.

MS. BROYLES: I think that's all the questions I have until -- I think Jeff is going to ask you some, so I may have some follow-up.

Do you want to take another break?

THE WITNESS: No, I'm fine.

MR. PRIEBE: Jordan, are you okay?

MS. BROYLES: Oh, yeah. I'm fine.

MR. PRIEBE: Okay.

EXAMINATION

BY MR. PRIEBE:

Q. All right, Doctor. I'm going to share my screen. Can you see that, Dr. Miller?

A. Yes.

Q. What is this?

A. That is my Curriculum Vitae, a fancy name for a resumé.

Q. All right. And, to your knowledge, is this CV up to date and current?

A. Yes.

Q. And does it list your -- did you put it together?

A. I did.

Q. Does it list your education, training, and experience?

A. Yes. I completed undergraduate education at

1 Baylor University and then attended medical school at the
2 University of Arkansas in Little Rock, including residency
3 there in family medicine, which I completed in 1988. And
4 following that, I returned to my hometown, where I was born
5 and raised. I have been in practice there ever since.
6 Q. Okay. And when did you graduate from medical school,
7 Doctor?
8 A. Graduated, actually, from medical school in 1985 and
9 then completed a three-year residency in family medicine
10 also through the University of Arkansas system.
11 MR. PRIEBE: Julie, I'm going to make his CV
12 Exhibit 1.
13 (Exhibit 1 marked.)
14 Q (BY MR. PRIEBE) So if I do my math correctly, Doctor,
15 then you've been practicing medicine for over 35 years?
16 A. Correct. Including nursing homes during that entire
17 time.
18 Q. Okay. And during your training, did you -- were you
19 trained at the VAs?
20 A. Correct. The VA, both the main medical center there
21 in Little Rock by the University Medical Center, as well as
22 the North Little Rock facility.
23 Q. And during your last 35 years in practice, have you
24 worked at and seen patients at nursing homes?
25 A. Yes.

Q. And have you been a medical director of a nursing home?
A. I have been a medical director of nursing homes in the past.
Q. And in addition to your nursing home work and your general practice work, have you also served on state boards and commissions related to medicine in the state of Texas?
A. I've done work on peer review pretty much the entire time that I've been in practice, beginning on hospital quality insurance committees through insurance agencies, insurance companies, notably Blue Cross Blue Shield of Texas.
I've also served as a consultant to our state medical board and, finally, a commissioner and a member of the state medical board, which establishes standards for licensing, disciplinary standards, standards in maintaining license for approximately 75,000 licensees in the state of Texas.
Q. How long were you a commissioner on the Ark- -- strike that.
How long were you a commissioner on the Texas State Medical Board?
A. About six years.
Q. Okay. And in your practice, 35 years of practice, Dr. Miller, do you see veterans and veterans such as Mr. Jones?

1 A. Since the entire time I've been in practice, I've
2 treated veterans. We've increased the amount of veterans
3 that we see, particularly, over the last seven or
4 eight years. My practice has always been in my name,
5 Keith E. Miller, M.D., same spot/location the entire time.
6 It's still in the same spot/location, but about seven
7 or eight years ago, I sold my practice to Hope Community
8 Medicine -- which is a nonprofit, federally certified
9 entity, a federally qualified health center -- that in rural
10 underserved areas, such as the one that I practice in, has
11 provided for it certain grant funding and federal funding
12 and so forth to help underserved people, which we have a lot
13 of in our area.
14 That also makes it possible for us to care for
15 veterans. We are the only facility outside of any actual
16 Veteran Hospital in this entire area that accepts and cares
17 for veterans within a distance of probably about 60 miles.
18 And we have done that the entire time I've been practicing,
19 more so over the last seven or eight years since my practice
20 has become a federally qualified health center.
21 Q. And in your practice, have you treated veterans with
22 the same medical diagnosis, same background, same medical
23 and mental needs as Mr. Bill Jones?
24 A. Yes. The -- the conditions experienced by Mr. Jones
25 are

1
2 Q. And you are also -- I think you made mention to Jordan
3 earlier that you are board certified?
4 A. I -- I have two board certifications. I'm board
5 certified in family medicine, and I'm also certified in
6 hospice and palliative care.
7 Q. What does that mean to be board certified in hospice
8 and palliative care, Dr. Miller?
9 A. Well, board certified in anything, assuming it's a
10 board certification by the American Board of Medical
11 Specialties, which is the only legitimate board-certifying
12 agency, that's -- that's the ultimate symbol of training.
13 It means that you've had formal training in a
14 medical-school-type setting. In addition to that, you have
15 had training beyond that in fellowship, sometimes in
16 experience.
17 And based upon that, you have to have continuing
18 medical education, a lot of hours each year. And then,
19 finally, on a regular basis, you have to pass a very
20 extensive day-long certification examination, the first time
21 to certify, and then you have to recertify continually to
22 take that examination with the new residents and fellows as
23 they come out of training. So board certification is the
24 ultimate in training in any specialty area.
25 Q. And I understand the hospice decision, is that a

1 medical decision that you make about whether or not to
2 discuss with the family and ultimately recommend hospice for
3 a patient?
4 A. That's correct. And certainly, as all decisions, it's
5 made with the patient if they are able to and with the
6 family in those situations. It's based upon a determination
7 of the life expectancy for that patient, and it's -- that
8 being that patients with the medical conditions that they
9 have, is there a life expectancy of less than six months in
10 that particular patient, and that is a qualifying entity for
11 admission to hospice care.
12 Q. And are the standards for qualifying for hospice care
13 in Texas the same and/or similar to the standards in
14 Arkansas to qualify for hospice?
15 A. They are. Hospice is -- hospice is a federal
16 designation that works through Medicare to actually supplant
17 or take the place of Medicare, which, of course, is a
18 federally funded system.
19 Q. So in your board certification in regards to hospice,
20 you have to make decisions regarding life expectancy; is
21 that fair?
22 A. Yes, I do.
23 Q. Okay. Now, I know you've treated patients in nursing
24 homes. You've been a medical director of patients in
25 nursing homes. The nursing home here in question, the

Veterans Home in North Little Rock, this cottage system, have you treated or seen patients in a similar-sized facility?
A. Yes.
Q. And in your review of the records -- I take it you saw his medical records there that were utilized by the Veterans Nursing Home?
A. Yes.
Q. And do you utilize or use those same types of records in your practice in seeing your patients at nursing homes?
A. Yes.
Q. And in your review of the depositions of the administrator and the former nurses that worked at the Veterans Nursing Home, in your experience, is that the same type of nursing professionals that you work with in your practice?
A. It is.
Q. Okay. Ms. Jordan asked you earlier about the standard of care.
When you look at this case, Doctor, how do you define the applicable standard of care, that's applicable to the Veterans Nursing Home here?
MS. BROYLES: Objection. Form.
MR. PRIEBE: Go ahead, Doctor.
A. The standard of care is what a reasonable physician or

1 healthcare provider would do in the same or similar
2 circumstances with the same or similar patient and in the
3 same or similar locality.
4 Q (BY MR. PRIEBE) And you talked to Ms. Jordan earlier
5 about the regulations, both the federal and state
6 regulations that are cited in your report.
7 How do those regulations play into the standard of
8 care, Doctor?
9 MS. BROYLES: Object to the form.
10 A. As we spoke earlier, a statutory regulation does not
11 establish the standard of care. Standard of care is based
12 upon what we just said. As a matter of course, we know that
13 regulations reflect the standard of care. Statutory
14 regulations will serve to communicate or to transmit that
15 standard of care to others, that it has various uses for
16 education and so forth. They do not establish the standard
17 of care, but they reflect the standard of care typically as
18 they do in this case.
19 Q (BY MR. PRIEBE) And in the review of those depositions,
20 did some of those depositions have policies and procedures
21 that were attached to them?
22 MS. BROYLES: Object to the for- -- well, where
23 this is going, I'll object down the road for set policies
24 and procedures and the standard of care.
25 MR. PRIEBE: But no one said that.

MS. BROYLES: I think that's where you're going.
MR. PRIEBE: No, that's not where I'm going. But I -- hold on. Let me ask it.
Q (BY MR. PRIEBE) Doctor, were there policies and procedures attached to some of the depositions that you were able to review in this case?
A. Yes.
Q. Are you familiar with those same or similar types of policies and procedures?
A. Yes. Those are the same as I see in the nursing homes that I work in.
Q. How do those policies and procedures play into your review of this case?
A. Again, just like -- just like the statutory regulations, policies and procedures should reflect standard of care. And the ones that I saw in this case did that, also. They serve to communicate to various healthcare team members. They educate. They have uses to disseminate information that's important to let healthcare staff know how they are to treat patients. Again, they do not establish standard of care, but they reflect it.
Q. Okay. All right. Ms. Jordan asked you about your -- some of your expert testimony. Why do -- you know, you're providing -- you're reviewing the records. You review records for lawyers.

1 Why do you do this, Doctor?
2 A. I do it because everyone should do it. It's a matter,
3 to me, of professionalism, of policy. If we're not -- we,
4 as physicians, are not willing to police ourselves or watch
5 over ourselves, we have no right to ask for the trust of
6 patients. Professionalism means doing the right thing when
7 you could possibly get away with not doing that.
8 We are in a position with patients and their families
9 who are often vulnerable. They have to trust us. They do
10 not understand all things that that's doing. And
11 professionalism is that -- it's our duty to make sure we
12 always do the best thing that's in the interest of our
13 patients.
14 We have to always watch over ourselves, police
15 ourselves in doing that. If we, physicians, and other
16 members of the healthcare team are not willing to do that,
17 we have no right to ask for the trust of patients when they
18 place the trust of themselves or their family members into
19 our care.
20 Q. And I know in this case, you're providing these
21 services on behalf of the family and the resident, and I
22 know that in the past, you've been hired to provide legal
23 opinions on behalf of family and residents.
24 Have you ever been retained to provide expert legal
25 analysis -- or expert medical analysis on behalf of a

1 defendant or a provider?
2 A. Yes. And I do that on a frequent basis. I -- by far
3 and away, most of the cases I have done have been on behalf
4 of injured patients and their families, you know,
5 plaintiffs' cases. As I mentioned earlier, I do not
6 advertise. I never have. I don't have a website. I don't
7 speak at seminars. I don't solicit cases in any way
8 whatsoever. It's always been by word of mouth.
9 So it began with one plaintiff's attorney that I knew
10 personally. He referred my -- my name to other plaintiff's
11 attorneys and so on and so forth. Again, I do not
12 discriminate against the type of case. I review defense
13 work. Defense cases don't always seem to require sworn
14 testimony as much as a plaintiff's case -- I don't know --
15 but I do both sides any time that I'm asked.
16 Q. And have you provided expert medical testimony in
17 cases such as this in the state of Arkansas?
18 A. Yes.
19 Q. Have you -- have you testified in court as a medical
20 expert in the state of Arkansas?
21 A. Yes.
22 Q. Have you testified in arbitrations on behalf of
23 families as a legal-medical expert in the state of Arkansas?
24 A. Yes.
25 Q. Okay. Now, you issued a report that Ms. Jordan

referred to earlier, correct?
A. Yes, sir.
Q. All right. I'm going to share my screen again.
Doctor, do you see -- is this a copy of your report?
A. Yes.
Q. Now, when you drafted -- or did you draft this report?
A. I did.
Q. And when you drafted it -- it appears that you drafted it on or around June the 24th of last year?
A. Yes, sir.
Q. Okay. And when you draft this report, what are you trying to do, Doctor?
A. I began by simply reading the medical records of the case. I start by determining what are the facts of that particular case. After looking at the facts -- we've already talked about standards of care -- what standards apply to the situations within that case? Were those standards met? Were those standards breached, that is, not met?
If the standards were not met, what damage or harm resulted as a cause of that failure to meet the standards of care. And that's the best way I proceed, and then I place that in the form of a report that you see.
MR. PRIEBE: And I'm going to make that report Exhibit No. 2, Julie.

1 (Exhibit 2 marked.)
2 Q (BY MR. PRIEBE) Since you wrote that report, I take it
3 you have been provided additional information in the form of
4 deposition testimony, additional records, pictures, that
5 sort of thing?
6 A. Yes.
7 Q. Okay. One thing that I was going to ask you about --
8 and I'm going to share my screen again. You may have a copy
9 there with you.
10 Were you provided a copy of the death certificate for
11 Mr. Jones?
12 A. Yes.
13 Q. Okay. I'm going to show you -- do you see that on
14 your screen, Doctor?
15 A. I do.
16 MR. PRIEBE: All right. We'll make this
17 Exhibit 3, Julie.
18 (Exhibit 3 marked.)
19 Q (BY MR. PRIEBE) Can you tell me the immediate cause of
20 death listed on this death certificate?
21 A.

1

17

1 _____

6 Q. Okay. I'm going to make this -- I think I made it --
7 I'm going to make that death certificate Exhibit No. 3.
8 And you talked to Ms. Jordan about that you -- you
9 have the medical opinion that but for the actions of the VA
10 Nursing Home, that he would have survived -- lived another
11 four to five years; is that right?
12 A. The actions and inactions, that is correct. That's my
13 opinion.
14 Q. And what do you base that opinion on that he would
15 have lived another four to five years, Doctor?
16 A. That's based on my opinion of the fact that at the
17 time that Mr. Jones came to the nursing home, _____

25 Given that, he did not have any -- at the time that he

1 entered the facility --
2 at the time that he entered the nursing home.
I would have expected that
7 him having received adequate care, that he would have
8 survived another four to five years.
9 Q. Now, from your review of the records, he went from the
10 Veterans Nursing Home to the VA on the 27th of December,
11 correct?
12 A. Yes.
13 Q. So after he gets to the VA,
17 Q. Do you agree with that decision?
18 A. I do. By that time,

1

6 Q. I'm going to show you, Doctor, what I'm -- this is
7 Bates No. 636. This is a progress note from the
8 VA Hospital.
9 Did you review the VA Hospital records from
10 December 27th through January 3rd?
11 A. I did.
12 Q. Okay. This looks like January 1, and this goes up
13 to -- well, I'll stay on 636.
14 The assessment on January 1, down here at the bottom,
15 I have highlighted,

1

18 Q. So just to take it literally,

1

3 MS. BROYLES: Object to the form.

4 A. Unfortunately, that would be my opinion, looking at

5 that information.

9 A. Unfortunately, that is my opinion, and that's what it

10 says in the death certificate and in the medical records.

11 Q. And take it to the next step,

13 ultimately caused his death, correct?

14 A. Unfortunately, yes.

15 MR. PRIEBE: I want to make this Bates No. 636

16 Exhibit No. 4.

17 (Exhibit 4 marked.)

18 Q (BY MR. PRIEBE) Oh, let's go back to this exhibit.

19 I've also highlighted on here, on Exhibit No. 4, a

20 stage 2 sacral ulcer.

21

1 [redacted]

23 A. My opinion is it was.

24 Q. Okay. And I'm going to show you --

25 MR. PRIEBE: And, Julie, I'm going to warn you on

this one, it's not pretty, okay?

I'm going to show you what I'm going to label as Exhibit 5.

(Exhibit 5 marked.)

Q (BY MR. PRIEBE) Do you see this Bates No. 2885?

A. I do.

Q. And I'll represent to you that these were obtained from the VA Hospital.

This Exhibit No. 5, Bates No. 2885, what is this?

A. That's --

Q. Okay. In December of 2018, Doctor, what type of

1 resident was Mr. Jones? And what I mean by that is: How
2 much

And that's --
10 that's what he should have had during that time.
11 Q.

14 Q.

17

1 _____
_____
_____
_____
_____
_____
_____
_____
8 MR. PRIEBE: And I'm going to show you -- this is
9 Bates No. 816. I'm going to make this Exhibit No. 7.
10 (Exhibit 6 skipped.)
11 (Exhibit 7 marked.)
12 Q (BY MR. PRIEBE) _____
_____?
14 A. He was. There was also other information saying that
15 he was _____
_____
_____
_____
_____
20 Q. Did you look at the ADL doc- -- strike that.
21 Do you know what ADL documentation is, Doctor?
22 A. I do know what they are. Not being a physician -- or
23 not being a nurse, I don't write those. I don't generally
24 assess them. I know their purpose generally.
25 Q. Would you expect for a patient, such as Mr. Jones, his

1 _____
_____
_____
_____ To the extent that it's reasonable. To
5 determine if there's a problem or something is not working,
6 then it should be changed, whether it's an ADL, whether it's
7 a plan of care, whether it's just nursing progress notes.
8 If something is not working, if there's a problem, there
9 should be information in there about: This isn't working.
10 Why is it not working? What should we do differently? To
11 me, I mean, that's just intuitively obvious. I -- I know
12 that.
13 Q. In your experience, Doctor, with nursing homes, seeing
14 patients there, is it ever appropriate for a nursing home
15 staff to document on a resident when the resident is not
16 physically present at that facility?
17 A. No, it's not.
18 Q. Now, we talked about his condition in December, and
19 when he first -- and talked about _____
_____
_____
_____
_____
_____
_____

1

9 Again, that's the testimony of his family, also.

10

12 A. Yes. Particularly toward the end of his stay there.

13 Q. I know that you and Ms. Jordan were talking about it

14 earlier.

15

18 MS. BROYLES: Object to the form.

19 A. No. And that's my point. And, again, not being a

20 nursing expert, I don't write care plans, I don't

21 necessarily assess ADLs, and so forth. But, again, as I

22 said just a moment ago, it's just intuitively obvious. When

23 there's a problem, when something is not working, there

24 should be a change. You should be doing something

25 differently, and you should be noting all of that in the

1 medical record.
2 And there should be changes in the tools and the
3 mechanisms, plans of care, ADLs, that nursing staff make use
4 of. Those things should be evolving. They should be
5 changing. They should not be stagnant and just sit there
6 and keep doing the same thing over and over again, hoping
7 that you get a better outcome because you won't, as they did
8 not in this case.
9 Q (BY MR. PRIEBE) You are familiar with the definition of
10 neglect as it's used in the long-term care world, aren't
11 you, Doctor?
12 A. As it's been related to me, yes, and I list that
13 definition in my report.
14 Q. But generally, what is it?
15 A. It's doing what you shouldn't do or not doing what you
16 should do.
17 Q. The failure to provide goods and services that are
18 needed?
19 A. Correct.
20 Q.
23 MS. BROYLES: Object to the form.
24 A.

1 _____
_____
_____
_____

5 Q (BY MR. PRIEBE) And in your experience of treating
6 patients with _____
_____?
8 A. _____
_____
_____
_____.
12 Q. And was Mr. Jones at risk to develop _____ in
13 December of 2018 at the Veterans Nursing Home?
14 A. Certainly, because of his -- his lack -- by that time,
15 _____
_____
_____
_____
_____
_____
_____
_____
_____

1 _____

_____

_____

6 Q. Did the Veterans Nursing Home fail to meet an
7 applicable standard of care in the care and treatment of
8 Mr. Jones's _____ risk?
9 MS. BROYLES: Object to the form.
10 A. Yes.
11 Q (BY MR. PRIEBE) Did the Veterans Nursing Home fail to
12 meet the applicable standard of care in regards to
13 Mr. Jones's _____?
14 MS. BROYLES: Object to the form.
15 A. Unfortunately, yes.
16 Q (BY MR. PRIEBE) Did the Veterans Nursing Home fail to
17 meet the standard of care in the care and treatment of
18 Mr. Jones in regards to _____?
19 MS. BROYLES: Object to the form.
20 A. Yes.
21 Q (BY MR. PRIEBE) And did those failures have negative
22 consequences for Mr. Jones?
23 MS. BROYLES: Object to the form.
24 A. Unfortunately, yes. We see from the information,
25 Mr. Jones died _____. When

1 you're not --

And so all these things tie in and impact each
9 other.
10 Q (BY MR. PRIEBE) And did the lack of having sufficient
11 staff to meet the needs of residents at the Veterans Nursing
12 Home have negative consequences for Mr. Jones?
13 MS. BROYLES: Object to the form of the question.
14 A. That -- more likely than not, to a reasonable degree
15 of medical certainty, that is the thing that ties all these
16 issues together. You look at

, how do
18 all of those things tie in together? Those things tie in
19 together and they spring from and they come from and they
20 begin with a lack of consistent medical care, nursing care,
21 staff care at the nursing home.
22

1

The lack of nursing care
4 is the one thing that ties all these things together, and,
5 unfortunately, it makes all the pieces of the puzzle fit.
6 Q (BY MR. PRIEBE) I take it you read Mrs. Mary Ann
7 Jones's deposition?
8 A. Yes.
9 Q. And she described her husband's military service?
10 A. Yes.
11 Q. And would you -- would you say that Mr. Jones's
12 military service was impressive?
13 A. I'd say a thousand parachute drops into Vietnam is
14 impressive. In the order of defending our country and our
15 freedoms that we appreciate so much and take for granted, I
16 think that was extremely impressive.
17 Q. And Mr. Jones, not only due to his military service
18 but also just as a human being, did he deserve high-quality
19 care at that Veterans Home?
20 A. He certainly deserved care according to the standards
21 that should have been -- that should have been delivered in
22 those circumstances.
23 Q. And have all of the opinions you have given today,
24 Dr. Miller, been within a reasonable degree of medical
25 certainty?

A. Yes.

MR. PRIEBE: All right. Let's do this. Let's take a quick break. I'm probably going to be done, Jordan, okay?

MS. BROYLES: Okay. I was going to say I have a couple of questions. I'm happy to just get mine done while you review your notes if you want to.

MR. PRIEBE: Yeah, that's fine.

THE WITNESS: I need just three minutes or four. It won't take just a second here. I'll be right back.

MS. BROYLES: Okay.

THE WITNESS: Sorry.

MR. PRIEBE: Let's go off the record, Julie.

THE COURT REPORTER: We are off the record.

(Off record/Pause.)

THE COURT REPORTER: Back on the record.

FURTHER EXAMINATION

BY MS. BROYLES:

1 _____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

12 Q. Has your testimony ever been excluded in court?
13 A. No.
14 Q. You gave an opinion that Mr. Jones would have lived
15 another four to five years.
16 What would he have died from in four to five years?
17 A. Probably a combination of his _____ and, perhaps,
18 complications of _____
19 Q. Could he have died of a ____
20 A. It's possible.
21 Q. Could he have died of the same things that he did in
22 2019?
23 A. It's possible.
24 Q. _____
_____

1 _____
_____.
3 Q. Okay. Would you agree that it can enter the body
4 during surgery?
5 A. That's possible.
6 Q. It can enter the body through insufficiently cleaned
7 medical devices or even one's own hands?
8 A. That could be possible.
9 Q. It could be ingested through food or fluids?
10 A. That could be possible.
11 Q. And so it is not necessarily that the only way one
12 could be contaminated with that bacteria is be in _____
_____?
14 A. That's true.
15 Q. Would you agree that _____
_____?
17 A. I'm not aware of that.
18 Q. Would you agree, at least, that it is an extremely
19 common bacteria?
20 A. It is common. I don't know if I could call it
21 "extremely common." It is common.
22 Q. Would you agree that it is one of the main causes of a
23 ____
24 A. No.
25 Q. Okay. Why do you disagree with that?

1 A. Well, again, you have to define who you are talking
2 about. If you're talking about _____ nursing home
3 patients, that might be a possibility. If you are talking
4 about patients on a whole, younger, healthier patients,
5 ambulatory patients, that would certainly not be the case
6 there.
7 Q. Patients, like Mr. Jones, in a nursing home.
8 A. Well, that's more common -- that would be more common,
9 particularly,
_____.
11 Q. Would you agree that the -- I'm not sure I asked this
12 question -- but that documentation in medical records in
13 long-term care is different than that in a hospital setting?
14 A. Probably.
15 Q. That the standards of documentation are different,
16 would you agree?
17 A. Well, I -- I could not answer that in hypothetical. I
18 would have to look at specifics. In any situation, medical
19 records in an office practice are different than a hospital
20 or different than a nursing home. They are different than a
21 hospice entity. You know, the generalities are the same.
22 You want to know the facts. You want to know what's
23 happening. You want to take a history or some examination.
24 You want to make an assessment, a plan of care, based on
25 that. Those things are -- are the same between those --

1 those situations there. So some things are the same. Some
2 things might be different. I would have to look at
3 specifics to make that opinion.
4 Q. [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted] That's always a decision of the patient and their
14 family.
15 MS. BROYLES: That's all the questions I've got.
16 Thank you.
17 THE WITNESS: You're welcome.
18 MR. PRIEBE: Thank you, Dr. Miller.
19 THE WITNESS: Okay.
20 (Deposition concluded at 4:30 p.m. CT.)
21
22
23
24
25

REPORTER CERTIFICATION

I, JULIETA V. AVALLONE, Certified Court Reporter for the State of Arkansas, do hereby certify the following:

1) that on the 10th day of October 2023, the witness was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by the witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has a substantial tendency to affect impartiality or requires me to relinquish control of an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is WAIVED.

This transcript is prepared at the request of counsel for the RESPONDENT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 12th day of October 2023.

Julieta V. Avallone, CCR #874

Arkansas Supreme Court

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Exhibits

Keith Miller Exhibit 1 - Curriculum Vitae 1-17-23 74:12,13
Keith Miller Exhibit 2 - Expert Report 6-24-22 84:25 85:1
Keith Miller Exhibit 3 Death Certificate-1 85:17,18 87:7
Keith Miller Exhibit 4 - VA Recs efaecalis-1 91:16,17,19
Keith Miller Exhibit 5 - VA Recs WOUND PH OTOS-1 93:3,4,9
Keith Miller Exhibit 7 - Progress Notes Bate s No. 816 95:9,11

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Area Health Education Center, South Arkansas
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Family Practice Residency, 7/1986 to 6/1988
University of Arkansas Medical Sciences Campus
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Family Practice Internship, 7/1985 to 6/1986
University Hospital
Little Rock, Arkansas

Doctor of Medicine Degree, 8/1981 to 5/1985
University of Arkansas College of Medicine
Little Rock, Arkansas

Attended, 8/1980 to 5/1981
University of Arkansas at Little Rock, School of Law
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Bachelor of Arts, 8/1976 to 5/1979
German and Chemistry
Baylor of University
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Attended, 8/1975 to 5/1976
Biology and Chemistry
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Shelbyville High School, 8/1971 to 5/1975
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Commissioner, 9/2003 to 9/2007
Texas State Board of Medical Examiners / Texas Medical Board
State Medical Licensing Board of Texas

Physician Consultant for Physician Peer Review, 8/1990 to 9/2003
Texas State Board of Medical Examiners
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Member, Texas Statewide Medical Advisory Committee, 8/1995 to Present
Blue Cross/Blue Shield of Texas
Performs Physician Peer Review for All Blue Cross/Blue Shield Patients in Texas

President, 1990 to Present
Shelby County Medical Society

Advisory Committee Member and Clinical Faculty, 8/1990 to Present
School of Licensed Vocational Nursing
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Member, Board of Directors, and Medical Director, 8/1990 to Present
Shelby County Child Advocacy Center
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-PRACTICE ACTIVITIES (CONTINUED)-

2014 to Present
Family Medicine Service Privileges
Memorial Hospital San Augustine
San Augustine, Texas

2014 to Present
Family Medicine Service Privileges
Nacogdoches Medical Center
Nacogdoches, Texas

Former Physician Reviewer, Texas Medical Foundation, 8/1990 to 8/2003
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Former Clinical Faculty, Preceptor, 8/1990 to 8/2003
University of Texas Health Sciences Center
Family Practice Residency Program
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Attending Physician
Holiday Nursing and Rehabilitation
Center, Texas

July 1988 to Present
Attending Physician
Pine Grove Nursing Center
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Focused Care of Center
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July 1988 to Present
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Summit Nursing and Rehab Center
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Colonial Pines Healthcare Center
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Lakeside Village Assisted Living
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March 2012 to May 2014
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Bethany Home Health Care Agency
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April 2016 to Present
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American Academy of Family Physicians

KEITH E. MILLER, M.D.

- BOARD CERTIFICATIONS -

American Board of Family Medicine, ID 53861

FAMILY MEDICINE

Certification Date July 8, 1988

Re-Certification Date July 14, 1995

Re-Certification Date July 12, 2002

Re-Certification Date July 15, 2010

Re-Certification Date April 18, 2019

HOSPICE AND PALLIATIVE MEDICINE
Certificate of Added Qualification (CAQ)

Certification Date November 1, 2022, through December 31, 2032

- PROFESSIONAL CERTIFICATIONS -

Hospice Medical Director Certified (HMDC)
Hospice Medical Director Certification Board
Certified July 8, 2014
Recertified November 25, 2020

Certified Medical Review Officer
United States Department of Transportation
Certified February 21, 2006
Re-certified March 24, 2012
Re-certified December 10, 2017

Certified Medical Examiner
Federal Motor Carrier Safety Administration
United States Department of Transportation
United States Department of Health and Human Services
Certified February 11, 2014

KEITH E. MILLER, M.D.

- PROFESSIONAL AFFILIATIONS -

American Medical Association

Southern Medical Association

American Academy of Family Physicians

Texas Medical Association

Shelby County Medical Society

- VOLUNTEER ACTIVITIES -

Texas State Legislature
Physician of the Day, 1989 to Present

Coordinator, Free Physicals Programs, 1988 to Present
Department of Athletics
Center Independent School District, Center, Texas

Team Physician, 1988 to Present
Department of Athletics
Center Independent School District

Vice-President, Board of Trustees, 1990 to 1999
Center Independent School District, Center, Texas

Preceptor, 1990 to Present
Texas Statewide Medical Student Preceptorship Program

Member, Development Council
Baylor University

Former Member, Committee on Rural Health Concerns
Texas Medical Association

Former Member, Committee on Rural Health
Texas Academy of Family Physicians

KEITH E. MILLER, M.D.

-LICENSURE-

State of Texas (H-2155), 8/87 to Present

Formerly Licensed in Arkansas and Louisiana

- AWARDS -

Texas Academy of Physician Assistants
Supervising Physician of the Year - 2004

American Medical Association
Physician's Recognition Award

American Academy of Family Physicians
Award for Clinical Instruction of Medical Students

Center Independent School District
Community Service Award for Contributions to
Student Academics and Athletics

Anderson County Educational Cooperative
Service Award for Organizing Programs for
Special Services Students

Texas State Legislature
Award of Appreciation for Serving as
Physician to Legislators While in Session

- PUBLICATIONS -

"Use of Digoxin in the Family Practice Setting"
Journal of the Arkansas Medical Society
February 1988

KEITH E. MILLER, M.D.

- ARTICLES -

"More Doctors in Texas After Malpractice Caps"
New York Times
October 5, 2007
Story of Texas Medical Board Responding to Increased Licensing
Demands During My Tenure as Chairman of the Licensing Committee

"Dangerous Doctors"
Reader's Digest
June 2004
Background Story of Texas Medical Board Prior to My
Appointment as a Commissioner

"No Medicinal Jet Fuel"
Texas Medicine
August 2009
Story of My Filing of Complaint Against a Physician for Non-Therapeutic Prescribing

- PERSONAL -

Interests Are Health-Care Reform and Finance Issues, in America and Abroad

Speaks Fluent German and Passable Spanish

Instrument-Rated Private Aircraft Pilot

Umpire, High School Baseball

Keith E. Miller, M.D., F.A.A.F.P.

June 24, 2022

Mr. Jeff R. Priebe, Attorney at Law
Rainwater Holt & Sexton, P.A.
Post Office Box 17250
Little Rock, Arkansas 72222

Re: Mr. Oscar Jones, Deceased

Dear Mr. Priebe:

Thank you for allowing me to review this case on behalf of Mr. Oscar Jones, and his family. My opinions in this report are based on the information I have reviewed to date and my education, training, and direct experience in the diagnosis and treatment of patients with conditions similar to those of Mr. Oscar Jones, as described in the materials I have reviewed and discussed in this report. Each opinion is based on reasonable medical and nursing, probability and certainty.

BACKGROUND

My name is Keith E. Miller, M.D., and I give this report for the purpose of complying with any applicable provisions or codes. As my attached curriculum vitae demonstrates and which is incorporated into this report by reference, I am a Medical Doctor currently licensed to practice in the State of Texas and formerly licensed in the States of Louisiana and Arkansas. I currently practice in nursing homes similar to the Arkansas State Veteran's Home at North Little Rock, in North Little Rock, Arkansas. I have had numerous patients similar to Mr. Oscar Jones. I am board-certified in Family Medicine, and I have been in practice for more than 30 years. By virtue of my education, training, and direct experience, I am qualified to render opinions regarding the standards of care as they apply to this particular case.

I am over the age of 18, of sound mind, and capable of preparing this expert medical report. My opinions in this report are based on the information I have reviewed to date, as well as my education, training, knowledge, and direct experience in the diagnosis and treatment of patients with conditions similar to those of Mr. Oscar Jones, as described in the materials I have reviewed and discussed in this report. My opinions are based on reasonable medical and nursing, probability and certainty. My opinions concern the care and treatment received by Mr. Oscar Jones, or lack thereof, in regard to the applicable standards of care and the manner, in which the care rendered to Mr. Oscar Jones, by the healthcare facility in this case, fell below the standards of care and caused the

It is impossible in an expert medical report to marshal all the proof regarding the standard of care, breach, and causation and include it within my expert opinions in this case. My report represents a good faith effort to inform the health care facility of the specific conduct that I am calling into question and to provide a basis for anyone to conclude that the claims in this matter have merit. Obviously, any defendant in a medical malpractice case has medical knowledge of medical terms which, when read in context with my opinions, will be clear to any competent health care facility.

This report will provide a summary of my opinions, as of this date, regarding: 1) the applicable standards of care at issue in this case; 2) how the applicable standards of care were violated and breached; 3) how the violations and breaches of the applicable standards of care resulted in the illnesses, infections, and subsequent death of Mr. Oscar Jones; and 4) what the nursing home in this case should have done differently to prevent the illnesses, infections, and subsequent death of Mr. Jones. I reserve the right to amend, or add to, my opinions upon further review of records, testimony, or facts, as they become available.

MY EXPERTISE

I am a medical doctor currently licensed to practice in the State of Texas. I have been a licensed medical doctor since 1985, have been practicing medicine continuously since then, including during the time of this claim, and as part of my practice, have been, and am currently, involved in the diagnosis, care, and treatment of many patients similar to Mr. Oscar Jones. I am familiar with the

I am familiar with the standards of care applicable to physicians, nurses, hospitals, nursing homes, rehabilitation centers and their staffs that treat patients such as Mr. Jones. My training is similar to the training of the healthcare

providers, nurses, and facility staff in this case.

After graduating from medical school in 1985 at the University of Arkansas, I received additional training and experience in a family practice residency program which I successfully completed in 1988. I have over 30 years' experience practicing medicine in office settings, hospitals, nursing homes, rehabilitation centers and emergency departments. I am board-certified in Family Medicine by the American Board of Family Medicine and have been in practice for more than 30 years. By virtue of my education, training, knowledge and direct experience, I am qualified to render opinions regarding the standards of care as they apply to this particular case, including the standards of care applicable to physicians, nurses, hospitals, nursing homes, rehabilitation centers and their staffs treating patients for because I have treated many patients with these conditions.

A COPY OF MY CV IS ATTACHED

My attached curriculum vitae is incorporated herein as part of my report.

MATERIALS REVIEWED

The specific medical records of Ms. Oscar Jones, which I have reviewed to date, include his medical records from the following:

1) Arkansas State Veteran's Home at North Little Rock, in North Little Rock, Arkansas;
2) Central Arkansas Veteran's Healthcare System in Little Rock, Arkansas;
3) Metro EMS in Little Rock, Arkansas;
4) Complaint;
5) State of Arkansas, Certificate of Death.

SIGNIFICANT FACTS

The nursing home staff of the Arkansas Veteran's Home failed to adequately

Despite Mr. Jones' poor hydration status, during his stay at the Arkansas Veteran's Home, there is no evidence in the nursing home records that the staff of this nursing home consistently and adequately notified Mr. Jones' physician of this deterioration in his condition.

Due to the failure of the Arkansas Veteran's Home, to properly care for Mr. Oscar Jones, he es while he was a resident of this facility.

(ADVA Docs. 12-14, 00J-AVA-000535).

00J-AVA-000510, Death Certificate).

The Arkansas Veteran's Home in North Little Rock, Arkansas, failed to prevent and properly Mr. Oscar Jones'

Upon admission to the Arkansas Veteran's Home, this nursing home documented that Mr. Jones . However, following his admission to this nursing home, Mr. Jones developed and y while a resident in the care of this nursing home. By the time of his final hospitalization, beginning on December 28, 2018, Mr. Jones was documented to be

(00J-AVA-000457, 000503, 000507 - 000508, 000510, 000541, Death Certificate).

When Mr. Jones left the Arkansas Veteran's Home, and

(00J-AVA-000498).

(00J-AVA-000537, 000542, 000816, 000821, .

While a resident of and in the care of the Arkansas Veteran's Home in North Little Rock, Arkansas, Mr. as a result of this nursing home failing to properly monitor Mr. Jones and preventing injuries due to falls.

As a result of this nursing home's failures and intentional acts, Mr. Jones

(ADVA Docs. 1430-1449).

During this same time that Mr. Jones was suffering multiple falls, while a resident in the Arkansas Veteran's Home,

DVA Docs. 1430-1449, 00J-AVA-000510, Death Certificate).

(00J-AVA-000510, Death Certificate).

(00J-AVA-000510, Death Certificate).

Following his death, Mr. Oscar Jones, had a Death Certificate completed. It

Death Certificate documented that these infections were made worse by Mr. Jones'

which was also caused by the negligence of the Arkansas Veteran's Home (Death Certificate).

When Mr. Oscar Jones' Death Certificate, his medical records from the Arkansas Veteran's Home, the hospital records, and all his records from all sources, are examined in their entirety, it is clear that Mr. Jones' death was caused by his

FAMILIARITY WITH THE STANDARD OF CARE

At the time of the care and treatment of Mr. Oscar Jones by the Arkansas Veteran's Home in North Little Rock, Arkansas, during April through December 2018, I was familiar with the minimum medical standards of care applicable to the

and described in the referenced medical records. I am familiar with the medical and nursing standards of care for the above referenced conditions applicable to the Arkansas Veteran's Home in North Little Rock, Arkansas. The minimum standards of care for treatment of patients with similar signs, symptoms, and conditions as Mr. Oscar Jones, that are the basis of this report, are universally accepted standards of care and do not differ from community to community.

From the time of the medical treatment of Mr. Oscar Jones from April through December 2018, and through the present, I have had an active clinical practice as a family practitioner in Center, Texas that includes providing care to adult patients in nursing homes and rehabilitation centers, such as Mr. Oscar Jones. During my career as a family practitioner, I have worked with and or supervised medical office staff, hospital staff, nursing home staff, and rehabilitation center staff, including medical technologists and nurses, in the care of my patients. I have also participated in the development and

In addition, based on my education, training, knowledge, and direct experience, I am familiar with the accepted and expected, standards of care, as listed below, for nursing home and rehabilitation center facilities, who take care of patients with conditions

and can offer opinions on the standards of care, the breaches of the standards of care and the causation of the injuries from these breaches.

In my medical practice, I routinely rely on medical records, nursing records, lab reports, diagnostic tests and images, consulting physician reports and other patient data. I consider materials of this type to be generally reliable, unless evidenced otherwise, and they are the type of materials routinely relied upon by physicians and clinical staff in providing care to patients.

CASE SPECIFIC EXPERTISE

At the time of the medical treatment of Mr. Oscar Jones from April through December 2018, I was treating patients with symptoms similar to those experienced by Mr. Jones. I am familiar with the accepted medical and nursing standards of care applicable to the , by Mr. Oscar Jones during that time as described in the referenced medical records. I am familiar with the standards of care for physicians, nurses, and nursing home and rehabilitation center staff treating patients such as Mr. Jones. I am familiar with the medical and nursing standards of care for the above referenced as they apply to the Arkansas Veteran's Home in North Little Rock, Arkansas. The accepted and applicable standards of care for the treatment of patients with that are the basis of this report, are universally accepted standards of care and do not differ from community to community, and also apply to the specific medical care provided to Mr. Jones in this case. The accepted medical and nursing standards of care for the apply to all nursing home and rehabilitation center facilities. I know the accepted standards of care, the breaches and violations of the standards of care, and the causation link between the breaches and violations of the standards of care and the of Mr. Oscar Jones as they apply to the Arkansas Veteran's Home in North Little Rock, Arkansas, on the basis of my education, knowledge, training, and direct experience.

I acquired this education, knowledge, training, and experience through:

1) My attending, and successfully completing, medical school classes, and residency, that teach the evaluation, diagnosis, care and treatment of patients with the same or similar conditions as Mr. Oscar Jones and for ,

[redacted];

2) Practical experience of

3) Discussions with colleagues at yearly conferences, seminars, and meetings;

4) Study of technical works routinely published in textbooks, journals and literature concerning the evaluation, diagnosis, care, and treatment of patients with

5) My routine discussions and consultations with other physicians who also treat patients with the same or similar conditions as Mr. Oscar Jones and for ;

6) My routine and regular contact with nursing home nurses, staff and residents who take care of patients with the same or similar conditions as Mr. Oscar Jones and ;

7) My knowledge and experience giving lectures and in-service conferences to the nurses and staff;

8) My experience serving on numerous hospital and nursing home committees; and

9) My observation of nurses and nurse conduct, supervising residents, and instructing nurses and residents in the evaluation, diagnosis, care, and treatment of patients the same as, or similar to Mr. Oscar Jones and

FACILITY - PATIENT RELATIONSHIP

Based upon the above facts, there was a facility-patient relationship established between Mr. Oscar Jones and the Arkansas Veteran's Home in North

Little Rock, Arkansas.

DUTY

There was a duty owed to Mr. Oscar Jones by the Arkansas Veteran's Home in North Little Rock, Arkansas, to do what a reasonable nursing home or rehabilitation center would have done under the same or similar circumstances, or not to do what a reasonable nursing home or rehabilitation center would not have done under the same or similar circumstances.

RELEVANT STANDARDS OF CARE IN ISSUE

This section addresses some of the principal applicable standards of care that the Arkansas Veteran's Home in North Little Rock, Arkansas, and its staff should have met for Mr. Oscar Jones specifically how the Arkansas Veteran's Home, and its staff breached the standards of care and the causal relationship of the breach to Mr. Jones' illnesses and infections. These standards are based on my education, training, and direct experience, and are reflected in the state and federal regulations that govern nursing homes and rehabilitation centers.

The following standards, among others, are consistent with the standards of care that were required to be followed by the Arkansas Veteran's Home of North Little Rock, Arkansas, and its staff as it concerns Mr. Oscar Jones:

1. 42 CFR 483.10- The resident has a right to dignified existence, self-determination, and communication.

2. 42 CFR 483.13, "Neglect" means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

3. 42 CFR 483.15- A facility must care for its residents in a manner that promotes quality of life and dignity.

4. 42 CFR 483.20-The facility must conduct initially a comprehensive, accurate assessment of each resident's functional capacity, a plan of care, based on a resident assessment, which will be used to provide care and services to attain the highest practical physical, mental, and psychosocial well-being.

5. 42 CFR 483.20 (k) (3) (I) - The services provided or arranged by the facility must meet professional standards of quality.

6. 42 CFR 483.25 (1) (2)- Ensure a resident entering the facility without pressure sores does not develop them unless the resident's clinical condition demonstrates

that they were unavoidable and a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

7. 42 CFR 483.25(a) (3) - A resident who is unable to carry out activities of daily living must receive the necessary services to maintain good nutrition.

8. 4**2 CFR 483.25 (f)(1)-** A resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

9. 42 CFR 483.25 (h) (2) - A resident must receive adequate supervision and assistance devices to prevent accidents.

10. 42 CFR 483.25 (j) - The facility must provide a sufficient fluid intake to maintain proper hydration and health.

11. 42 CFR 483.25(l) (1) - Based on a resident's comprehensive assessment, the facility must ensure the resident maintains acceptable parameters of nutritional status.

12. 42 CFR 483.30- The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

13. 42 CFR 483.65- The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease.

14. Arkansas LTC 303.7 – Sufficiently trained personnel shall be on duty at all times. Provisions shall be made for relief of direct care personnel during vacations and other relief periods.

15. Arkansas LTC 306.11.1(3) - "Neglect" means:

a. Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to [a nursing home resident;

b. Negligently failing to report health problems or changes in health problems or changes in health condition of [a nursing home resident] to the appropriate medical personnel; and

c. Negligently failing to carry out a prescribed treatment plan.

16. Arkansas LTC 318.5 - Only those persons are accepted whose needs can be met by the facility directly or in cooperation with the community resources or other providers of care with which it is affiliated or has contracts.

17. Arkansas LTC 318.6 - As changes occur in their physical or mental condition necessitating service or care which cannot be adequately provided by the facility, residents shall be transferred promptly to facilities which can provide appropriate care.

18. Arkansas LTC 352.1 - Total resident care includes medical care, nursing care, rehabilitation, restorative therapies, and personal cleanliness in a safe and clean environment.

19. Arkansas LTC 402 – General - Every institution must be maintained, managed, and equipped to provide adequate care, safety, and treatment of each resident.

20. Arkansas LTC 453 – Equipment and Supplies - Nursing equipment and supplies shall be provided to meet the patients' needs and maintained in good condition to ensure adequate nursing care of the patients.

21. Arkansas LTC 516.2 - Routine Care and Services - Each patient in the home shall receive the type of nursing care including restorative nursing as required by his/her condition. Patients shall be encouraged to be active, to develop techniques for self – help, and be stimulated to develop hobbies and interests. Criteria for determining adequate and proper care includes:

22. Arkansas LTC 516.2 - Significant changes in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications). Charting will be required on every shift until the resident's condition becomes stable.

23. Arkansas LTC 516.2.9 - Measures shall be taken toward the prevention of pressure sores, and if they exist, treatment shall be given on written medical order. The position of bed patients shall be changed every two (2) hours during the day and night.

24. Arkansas LTC 516.2.13 - Fluids shall be offered at frequent intervals when the patient is unable to obtain them. Water pitchers shall be refilled at least once each shift and should be kept in reach of patients. Clean drinking glasses shall be kept with each water pitcher.

25. Arkansas LTC 516.2.17 - Proper bed and chair positioning.

26. Arkansas LTC 516.2.18 - Nursing equipment is in sufficient supply, in good condition, is properly cleaned, and cared for, well organized, and readily available.

27. Arkansas LTC 516.2.19 - Precautions to assure the safety of patients are continuously in effect.

28. Arkansas LTC 516.2.20 - Bedside nursing care.

29. Arkansas LTC 519 - Supervision of Patient Nutrition - Nursing personnel shall be aware of the nutritional needs, food, and fluid in-take of patients and assist promptly where necessary in the feeding of patients.

HOW THE STANDARDS OF CARE WERE BREACHED AND CAUSED INJURY, HARM, OR DAMAGES

1. Mr. Oscar Jones

ADVA Docs. 12-14).

(ADVA Docs. 633-634).

Further evidence of Mr. Jones' was documented by the

[redacted]

(00J-AVA-000490-000491).

At the time of his admission to the hospital,

(00J-AVA-000490-000491).

Further evidence of Mr. Jones' was evidenced by the statements of the hospital staff. The dietary staff noted that when they assessed Mr. Jones upon his arrival from the Arkansas Veteran's Home,

(00J-AVA-000816).

Finally, it was noted from Mr. Jones' Death

in the case of Mr. Oscar Jones (Death Certificate).

The nursing home staff of the Arkansas Veteran's Home failed to adequately monitor Mr. Jones for signs and symptoms of document their observations, and consistently and adequately report these findings to Mr. Jones' physician.

As a direct cause, the Arkansas Veterans Home in North Little Rock, Arkansas, and its nursing staff failed to comply with those standards set forth in paragraphs: 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 28, and 29. The failure to comply with these standards caused, within a reasonable degree of medical and nursing, probability and certainty, Mr. Oscar Jones to become malnourished which compounded his ability to These problems would have, within a reasonable degree of medical and nursing, probability and certainty, been prevented or detected/addressed earlier if these standards had been followed:

To meet these standards, the Arkansas Veteran's Home in North Little Rock, Arkansas, and its nursing staff were required to do the following:

A.

B.

C.

.

D. Timely notify Mr. Jones' physician or nurse practitioner of changes in signs or symptoms of malnutrition or dehydration to prevent further complications.

E. Give Mr. Oscar Jones food to eat and water to drink and help him eat and drink.

2. Mr. Oscar Jones

(ADVA Docs. 12-14).

(00J-AVA-000542, 000816).

[redacted]

As a direct cause, the Arkansas Veteran's Home in North Little Rock, Arkansas, and its nursing staff failed to comply with those standards set forth in paragraph numbers: 1, 2, 3, 5, 8, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, and 28. The failure to comply with these standards caused, within a reasonable degree of medical and nursing, probability and certainty, Mr. Oscar Jones to

These problems would have, within a reasonable degree of medical and nursing, probability and certainty, been prevented or detected/addressed earlier if these standards had been followed:

To meet these standards, the Arkansas Veteran's Home in North Little Rock, Arkansas, and its nursing staff were required to do the following:

A. Recognize and act on an accurate assessment that Mr. Jones was as evidenced by his oral intake records.

B. Act on the fact that Mr. Jones

C.

D. Discover and consistently

E. Timely notify Mr. Jones' physician of changes, to prevent further complications.

F.

k.

Decubitus Ulcer or

3. Due to the failure of the Arkansas Veteran's Home, to properly care for Mr. Oscar Jones, he

This was documented by the nursing staff of this facility in the initial nursing notes. Due to the failure of this nursing home to employ appropriate measures to prevent

(ADVA Docs. 12-14, 00J-AVA-000535).

In addition to posing a

00J-AVA-000510, Death Certificate).

As a direct cause, the Arkansas Veteran's Home in North Little Rock, Arkansas, and its nursing staff failed to comply with those standards set forth in paragraphs: 1, 2, 3, 4, 5, 6, 8, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, and 28. The failure to comply with these standards caused, within a reasonable degree of medical and nursing, probability and certainty, Mr. Jones to develop and suffer from decubitus ulcers or pressure sores. These problems would have, within a reasonable degree of medical and nursing, probability and certainty, been prevented or detected/addressed earlier if these standards had been followed.

To meet these standards, the Arkansas Veteran's Home, and its nursing staff were required to do the following:

A.

y

4. The Arkansas Veteran's Home in North Little Rock, Arkansas, failed to prevent and properly

. More likely than not, Mr. Oscar Jones'

00J-AVA-000510, Death Certificate).

Upon admission to the Arkansas Veteran's Home, this nursing home documented that Mr. Jones was

(00J-AVA-000457, 000503, 000507 - 000508, 000510, 000541, Death Certificate).

When Mr. Jones left the Arkansas Veteran's Home, and

(00J-AVA-000498).

(00J-AVA-000537, 000542, 000816, 000821, .

As a direct cause, the Arkansas Veteran's Home, and its nursing staff failed to comply with those standards set forth in paragraphs: 1, 2, 3, 4, 5, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, and 28. The failure to comply with these standards caused, within a reasonable degree of medical and nursing, probability and certainty, Mr. Oscar . These problems would have, within a reasonable degree of medical and nursing, probability and certainty, been prevented or detected/addressed earlier and cured if these standards had been followed.

To meet the standards, the Arkansas Veteran's Home, and its nursing staff were required to do among other things the following:

A.

B. Develop and act on a plan of care to minimize the risk for developing infections.

C. Monitor

5. While a resident of and in the care of the Arkansas Veteran's Home in North Little Rock, Arkansas, Mr. Oscar Jones

As a result of this nursing home's failures and intentional acts, Mr. Jones suffered at least , while a resident in the care of this nursing home. The first of these falls occurred only three days after Mr. Jones' initial admission to this nursing home.

During this same time that Mr. Jones was

.

As a direct cause, this facility and its staff failed to comply with those standards set forth in paragraph numbers: 1, 2, 3, 4, 5, 8, 9, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, and 28. It is my opinion, based upon experience, knowledge, qualifications and review of these records that these standards were not followed and the result was that Mr. Oscar Jones

,

To meet the standards, the Arkansas Veteran's Home in North Little Rock, Arkansas, and its staff were required to do among other things the following:

A. The Arkansas Veteran's Home in North Little Rock, Arkansas, along with its nurses and all staff members should have taken adequate measures to prevent

E. The Arkansas Veterans Home, along with its nurses and all staff members should have taken adequate measures to prevent falls and injuries to Mr. Oscar Jones.

F. Mr. Jones should not have been left alone in a wheelchair, nor should he have been allowed to access a wheelchair, walker, or stool, on his own without supervision. The nursing staff of this facility should have been aware that in Mr. Jones' case, a wheelchair, walker, or stool, is for Mr. Jones' supervised transportation only and is not a safe alternative for a place to merely sit. Any wheelchair left in his room or around him, should always have its wheels locked.

G. Consistently notify Mr. Jones' physician when this patient has an

H. The Arkansas Veteran's Home, and all staff members who contribute to patient medical records should record and maintain accurate medical records that appropriately and accurately describe the precise medical condition of a patient and the actions taken by the nursing home staff.

I. All staff members of the Arkansas Veteran's Home, who contribute to patient medical records

HOW ANY OF MR. OSCAR JONES IMPACTED THE STANDARD OF CARE THAT SHOULD HAVE BEEN FOLLOWED BY THE ARKANSAS VETERAN'S HOME

Mr. Oscar Jones that would have impacted the standards of care that should have been followed by the Arkansas Veteran's Home in North Little Rock, Arkansas, and its staff. Mr. Jones'

MR. OSCAR JONES' DEATH CERTIFICATE CONFIRMED THAT HIS DEATH WAS CAUSED BY THE NEGLIGENCE OF THE ARKANSAS VETERAN'S HOME

Following his death, Mr. Oscar Jones, had a Death Certificate completed. It documented that the immediate cause of his death was '

This Death Certificate documented that

which was also caused by the negligence of the Arkansas Veteran's Home (Death Certificate).

When Mr. Oscar Jones' Death Certificate,

SUMMARY

I have been advised that "*Negligence*" means:

> *Negligence, when used with respect to the conduct of a medical facility means failure to use ordinary care, that is, failing to do that which a medical facility of ordinary prudence would have done under the same or similar circumstances or doing that which a medical facility of ordinary prudence would not have done under the same or similar circumstances.*

I have been advised "*proximate cause*" means:

> *That cause that was a substantial factor in bringing about an occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission must be such that a health care provider using ordinary prudence would have foreseen that the occurrence, or some similar occurrence, might reasonably result there from. There may be more than one proximate cause of an occurrence.*

More likely than not, this negligence on the part of the Arkansas Veteran's

Home in North Little Rock, Arkansas, to practice in an acceptable manner proximately caused Mr. Oscar Jones'

As more specifically set forth above, the actions and inactions of this facility caused the conditions and complications described above.

In summary, the Arkansas Veteran's Home in North Little Rock, Arkansas, did not meet the standard of care in its treatment of Mr. Oscar Jones. It is my opinion, based on my medical education, experience, and training and based upon a reasonable degree of medical and nursing, probability and certainty, that these negligent acts and omissions as stated above proximately caused Mr. Oscar Jones'

It is my opinion that the Arkansas Veteran's Home, in North Little Rock, Arkansas, knew or should have known that its failure to meet the standards of care would put Mr. Jones at extreme risk of harm and knew that this failure to meet these standards would likely cause complications or injuries to Mr. Jones. Nevertheless, the Arkansas Veteran's Home, still failed to follow the above standards. Had the standards of care been followed by the Arkansas Veteran's Home, more likely than not and based upon a reasonable degree of medical and nursing, probability and certainty, Mr. Oscar Jones would not have

I reserve the right to amend, or add to, my opinions upon review of additional records, testimony, or facts, as they become available, or upon further review of existing materials.

Respectfully submitted,

Keith E. Miller, M.D.
558 Lakewood Drive
Center, Texas 75935

1 BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS
2
MARY ANN JONES, as Special)
3 Administrator of the Estate of)
Oscar Odell "Bill" Jones,)
4)
CLAIMANT,)
5) CLAIM NO. 20-00817
VS.)
6)
ARKANSAS DEPARTMENT OF VETERAN)
7 AFFAIRS d/b/a NORTH LITTLE)
ROCK - VETERANS AFFAIRS f/k/a)
8 ARKANSAS STATE VETERANS HOME)
AT NORTH LITTLE ROCK,)
9)
RESPONDENT.)
10
11 ----------
12 ORAL DEPOSITION OF
13 BEVERLY BYRD
14 July 27, 2023
15 ----------
16
17 ORAL DEPOSITION OF BEVERLY BYRD, produced as a
18 witness at the instance of the CLAIMANT, and duly
19 sworn, was taken in the above-styled and numbered
20 cause on the 27th day of July, 2023, from 1:51 p.m. to
21 3:04 p.m., before Dana Hayden, CCR in and for the
22 State of Arkansas, RMR, CRR, CRC, reported by machine
23 shorthand, at the Rainwater Holt & Sexton, 2701 TP
24 White Drive, Jacksonville, Arkansas 72076.
25

APPEARANCES

FOR THE CLAIMANT:

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ALSO PRESENT:

Ms. Brianna McDonough

I N D E X

July 27, 2023

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WITNESS: BEVERLY BYRD	
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EXHIBITS

NO.	DESCRIPTION	MARKED
Exhibit 1	Notice to Take Deposition	7
Exhibit 2	Subpoena	7
Exhibit 3	4/12/2018 Total Body Skin Assessment, ADVA Docs. P. 1351 - 1353	15
Exhibit 4	Progress Notes, Bates-stamped OOJ-AVA-000022 - 000036	22

BEVERLY BYRD,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. PRIEBE:

01:51PM Q. Would you please state your name.

A. Beverly Byrd. Sorry.

Q. No. Ms. Byrd, at some time, did you go by Hamelback or --

A. Uh-huh, Hamelback.

01:51PM Q. Spell that for the court reporter.

A. H-a-m-e-l-b-a-c-k.

Q. Okay. And, Ms. -- is it okay if I call you Beverly?

A. I would prefer that.

01:51PM Q. All right. Beverly, what's your home address?

A. _____

Q. All right. My name is Jeff Priebe.

A. Okay.

01:51PM Q. And you and I have met before?

A. Yes, we have.

Q. Okay. And you understand that we're here to take your deposition?

A. Huh?

01:51PM Q. We're here to take your deposition today.

1 A. Okay.
2 Q. We need to ask some questions, the lawyer for
3 the -- the state lawyer and myself, to find out what
4 you know and what you remember, okay?
01:51PM 5 A. Okay.
6 Q. The court reporter's taking everything we say
7 down and so we can get along just fine saying "uh-huh"
8 or "huh-uh" or shaking our heads, but she's going to
9 get on to us. So we need to do everything verbally.
01:52PM 10 And if I ask you, "Is that a 'yes,'" or, "Is that a
11 'no,'" we're not getting on to you. We just want to
12 make sure she can get your testimony. Okay?
13 A. Okay.
14 Q. From time to time you may hear myself or the
01:52PM 15 other lawyer say "Objection," or "Objection to form."
16 We have to do that to preserve our record. It has
17 nothing to do with you. But even though we may say
18 that, you can go ahead and answer, okay?
19 A. Okay.
01:52PM 20 Q. If at any time today -- I
22 A. Mm-hmm.
23 Q. "Yes"?
24 A. Yes. I'm sorry.
01:52PM 25 Q. That's all right. If at any time you can't hear

1 me or understand me or if you can't hear or understand
2 the other lawyer, you just let us know.
3 A. Okay.
4 MS. BROYLES:
01:52PM
6 THE WITNESS:
01:52PM 10 MS. BROYLES:
13 THE WITNESS:
01:52PM
16 Q. Well, if at any time you can't hear us, you let
17 us know.
18 A. Okay. I will.
19 Q. I don't think we're going to be here that long,
01:53PM 20 but we have a little bit of ground to cover. If you
21 need to stretch your legs, take a walk, answer the
22 cell phone, just let us know, okay?
23 A. Okay.
24 Q. All right. Are you currently working?
01:53PM 25 A. Part time.

Q. What are you doing?
A. I'm nursing at StoneBridge in Conway.
Q. And what is StoneBridge?
A. It's an assisted living facility.
01:53PM Q. Okay. And what's your position there?
A. LPN.
Q. How long have you been a nurse?
A. Twenty-five years.
Q. Oh, wow. Congratulations.
01:53PM A. Thank you.
Q. I'm going to show you what I'm going to label as Exhibit 1 and Exhibit 2, which is a copy of the notice and the subpoena.
(Exhibit 1 marked for identification.)
01:53PM (Exhibit 2 marked for identification.)
Q. I'm going to show you this. Were you served a copy of Exhibits 1 and 2?
A. Mm-hmm.
Q. "Yes"?
01:54PM A. Yes. Yes, I'm sorry.
Q. But you got a copy of these, right?
A. I think I have it in the truck.
Q. Yeah, but I'm just saying you got a --
A. Yes, I did get a copy. I'm sorry.
01:54PM Q. That's okay. You're doing fine. And it had a

1 witness fee check, right?
2 A. A what?
3 Q. Witness fee check?
4 A. Oh, yes.
01:54PM 5 Q. Okay.
6 A. I'm sorry.
7 Q. That's a check that, under the rules, we have to
8 provide with the subpoena, okay?
9 A. Okay.
01:54PM 10 Q. All right. Is this why you are here today?
11 A. Yes.
12 Q. Okay. I'm going to give these to the court
13 reporter.
14 THE WITNESS: This is not going to be
01:54PM 15 easy.
16 MR. PRIEBE: No, it's fine. You're
17 doing just fine.
18 Q. All right. At one time did you work at the
19 State Veterans Home in North Little Rock?
01:54PM 20 A. I have no clue. I don't remember the years.
21 Q. But did you work there?
22 A. Oh, yes. I thought you said at what time.
23 Q. That's all right.
24 A. Sorry. Yes, I did.
01:54PM 25 Q. What was your title there?

A. LPN.
Q. Okay. Did you have any other title?
A. I was charge nurse, but I don't know if they put that in the title or not.
01:55PM Q. Okay. What shift did you primarily work?
A. 7a to 7p.
Q. Were you there when it opened?
A. I came in a couple of months afterwards.
Q. And I think the documents that we've been
01:55PM provided reflect that you worked there in 2017, 2018, and part of 2019.
A. Yes.
Q. Does that sound right?
A. It does.
01:55PM Q. Okay. And what was your -- what shift did you work?
A. 7a to 7p.
Q. So you worked 12 hours?
A. Most of the time, yes.
01:55PM Q. Okay. How many days a week would you work?
A. If I was doing the 12-hour shifts -- you know, it varied, really. I would work three days. And if I was working the 10-hour shifts, I worked four days.
Q. Were you hourly or salary?
01:56PM A. Hourly.

Q. When you were the nurse during the day shift --
A. Yes.
Q. -- is that fair?
A. (Nods head up and down.)
01:56PM Q. Who was your boss?
A. I had two. You mean the DON?
Q. Who would you report to, yes, ma'am.
A. Oh. Lisa. I want to say her last name's Ballenger?
01:56PM MS. BROYLES: Balencia?
THE WITNESS: Huh?
MS. BROYLES: Lisa Balencia?
THE WITNESS: Yes.
Q. And who was the administrator?
01:56PM A. Lindsey.
Q. Clyburn?
A. Yes.
Q. Okay. Who interviewed you for your job there?
A. Who interviewed me? There was another DON, but
01:56PM I can't think of her name. She was the one that interviewed me.
Q. Lindsey didn't interview you, did he?
A. No.
Q. Okay. I understand that in 2018, there were
01:57PM seven different, what they call houses?

A. Mm-hmm.
Q. Is that "yes"?
A. Oh. Sorry. Yes.
MS. BROYLES: I think it was eight,
01:57PM but --
Q. Seven or eight. Okay, yeah. Different houses?
A. Eight.
Q. Eight? Okay. My bad. I'm sorry. Y'all are right.
01:57PM Which house -- would you work at all the houses or just one or two of them, or how many?
A. When I first got hired in, I trained in Home 2.
Q. Okay.
A. I worked in Home 4 -- is that right -- 4. And
01:57PM then later on, I worked in 5 and 6.
Q. Okay. How many residents do you recall on average were in each home?
A. Twelve.
Q. Okay. And when you came on shift, how many
01:57PM houses would you be assigned to during your shift?
A. I was always -- wasn't it -- before they combined the houses, I was in one home, and that was usually 6. And then when they opened up 5, they combined them, and I ended up in both houses.
01:58PM Q. 5 and 6?

A. Yes.
Q. During your shift, would you be the only nurse assigned to those two houses?
A. Yes.
01:58PM Q. And I know that they called their CNAs, they called them universal workers?
A. Yes.
Q. Would you have to supervise the universal workers?
01:58PM A. Yes, I did.
Q. Well, tell us generally what you did when you came on. You know, take us through a shift.
A. Okay. I get there and make sure that I had all my staff, that everybody had reported. I had two in
01:58PM the kitchen and two on the floor, one on each side of the halls. Because it was kind of like the kitchen was in the middle.
Have y'all been in those homes?
MS. BROYLES: I've seen kind of the
01:59PM idea. I haven't gotten to go through. But did you say two in the kitchen and one on the floor?
THE WITNESS: Two on the floor, one on each side.
01:59PM A. Okay. So then I would make sure I had my staff,

and if I wasn't staffed, then I had to call staffing over there, Lisa, and tell her, you know, I need another worker; I don't have enough. A lot of times it was just, you're just going to have to make do.

01:59PM And then I would go into my office, and the night nurse would be in there, and I would get my report from her. After I got my report, then I would start passing my meds.

Each one of the -- each room had a

02:00PM little cabinet that's locked, and their meds were in there. So I didn't have to push a cart or anything like that. I would just take my computer with me and open that door up and get my meds out of there.

And after I'm done with that, you know,

02:00PM you can't just -- you can't just go in a patient's room and talk to -- I mean, and say "Here's your meds." You have to talk to them, or I do. So that's what I did. You know, I'd spend a couple of minutes with them making sure they were okay, they didn't have

02:00PM any complaints, they weren't hurting and like that. And then I would, you know, go on to the next one.

Then when that was finished, I'd go in, back in my office, and I would chart what had to be charted. And then the same thing at lunch and then

02:00PM the same thing at supper.

Q. Would you chart handwritten chart, or was it on computer?
A. Computer.
Q. Okay.
02:00PM A. I would make my notes handwritten so I wouldn't forget them but, you know.
Q. You'd make your notes as you rounded?
A. Yes.
Q. Then at the end of the round, would you go put
02:01PM them in the computer?
A. (Nods head up and down.)
Q. "Yes"?
A. Yes. Sorry.
Q. That's all right. Then throw your notes away?
02:01PM A. Huh?
Q. Then you'd throw your notes away?
A. You'd put them in the shredder.
Q. Perfect. Now, and I take it that if you were passing meds, would you mark the MARs and the TARs?
02:01PM A. I marked the MARs. My computer was with me. It was a laptop.
Q. What about the TARs?
A. I didn't have TARs -- I mean, I wasn't responsible for the TARs. The TARs were, like, wound
02:01PM care and stuff like that, and I didn't do. I wasn't

1 responsible for the wound care.
2 Q. Who did the wound care?
3 A. At that point, it was Kayla. I can't remember
4 her last --
02:01PM 5 MS. BROYLES: Is that 2018, or what
6 point are you talking about?
7 THE WITNESS: 2018.
8 MS. BROYLES: Okay.
9 Q. Kayla was another worker there?
02:01PM 10 A. She was the wound care nurse.
11 Q. Okay. And she worked for the Veterans Home?
12 A. Yes.
13 Q. Okay. And when you say she did wound care,
14 would you do wound audits or anything like that?
02:02PM 15 A. Wound what?
16 Q. Audits?
17 A. No.
18 Q. Okay. I'm going to show you what I'm going to
19 label as Exhibit 3 to your deposition.
02:02PM 20 (Exhibit 3 marked for identification.)
21 A. Her?
22 Q. No, that's what I want you looking through.
23 We'll get to her in just a minute.
24 But do you recognize these?
02:02PM 25 A. Do I have what?

1 Q. Do you recognize this?
2 A. No, I don't.
3 Q. Okay. These are skin and wound assess -- total
4 body skin assessment. Would you fill out these
02:02PM 5 documents?
6 A. I would have filled out one when he came in and
7 not any more.
8 Q. You mean when he was admitted?
9 A. Yes.
02:02PM 10 Q. Are you talking about Mr. Jones?
11 A. Yes.
12 Q. Okay.
13 A. Anybody that came in.
14 Q. Okay. [redacted]
02:03PM [redacted]
02:03PM 20 Q. So Exhibit Number 3, you wouldn't fill these
21 out?
22 A. No.
23 Q. Have you even seen these before?
24 A. No.
02:03PM 25 Q. Okay. I want to -- all right. I'm going to

hand these to her, okay?

So when you were passing your meds on a daily basis --

A. Yes.

02:03PM Q. -- three times a shift, right?

A. Yes.

Q. Would you do a full head-to-toe body assessment of residents?

A. No. No, because the full body head-to-toe,

02:03PM you'd have to take all their clothes off of them, and, no.

Q. If a resident had developed a wound, how would you find out?

A. The UW, universal worker, would see it. Because

02:04PM they dressed them in the morning and they got them ready to come out for breakfast. They also undressed them at night and put them in their bed. So they would see that.

Q. Okay.

02:04PM A. And they would pass it on and tell me he's got a Stage 3 in there or whatever have you, or he's got a little skin tear that needs band -- I could do the skin care. I couldn't do the wounds because that was the wound care nurse's responsibility.

02:04PM Q. So if a resident had a pressure sore or even a

Stage 1 pressure sore, you weren't responsible for doing the wound care?
A. No.
Q. You would only do wound -- if they had a scratch
02:04PM or a skin tear or shearing?
A. Or they had fell and then I would have to look at them to make sure, you know, no bones were broken. Or, you know, if they fell off the bed, they would get a big scratch, then I would do that.
02:05PM Q. Gotcha.
A. But as far as a daily head-to-toe, no.
Q. So it sounds like if you have two houses and you're making -- doing all the meds, it sounds like you were very busy during the day?
02:05PM A. Yes.
Q. Would you ever be pulled over and have to go to other houses?
A. Just my two.
Q. Just your two?
02:05PM A. (Nods head up and down.)
Q. Were you in charge of scheduling staff or scheduling universal workers?
A. No.
Q. Did you have any concerns about having enough
02:05PM staff there at the Veterans Home?

A. Yes.
Q. What were your concerns?
A. There -- how do I say. There were not enough staff to take care of two homes. There just wasn't. It's not safe. Which means that I would be in this home over here, and if this -- somebody fell in this home, I would have to stop what I was doing over here and go outside and go back in the other house to see what was going on.
And it also meant that more than likely, the meds were going to be late in one home. That, you know, one home would have the meds on time and one home wouldn't because you just -- I just couldn't do it.
Q. Did you ever talk to the DON or the ADON about your concerns about staffing?
A. Yes.
Q. And how often?
A. Probably a lot. I can't tell you every day because -- but it was a lot.
Q. And what would they tell you?
A. "You can do it. You're fine. If you need help, holler at one of us." Never happened. I mean, I could holler at one of them, but I didn't get any help.

Q. Were there any other -- were there times that you had to stay after your shift?
A. Yes. Because the oncoming nurse would not be there, and you'd have to stay until somebody else gets
02:07PM there to take your keys.
Q. How often would you have to stay over?
A. Depended on who was relieving me. There were certain nurses that would be there on time and certain nurses that would not.
02:08PM Q. Do you recall Mr. Jones?
A. Yes.
Q. You smiled.
A. He was one of my favorites.
Q. Why is that?
02:08PM A. I don't know. I can't describe what made him one of my favorites. He just was. He was tall and lanky, probably like my dad, but he was friendly. You know, he was confused as -- awfully confused, you know, and -- but if you would talk to him, he would
02:08PM settle down.
And he was -- we'd go out and walk. I'd take him out for a walk most days. You know, some patients you just get attached to, and he was one of mine.
02:08PM Q. You said he was confused. Did he have some

1 [redacted]

02:09PM

7 Q. Could he still -- you know, you said you took
8 walks?
9 A. Yes.
02:09PM 10 Q. Could he -- if you helped him, could he go for a
11 walk?
12 A. Toward the end, no.
13 Q. At the beginning?
14 A. Huh?
02:09PM 15 Q. At the beginning?
16 A. Yes.
17 Q. Do you recall him ever acting out?
18 A. The day I got him, he acted out, yeah, because
19 he wanted to go home with his wife. I don't really
02:09PM 20 recall him acting out with me so much as I think he
21 did with some of the other nurses, but I'm not sure.
22 Q. In your experience, if you take your time to
23 talk with the resident
is that -- do they tend to get along
02:10PM 25 better?

A. Yes, they do. I have one now. She's a sweet lady. If you go in there and say, "Hey, how are you doing today," and ask her if she wants to sing a song, and she will say, "Yes, but I can't think of one." If
02:10PM you lead her off -- it's a hymn -- she can do the whole song; you just have to start her.

But another nurse would go in there and say, "Hey, take your medicine," and she's not going to do it. It's all about approach. And Bill was the
02:10PM same way.

Q. You just had to take your time?

A. Yes.

Q. I'm going to show you some -- I printed off some of the nurses notes for Mr. Jones, and these are
02:10PM primarily in December of 2018, okay?

A. Okay.

Q. I'm going to mark this as Exhibit 4.

(Exhibit 4 marked for identification.)

Q. And just for -- to speed up the process, I
02:11PM highlighted where I found your name, okay?

A. Okay.

Q. Tell me, do you recognize Exhibit Number 4?

A. Yes.

Q. And these highlighted, is that you, Beverly
02:11PM Hamelback?

A. Yes, it is.
Q. Okay. And would you agree with me that these pertain to Bill Jones, Mr. Jones?
A. Let me see, make sure. I think so, yes.
02:11PM Q. Do you see his name right --
A. Oh, yeah. But I was reading over here to see what I could --
Q. The diagnosis?
A. Yes.
02:11PM Q. And these notes, it looks like they go in reverse order. It started in January, going back through December of '18, right?
A. Mm-hmm.
Q. "Yes"?
02:11PM A. Yes.
Q. All right. And it looks like January 1, you documented the family came and picked up his belongings?
A. Yes.
02:12PM Q. And then on the 27th of December, at 9 o'clock in the morning, you notified the APRN of a change in his status?
A. Yes.
Q. Tell me, do you recall what happened that day?
02:12PM A. Do what?

1 Q. Do you recall what happened that day?

2 [redacted]

02:12PM [redacted]

02:12PM [redacted]

14 Q. Okay. Let's back up. Let's go to the next

02:12PM 15 page. And it looks like you documented on the 26th of

16 December, the day before?

17 A. Okay. It looks like what?

18 Q. You worked the day --

19 A. Yes.

02:13PM 20 Q. On the 27th you went out, you also worked the

21 26th?

22 A. Yes.

23 Q. Okay. I'm going to go to this note right here.

24 A. Okay.

02:13PM 25 [redacted]

1 [redacted]

[redacted]

02:13PM [redacted]

02:13PM [redacted]

02:13PM [redacted]

02:14PM

02:14PM

1

02:14PM

02:14PM

02:15PM

16 Q. That's fine.

17 A. It's been too long.

18 Q. I understand. And a couple minutes earlier, you

19 had also documented that

02:15PM

I'm sorry if I didn't make that clear.

02:15PM 25 Q. No, you're fine. And did he -- do you recall

1 [redacted]

3 Q. Let's go to the next page, if we can.
4 A. Okay.
02:15PM 5 Q. Let's go down here to this note on December the
6 22nd, at 2:43. What did you document?
7 [redacted]
02:16PM [redacted]

13 Q. Now, when she called, did each home have its own
14 phone?
02:16PM 15 A. No -- yeah. Well, the nurses station had a
16 phone. Bill could have had a cell phone, but he
17 didn't.
18 Q. Was he in the -- wouldn't not have been able to
19 use a cell phone?
02:16PM 20 A. No, would not have been able to.
21 Q. So when she called, would she have called the --
22 would you have talked to her at the nurses station?
23 A. Yes.
24 Q. And would you see other families? Would they
02:16PM 25 call?

1 A. Yes.
2 Q. So calling, that's part of the process?
3 A. Yes.
4 Q. All right. Anything else you remember about
02:17PM 5 Mr. Jones?
6 A. No. He was just a sweetheart.
7

02:17PM

02:17PM

02:17PM

02:18PM

1 [redacted]

02:18PM

7 Q. You cared for Mr. Jones, didn't you?
8 A. Yes, I did.
9

02:18PM

02:18PM

18 THE WITNESS: You should be able to hear
19 them marbles rolling around in my head.
02:19PM 20 Q. Now, you and I have met before?
21 A. Yes, I have.
22 Q. You've met my investigator, Mr. Hopkins?
23 A. Yes.
24 Q. Okay. When I met with you before with
02:19PM 25 Mr. Hopkins, did we talk about the same things here

1 today?
2 A. Yes.
3 Q. Was Mr. Hopkins nice to you?
4 A. Yes.
02:19PM 5 Q. Was I nice to you?
6 A. Yes.
7 Q. All right. I need to ask you some questions
8 about why you quit working there.
9 A. Okay. Could I have some water first?
02:19PM 10 Q. Absolutely. There you go.
11 A. Thank you.
12 Q. You're welcome.
13 [redacted]
02:19PM [redacted]
02:19PM [redacted]
02:20PM

1

02:20PM

02:20PM

02:21PM

17 Q. And then how long after that did you go work for
18 the assisted living facility?
19 A. I went to work -- I was out of work probably two
02:21PM 20 months, pretty close to two months. And then I went
21 to work at Ridgemere Assisted Living, and I worked
22 there just for maybe two years. And then I went to
23 work at StoneBridge, and I have been there ever since.
24

02:21PM

Q. I know you talked about needing more help and telling the DON and the ADON about needing more help. Do you think the residents would have gotten better
02:22PM care if they had more help?
A. If the residents would have got better care if what?
Q. If you had more help?
A. Yes. There's no doubt about it.
02:22PM Q. Do you think the -- they were veterans, right?
A. Yes, all of them were veterans.
Q. Do you think the veterans deserve to have more help there?
A. Yes, they do.
02:22PM Q. Ms. Beverly, thank you.
A. You're welcome.
Q. This other lawyer's going to ask you some questions, all right?
MS. BROYLES: Yeah. Just one second.
02:22PM We'll take a break for a minute.
THE WITNESS: Okay.
MS. BROYLES: And then I'll pull up some stuff.
(Recess from 2:22 p.m. to 2:24 p.m.)
///

EXAMINATION

BY MS. BROYLES:

Q. Ms. Byrd, again my name is Jordan Broyles, and I represent the Veterans Home --

02:24PM A. Okay.

Q. -- where you were employed. We talked with Lindsey Clyburn this morning, so you're our second witness today. You and I have not gotten to meet before, right?

02:24PM A. You?

Q. Yes.

A. No, we have not.

Q. And do you know if anyone from the State has called you or talked to you about this case?

02:24PM A. No.

Q. Okay. So the only attorney that you've visited with about this case is the attorney for the Joneses?

A. Yes.

Q. Have you read the complaint that they filed in

02:24PM this case?

A. No, I don't think so. I didn't -- if it was on that one piece of paper, that first one?

Q. No, that --

A. No.

02:25PM Q. Okay. So you don't know what they are alleging

1 against the facility in this case?
2 A. No.
3 Q. Is that fair?
4 A. That's fair to say, yes.
02:25PM 5 Q. So one of -- here are some of the things that
6 they are complaining of, okay?
7 A. Okay.
8 Q. So it says he was a veteran who was a resident
9 at the home.
02:25PM 10 A. Mm-hmm.
11 Q. And then it says,

14 Do you understand that part of that
02:25PM 15 allegation is based off of the care that you would
16 have provided to Mr. Jones?
17 MR. PRIEBE: Object to form of the
18 question.
19 A. Yes.
02:25PM 20 Q. Do you feel like you provided below, or poor,
21 care to Mr. Jones?
22 A. I gave Mr. Jones the best care of my ability.
23 Q. And I can tell from visiting with you that you
24 have that priority with all of your patients,
02:26PM 25 residents, veterans; would that be true?

A. Yes.
Q. Would you say, as well, that the care that you prioritize, in this instance Mr. Jones' care?
A. (Nods head up and down.)
02:26PM Q. Is that a "yes"?
A. Yes. Sorry.
Q. And would it also be fair to say that anytime a need was communicated to you that if it needed to be escalated, you would have taken that necessary step?
02:26PM A. Yes.
Q. Is it also fair to say that as the LPN in -- I'm going to say in charge of your home.
A. Okay.
Q. Is that fair to say your --
02:26PM A. Yes, it is.
Q. That if you observed something concerning or was reported something concerning that you would have elevated that --
A. Yes.
02:26PM Q. -- to your supervisor?
A. Yes.
Q. And your supervisor, as you mentioned, was -- that would be Ms. -- I guess it was Nurse Balencia?
A. Yes. Lisa.
02:27PM Q. Lisa.

A. When you do the last names, I don't recognize them.

Q. Oh, okay. Lisa. That's fair. Okay.

So one thing that -- have you looked at

02:27PM the medical records in this case?

A. I haven't looked at anything.

Q. Okay. I might -- I kind of want to go back and remind you of some things.

A. Okay.

02:27PM Q. Was it -- I'm making an assumption, so clarify or correct me if I'm wrong. But it would be -- would it be true that a number of residents that you have cared for in the various facilities where you've worked

02:27PM A. That's true.

[redacted]

02:27PM [redacted]

02:28PM [redacted]

Q. Right. So one thing that I see very often in your charting is your communication with Mrs. Jones. Would it be fair for me to assume that if you charted it that it did happen?

02:28PM A. Yes, ma'am.

Q. And so did you have a habit of charting things that weren't true?

A. No.

Q. I didn't think so. So I can rely on your

02:28PM charting here, right?

A. You can rely on it.

Q. Okay. Good. And what I take from this is you made it a priority to communicate with family members who were contacting the facility --

02:28PM A. Yes.

Q. -- and talking with them?

A. Yes.

Q. One thing that is mentioned through here are concerns about

02:29PM . I understand you don't recall all of those?

A. I don't. I really don't, except for that first day.

Q. Have you worked night shift before?

A. At the Veterans Home, or anywhere?

02:29PM Q. Or anywhere.

1 A. Yes.
2 Q. Have you experienced the instance where
3 veteran -- not per se veteran, but residents have
4 [redacted]
02:29PM [redacted]
02:29PM [redacted]
02:29PM [redacted]
02:30PM 20 Q. Because the care platform or -- "platform" is
21 not the word, but it was patient-centered care?
22 A. Yes.
23 Q. So my understanding from us visiting with
24 Mr. Clyburn this morning was if a patient wanted to
02:30PM 25 have breakfast later in the afternoon, they could, and

1 maybe their schedule would not be as a traditional day
2 may follow?
3 A. Yes.
4

02:30PM

02:31PM

02:31PM 15 A. Okay.
16

02:31PM

02:31PM

1 [redacted]

02:31PM [redacted]

02:32PM [redacted]

02:32PM [redacted]

19 Q. It does. And it would -- would it be fair to

02:32PM 20 say that residents' or veterans' preferences on care

21 providers wasn't always consistent?

22 A. Umm-umm. I mean, yes, it would be. Sorry.

23

02:32PM

1 [redacted]

4 Q. Did you experience -- were many of the residents
02:33PM 5 at the Veterans Home men?
6 A. Do what?
7 Q. Were many of them male?
8 A. I want to say 95 percent of them. I only had
9 one woman in my home.
02:33PM 10 Q. Did you ever observe males having preference for
11 female caregivers over males or vice versa?
12 A. I didn't have any male workers --
13 Q. Okay.
14 A. -- until the very end, and they did not want
02:33PM 15 him.
16 Q. There's references here to you making calls to a
17 APRN Welch?
18 A. Yes.
19 Q. Do you remember her?
02:33PM 20 A. Uh-huh.
21 Q. Did you have any complaints or concerns about
22 Nurse Welch?
23 A. No, because if I called her, she was one of
24 those that usually got right back to me. And if I
02:34PM 25 said I needed Tylenol, she would say, "Okay." Or if I

needed to send him out, she would say go. You know, she was consistent.
Q. So you knew that if you needed something requiring her okay or approval that she was a good
02:34PM source for you to contact?
A. Yes.
Q. Do you know how, in his records, there's various doctors who are -- appear. I think there's maybe a Riggs and another last name that I cannot pronounce
02:34PM and won't try to. But were there any doctors that you engaged with regularly, or more frequent than others?
A. I want to say that that Dr. Riggs was one of them, but I don't recognize that name of the one that you can't --
02:35PM Q. Starts with an O.
A. I don't recognize that one.
Q. Okay. Did you monitor -- or kind of tell me how you observed the universal workers with respect to -- you know, you're doing your duties, and you're
02:35PM watching them move about. How did that work?
A. Me watching them do their duties and what?
Q. Or not per se -- sorry. You know, you're all in the -- I'm kind of putting myself there, and you've got your staff, you've got your veterans; and as
02:35PM you're going, going through your responsibilities,

they are doing the same thing?
A. Yes.
Q. What are the types of things that you're seeing go on, just on a typical day?
02:36PM A. Okay. The two girls are cooking breakfast that are behind the counter. The two girls that are on the floor, they are going into each individual's room and getting them up and waking them up for breakfast and getting them dressed. If they need a shower that
02:36PM morning, then they are doing that, you know, if they have been wet throughout the night.
They are changing, stripping that veteran's bed and then, you know, going from room to room and bringing them out if they were not able to
02:36PM bring theirself out. Most of them could bring theirself out.
Then they would mop the floors and, you know, it would be a good environment.
Q. When we talked with Lindsey this morning, he
02:36PM said compared to other nursing homes where he's worked, this home style or greenhouse style, cottage style environment was very beneficial to the residents or veterans as opposed to the traditional nursing home --
02:37PM A. Yes.

Q. -- layout. How -- I know you've worked in both settings?
A. Yes.
Q. Can you tell us the -- kind of your observation
02:37PM and the benefits of that layout?
A. Okay. A nursing home, once you're put in the nursing home, you're usually not free to come and go, okay? And some of them can't help theirself at all, you know. They have to be fed, bathed, all that, in
02:37PM the bed because they can't get up.
In an assisted living, they have to be able to assist with their daily living. They might not be able to dress theirself all the way, but they have to be able to try. They might need help maybe
02:38PM feeding some. They can feed theirself certain foods and then others not.

02:38PM

02:38PM Q. Okay. Good to know. And kind of backing back

for a minute, you know, as you talked about, you're busy during your shift, right?
A. Mm-hmm.
Q. Is that a "yes"?
02:39PM A. Yes.
Q. And all of the universal workers, everybody's staying busy?
A. Yes.
Q. There's a saying in health care that if it's not
02:39PM charted, it didn't happen?
A. Yes.
Q. Have you heard that?
A. Yes.
Q. Have you experienced instances where you could
02:39PM not chart every single thing that you have done in a day?
A. Yes.
Q. Would it be fair to say that it's possible to miss charting something in the sense of you can't go
02:39PM back in detail every single encounter and also get all the jobs done you need to do?
A. Do it again.
Q. Yeah.
If you had the option between caring for
02:39PM a resident or veteran versus charting, what would you

pick? What's your priority?
A. That's not fair. It's take care of the veteran.
Q. Of course it is.
A. Or caring for my resident.
02:40PM Q. And so as busy as you are, it is possible not to chart something and it not be neglect; is that fair?
MR. PRIEBE: Form.
A. And it not be neglect? Yes, that's fair.
You're not ever going to find a nurse,
02:40PM ever, that can chart everything that happens. You're just not. Not if it's a 12-hour shift and she's got two homes, no.
Q. And you'd have to basically have a video surveillance on you 100 percent to capture every
02:41PM single thing you did in a day; is that fair?
A. Yes, it's fair. It's for my safety and theirs. They're both.
Q. Of course.
A. Yes.
02:41PM Q. What is your -- I know you said you've been a nurse for 25 years.
A. Uh-huh.
Q. Is that right?
A. Yes.
02:41PM Q. Have you worked outside of the nursing home --

A. Oh, yes.
Q. -- environment?
A. Yes, I have.
Q. Okay. Where all have you worked?
02:41PM A. I spent twelve years, twelve or thirteen years in a hospital in Paragould, Arkansas. I worked most of the floors. My favorite was the telemetry floor, the heart floor.
Q. When did you transition to nursing home, 02:42PM long-term care?
A. I worked at a nursing home in Paragould at the same time I was doing the hospital work because I had never done nursing home, and I wanted to see if I liked it any better or if it was any harder or if I 02:42PM was missing anything.
Q. Yeah.
A. You know what I'm saying?
Q. Yeah.
A. That. So --
02:42PM Q. Do you have a preference one over the other?
A. There are things about each, each one that I like. I like the hospital setting because it's kind of pretty much set in stone, and I have my supplies that I need and, you know, like that, but I don't have 02:42PM time to spend with my residents that I like to spend

with them.
Q. And that's the benefit of being in the long-term care environment?
A. Yes, yes.
02:42PM Q. One thing that we talked to Lindsey Clyburn about, too, is he thought that the LPNs in 2018 were one to a house until after he left. So in 2019, there was a change to one LPN per two houses?
A. During the day. But I think at night, I think
02:43PM it's always been -- I'm not positive. I think it's -- it might have always been two. But like I said, I'm not positive.
Q. So for when Mr. Jones was in -- and he was a resident in 2018?
02:43PM A. Yes.
Q. So for the -- and you were the day shift, correct?
A. Yes.
Q. So for the time that Mr. Jones was in the
02:43PM facility, you would have only been in his house during a single shift; is that true?
A. I think so, yes.
Q. Okay. I know you communicated concerns about staffing, and I certainly can understand, when someone
02:44PM doesn't show up, it's tight for everyone?

A. Yes.
Q. And I can appreciate frustrations of, "Sorry; do the best you can."
A. Yes.
02:44PM Q. Did you ever -- specific to Mr. Jones, did you ever witness any neglect of Mr. Jones?
A. No, I don't, no.
Q. If you felt like he was truly being neglected, there is a complaint and process to take advantage of;
02:45PM is that fair?
A. That's fair.
Q. So you have no recollection of making that type of report of a specific concern about Mr. Jones?
A. Yes. I think first I would go to the APRN or I
02:45PM would go to my ADON or DON, and if it still didn't get checked -- if it still wasn't addressed, then there is always that phone number up there that you could call for State.
Q. And getting to know you over this conversation
02:45PM and knowing you care about your patients, if there was something that you felt needed to be reported, you would take is that step?
A. Yes. I would not hesitate on that.
Q. Have you had to do it in other instances?
02:46PM A. Have I took that step? I have never reported to

1 State, but I have reported --

02:46PM

02:46PM

13 Q. I can understand the frustrating aspect of that,
14 but you did the right thing.
02:47PM 15 Anything else about Mr. Jones that you
16 can recall, as we sit here?
17 A. No, I can't. I really -- you know, he was just
18 one of my favorites. I mean --
19 Q. I should ask: Do you remember, so he had -- he
02:47PM 20 was married obviously, Ms. Jones, sweet as can be, and
21 then he had a stepdaughter local. Do you remember his
22 stepdaughter?
23 A. No. But what did you say about Ms. Jones?
24 Q. She's as sweet as she can be.
02:47PM 25 A. (Shakes head back and forth.)

1 Q. No?
2 A. No.
3 Q. Okay. Tell me about Ms. Jones. Okay.
4

02:47PM

02:48PM

02:48PM

19 Q. And on your end, the difficulty is you -- it's
02:48PM 20 hard to marry sometimes the person who's not there
21 with the real circumstances --
22 A. Yes.
23 Q. -- you're facing?
24 A. Yes.
02:48PM 25 Q. I think during her deposition, she said one of

her complaints was that he maybe had a shirt on that had someone else's initials in it?
A. I remember that. I remember that, yes.
Q. And I assume that's just an unfortunate
02:49PM accident?
A. Yes.
Q. And it being primarily male and knowing my husband at least, you probably got a lot of white V-neck shirts to wash?
02:49PM A. Most of them wore the white T-shirts. Most of them did.
Q. How -- you know, I see that she calls and that you-all were very responsive to her, and she had no complaints of that in her deposition.
02:49PM A. Oh, wow.
Q. Yes, so there you go.
How else was her demeanor?
A. She would come in and maybe stay just a little bit and leave, you know. And toward the later part of
02:50PM him, it just upset him more. He wanted her to stay longer; she didn't want to stay longer.
I don't remember the stepdaughter. I really don't.
Q. Any other children you remember visiting?
02:50PM A. No.

Q. Okay. It seems like from your charting when you're there, you usually documented if she was physically present. Is that part of your usual routine?
02:50PM A. Yes.
Q. Okay. Because I also know the phone calls.
A. Yes.
Q. So it seems like it's something you include.
Do you know Ms. Rosalind Page that we're
02:50PM going to visit with.
A. Rosa?
Q. Rosa, okay. What position did she hold?
A. LPN.
Q. Okay. Did you get along well?
02:51PM A. Uh-huh. I thought I did. She's the night nurse usually.
Q. In other depositions, there's been questions about, you know, charting being a form of communication. When you -- in the hospital setting,
02:51PM they call it "handing off"?
A. Yes.
Q. Is that the correct term for you as well?
A. Yes, yes.
Q. And when you took the handoff or vice versa,
02:51PM were you communicative of the things that you observed

with your various veterans that day?
A. Yes.
Q. Do you have any complaints? I mean, I know you were on different shifts, but any complaints about
02:51PM Ms. Page?
A. About Ms. who?
Q. Rosa?
A. Oh.
Q. Sorry. Last names.
02:51PM A. No. She's very detailed. She's a very good nurse. I mean, she is -- she's very detailed.
Q. All right. I don't have any further questions. Jeff may have some more.
THE WITNESS: How about you?
02:52PM MR. PRIEBE: Yeah, I got a few more.
FURTHER EXAMINATION
BY MR. PRIEBE:
Q. Now, you worked there in 2017, 2018, and just a few months in 2019, right?
02:52PM A. Yes.
Q. And so in 2018, it's fair to say that you were assigned to two houses in 2018?
A. Yes.
MS. BROYLES: Object to the form.
02:52PM Q. And that you worked by yourself as a nurse in

two houses in 2018?
A. Yes.
Q. I just wanted to make sure. That's what you said earlier.
02:52PM Now the charting.
A. Hmm?
Q. The charting, she asked you about the charting?
A. Yes.
Q. Now, when you were the nurse, you were in charge
02:52PM of the MARs and of the nurses notes, right?
A. Yes.
Q. And was it the policy, and was it just good nursing, just to document if you give a medication?
A. It's both. It's both.
02:53PM Q. It's good nursing, right?
A. Yes.
Q. And it's the policy of the Veterans Home, right?
A. It's the policy no matter where you're at.
Q. That's right. And so you would be sure to
02:53PM document when you gave medication?
A. Yes.
Q. Or you can get in trouble, right?
A. Yes.
Q. Okay. You weren't responsible for filling out
02:53PM the ADLs, were you?

A. No.
Q. That was the CNAs, right?
A. Yes.
Q. And was it -- you were taught in nursing
02:53PM school -- you've heard the "not documented, not done"?
A. Yes.
Q. That's what you were taught, right?
A. Yes.
Q. Was that the policy of the Veterans Home: If it
02:53PM wasn't documented, it wasn't done?
MS. BROYLES: Object to the form.
A. Yes. Policy everywhere.
Q. Policy everywhere. And would you agree that
your nurses note that you write and that MAR that you
02:53PM fill out that that's a communication tool?
A. Do what?
Q. It's a way to communicate?
A. Yes.
Q. I know that you may talk with the next shift
02:53PM that comes on --
A. Yes.
Q. -- but if you see something different with a
resident, then you may go back and look at two or
three different days?
02:54PM A. If he refused a medicine for me, then I would go

1 back and see if he took it the day before or if it
2 was -- or that night before, yes.
3 Q. Or if he hadn't had a bowel movement --
4 A. Yes.
02:54PM 5 Q. -- during your shift, would you want to go back
6 and look and say, "Hey, has he had a bowel movement
7 today, yesterday, the day before"?
8 A. I usually just ask that. I didn't go back and
9 look. That was just a --
02:54PM 10 Q. Who would you ask?
11 A. The UWs.
12 Q. Okay. And they would have to go look at the
13 ADLs?
14 A. Yes.
02:54PM 15 Q. Right. If you had MAR -- you know what a
16 blank-and-skip is, don't you, skips and blanks where
17 you don't fill out your MAR?
18 A. No.
19 Q. Have you ever not filled out your MAR?
02:54PM 20 A. Yes.
21 Q. You know it's a blank in the chart. It
22 doesn't -- you know, it doesn't list anything? Have
23 you heard about that?
24 A. No.
02:54PM 25 Q. Okay.

A. What is it?
Q. If you don't -- let's say you don't pass -- you pass a medication and you don't fill out your MAR.
A. Okay.
02:55PM Q. Then there's not going to be anything on there, right?
A. Uh-huh.
Q. Would you ever get in trouble for not filling out your MARs?
02:55PM A. There would be a note. It should be a note left for you in the morning saying you didn't fill out your -- did he take that medicine; you didn't mark it.
Q. And then you can go back in and put a late entry, can't you?
02:55PM A. I can do a late entry, yes.
Q. And to make sure, say, "Oh, absolutely, he got that medication"?
A. Yes. You'd have -- we would have to go back in and chart med was given on this day at this time.
02:55PM Q. And you know what a late entry is, right?
A. Huh?
Q. You know what a late entry is, don't you?
A. Yes.
Q. And it's --
02:55PM A. You would put the "LE" on there.

Q. That's right. And it's okay to do a late entry, isn't it?
A. Yes.
Q. And so it sounds like to me someone's going back
02:55PM and looking at y'all's MARs at the Veterans Home to make sure they were filled out?
A. They should have been. I don't know if they did or not.
Q. Because yours were always filled out? And then
02:56PM same way with the nurses note. I know you don't document in your note -- you don't document every time you say hello to a resident, do you?
A. No.
Q. You don't document every time that you might
02:56PM help a resident get from a wheelchair to the bed?
A. No.
Q. But you document if you see something different, don't you?
A. Yes.
02:56PM Q. And that was the policy of the Veterans Home, wasn't it?
A. Yes.
Q. And if someone told you something that was different for that resident --
02:56PM A. Yes.

Q. -- would you document that?
A. Yes.
Q. So you're not -- okay.
A. Why wouldn't you? You're making me ask
02:56PM questions. Why wouldn't you? If I -- if he's -- if
he could get up and walk one day and then the next day
he doesn't and I don't chart it and then the next day
he falls because he couldn't -- that doesn't -- that's
just wrong. I'm sorry.
02:57PM Q. That's right. And that's the whole point of my
questions was you did your documentation the best you
could?
A. Yes.
Q. And you did it based on what you saw and what
02:57PM you heard?
A. Yes.
Q. But the only thing you can document is what you
see and what you hear?
A. That's right.
02:57PM Q. And the MARs, you were sure to fill them out?
A. Yes.

02:57PM

1

02:57PM

02:58PM

02:58PM

02:58PM

23 Q. But he wasn't on hospice, was he?

24 A. No.

02:58PM 25 Q. Did you --

A. I don't think so.
Q. Did y'all have hospice residents? Do you know?
A. I don't remember.
Q. Let me ask you this, my last question. You've
02:58PM 5 been a nurse --
A. Twenty-five.
Q. That's right. Is it ever acceptable to document
on a resident when the resident's not in the building?
A. To document what?
02:59PM 10 Q. Is it ever acceptable to document on a resident
when the resident is not there?
A. No, it's not acceptable.
Q. Thank you.
A. Wait, wait. You're going to document resident
02:59PM 15 has gone out or resident is in the hospital?
Q. No. Let me ask you this: Is it acceptable for
you to document that you gave a medication --
A. No.
Q. -- when the resident is not in the building?
02:59PM 20 A. No.
Q. Is it ever acceptable to document that the
resident got a bath when they weren't in the building?
A. No.
Q. Or that they were -- they got help transferring?
02:59PM 25 A. No.

Q. All right. Thank you.
MS. BROYLES: Just real quick.
FURTHER EXAMINATION
BY MS. BROYLES:
02:59PM Q. So we've got -- and I know it's been a bit since you've been at the facility. So in answering questions today, at one point you said in 2018 you were in two, then you said in 2019, then said just 2018. Do you really remember if you were covering two
03:00PM houses in your shift in 2018?
A. The last part of it, yeah.
Q. Okay.
A. Yes. I'm sorry.
Q. Okay. So part of it may be. Would you defer to
03:00PM the facility records on when that changed?
A. I would have to look, yes.
Q. Okay. I'm going to be just --
A. But the only reason I can tell you I was working two homes is because Home 5 didn't have a Christmas
03:00PM tree.
Q. Okay.
A. And I got them a Christmas tree.
Q. Good. I like that. Then I'm glad you were covering both homes because you were aware.
03:00PM So I'm going to be frank with you --

A. Okay.
Q. -- about this, okay? The nature of the questions in this suit that you're being asked are because part of the allegations of the Joneses is that
03:00PM the care that he -- that Mr. Jones was provided was poor and caused his death. That is their case, okay?
A. Okay.
MR. PRIEBE: Form.
THE WITNESS: Huh?
03:01PM MR. PRIEBE: I'm just objecting to the form.
Q. That's their allegation in the case.
A. Okay.
Q. I understand you're not an expert witness to
03:01PM talk about speed of death and things like that.
A. Correct.
Q. But, again, you just explained that
03:01PM
03:01PM

1 [redacted]

[redacted]

03:01PM [redacted]

03:02PM [redacted]

03:02PM [redacted]

03:03PM

03:03PM

1 _____
_____
_____
_____
03:03PM _____
6 Q. Well, I appreciate you and your time, and it's
7 good to visit with you, and I apologize for being a
8 little late. We were finishing the last deposition --
9 A. That's all right.
03:03PM 10 Q. -- and came, and _____, and I had to get
11 Sonic on my way or it was not going to be a pretty
12 sight, so -- but thank you so much.
13 A. You're welcome.
14 Q. And I'm sorry about your husband.
03:04PM 15 A. That's okay. Thank you.
16 (Proceedings adjourned at 3:04 p.m.)
17
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REPORTER CERTIFICATION

I, DANA HAYDEN, Certified Court Reporter for the State of Arkansas, do hereby certify to the following:

1) that on 07/27/2023, the witness, BEVERLY BYRD, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein;

2) that the foregoing pages contain and are a true and correct transcription of the proceedings as reported verbatim by me via realtime stenography to the best of my ability and transcribed at or under my direction and supervision, and subject to appropriate changes submitted by witness, if any, during his/her requested reading and signing of this deposition according to the Arkansas Rules of Civil Procedure;

3) that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and that I am not a relative or employee of any attorney employed by the parties hereto;

4) that I am not financially interested or otherwise interested in the outcome of this action that affects or has substantial tendency to affect impartiality or requires me to relinquish control of

an original or copies of a deposition transcript before it is certified, or that requires me to provide any service not made available to all parties to the action; and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived. This transcript is prepared at request of counsel for CLAIMANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 20th of August, 2023.

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CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT
LS NO. 714

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Exhibits

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BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MARY ANN JONES, as Special Administrator
of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF
VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK –
VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS
HOME AT NORTH LITTLE ROCK **RESPONDENT**

NOTICE TO TAKE DEPOSITION FOR BEVERLY HAMEBACK BYRD

TO: Beverly Hameback Byrd
[redacted]

Please take notice that on **Thursday, July 27, 2023, beginning at 1:30 pm**, Claimant, Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, will take the deposition upon oral examination of the following person before a duly qualified court reporter:

BEVERLY HAMEBACK BYRD

Said deposition is in accordance with Rule 30 the Arkansas Rules of Civil Procedure. Further, this deposition is to be taken before a court reporter authorized to administer oaths, will be stenographically recorded, and will begin at the time specified and continue until completed.

Date/Time: **Thursday, July 27, 2022 at 1:30 pm**

Place: **Rainwater Holt & Sexton**
2701 TP White Drive
Jacksonville, Arkansas 72076

COURT REPORTER: **Arkansas Realtime Reporting**
PH: 501-725-7963

EXHIBIT
7/27/23
BYRD

Counsel is invited to attend and cross examine.

Respectfully submitted,

By: _____

Jeff Priebe
Ark Bar No. 2001124
Jeff Priebe Law Firm
P. O. Box 7481
Little Rock, AR 72217
501-580-7890
jeff@jeffpriebelawfirm.com
jpriebe@rainfirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Jeff Priebe, hereby certify that on this 17th day of July, 2023 a true and correct copy of the foregoing has been served via electronic mail on the following:

Justin Brascher
Jordan Broyles
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
justin.brascher@arkansasag.gov
jordan.broyles@arkansasag.gov

_____
Jeff R. Priebe

Issued by the
ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES, Claimant

SUBPOENA

V.

CLAIM NO. 200817

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS, Respondent

TO: **Beverly Hameback Byrd**
[redacted]

_____ YOU ARE COMMANDED to appear at the Arkansas State Claims Commission at the place, date, and time specified below to testify in the above case.

__X__ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Rainwater, Holt & Sexton
2701 TP White Drive
Jacksonville, Arkansas 72076

Thursday, July 27, 2023
1:30 p.m.

_____ YOU ARE COMMANDED, at the time of trial, hearing, or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

_____ YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents of objects):

July 17, 2023
Date

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

EXHIBIT
2
BHXD
7/27/23

PROOF OF SERVICE

Beverly Byrd
SERVED ON (Print Name)

[redacted]
PLACE

7/18/2023
DATE

Hand Delivered
MANNER OF SERVICE

C. Jon Hopkins
SERVED BY (Print Name)

Investigator
TITLE

DECLARATION OF SERVER

I declare, under penalty of perjury under the laws of the State of Arkansas, that the foregoing information contained in the Proof of Service is true and correct.

Executed on 7/18/2023
DATE

C. Jon Hopkins
SIGNATURE OF SERVER

PO Box 1751
Searcy, AR 72145
ADDRESS OF SERVER

NOTICE TO PERSONS SUBJECT TO SUBPOENAS

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Ark. R. Civ. Proc. 45(d), Claims Commission Rule 3.2(d).

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the deposition. Ark. R. Civ. Proc. 45(e), Claims Commission Rule 3.3.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Ark. R. Civ. Proc. 45(b). The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the Claims Commission. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Ark. R. Civ. Proc. 45(e). When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the Claims Commission may enforce the subpoena pursuant to Ark. Code Ann. § 19-10-207(d).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Jennifer Winn
To: Kathryn Irby
Cc: Jeff Priebe
Subject: RE: Jones V. ADVA CC-200817
Date: Friday, October 20, 2023 9:35:16 AM
Attachments: 101823 TRAHANT, LUANNE fulltranscript indx.pdf
Luanne Trahant Exhibit 2.pdf
Luanne Trahant Exhibit 3.pdf
Luanne Trahant Exhibit 1.pdf

Ms. Irby,

Attached please find the deposition transcript and exhibits for Luanne Trahant, our expert that was deposed yesterday.

Four hard copies will be delivered to your office before noon today.

Thank you,
Jennifer

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, October 19, 2023 11:40 AM
To: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Please email it and drop off 4 hard copies of the transcript, thanks.

Kathryn

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Thursday, October 19, 2023 11:39 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: Re: Jones V. ADVA CC-200817

Tomorrow do you want me to simply email the transcript to you or bring your 4 hard copes or flash drives?

Thank you,

Jeff

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>

Sent: Thursday, October 19, 2023 10:29 AM
To: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

I wouldn't be able to send the documents to the commissioners before noon tomorrow anyways, so I can make that work. As for the defense expert, if he or she is testifying live, then the deposition transcript doesn't have to be submitted. Deposition transcripts only have to be submitted where a party is testifying by deposition.

Kathryn

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Thursday, October 19, 2023 10:23 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: Re: Jones V. ADVA CC-200817

Kathyrn

The Court Reporter said she can get us the transcript by noon tomorrow.

Jeff

From: Jeff Priebe
Sent: Thursday, October 19, 2023 10:06 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jordan Broyles <jordan.broyles@arkansasag.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: Re: Jones V. ADVA CC-200817

Deposition

Sent from my iPhone

> On Oct 19, 2023, at 10:05 AM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:
>
> Jeff, are you intending to have your expert testify live or by deposition?
>
> Kathryn
>
> ---
>
> **From:** Jordan Broyles <jordan.broyles@arkansasag.gov>

Sent: Thursday, October 19, 2023 10:03 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

The defendant will have its expert testify live at trial. Otherwise, defendant is not expecting to have any other witnesses except for reserving the right to cross-examine any witnesses called by the plaintiff.

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
Direct: (501) 682-9482 | Main: (501) 682-2007
jordan.broyles@arkansasag.gov

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

<image001.jpg>

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, October 19, 2023 10:01 AM
To: Jordan Broyles <jordan.broyles@arkansasag.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Are the parties intending to call the experts to testify live?

Kathryn

From: Jordan Broyles <jordan.broyles@arkansasag.gov>
Sent: Thursday, October 19, 2023 9:59 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Kathryn,

We apologize and understand the issue and trouble we've created. We have a

deposition of one of Plaintiff's expert's that starts in 30 minutes and a defense expert on October 26. We will not be able to provide the transcripts for those today.

We can, however, provide pre-hearing briefs, the depositions transcripts for the other witnesses, witness/exhibit lists, and exhibits today.

Will this allow for keeping the Nov. 9 date?

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
Direct: (501) 682-9482 | Main: (501) 682-2007
jordan.broyles@arkansasag.gov

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

<image001.jpg>

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, October 19, 2023 9:34 AM
To: jeff@jeffpriebelawfirm.com; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Justin Brascher <justin.brascher@arkansasag.gov>
Subject: RE: Jones V. ADVA CC-200817

Jeff, Jordan, and Justin, unfortunately, as I said in my March 8 email to the parties transmitting the hearing letter (attached), I am unable to move the prehearing material deadline – the Commission has two very full days of hearings in November, and my part-time commissioners (all with other full-time employment) need that time to review claim files to be prepared for hearings. In addition, when the prehearing materials are submitted, the materials have to be processed by my office before the materials (and claim file) can be transmitted to the commissioners. Because my commissioners are scattered around the state, such that claim documents have to be shipped, extra time is necessary.

If the parties cannot submit the prehearing materials today, then I will need to continue this matter. My next available full day spot on the docket is May 9, 2024. I will move this matter to the May 9 docket unless I hear otherwise from you all.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Wednesday, October 18, 2023 10:20 AM
To: ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Jeff Priebe <jpriebe@rainfirm.com>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>
Subject: Jones V. ADVA CC-200817

> You don't often get email from justin.brascher@arkansasag.gov. Learn why this is important

All,

Please see the attached letter regarding the above case. The parties are requesting more time to file pre-trial documents, but the parties are not requesting a change of the hearing date. Let me know if you have any questions.

<image002.png>

1 BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS
2

MARY ANN JONES, as Special Administrator of the Estate of OSCAR ODELL "Bill" JONES,	)	
PLAINTIFF,	)	
VS.	)	CLAIM NUMBER
ARKANSAS DEPARTMENT OF VETERAN AFFAIRS, d/b/a NORTH LITTLE ROCK VETERANS AFFAIRS, f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK,	)	20-00817
DEFENDANT.	)	

3 4 5 6 7 8 9 10

11 ----------

12 ORAL DEPOSITION OF
LUANNE TRAHANT
13 OCTOBER 18, 2023

14

15 ORAL DEPOSITION OF LUANNE TRAHANT, produced as a
16 witness at the instance of the DEFENDANT, and duly
17 sworn, was taken in the above-styled and numbered
18 cause on the 18th day of October, 2023, from
19 10:30 a.m. to 1:13 p.m., before Tammie L. Foreman, CCR
20 in and for the State of Arkansas, RPR, CRR, reported
21 by machine shorthand, via audio-videoconference,
22 pursuant to the Arkansas Rules of Civil Procedure.
23
24
25

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 JEFF R. PRIEBE
Jeff Priebe Law Firm
4 Post Office Box 7481
Little Rock, Arkansas 72217
5 501-580-7890
jeff@priebelawfirm.com
6

7 FOR THE DEFENDANT:

8 JORDAN BROYLES
JUSTIN BRASCHER
9 Arkansas Attorney General's Office
323 Center Street, Suite 200
10 Little Rock, Arkansas 72201
jordan.broyles@arkansas.gov
11 justin.brascher@arkansas.gov

12

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I N D E X

October 19, 2023

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WITNESS: LUANNE TRAHANT

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Further Examination By Mr. Priebe	91

EXHIBITS

NO.	DESCRIPTION	MARKED
Exhibit 1	Curriculum Vitae	52
Exhibit 2	Care Plan Infection ADVA Docs. Number 214, 231, 250	60
Exhibit 3	September ADLs	65

1 LUANNE TRAHANT,
2 having been first duly sworn, testified as follows:
3 EXAMINATION
4 BY MS. BROYLES:
5 Q. Ms. Trahant, my name is Jordan Broyles. I
6 represent the Arkansas Department of Veterans Affairs
7 with my partner, Justin Brascher, who is here with me.
8 What I'll be asking today, just kind of confirmation
9 on what you've already provided. So I'm relying on
10 what's been given to us as far as what your opinions
11 are.
12 So the original documentation, or I
13 should say what was originally provided regarding your
14 opinions -- I am going to mute my computer. -- was in
15 the claimant's answers in response to respondent's
16 first set of interrogatories, request for production.
17 And it has the materials you've reviewed as well as a
18 summary of your opinions. Have you seen this
19 document?
20 A. I have.
21 Q. Okay. And you have not supplemented or updated
22 this document since originally providing it -- or,
23 well, or at least it was originally provided to us in
24 February of this year.
25 A. No.

1 Q. Okay. And so I take it then -- well, obviously,
2 he passed away, so there's been no additional medical
3 records or things of that sort that have required your
4 review, correct?
5 A. Correct.
6 Q. Okay. And at the time that this -- that you had
7 generated these opinions, no depositions had been
8 taken. So have you reviewed any deposition testimony
9 taken in this case?
10 A. Yes, I have.
11 Q. And what depositions have you reviewed?
12 A. I reviewed the deposition of his wife, Ann; his
13 daughter, Cynthia; his son, _____ or
14 _____ I believe; the deposition of Rosa Page;
15 Beverly, I think it's Byrd on the deposition but maybe
16 Hamelback when she took care of him. And then also
17 Lindsey Clyburn, and I believe -- I'm thinking I'm
18 missing one. Those are the only ones, I believe.
19 Q. Did you review the deposition of Dr. Miller, the
20 other plaintiff expert in this case?
21 A. No, ma'am.
22 Q. Okay. Did you have any discussion with
23 Dr. Miller or plaintiff's counsel about Dr. Miller's
24 deposition in this case?
25 A. No.

Q. Did you review Dr. Miller's written opinions that he has in this case?
A. No.
Q. So do you have the first -- or well, do you have the discovery responses in front of you?
A. I don't.
Q. Okay. Well, so I guess I'm just -- I can read through these. I'll read through them, just make sure this is a comprehensive list of everything you've reviewed. I have that being the deposition transcripts, which (inaudible). So including that, the complaint, the medical records from the following facilities, which list Arkansas Veterans Home; MEMS, which is three trips; VA records. And then the -- it just says defendant's records, which I think is a compilation from the veterans home and the VA hospital. The death certificate -- well, death certificate is a medical record. You have not reviewed any billing records in this case, true?
THE COURT REPORTER: What records?
MS. BROYLES: Billing records.
THE COURT REPORTER: Thank you.
A. No.
Q. (By Ms. Broyles:) Incident and accident reports for resident. Those are where he had fallen, correct?

A. Correct.
Q. Okay. There are no incident or accident reports related to any kind of abuse, complaints, or anything of that sort related to Mr. Jones, true?
A. That's true.
Q. Okay. You've got the facility brochure and then it says accident reports again, so I think that's just a duplicate. And then the federal regulations, Office of Long Term Care rules and regulations. Any other -- did you review any policies or procedures of the facility?
A. I do have -- I do have some policies and procedures, yes.
Q. Okay. And then you did not review any records from the Office of Long Term Care; is that true?
A. That's true.
Q. Okay. So there's a opinion in here that has surveys from the Office of Long Term Care citing respondent, but there's nowhere indicating you reviewed any of that material. So I'm struggling to figure out where that opinion would come from.
A. I'm not sure. I don't have any OLTC survey documents. I have two OLTC documents where the facility reported Mr. Jones's fall possibly, but I don't have any actual surveys.

Q. Okay. I was going to say, we didn't go over the surveys showing those deficiencies. But again, I don't know that you have -- it doesn't seem like you reviewed any of those materials to come up with your opinions in this case.

MR. PRIEBE: Jordan, we're not going to be asking her about any past surveys.

Q. (By Ms. Broyles:) Okay. So that opinion is out?

A. Yeah.

Q. Okay. Did you review any articles, publications, medical literature to provide your opinions in this case?

A. No, ma'am.

Q. Are you relying upon any specific medical literature to reach your opinions in this case?

A. No.

Q. And in this document here, the disclosure, I've got "Nurse Trahant will testify as to the appropriate standard of care of the respondent and the breaches of the standard of care related to Mr. Jones." Is that true still today?

A. Yes.

Q. And that said, you are not offering any causation opinions today; is that also true?

A. That's true.
Q. And since you haven't reviewed any medical records -- or excuse me, billing records and based off the disclosures here, you are not intending to offer any damages testimony; is that true?
A. That's true.
Q. Based on your CV, you've got -- well, do you have a copy of your CV in front of you, by chance?
A. I do.
Q. Okay. Do you know if you have the same one that I have that came with the disclosure in February?
A. It should be.
Q. Okay. Is there anything that needs to be added since February of 2023?
A. No.
Q. Do you -- I see you're currently an adjunct professor -- is it Louisiana Christian College?
A. Yes, ma'am.
Q. Is that an adjunct role?
A. Yes.
Q. Do you work in a medical facility at this time as well?
A. No. As a adjunct professor, yes. Everything that I do is clinically oriented in hospitals, nursing homes, clinics, public health facilities. As a nurse

1 practitioner, I treat patients in the community in a
2 private practice.
3 Q. Okay. What -- so you're also practicing in
4 private practice currently?
5 A. Yes.
6 Q. Okay. What is the practice called?
7 A. It's under Consulting Concepts, my legal
8 consulting entity.
9 Q. Would you agree in this case that there is no
10 evidence of any intentional neglect?
11 A. I agree with that, yes.
12 Q. So there is no -- this is not a case where there
13 is any allegation of patient abuse, true?
14 A. I mean, I agree as far as I don't believe
15 anybody that was caring for Mr. Jones did anything
16 intentionally.
17 Q. You have no opinions today on life expectancy?
18 A. No.
19 Q. So what I said is true?
20 A. Yes. I'm sorry. Double negative.
21 Q. Double negative kind of coming through here. So
22 this type of facility is a pod-style setting. Have
23 you worked in that type of facility or do you have
24 experience in that type of facility?
25 A. I do, but it would have been in a different

1 situation. When I was a director of nursing for Pecan
2 Grove Training Center, that is a private facility.
3 But we offered services to a state facility here.
4 It's called Pine Crest. They have a pod system. The
5 only difference is, they're developmentally disabled.
6 They're not necessarily elderly.
7 Q. What would be the clinic practical or clinical
8 difference between -- or what you understand it to be
9 between a pod-type of facility versus a standard
10 nursing home?
11 A. A pod-type of facility would have each
12 resident -- the resident would be housed in something
13 more like a home. They would have their own bedrooms.
14 They would have a dining area, a dayroom or a living
15 area. It's not institutionalized. So it's like
16 having a private home for each set of residents.
17 Q. Is there any -- based on my review of the
18 disclosure, you don't have any complaints about the
19 facilities at the veterans home, correct?
20 A. Correct.
21 Q. And as far as when we talked with Dr. Miller, he
22 agreed that this facility was appropriate for
23 Mr. Jones, as far as level of care.
24 A. Yes. I mean, I believe that initially, in his
25 condition, yes. At some point, if certain skilled

1 services could not be provided to him adequately, then
2 maybe not.
3 But I have a different opinion about why
4 that was happening. So, I mean, I don't think -- I
5 think overall, it's fine.
6 Q. Yesterday, we were provided your notes. And
7 mine came out to 19 pages because you spaced it out so
8 that each block wouldn't be on two -- on two different
9 pages.
10 But can you explain -- first, your -- you
11 know, you've got some things are bolded and some
12 things aren't, and so kind of your different columns.
13 You know, this may be obvious. But just for the
14 record, can you just explain generally a layout
15 formatting of your chart?
16 A. Yes, ma'am. When I go through the records,
17 beginning from the first set of records I get through
18 any additional information, this document, it lives
19 through that process. So I add to it or take away
20 from it.
21 And basically, the first two columns are
22 going to be factual information, what were the dates
23 and times and potentially what was entered into the
24 medical record. Under related files, I can go in --
25 this is a program called Case Map. But what you got,

it has to be converted into Microsoft Word in order for me to send it because if someone doesn't have the software, they can't open this on their computer.

So on the related files, I can go in and attach certain documents that I may want to have right there in that digital file to look at. If there was an attached document, I printed it out for today. That way, if you wanted that document, you could have it at the conclusion of the deposition.

Comment, most of the time anything that's in the comment section I'm trying to look at. Different staff members or information that I may need to go to another part of the record to find. Sometimes I'll remove those comments if I find the answer to it. Sometimes I don't necessarily.

So we may come up to something where I tell you, you know, no, I found that or, no, that's not applicable now. If it's bolded, most of the time, that's just age, so I can find things easily.

The source, I will tell you hopefully, that's a Bates number. I know that everything I printed out for today, I think, is Bates-stamped, so I'm hoping that's correct. But I think I do have some pages that are Bates-stamped, like this one is 00022. Then I have another set that says ADVA doc page 504.

1 But I will try to do my best to tell you what the
2 document is and where it is and where it's found.
3 Q. Okay. So it's fair to say that not every row is
4 a breach of the standard of care or criticism. Some
5 of this is your observation while reviewing the
6 records?
7 A. Correct.
8 Q. Okay. So I guess if you can tell me, what is
9 better to go through for us? I mean, I can go through
10 the disclosure on the summary or, I mean, or your
11 notes. I'm just kind of trying to decide.
12 So would it be fair to say that -- so the
13 first point is that he wasn't monitored, checked,
14 failed to properly monitor, check, care plan, fail to
15 put in place interventions to prevent weight loss.
16 Have you identified those things in your notes?
17 A. I believe that I have. I don't know what's
18 easiest for you. I can tell you that the bulk of the
19 issues that I have with the case start after he
20 switched houses in August of 2018, simply because they
21 identified one of the reasons they wanted for him to
22 go from house 7 to house 6 was because he needed more
23 acute monitoring and observation.
24 Q. Okay. So you said after he switched to house 7?
25 A. No. I believe he went from -- in the record, it

said he transferred from 7 to 6. Is that not --
Q. Okay.
A. Okay.
Q. And that was in August -- do you remember what day? I know I've got it written down, but you've probably got it in front of you.
A. August the 13th of 2018.
Q. Okay. So would it be fair -- he got there April 12, 2018. So would -- just for the purpose of jumping forward, are there any criticisms that you believe in this case that rise to a breach of standard of care prior to August 13, 2018, or can we just start there and work forward?
A. I believe that we can start in August.
Q. Have you ever been a defendant in a lawsuit?
A. No.
Q. One of -- a question I've got, when we -- when I deposed Dr. Miller last week, he talked a lot about the various falls and things. You would agree in a facility like this, it's not a one-on-one care environment?
A. I agree.
Q. And there was no -- do you believe at any point he should have been restrained to his bed?
A. No.

Q. What about restrained to his wheelchair?
A. No.
Q. Would you agree that -- at least that certain -- that falls can occur in absence of failure to supervise?
A. I agree that can happen.
Q. Would you also agree that based on medical records, he did not suffer any injury from any of his falls?
A. I agree. In relationship to his falls, it is more the recognition of the changes in his condition. And at least initially, one of the interventions that they had in place was that he was supposed to have every-hour monitoring.

And so the issue for me was more they don't have evidence of every-hour monitoring and what that every-hour monitoring would have done for him based on the other problems that he was having, not just falls.

Q. Okay. So really, the issue with falls, like you said, if I'm understanding, it's more so indicative of his conditioning as opposed to every fall is someone's fault in that facility?
A. That's fair.
Q. Okay. And you would agree that they did

1 document for every fall, _____
_____ were ruled out each time, true?
3 A. That's true.
4 Q. Okay. _____
_____
_____
7 Q. Okay. I'm trying to just -- you know, I know
8 that there are cases that things do occur and there's
9 poor care going. This is not an extreme case where
10 you thought all the moving parts as opposed to maybe
11 abuse filed in a case. So I'm just trying to kind of
12 get my mind wrapped around it from your perspective.
13 A. Sure.
14 Q. So the fourth -- or let's see here. That
15 actually covers your second and third opinions because
16 it talks about falls and interventions. And then
17 you've got infections and urinary tract infections.
18 So as far as we know, _____
_____
_____
_____.
22 Q. Okay. Of 2018?
23 A. Correct.
24 Q. And then the ____ _____ which we'll talk
25 about when we get to it, but that's -- then you've got

1 respondent failed to provide sufficient staffing,
2 including sufficient staff to watch, care for, or
3 protect Mr. Jones. What are you relying upon to reach
4 that conclusion or that opinion?
5 A. Prior to receiving the depositions, especially
6 Beverly and Rosa Page, indicating that they often
7 didn't have enough help. Especially Ms. Page, at
8 night being the only nurse for these houses at the
9 time.
10 When you look at a record, you try to
11 evaluate, first of all, what is not going on in the
12 record. And oftentimes, when you don't have proper
13 update to care plans, especially when you know
14 something is going on with a resident, poor or
15 incomplete documentation, especially in the face of
16 changing conditions like what Mr. Jones was
17 experiencing. Specifically,
19 Most of the time, people that work in
20 these environments try to do the best they can.
21 They're not there to, like we talked about,
22 intentionally do anything. But when you see a record
23 that has a lot of information missing, a lot of policy
24 violations, a lot of regulatory violations, typically,
25 there's a few reasons that that's happening. Either

1 the person that's there is not properly trained or
2 equipped to provide the care that they're supposed to.
3 And I know that in Ms. Page's deposition, she had a
4 lot to say about the fact that the universal workers
5 did not always know exactly their job or they weren't
6 trained CNAs, so that could potentially be an issue.
7 The other reason is, they're not being
8 supervised correctly. I mean, the facility had a
9 director of nursing who would have been responsible
10 for making sure that they had the appropriate amount
11 of staff and that that staff was addressing problems
12 that these veterans may be having. Or there's just
13 not enough people to have the proper communication
14 that needs to be taking place so that they can
15 recognize changes in the veteran and get them the
16 proper medical care that they need.
17 Q. Have you reviewed any staffing logs?
18 A. I have not.
19 Q. Okay. So as far as -- now, I've worked or
20 handled different medical-type cases. But -- and I
21 know that Ms. Page does not -- she doesn't like the
22 universal worker model.
23 Would you agree that that is an accepted
24 model in the nursing home environment? I mean, there
25 is a kind of -- kind of a CNA-type role and some

1 facilities only have CNAs or medical assistants,
2 things of that sort. But there is a model that allows
3 for a universal worker to work in a facility and that,
4 in and of itself, is not below the standard; is that
5 fair to say?
6 A. I mean, I would say that that is something, as
7 far as a nonlicensed person, I definitely have
8 supervised nonlicensed personnel in state and federal
9 entities. Not in private. In private facilities,
10 that's not the case.
11 And I do not have a problem with it, as
12 long as the resident doesn't require care that
13 requires them to have a specific type of training or
14 attention as far as that resident is concerned, which
15 we'll kind of talk about that with Mr. Jones. Just
16 simply because I do believe that _____
_____, he did
18 require a higher level of care that either the
19 universal workers needed to be trained to give or they
20 at least need to express to Ann that they might not
21 could give that type of care.
22 Q. Okay. So do you -- I guess have you -- you
23 don't have any opinions about -- well, let me back up.
24 You would have to speculate about any
25 training given to the universal worker in this case,

correct?
A. That's fair.
Q. So whatever the issue may be, you can't say whether it may be a training issue versus a person issue, or I should say a judgment issue; you don't have an opinion in that way one way or the other?
A. That's fair.
Q. And again, I know what Ms. Page said, and she just did not prefer that style and had issues with it, so I'm not knocking her or anything. It's just -- I just to make sure that you haven't reviewed any training materials to have any criticisms in that regard?
A. I have not.
Q. And just one more question. So you haven't reviewed any staffing logs to identify specifically any shortcomings in staffing? I mean, by a particular day or week, month, things of that sort?
A. I have not.
Q. So what you're relying upon in that sense is, sounds like, the testimony of Ms. Page and then what -- maybe just documentation not being present in the record; is that fair to say?
A. Correct. And follow up with their own assessments and interventions and the care planning

1 process, things that should have been recognized.
2 Q. When did the care plan have to be updated?
3 Because there are -- I see kind of in there instances
4 where there's documentation of changes to his care.
5 It just may not be redocumented in a care plan. And
6 so is there a requirement that they be updated on a
7 monthly basis, or how does that work?
8 A. Well, based on regulation, the care plans --
9 once they're developed, they have to be reviewed
10 quarterly, with their quarterly known dataset
11 assessment. And then any revisions to the care plan
12 in that quarter would be made based on changes in
13 their condition or their overall plan.
14 So for instance -- this is a crude
15 example. But if on, you know, December 5th, you add
16 an intervention, I don't necessarily expect that it's
17 going to be on the care plan on December 5th. But I
18 certainly expect that within a few days, you know,
19 that plan is changing simply because that is one way
20 for the nursing staff, besides giving verbal report,
21 is looking at the plan.
22 Just simply because we're human. And if
23 nothing big is going on with a resident and I give
24 another nurse report, I may not include that, you
25 know, on December 5th, they got an order for

1 supplements or whatever it might be. That also helps
2 with the communication between the nurse and, in this
3 case, the universal worker.
4 Q. Quarterly -- do you know if this facility -- or
5 I think I know. You're talking about monthly, like
6 not monthly, but quarterly as in every three months?
7 A. Correct.
8 Q. Okay. And so do you know if this facility
9 reviewed -- what their calendar year was?
10 A. I mean, I can't tell you what their calendar
11 year was. But the way that it would work, it would
12 actually be on admission. So in Mr. Jones's case,
13 4/12 of '18, then it would be quarterly from there.
14 So if you look at his care plan, we have
15 target dates that are quarterly. And the problem is,
16 we don't have revisions that go along with those
17 target dates. So just for example, this is ADVA doc
18 page 263 and this is about Mr. Jones's potential for
19 _____.
20 Q. What day is that? Sorry.
21 A. Okay. This is care plan, it says -- the page
22 number I have is ADVA doc page 263.
23 Q. Can you point to a date on your -- so I can get
24 to the date?
25 A. Oh, it doesn't, but I'll tell you why it

1 doesn't. This care plan was initiated on 4/24 of '18.
2 And so the example here is that it's showing that it
3 was revised a couple of times, October of '18 and then
4 January of '19.
5 But if you look at the actual care plan
6 itself, the only thing that was ever changed was a
7 clarification for the day that they were weighing him,
8 which that wasn't occurring. So it's not really an
9 addition or subtraction; it's just a change.
10 And then the only other thing that was
11 added to this care plan was about _____
_____
_____. So that's just an example whereby
14 they're putting a target date and they're putting a
15 revision date.
16 But there's not really anything happening
17 on the piece of paper. What should be happening is
18 that they actually have a conference. So there should
19 be Beverly or Rosa or one of the other nurses that are
20 over the houses meet. The DON should be there. The
21 universal workers that care for Mr. Jones should be
22 there.
23 And they actually sit down and they talk
24 about this plan and what they're doing to try to
25 maintain where he's at, improve where he's at if

1 there's an area to improve. But -- but definitely to
2 prevent any deterioration or neglect of a resident.
3 Q. Would you agree -- I acknowledge that -- the
4 care plan issue that you're talking about. But would
5 you agree, reading through your notes, that there is
6 an acknowledgment and communication being documented;
7 it's just not being updated to the care plan?
8 A. I agree. There is information in the record
9 that shows there are changes to his plan. I believe
10 the biggest problem is also when you're -- just like
11 Beverly and Rosa testified to, when you're trying to
12 take care of -- even if it's just one house with 12
13 people, much less two houses with 24, you don't -- you
14 have to have a document where you can have -- it's
15 almost like the Cliffs Notes. It's a quick guide.
16 So -- 'cause they're not going to have
17 time to go through, you know, all the nurses' notes or
18 all the other documents that may pertain to Mr. Jones
19 that have been changed. So basically what I do, I
20 give them -- when I look through and I review, I give
21 them credit for the things that were changed.
22 But then I have to look at, well, but what
23 is the process that the nursing staff, that are the
24 boots on the ground taking care of him, going through
25 to make sure these things are being done, what is the

1 process for the DON who is -- who should be
2 supervising his care, to identify if it's done. So
3 the only way that I can do that is by looking at what
4 interventions are being carried out and what kind of
5 reassessments are being provided.
6 And in some of those areas, that's not
7 being done. So the reasonable conclusion is that
8 okay, somebody's not sitting down looking at this care
9 plan 'cause that's their map. That's their map that
10 says we're at A. We're traveling to B. And how do we
11 get there.
12 And I believe in this particular
13 situation, that's the problem, that the care was very
14 disjointed. And in this particular situation, it's my
15 opinion that Mr. Jones suffered as a result of that
16 disjointed care.
17 Q. You're not offering any specific causation
18 opinions in this case, true?
19 A. That's true.
20 Q. So the -- I guess why don't we jump to August.
21 I see you've got the 13th, he switched -- switched
22 from 7 to 6. So I guess just -- I'm just going to ask
23 a broad question. I mean, without me going line by
24 line here, where is a concern -- you know, where can I
25 find a specific concern? 'Cause something I just

1 wanted to try and get in general from you.
2 A. Sure. It's my opinion that the first concern
3 that should have been being assessed and care-planned
4 and evaluated is, once he moves to house 6, within a
5 couple of weeks of transferring, they note that he's
6 _____
_____
_____
_____
10 As a nurse, as a DON, either one, the
11 first thing that you have to start looking at is, you
12 know, what's going on during this time. So you have
13 to go and look at -- you talk to your nurses. You
14 talk to your universal workers. And then you also
15 look at what's going on with his meals.
16 And one of the problems with his meal
17 documentation is how poorly it's maintained. So
18 you've got a lot of days where, in August of 2018,
19 that either they don't complete the documentation --
20 especially at dinnertime, there were lots of blanks at
21 dinnertime. But overall, in August, it looked like
22 the days that were documented, _____
_____.
24 So you start looking at okay, if he's
25 eating okay, then what else may be underlying this

1 weight loss? During that time, _____

10 So that initial weight loss wasn't a
11 criticism. It was a -- it was the beginning of okay,
12 now y'all know. You're on notice. _____
_____ He's switched homes.
14 Obviously, somebody recognized there were some
15 changes. He needed more monitoring. Now, you know
16 he's got _____. So that's where that begins the
17 evaluation process.
18 Q. So it's fair to say that you're not attributing
19 his _____ to some neglect, per se, of a
20 provider. It should be a combination -- it could be a
21 _____

24 Q. Okay. And just -- I mean, would you agree that
25 if he -- you're not concluding that if it's not

1 documented, he wasn't fed?
2 A. No, I'm not. What I conclude is, if it's not
3 documented, we have no way to evaluate it. So if, for
4 instance -- and we'll talk about it in subsequent
5 months. But if, for instance, on August evening or
6 night shift, or evening shifts really, where they have
7 not documented anything, if he wasn't eating anything
8 or he was only eating 25 percent, the expectation
9 would be that they have documented what type of
10 alternative they might have given him.
11 I know Beverly at least testified, you
12 know, there were some things that I believe Ann wanted
13 him to have that he didn't like, but Beverly knew some
14 things that he did like. And I commend her for that,
15 trying to find something that he would want.
16 The problem is, one person -- it's not
17 just on one person. It's on every person thereafter.
18 And that communication, just like her saying he loved
19 strawberry Yoplait yogurt, that's something that could
20 be put on the care plan and, instead of her spending
21 her own money, talking to the director or talking to
22 Lindsey or whoever came after him about them
23 purchasing those for Mr. Jones because it wasn't my
24 understanding any other nurse was spending their money
25 to make sure Mr. Jones ate.

1 Q. And some of the nurses documented that they took
2 him on walks and things like that outside?
3 A. Beverly did. I believe that Beverly was the
4 only nurse that ever took him out walking.
5 Q. So I guess where -- we kind of -- it seems like
6 there's a point of where your opinions really came
7 off, and so what -- where did that begin so we don't
8 have to waste any time prior to -- I mean, so kind of
9 what's -- where do you want to start on that?
10 A. My real concern starts on September 27th of
11 2018. The assessments prior to that, I mean, he had
12 fallen. We talked about how they were supposed to be
13 watching him hourly at this point. But they are
14 documenting that he, you know, is sitting in the
15 recliner or going out on walks with Beverly and not
16 [redacted] during this time.
17 But they do an evaluation, the dietitian
18 does an [redacted]
[redacted]. [redacted]
[redacted] At that point, it should become a
21 serious concern to everybody, especially when the
22 dietitian documents that he normally eats all of his
23 food well and that they monitor his intake and his
24 weight. So they have a directive.
25 But if you look at the September ADL

1 records as far as how much he's eating, the records
2 don't say consistently that he's eating as well as he
3 was in August. So that's -- in my opinion, that
4 becomes a breakdown in communication as far as how
5 much he's eating and whether or not he needs to be
6 supplemented.
7 Now, she -- eventually, they get an

So in my opinion, that was a big delay.
15 Q. Okay. And so the three weeks later, I'm jumping
16 ahead, is that the November 6?
17 A. They order -- no.

19 Q. Sorry. I'm just trying to understand. And you
20 said , does that mean therapy?
21 A. Yes. On October 18th, when they -- when dietary
22 evaluated him -- now, this is -- there's a difference
23 on September 27th, the note that I have, that's the
24 dietitian.
25 On October 18th, I believe that's a

1 dietary manager person. I don't believe that's an
2 actual dietitian. But it is addressing the correct
3 thing.
4 Unfortunately, at that point, they
5 identify that he needs [redacted]
12 But she's identifying for some reason, he
13 may not be completing his meals. And that happens
14 with [redacted]. If they don't have somebody right
15 there telling them, okay, Mr. Jones. Here, now let's
16 eat this or now let's eat that.
17 But again, that [redacted]. So you've
19 got two different interventions that are very delayed.
20 And then the problem with the [redacted] when I look at
21 the documentation, at least initially, it was only
22 once a day.
23 Oftentimes, they were documenting 7, and
24 the code there for a 7 is that he was sleeping. And
25 Mr. -- it was well-documented in the record.

1 Mr. Jones liked to sleep. Sometimes he didn't get up
2 until 10:30 in the morning.
3 So the problem is, you can't offer someone
4 a supplement to help him gain weight at a time when
5 you know they're not awake. You have to change the
6 timing. And that happened time and time again.
7 Even when they increased it in December to
8

[redacted]

13 And those are simple changes in
14 intervention, just change the timing. But instead,
15 that didn't ever register to whoever was looking at
16 these documents, noting day after day that he's not
17 getting it because he's asleep.
18 Q. Is there a -- is there documentation that he was
19 getting it a different time, even though they
20 didn't -- eventually, he was asleep at 11:00, so they
21 gave it at noon, but they didn't change the time in
22 the plan, per the records, if that makes sense. The
23 day or the times or, you know, you do, like, 11:00,
24 3:00 and 4:00, or 11:00, 3:00 and 7:00, yada, yada,
25 yada. But it may be given at 4:00.

1 A. That's a possibility. The problem is, when
2 you're looking at charting and documentation, even in
3 relationship to their own policies, they understood
4 that this was something that had to be documented in
5 the medical records. So if you noticed at 9:00 a.m.
6 you're charting the majority of code 7, which meant he
7 was asleep, then you change that time and you document
8 it subsequent to that time so that -- so that first of
9 all, you're not wasting the nurse's time.
10 If the nurse is going in there to give
11 medicines at 9:00 a.m. and they know he's going to be
12 sleeping, you take the _____ in there and then
13 hoping to get back in there at another time, which
14 just seems practical that you would just change the
15 time and take it.
16 And, of course, I can't say reasonably --
17 even though I'm not opining to causation, I can't say
18 reasonably that on those days that they were
19 documenting a 7 that he was truly ever getting that
20 supplement, based on the _____.
21 Q. I think you testified earlier -- and again, I
22 just -- you would agree that _____ patients,
23 part of their natural decline is _____ ___. That's
24 how I believe for --_____

1 A. I agree. You know, I can't say, based on his
2 condition, you know, just looking at overall, not from
3 a medical perspective. He was, you know, up and
4 walking around and, I mean, he had some behavior
5 problems and things, which is normal for _____
6 But, you know, once he switched houses and they
7 identified that there may be some acute changes, just
8 from a nursing perspective, he just went downhill
9 faster than I see residents, you know -- I mean, I've
10 done this for 31 years dealing with _____
11 residents.
12 So it was just -- in looking at the
13 record, especially looking at the interventions that
14 weren't care-planned or weren't consistently carried
15 out, I was more of the opinion that those breaches in
16 the standard of care should have been identified and
17 implemented versus this just being from _____
18 Q. Would you agree that _____ patients can
19 decline at a very (inaudible) pace?
20 A. Uh-huh. I agree.
21 Q. So on November 6, 2018, at one point, you've got
22 some circles -- the font color, I think that's the
23 line maybe that I noticed something was changed to
24 purple, but I didn't know if the purple meant
25 anything.

1 A. Yeah. That's just to identify that he was
2 and that that was the time frame.
3 So they gave him therapy for 30 days. The issues that
4 I have here in this time period, which I think we've
5 already kind of talked about, the meals are still not
6 being documented every shift, every day. In order for
7 a dietary person or a nurse to monitor what's going on
8 with someone nutritionally, they're not typically
9 going to be at every meal. So that's something that
10 they have to go and look at and say okay. Well, he
11 didn't eat any breakfast. Let me see if he'll eat
12 some other alternative, like the yogurt or whatever it
13 was that he liked.
14 But also, _____
_____
_____ So then what you're going to
17 look at is, the feeding plan should change at that
18 point, _____
_____.
20 So if you look at the October time period,
21 after they identify this need -- I'm sorry. I said
22 October. I meant November.
23 After they identify this need, there are
24 still multiple days at multiple times where they're
25 saying _____

1 _____. So the problem is that they're not giving
2 him the care that he needs and they're not helping him
3 eat. And you look _____
_____
_____
_____. In fact,
7 on some of these days where they have that he's either
8
_____.
10 And so if you just -- if you just set up a
11 meal in front of a patient that has _____ who has
12 been identified to need cues to initiate eating,
13 they're not going to eat. And so then that food is
14 picked up and the assumption is, well, he just didn't
15 want it when, in all actuality, speech therapy talks
16 about how, in order to get him to eat at least 75
17 percent of his meal, she would have to spend 30
18 minutes with him.
19 Q. So in early to mid-November, he transitions to a
20 _____
21 A. Yes.
22 Q. That's not -- that's not unusual dietary for a
23 _____ patient?
24 A. Correct. The speech therapist was concerned
25 _____

1 [redacted]. The only issue I had with any of that is, it
2 took them almost a week to get his diet changed. I
3 mean, there's just no reasonable reason, if that
4 sounds right, that I could come up with for it to take
5 that long.
6 So all of those days in between November
7 8th and November 13th, when his diet was finally
8 changed, how much -- you know, when you look at their
9 actual meal intake records -- this is at page 596.
10 During those days, we have -- [redacted]
19 Q. Sorry. I've got to pull up this page real
20 quick.
21 A. Would this be a good point to take a quick
22 bathroom break?
23 (Recess from 11:31 a.m. to 11:47 a.m.)
24 Q. (By Ms. Broyles:) Okay. So Nurse Trahant, I
25 was looking at the meals from page 596. And just

1 looking at the chart or the coding, I guess would be a
2 better way to say it, you can rank a 0, 2, or 3 for
3 percentage of food consumed, is that --
4 A. Yes.
5 Q. Okay. So 3 is the highest at 76 to 100 percent?
6 A. Correct.
7 Q. [redacted]
11 A. Correct.
12 Q. [redacted].
14 A. [redacted]
20 I guess the other issue too is, with some
21 of the follow-ups, like when the nurse practitioner
22 comes in on November 30th, she indicates that she's
23 following up because he's had [redacted] and that the staff is reporting that
25 he's eating well.

1 Well, that in and of itself, if you look
2 at the documentation, he's not. He's not eating well.
3 _____
_____
_____.
6 Q. Well, which point is that? Like, what day on
7 this chart? Because, like, Friday the 30th, he's got
8 a 2, 3, 3, on November 30th.
9 A. Correct. And, I mean, and that's fair to say on
10 that particular day, if she came in at 1:00 in the
11 afternoon, he did eat good for breakfast and lunch.
12 But that's why -- I guess that's what I was talking
13 about with the care being disjointed.
14 When you take an average of the week
15 before she came, _____
_____. So that's -- that's
17 what you're looking at. You're not looking at okay,
18 well, he ate well this day. You're looking at the
19 three days before. If you include the meals that
20 aren't documented, he had two meals that NA, I don't
21 know if that means he wasn't --
22 Q. Yeah. So sorry. What week are you working off
23 of of November? Like, what day?
24 A. From November -- so if we go from just, say,
25 November 20th forward, we've got -- first of all,

1 we've got multiple days where nobody documents his
2 meals at all. So we can't assume that he ate 75 to
3 100 on those days. But so for instance, on the
4 20th --
5 Q. Well, I mean, there are five. I mean, where
6 there's no documentation, there's five blanks in that
7 week of November 20th.
8 A. There are seven blanks.
9 Q. One, two, three, four -- on blanks, November
10 20th.
11 A. Correct. Going from the 20th to the 30th,
12 [redacted].
14 Q. I'm sorry. You're saying we have to look back.
15 I was looking at November, you know, 19, 18, 17.
16 Okay. I thought you were saying start at the 20th and
17 go backwards. You're saying start at the 20th and go
18 forward. Okay. Sorry.
19 A. No. That's okay. So you're looking -- so you
20 have to be looking at what's going on overall. And
21 what they know is that .
22 They know that [redacted].
24 But also, on this particular day when the
25 nurse practitioner comes in and they get this weight,

1 it -- you know, you have to look at okay, they
2 [redacted]
9 [redacted]
13 Q. Okay. So absent the -- we kind of started by
14 saying, you know, where does the issue start. And so
15 generally speaking, is there -- I mean, what is your
16 opinion? Does it just persist or what? I'm trying to
17 kind of get the -- get to the point.
18 A. It does. Yeah. The same -- in looking at the
19 records, the same issues -- the inconsistencies, the
20 information not being relayed correctly.
21 Specifically, that he's really not [redacted].
22 And there are multiple times when the nurse
23 practitioner [redacted]. There are
24 multiple times on multiple days [redacted]

1 That's on page 504. Every time they
2 document a number 7, that means he was sleeping and
3 they didn't administer it. So even though they're
4 communicating, albeit my opinion is they're
5 communicating an inaccurate weight loss to the nurse
6 practitioner, she does implement interventions. But
7 nobody bothers to let her know he's not actually
8 getting all of that Glucerna and/or they changed the
9 times to make sure that he does get it three times a
10 day.
11 And he continues to _____ through
12 December. They continue to document on their ADL
13 records that -- and at this point, he's one-to-one
14 feeding. Based on the _____
_____ And there is still
16 documentation showing that _____
_____.
18 And so that goes back to in the very
19 beginning, when we talked about sufficient staff. If
20 they recognize that that's what he needs and they have
21 enough people to actually do it, I would expect that
22 documentation to reflect that.
23 Q. Would you agree, though, that in some of the
24 narrative notes, that he is getting one-to-one feeds
25 even though it's not documented as such on the chart?

1 A. I would agree the _____.

3 Q. Is that the extent of your opinion related to
4 his nutrition? I mean, is there anything else that we
5 need to go through?
6 A. No. I think the only thing that I can add here
7 to make it easier is the _____

1 [redacted]

20 Q. You would agree that [redacted] in
21 these types of patients can happen in the absence of
22 any negligence? I mean, are you saying that any care
23 provider caused a [redacted]?
24 A. Well, I'm not testifying to causation. What I
25 will say is a couple of things. If a patient -- a

1 resident -- especially a male resident.

--

5 Q. Wait one second. So the

true?

8 A.

18

1 [redacted]

15 I think the other concern, though, is like
16 with Beverly's testimony, it was very clear that there
17 were lines delineated between who is giving medicines
18 and who is actually looking at the skin or the wound
19 care. And we have -- at least on 12/20, we have a
20 [redacted]

23 But the overall gist that I got from those
24 depositions was that that line was drawn between what
25 a regular nurse caring for those veterans in those

1 homes would do versus what the ____ person -- ____
2 ____ nurse would do. And so the issue is, if they're
3 not looking at their bodies, or the universal workers
4 are not reporting to the nurses that something is
5 wrong, this is what can happen. _____
_____ and that be something that's just one more
7 insult to his body, to his overall well-being.
8 Q. Did you see on the -- from the VA records on the
9 assessment that _____?
10 A. Yes.
11 Q. It wasn't --
12 A. I'm sorry.
13 Q. When he got to the VA, _____
_____
_____
_____. But, per se, for someone who
17 it had not been acknowledged in some form or fashion.
18 I mean, _____
_____
_____ And it did not look that way in
21 this case.
22 A. I don't remember any documentation about
23 _____
_____
_____

1 _____
_____
_____
_____
_____
_____
_____
_____
_____

9 At this point in his residency, Mr. Jones
10 was _____. I mean, he had gone from walking
11 outside to _____
_____
_____
_____

15 And so that was very concerning from a
16 dignity perspective and also from a neglect
17 perspective, that if he's being _____ __ _____
18 like he's supposed to be, I would not expect that to
19 _____.
20 Q. Any other opinions that you have that we have
21 not talked about?
22 A. I don't believe so. In terms of the policies
23 and procedures, we talked about the charting and
24 documentation. They also had policies on
25 care-planning, which is all -- all of their policies

1 met the -- the MED-PASS Corporation, that's where they
2 get their policies from. That's where most people get
3 their policies from. They all reference the federal
4 regulations and they fall in line with those
5 regulations.
6 Updating the care plans. Making sure that
7 they meet. So they violated that. And then the other
8 two is in relationship to the treatment for quality of
9 life for dignity and neglect. And that all falls in
10 line with what we've talked about today, ensuring that
11 Mr. Jones got the goods and services that they held
12 themselves out to provide during his residency.
13 Q. You would agree, and Dr. Miller agreed also,
14 that federal and state regulations do not establish a
15 standard of care in medicine, true?
16 A. Not by themselves, they don't. You're going to
17 take into consideration the regulations, the policies,
18 and then also the education, training, and experience
19 of the nurses and the workers at the bedside.
20 Q. And you don't have any opinions about the
21 training and education, things like that, of the
22 nurses at the bedside, at his bedside?
23 A. I don't have any -- no. I don't have any
24 information one way or the other. I can only go by
25 really what's in the depositions and what they

1 testified they were expected to do and kind of how
2 their day went.
3 Q. So you don't -- you do not have any opinion
4 then, too, of any of the workers or personnel were not
5 properly trained; it's just basically what you've got
6 is judgment what they decided to chart or not chart?
7 A. In part. And then I believe the other part is
8 communicating the changes, ensuring they had a -- a
9 minimum standard system in place, which would just be
10 the nursing process. Ensuring that the care plan is
11 developed and updated, that that information is
12 communicated, and that they recognize if Mr. Jones had
13 gotten to the point where his care was something that
14 was outside of their abilities, whether because they
15 didn't have enough numbers or the ones that were
16 taking care of him were not trained, that they
17 communicated that to Ann and looked for a different
18 alternative for him.
19 MS. BROYLES: Okay. Well, thank you. I
20 don't have any further questions at this
21 time. I'll wait and see if I've got any
22 after Jeff.
23 THE WITNESS: Thank you.
24 EXAMINATION
25 BY MR. PRIEBE:

Q. Hey, Luanne, can you hear me?
A. I can hear you.
(Exhibit 1 marked for identification.)
Q. Okay. You've been kind enough to provide us with a copy of your CV. Can you -- let me share my screen. Does this appear to be a copy of your CV?
A. It is.
Q. And is it up to date?
A. The only thing that's different is just the way that I have it formatted now. None of the employment, nothing germane is different. I just have it to where my most current employment is first now.
Q. Okay. And so how long have you been a nurse?
A. Thirty-one years.
Q. And in that 31 years, have you been continually practicing?
A. Yes.
Q. And in your 31 years of experience, have you worked at nursing homes?
A. Yes.
Q. What positions have you held at nursing homes?
A. Charge nurse, director of nursing, administrator, hospice nurse, and a family nurse practitioner.
Q. And when you were the -- when you worked at the

nursing homes, were you employed by them?
A. Not as a nurse practitioner. But in other positions, yes.
Q. Such as the DON?
A. Correct.
Q. Okay. And I take it in your last 31 years, you also teach nurses?
A. Yes, I do.
Q. And do you actually teach nurses in a clinical setting?
A. I do.
Q. And when we say "clinical setting," what does that mean?
A. That means in a setting where they're actually taking care of patients or residents, not in a classroom.
Q. I take it you do the classroom work as well, right?
A. Sometimes. Not much.
Q. Do you ever teach nurses or nursing students in a clinical setting such as a nursing home?
A. Yes, I have.
Q. And in your experience in working in nursing homes, did you work alongside other nurses?
A. Yes.

Q. And when you were in -- as the director of nurses or in administration, were you actually over the nurses?
A. Yes.
Q. And have you worked -- in your years of experience working in nursing homes, have you also worked with CNAs, or certified nursing assistants?
A. Yes.
Q. I take it in your review of the records and the depositions, would universal workers that are used at the state veterans nursing home be similar to the CNAs that you've worked with and supervised?
A. It would be.
Q. And I understand that you do this expert work part time?
A. Correct.
Q. And how long have you been doing records review?
A. Twenty-two years.
Q. And do you do that both for families as well as the defendants and/or insurance companies?
A. Yes, I do.
Q. Okay. Have you ever testified as a nursing expert in a courtroom?
A. Yes.
Q. Have you ever done that in Arkansas?

A. Yes.
Q. How many times?
A. Many. I can't tell you. I can't tell you how many.
Q. Have you ever testified here in Pulaski County as a nursing expert?
A. Yes.
Q. And I take it -- have you ever testified in arbitration trials in nursing home cases?
A. Yes.
Q. Okay. And in your -- I take it you've looked at all the medical records in this case?
A. I have.
Q. And the depositions?
A. Yes.
Q. Okay. And in your review of the records and depositions, have you worked with and done the same type of records that you reviewed in this case?
A. Yes, I have.
Q. The family depositions, the nurse's depositions, have you worked with similar nurses and/or worked with families similar to the ones that you read about?
A. Yes.
Q. This facility, I think you talked to Ms. Jordan earlier about how you've worked in a very similar

1 facility such as the veterans home in North Little
2 Rock?
3 A. Yes.
4 Q. And in your review, you said that you looked at
5 some of their policies?
6 A. Yes.
7 Q. And you also reviewed and are familiar with the
8 federal and state regulations that govern facilities
9 such as the veterans nursing home?
10 A. Yes.
11 Q. You were asked about the standard of care.
12 What -- to you, Nurse Trahant, what is the standard of
13 care that you would apply in a case like this?
14 MS. BROYLES: Object to the form. It's
15 not her standard. It's a legal standard.
16 Q. (By Mr. Priebe:) Go ahead.
17 A. It's what a reasonable nurse would do in a
18 similar situation based on their education, training,
19 experience, in this particular setting within the
20 confines of the federal and state regulations and
21 their policies and procedures.
22 Q. And I take it did you review the depositions of
23 Administrator Clyburn?
24 A. Yes.
25 Q. In his depositions, did you see where he said

that he expected the employees to follow the policies and procedures?

A. Yes.

Q. Is that a reasonable expectation?

A. Yes. And if, for some reason, they can't, that's something that has to be looked at or reported. I mean, there may be instances where you have to deviate for resident safety and well-being, but that's rare.

Q. So let's talk about your opinions as it relates to care-planning and Mr. Jones's care plan. First of all, let me start when he was admitted in April of '18, tell me what type of assistance did he need.

A. Really, in April of '18, [redacted]

Q. And in your review of the materials, why was he

1 admitted into the veterans home in North Little Rock?
2 A. Well, I mean, based on the materials and, of
3 course, Ann's deposition, it just got to be where his
4 _____
_____
6 _____
_____
_____
_____
10 Q. And in your description of Mr. Jones in April of
11 '18, in the records, when they assessed him, it looks
12 like that they assessed him as _____
_____
14 A. _____
_____.
16 Q. Fair to say that in April of '18, if you put a
17 _____
_____
19 MS. BROYLES: Objection to form.
20 Q. (By Mr. Priebe:) Go ahead.
21 A.
22 Q. Based on their assessments and your review, have
23 you treated and cared for -- I'm talking about
24 hands-on care to patients like Mr. Jones?
25 A. Yes.

Q. And in your experience, 31 years, Nurse Trahant, have you treated veterans?
A. Yes.
Q. And so in April of '18, I think you've told Ms. Jordan, they put into place a care plan that addressed his issues. But tell us, in your explanation, what is a care plan?
A. When a nurse assesses a resident, they develop nursing diagnoses, which means what can we do as nurses to maintain their quality of life, improve their quality of life, or at least recognize if they have a deterioration in their quality of life, how we can make them more comfortable if they're dying.
That is the road map. That's the plan. So everything that they're potentially at risk for is memorialized in that particular document.
And that care plan says this is what the nursing staff is going to do. This is what, in this case, the universal workers are going to do to help preserve as much quality of life, dignity, as we can.
Q. And what areas of a resident's life or care are addressed in a care plan?
A. Every area. You look at their physical well-being. So you would look at their potential problems for skin breakdown, nutrition, hydration,

1 activities. Their psychosocial abilities or any
2 problems with their psychiatric condition.
3 You're going to look at their ADLs, their
4 bathing, their grooming, their toileting. So it's the
5 whole person. It's not just medical plans.
6 Q. Okay. I'm going -- I am going to show you --
7 this is Bates number 214. Do you recognize this
8 document?
9 A. Yes.
10 Q. What is it?
11 A. That's a care plan for a potential for
12 infection.
13 Q. And who is this for?
14 A. Mr. Jones.
15 (Exhibit 2 marked for identification.)
16 Q. Okay. Again, this is Bates 214. I am going to
17 make this Exhibit 2 to your deposition. And so on the
18 left hand, we have the focus area, right?
19 A. Correct. Correct.
20 Q. Which is -- and is that the issue that's being
21 addressed by this part of the care plan?
22 A. That's correct. Whatever they identified is his
23 risk.
24 Q.

1 [redacted]

7 Q. And the goal, because you go over the goal, is
8 what?
9 A. That he would not have any undetected signs and
10 symptoms of [redacted]
11 Q. Okay. And underneath that, you have a date
12 initiated of 4/24/18, which means that's the day they
13 put it in place, correct?
14 A. That's correct.
15 Q. And then you have a target date of 7/19/18.
16 What's that target date?
17 A. That's the date where you will evaluate to see
18 if you've met your goal for that quarter. And then
19 you revise the plan if they remain at risk and you
20 continue that.
21 Q. Even though that -- even though you're supposed
22 to review it by at least July the 19th, can a facility
23 update this care plan at any time?
24 A. Yes.
25 Q. And if the resident has a significant change in

1 condition, whether it be a good change or a bad
2 change, do the regulations and its own policy require
3 this care plan to be updated?
4 A. Yes.
5 Q. As we go over -- continue on over on Exhibit
6 Number 2, interventions. Generally, what are these
7 interventions? What's the purpose of this?
8 A. Well, you need to be able to meet your goal of
9 no undetected signs and symptoms. So those
10 interventions would be geared towards reasonable
11 interventions that would reduce their risk or
12 eliminate their risk for infection.
13 Q. Okay. And on this [redacted]

1 [redacted]

[redacted].

3 Q. And is that a good intervention?

4 A. Yes.

5 [redacted]

10 Q. And that's just one part. But did you also see

11 in the April -- in April of '18 that they also

12 care-planned for [redacted]

18 Q. Okay. And so the care plan they put in place in

19 April '18, in your opinion, was that a good care plan?

20 A. Yes.

21 Q. And then let's move forward to August and

22 September of '18. He's already had his move to the

23 new house. Had Mr. Jones's care needs changed by

24 August and September?

25 A. Yes, they had.

1 Q. How so? How so?
2 A. He was

7 So at that point, they needed to look at,
8 first of all, all the interventions collectively
9 because you can't -- oftentimes, you can't just take
10 one system by itself.

13 So these care plans should have been
14 updated with how much assistance he's requiring, who
15 is providing it, who is supervising it, the
16 supplement, what to do when they detect that he's
17 losing weight. But his care plans were not -- they
18 were not updated at all.
19 Q. And so you said that by the time of August and
20 September, [redacted]

1 [redacted]
2 [redacted]
[redacted]
13 Q. And who provides the majority of that type of
14 care in a facility?
15 A. In this facility, it would have been the
16 universal worker.
17 Q. Okay. And you talked about -- earlier about the
18 ADL, about -- who fills out the ADLs?
19 A. The universal workers.
20 (Exhibit 3 marked for identification.)
21 Q. Okay. And I want to show you -- let me share my
22 screen. This is an ADL from September of '18. Do you
23 recognize this ADL, Nurse Trahant?
24 A. Yes.
25 Q. And this is Bates number 571. So again, who is

1 the -- who are the people that are supposed to be
2 filling out this information?
3 A. The universal workers or the assistants that are
4 helping him.
5 Q. Or CNAs, right?
6 A. Correct.
7 Q. Okay. And why do they fill this information
8 out?
9 A. Because that document helps to memorialize the
10 care that they've provided. So they are documenting
11 saying we are supposed to provide this care and, in
12 fact, we did provide it.
13 Q. And did you see in the administrator's
14 deposition where he called this type information a
15 communi- -- strike that. Let me start over.
16 Did you see in the administrator's
17 deposition where he said that these ADLs are a
18 communication tool?
19 A. Yes. That's going to be between shifts. You're
20 looking at is there a change in there, the needs that
21 they require. That helps them to understand from
22 shift to shift what's happening.
23 Q. Did you review the policies and procedures on
24 charting for the veterans home?
25 A. Yes.

1 Q. And what -- okay. Let's look back at Exhibit
2 Number 3 here, this ADL, back here on the bottom.
3 This is Bates 572. You see blanks and skips?
4 A. Yes.
5 Q. Why do we have blank information?
6 A. Because either the care wasn't provided or if
7 the care was provided, they didn't have time to
8 document it. You know, you always look at whether or
9 not a certain amount of missed documentation is going
10 to be acceptable. And in any supervisory position,
11 you would look at that. I looked at that. I continue
12 to look at that. But you also have to be looking at
13 the resident and what's going on with them.
14 In this particular situation, this isn't
15 just one or two holes here and there. It's multiple
16 on multiple weeks, multiple shifts on multiple days.
17 And the problem is, _____
_____
_____
20 Q. Okay. I mean, and do you expect to see a
21 perfect chart with every little blank filled in?
22 A. I don't.
23 Q. Okay. But is this charting in September of
24 ADLs, is this charting acceptable?
25 A. It is not. This should have been being

reviewed, which I know in both depositions -- I believe Beverly and Rosa both testified that they were supposed to look at this documentation.

But when you're stretched thin and you don't have time to do the job that you've been tasked to do, that's one of the problems is that that documentation is not reviewed. That documentation is not verified. So we don't know on these days when there's a bunch of blanks whether he got that care or not.

Q. In your opinion, after reviewing the policy of the veterans home and hearing and reading the depositions, does this lack of charting, these blanks and skips in the ADLs that we see in September, we see in October, November, all the way through December, does that violate the facility's own policies?

A. Yes.

Q. Does that type of charting violate the federal and state regulations that govern long-term care facilities about charting?

A. Yes.

Q. Does this violate good nursing practice?

A. It does.

Q. All right. You talked earlier -- so we get to September -- August, September. He's now a one to two

1 person assist. I think you said earlier at that time
2 his care plan should have been updated?
3 A. Right.
4 Q. And was it?
5 A. No.
6 Q. Going forward to November and December, did
7 Mr. Jones's care plan -- strike that.
8 Going forward to November and December,
9

25 Q. When he was first admitted in April, he just

1

8

25 Q. At any time between November and December, did

1 the facility change his care plan?
2 A. No.
3 Q. Should they?
4 A. Yes, they should have.
5 Q. The failure of the veterans nursing home to
6 change his care plan from April to September, now to
7 December, does that violate the standard of care?
8 A. It does.
9 Q. Does it violate the nursing home's own policy?
10 A. It does.
11 Q. Does it violate the federal, state regulations
12 that govern care plans?
13 A. It does.
14 Q. And did you continue to see blanks and skips in
15 the ADL charting in December?
16 A. Yes.
17 Q. And were those blanks and skips significant
18 enough to concern you?
19 MS. BROYLES: Object to the form.
20 A. Yes. Yes, they were.
21 Q. (By Mr. Priebe:) And did those blanks and
22 skips, even in December, in the charting, does that
23 violate their policies and the federal and state
24 regulations?
25 A. It does.

1 [redacted]

1 Q. And so as a nurse, you read cultures, don't you?
2 A. Yes.
3 [redacted]
25 Q. And so in your review of the records, did this

1 _____

3 MS. BROYLES: Objection to form.

4 A. Sorry. _____

6 Q. (By Mr. Priebe:) He was _____ on

7 December 27th. Was he _____

9 _____

24 Q. In fact, on the 26th, what did those records --

25 what do those records reflect?

1 A. That -- hold on just a second. I might need to
2 be more specific.
3

7 Q. And here's -- this is the ADL for December of
8 '18. You see the skin observation?
9 A. Yes.
10 Q. This is Bates number 604. On the 25th, I see
11 right here, it says yes, that

22 Q. Did you read the deposition of Ms. Page?
23 A. Yes.
24

1 [redacted]

17 A. We should. And that's going back to that --
18 what I testified to earlier, that the delineation of
19 the lines for the nurses were, in my opinion, not
20 very -- would not have been very reasonable. Any
21 nurse that's taking care of a resident in a nursing
22 home should be trained at least to [redacted] not just depend on, quote, the
24 wound nurse.
25 So if somebody saw it other than if

1 Katelynn wasn't there, which is who they said was the
2 wound nurse at that time, they should have had enough
3 knowledge and experience to be able to document those
4 skin changes and get treatment for them.
5 Q. And if they had -- would that type of
6 documentation have also required an update to the care
7 plan?
8 A. Yes.
9 Q. Are you critical of the veterans nursing home
10 for not properly documenting that pressure sore?
11 A. Yes. I mean, the only way that you can treat it
12 and make sure that it doesn't get any worse is to
13 document it and report it to the physician and get
14 orders.
15 Q. Earlier, would that lack of documentation, _____
_____ would that also be, in
17 your opinion, a breach of the standard of care?
18 A. Yes.
19 Q. A breach in good nursing practice?
20 A. Yes.
21 Q. Okay. You have read the depositions. You've
22 talked to -- you talked about the staffing. Was it
23 your opinion -- or do you have an opinion as to the
24 staffing at the veterans nursing home?
25 A. Based on my review and the depositions and my

1 experience, the breaches in the standard of care, the
2 lack of documentation, the multiple delays in
3 treatment, and at times no treatment, is consistent
4 with a facility that does not have enough staff.
5 Q. Does that -- not having enough staff, does that
6 violate the federal regulation on staffing?
7 A. Yes.
8 Q. And what is that federal regulation?
9 A. That you have sufficient staffing to meet the
10 needs of the residents that you care for.
11 Q. The veterans nursing home and their policies had
12 a definition of neglect; did you see that?
13 A. Yes.
14 Q. Do you recall what they said their definition of
15 neglect was?
16 A. It's consistent with the definition in the state
17 and federal regulations. Failure to provide goods and
18 services that are necessary to avoid physical harm,
19 mental anguish, or mental illness.
20 Q. In your opinion, the failure to -- related to
21 the care plan, the failure related to the
22 documentation, the failures related to the
23 treatment -- the identification, treatment, and
24 documentation of the _____, does that meet
25 their definition of neglect?

1 A. It does.
2 Q. When that _____ is identified by the
3 staff at the veterans nursing home, are they required,
4 under regulations and policies, to contact the family
5 and let them know?
6 A. Yes.
7 Q. Did you see that happen in this case?
8 A. No, I didn't.
9 Q. Should they have been called?
10 A. Yes. I mean, any change in the resident's
11 condition should be communicated to the family as well
12 as the doctor. That's their right as a resident.
13 Q. And earlier, you talked about _____ in
14 December not _____?
15 A. Correct.
16 Q. Tell us about that.
17 _____

1 [redacted]

14 Q. So are you telling me that according to your
15 review, that the facility failed to follow the
16 physician's orders?
17 A. Correct.

1 Q. And that has to pertain to _____ correct?
2 A. Correct.
3 Q. And _____
_____ is that physician's order required to be
5 followed?
6 A. _____
_____
_____
_____
_____
11 Q. Are you familiar with the Arkansas Resident's
12 Rights?
13 A. Yes.
14 Q. And is one of those rights that the residents
15 are supposed to be treated with dignity and respect?
16 A. Yes.
17 Q. Based upon the failures that you have opined
18 about regarding the veterans nursing home, did the
19 facility violate Mr. Jones's resident's rights?
20 A. In my opinion, they did.
21 Q. Nurse Trahant, have all of the opinions that
22 you've been giving today been based upon your 31 years
23 of experience and training?
24 A. Yes.
25 Q. And have all the opinions you've been giving

1 today been within a reasonable degree of nursing
2 certainty?
3 A. Yes.
4 MR. PRIEBE: Nurse Trahant, thank you
5 very much. Ms. Jordan may have some more
6 questions for you.
7 THE WITNESS: Thank you.
8 FURTHER EXAMINATION
9 BY MS. BROYLES:
10 Q. Again, Ms. Trahant, you're not offering any
11 causation opinions today?
12 A. That's correct.
13 Q. And just -- I mean, I want to be fair because
14 Mr. Jones's medical concerns were beyond that of just
15 _____ at the time that he was admitted in April,
16 true?
17 A. Well, _____ But as
18 far as the type of care that had to be provided to him
19 on a daily basis, he could still provide most of his
20 ADLs. Like, he could still feed himself. He could
21 still ambulate.
22 But yes. I mean, he wouldn't have been
23 there if he didn't need some degree of care.
24 Q. Right. He was _____ true?
25 A. Correct. Yes.

1 Q. [redacted]

13 Q. He had clearly gotten beyond the ability for her
14 or anyone in her family to take care of, true?
15 A. That's true. Yes.
16 Q. The records state even that two weeks -- for the
17 two weeks prior to admission, he was in the _____
_____, correct?
20 A. Yes.
21 Q. And _____
_____, true?
23 A. _____
_____.
25 Q. Now, I mean, I realize that these things are

1 reflective or secondary to his _____
_____. But it was beyond just being his
3 views or things of that sort; he clearly had become to
4 a point where he was _____
_____because of it, that being the
6 _____ and things of that sort?
7 A. That's fair. Yes.
8 Q. Okay. So in truth, he needed more than
9 supervision; fair to say?
10 A. Well, based on their assessments, he had to -- I
11 believe -- if we weren't clear about that, he could
12 still -- _____
_____
14 [redacted]
_____
_____
_____
_____

A. _____

Q. So he could just roam about being perfectly fine?

A. I'm sorry?

Q. When you say supervision, you're saying it would have been perfectly fine for him to just roam about the house?

A. Correct. Correct. He still had to have interventions in place to protect him, but he could still get up and walk. He couldn't -- they had to supervise him to make sure he didn't wander off or elope. But nobody had to be with him, you know, every minute of the day. He didn't -- he could eat by himself, those types of things.

Q. On the care plan, I think you identified focus of _____. Would you agree that 99 percent of care plans for residents in nursing homes contain issues for _____? The things in that area are, generally speaking, computer-generated? I mean, they are specified to a person. But you would agree that those are things that everyone who comes in is going to have on their care plan?

A. I believe that's absolutely fair. Where we differ in Mr. Jones is simply that each care plan has

1 to be individualized. So although most nursing home
2 residents are at risk for
_____, depending on their
4 age and their underlying conditions, they then have to
5 be individualized to that resident and updated as that
6 individual resident changes, which is more of my
7 criticism for Mr. Jones.
8 In the beginning, those generic
9 run-of-the-mill care plans are fine. You just have to
10 recognize when you have to add interventions or change
11 interventions.
12 Q. Would you agree that -- well, in what instances
13 was Mrs. Jones not notified of something? I mean,
14 when was there some time that she should have been
15 called and she wasn't?
16 A. Well, there's not an indication that she knew
17 about any kind of _____.
18 The only other -- I think the only other
19 thing that she had called concerned about all of his
20 _____
_____
_____.
23 You know, but other than that, I did not
24 see -- and I don't remember in her deposition if she
25 ever came to care plan conferences, where they sat

1 down and talked about his care and planned out his
2 care.
3 And then beyond that, just simply that if
4 they didn't have enough people to properly supervise
5 him and provide the care to him, that they conveyed
6 that to her. That would have been important.
7 Q. Where did you see, or on what page of the
8 records is where you're looking on -- about the
9 _____
10 A. Hold on a second. Let me see if I -- I think I
11 printed it out. If I didn't, I think I can tell you.
12 Okay. So possibly 338. So it's going to be the MAR.
13 Q. 338 under -- does it say page number 6 at the
14 top right?
15 A. I didn't print it out. I am so sorry. I'm
16 looking at my notes. And like I said, sometimes I'm
17 not the greatest about the numbers. It should be the
18 December _____, is where
19 that would be found.
20 Q. What day and times are you saying it wasn't
21 given? Like, based on the -- my 338 isn't a chart.
22 What I have -- what I'm scrolling through, that's why
23 the Bates number where it says -- what is the Bates
24 number?
25 A. Well, I'm not positive it is a Bates number. I

1 have three -- I have 338. But I'm looking. It looks
2 like the MARs are somewhere around the -- actually,
3 like 200s. Bates stamp 00JABA00, potentially, 205.
4 Q. All right. I'm not seeing it on 205. I'm just
5 trying to --
6 A. I think that's where they might start. Over on
7 the left, it should have an entry that says
8 _____.
9 Q. I'm scrolling through real quick. I see that
10 205 is where the MAR started. I see what you're
11 saying. I'm looking in the nurses' notes, it shows he
12 got _____ those times. So on 24.
13 A. I'm just trying to see. In the nurses' notes?
14 Q. Yes. The narrative.
15 A. Okay. On which day do you see they gave it?
16 Q. The 21st. I have coordinating with where you
17 said they were. I mean, I think I am. I could be
18 wrong. But so on 12/21/18 at 2133.
19 A. Right. Well, actually, what that nurses' note
20 says is _____
_____. So it doesn't -- that doesn't say they
22 administered anything there. _____
_____
_____
25 Q. 12/22, 1351?

A. Yes. That one is. But I think that one is signed on the MAR 'cause _____. And then the 23rd would have been his last -- his last day. And I don't believe we have any other entries about _____ after that.

Q. So there's not -- so when did he not get it twice a day?

A. When there's a -- there's two blocks that are documented as 7s. And then there's one that's blank on the 23rd, I believe, without having the document in front of me.

Q. There's not any blanks on the 23rd.

A. Let me see if I can pull --

Q. If it's an X?

A. Yes. It has to have an initial. Let me see if I can -- I'm sorry. Let me see if I can pull it up.

Q. If you look over to the right, doesn't it say _____

A. Correct.

Q. _____

A. _____ Let me just pull it up. Probably if I pull it up, I can be more explanatory. I'm waiting for it to load.

1 Q. 'Cause otherwise, _____

_____

_____

4 A. Okay.

5 THE COURT REPORTER: Can we go off the

6 record just a second?

7 MS. BROYLES: Yes.

8 (Discussion off the record.)

9 A. Okay. I'm there. So let me --

10 Q. (By Ms. Broyles:) Because it's five days

11 starting on the 18th would end on the 22nd.

12 A. Okay. So if you -- all right. So if you look

13 at the 21st, there's a 7. That means that he didn't

14 _____. I

15 mean -- I'm sorry, on the 21st.

16 _____

_____

_____

_____

_____ That would

21 have been the final.

22 _____

_____

_____

_____

Q. I guess I'm confused. How do you know she didn't give it to him because she checked it?
A. Because she documented underneath it for 8:00 a.m. that he was sleeping. And I'll be fair. I'll be fair. And let's say she came in and said he was sleeping and then gave it to her. Then we've got a missed dose on the 21st and we've got a missed dose on the morning of the 23rd.
Q. Well, and again, to be fair, it says until 8:00 a.m. on the 23rd. And it's five days. It's already five days, would have ended after the p.m. dose on the 22nd, right?
A. No.
Q. Okay.
A. No. The last dose -- until 12/23 at 8:00 a.m., in the nursing world, that would be that's the last dose 'cause it's timed for 8:00 a.m. So you would give five days twice a day, that would be 10 doses.
MS. BROYLES: Okay. Ms. Trahant, I think that's all the questions that I have. Thank you.
THE WITNESS: Thank you.
FURTHER EXAMINATION
BY MR. PRIEBE:
Q. All the opinions today have been given within a

reasonable degree of medical certainty, Luanne?

MS. BROYLES: Objection. That is a causation question and she's not giving causation opinions.

Q. (By Mr. Priebe:) Anyway, Luanne, have all the opinions you've been giving today been given within a reasonable degree of nursing certainty?

A. Yes.

MS. BROYLES: Object to form.

MR. PRIEBE: I'm sorry?

MS. BROYLES: Object to form.

A. Yes.

MR. PRIEBE: All right. That's all the questions I have.

(The deposition was concluded at 1:13 p.m.)

* * * * *

1 REPORTER CERTIFICATION

2 I, TAMMIE L. FOREMAN, Certified Court Reporter
3 for the State of Arkansas, do hereby certify to the
4 following:
5 1) that on 10/19/2023, the witness,
6 LUANNE TRAHANT, was duly sworn by me prior to the
7 taking of testimony as to the truth of the matters
8 attested to and contained therein;
9 2) that the foregoing pages contain and are a
10 true and correct transcription of the proceedings as
11 reported verbatim by me via realtime stenography to
12 the best of my ability and transcribed at or under my
13 direction and supervision;
14 3) that I am neither counsel for, related to,
15 nor employed by any of the parties to the action in
16 which this proceeding was taken; and that I am not a
17 relative or employee of any attorney employed by the
18 parties hereto;
19 4) that I am not financially interested or
20 otherwise interested in the outcome of this action
21 that affects or has substantial tendency to affect
22 impartiality or requires me to relinquish control of
23 an original or copies of a deposition transcript
24 before it is certified, or that requires me to provide
25 any service not made available to all parties to the

action, and

5) that I have no contract with the parties, attorneys, or persons with an interest in the action; and that I am not knowingly identified on a preferred provider list, whether written or oral, for any litigant, insurance company, or third-party administrator involved in this matter;

6) that signature of the witness is waived.

This transcript is prepared at request of counsel for DEFENDANT, and all fees are billed directly to them in compliance with Arkansas Board of Court Reporter Examiners Regulations Section 19.

Witness my hand and seal this 19th of October, 2023.

TAMMIE L. FOREMAN ARKANSAS SUPREME COURT No. 305 CERTIFIED COURT REPORTER

Tammie L Foreman

TAMMIE L. FOREMAN, CCR, CRR, RPR
LS Certificate #305, State of Arkansas
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www.ArkansasRealtimeReporting.com

Luanne Trahant, MSN, APRN, FNP-BC

EDUCATION

- Bachelor's of Science in Nursing, Northwestern State University, Shreveport, 1992
- Master's of Science in Nursing, *Cum Laude,* University of Phoenix, 2005
- Post Graduate-Family Nurse Practitioner, Northwestern State University, Shreveport, 2010

EMPLOYMENT

RN, Rapides Regional Medical Center ***1992- 1996***
Charge nurse for a 20 bed acute cardiac unit, provided daily nursing care and managed staffing for the unit. Case Manager for a 30-bed med-surg telemetry floor, provided review for length of stay, insurance use and approval, quality and standards of care review. Inservice Coordinator

RN, Agency Nursing, Nurse Finders ***1993-2000***
Provide direct nursing care in various clinical settings including pediatrics, med-surg, ICU/CCU, physical rehab, psych units, cardiac units, orthopedics, long-term care and surgical units

RN, Case Manager, Staff Nurse, Agency Nurse, ***1996***
Interim Home Health Staffing

Direct care of home health patients, chart and standard of care review on all Medicare and Medicaid recipients of home health, staff development that included physicians, rehabilitative services and nurses in the field. Agency nursing in Long-term care, psychiatric care, medical-surgical nursing and pediatrics

Director of Nursing/Administrator, Wilshire Manor Nursing Home ***1996-2000***

provided direct nursing care as needed in long-term care setting, directed overall operations of 110 bed facility including staffing, budgeting, purchasing, development of policies and procedures, monitor adherence to policies and Medicare and Medicaid regulations, quality assurance, infection control coordinator, operation of 10 bed Medicare Skilled Unit, inventory, supplies and review for compliance with federal and state regulations as set forth by the Department of Health and Hospitals, directly responsible for providing staff development and chart review on residents weekly for breach of care or substandard care

RN, Case Manager, Staff Nurse ***1998 & 2000***
Thompson Home Health
Direct care of the home health patient, coordinate visits for home health recipients, JCAHO education for the staff, manage Medicare and Medicaid utilization, Supervisory duties in the field

Director of Nursing, Pecan Grove Training Center, ***2000-2001***
Oversee nursing department for a 130 bed facility for the mentally retarded including medical and training services, quality assurance, case management, infection control and overall health needs of the well client. Directly responsible for staff and client education regarding health and medical issues

RN, Night Manager/Charge, Christus St. Francis Cabrini Hospital Staff
RN/Agency RN ***1993-2005***
*P*rovide direct nursing care of the elective post surgical knee and hip replacement patients, direct care to long-term rehabilitation patients. Provided direct care to telemetry patients, long-term care patients, rehab patients, medical surgical and ICU patients

RN, Staff Nurse/Faith Foundation Hospice **2006-2010**
provide direct nursing care on an as needed basis to patients with a variety of illnesses in the nursing home setting, provide quality assurance assessments and performance evaluations, member of the IDG team for evaluation of patient care, collaborate and coordinate care with the nursing home staff including evaluating and devising the plan of care, updating and changing the plan of care, monitoring care provided to the resident between nursing home visits, collaborating with the treatment team including the attending physician, nurses, therapists, social worker, pastor and administration, in order to provide consistent, comprehensive care to the residents.

FNP Clinical Residency **2008-2010**
Responsible for providing assessments, plans, diagnoses and treatment to patients with a variety of illnesses. These services were provided in the clinic setting, nursing home, assisted living and hospital. The population served ranged from young adult to geriatrics. Collaborate and coordinate care with an interdisciplinary health care team.

FNP-Applicant **5/2010-10/2010**
Responsible for providing assessments, plans, diagnoses and treatment to predominately geriatric patients with a variety of illnesses. These services were provided in the clinic setting, nursing home, assisted living and hospital. The population served ranged from young adult to geriatrics. Collaborate and coordinate care with an interdisciplinary health care team.

Family Nurse Practitioner-Christus Medical Group 1/2011-1/2012
Responsible for providing assessments, diagnoses and treatment to patients in a quick care setting with a variety of illnesses. The population includes children, adolescents, adults and geriatric patients.

Family Nurse Practitioner/RN-Faith Foundation Hospice 10/2010-1/2012
Responsible for providing assessments, plans, diagnoses and treatment to predominately geriatric patients with terminal illnesses and end of life issues. These services are provided in the home and long-term care settings. Courtesy visits are provided in the hospital setting. Member of the IDG team for evaluation of patient care, collaborate and coordinate care with the long-term care/hospice staff including evaluating and devising the plan of care, updating and changing the plan of care, monitoring care provided to the patient/resident between visits, collaborating with the treatment team including the attending physician, nurses, therapists, social worker, pastor and administration, in order to provide consistent, comprehensive care to the residents.

Brian Clinic-Dr. Jonathon Hunter 1/2012-7/2013

Responsible for providing assessments, planning, diagnosis and treatment to residents/patients in the long-term care setting (which includes nursing homes and assisted living facilities) for a variety of illnesses. The population served is predominantly geriatric. Coordinate and collaborate with the interdisciplinary team for the delivery of patient care.

APRN, LNCC, Owner, Consulting Concepts 2001-present
In depth medical case review and reporting for plaintiff and defense firms nationwide. Provide consulting services in the areas of medical and nursing malpractice, nursing home litigation and Medicare and Medicaid fraud. Expert witness services are provided nationwide.

Louisiana College Jan 2014-August 2014
RN/FNP
Provide medical diagnoses, assessment and treatment to individuals at campus clinic; includes middle adult and geriatric populations; Provide education and guidance to Senior nursing students in the Baccalaureate program regarding assessment, care planning, intervention and evaluation for acute and chronic illnesses in various settings.

Louisiana College RN/FNP-BC July 2015-Present
Adjunct Faculty
Provide Bedside Clinical education and guidance to entry level and senior level nursing students which includes the introduction to the nursing process and leadership role, development of care plans, designing interventions for age-specific populations and introduction and evaluation of the provision of nursing care, clinical reasoning, evaluation of nursing care and revision process in multiple settings including hospitals, outpatient clinics and public health settings.

MEMBERSHIPS/PUBLICATIONS/ACCOMPLISHMENTS

- Louisiana Association of Nurse Practitioners, Member, 2009-2016
- Reviewer: United States Department of Justice,2011-Present
- Louisiana Association of Nurse Practitioners-Public Policy Review Committee-2011-2014
- American Association of Nurse Practitioners 2012-2016
- *Completed WCN program through Wick's and Associates using the Wound, Ostomy and Continence Society's Core Curriculum 2017*

CERTIFICATIONS

- **2010/Board Certification-Family Nurse Practitioner-American Nurses Credentialing Center-Expires October 2020**
- **2005/Board Certification-Legal Nurse Consultant-American Nurses Credentialing Center-Expired 2015**

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Jordan Broyles
To: Kathryn Irby
Cc: Justin Brascher; Brianna McDonough
Subject: Jones V. ADVA CC-200817 - Respondent"s Pre-Hearing Brief
Date: Friday, October 20, 2023 8:43:25 AM
Attachments: image001.jpg
Oscar Jones Pre-Hearing Brief (2023.10.20).pdf

Ms. Irby,

Please see attached Respondent's Pre-Hearing Brief. The parties did not exchange these briefs and only sent to the Commission.

Best regards,

Jordan Broyles

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
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jordan.broyles@arkansasag.gov

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IN THE ARKANSAS CLAIMS COMMISSION

MARY ANN JONES, as special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones	**CLAIMANT**
v.	**NO. CC-200817**
ARKANSAS DEPARTMENT Of VETERAN AFFAIRS	**RESPONDENT**

RESPONDENT'S PRE-HEARING BRIEF

I. The Parties

Oscar Odell "Bill" Jones, deceased, was a decorated and honored veteran. He is survived by his wife, Mary Ann Jones, three biological children (Rhonda Brostrom, Cynthia Bartlett, and [redacted] and two stepdaughters (Jerrie Ann Stokes and Karen Garson). Ms. Mary Ann Jones is the claimant, who brings this case on behalf of herself and Mr. Jones' statutory beneficiaries. Pursuant to Arkansas law, the only statutory beneficiaries of Mr. Jones are his wife and three biological children. *See* Ark. Code Ann. § 16-62-102(d). There are no claims in this case on behalf of his stepdaughters because they are not eligible beneficiaries. Mr. Jones' biological children reside out of state and were not involved in his medical care.

Ms. Jones filed her claim against the Arkansas Department of Veteran Affairs, but the case is regarding Mr. Jones' medical care and treatment while he was a resident at the Arkansas State Veterans Home at North Little Rock. This is a state-owned facility that serves veterans, veterans' spouses, and Gold Star family members. Construction was completed in 2016. The facility is an innovative "small home" design with eight Hero Homes that each serve twelve (12) residents. The small home-concept is designed to de-institutionalize care and provide a warm, home-like environment in a setting that encourages social activity among the residents. It also is a more

welcoming space for patients transitioning from their prior living arrangements to living with other veterans.

II. Factual Background

Mr. Jones moved into the Veterans Home on April 12, 2018. As reflected in the medical records, he was in [redacted]

Mr. Jones' wife visited him on a weekly, or two-week basis and his stepdaughter occasionally came to visit him. Neither one of them ever observed any occurrence or evidence of physical abuse toward Mr. Jones.

[redacted]

III. Claimant's Allegations

This is a wrongful death case in which Ms. Jones alleges that her husband died due to the care and treatment he received while a resident at the Arkansas State Veterans' Home.

Claimant is not making any allegations of abuse or intentional wrongdoing or neglect. The claims are based only in terms of negligence. Specifically, Claimant alleges Mr. Jones suffered from as a result of the care he received.

Claimant is not making any allegations regarding the education, training, experience, or qualifications of the medical personnel who treated Mr. Jones. Further, there are no specific allegations made against any member of the medical staff.

Claimant retained two expert witnesses: Nurse Luanne Trahant and Dr. Keith Miller. Ms. Trahant only testified on her criticisms of the care provided and gave no causation opinions. Dr. Miller did give causation opinions, however he conceded that Mr. Jones' course while a resident at the Veterans Home could occur in the absence of negligence. More specifically, he agreed that a patient like Mr. Jones could suffer from due to no fault of any of the medical personnel in this case. Therefore, Claimants have not established causation.

Dr. Miller testified that he believes Mr. Jones could have lived an additional 4-5 years.

IV. Respondent's Defense

Respondent's retained Dr. Scott Simmons as their medical expert in this case. Dr. Simmons will testify live at the hearing in this matter. It is expected that Dr. Simmons will testify that by the time Mr. Jones presented to the Veterans Home, [redacted] Dr. Simmons will acknowledge that the charting in the medical records is not perfect, but sufficient information exists to show that he was not neglected while in the care of the Veterans Home. Dr. Simmons will further testify that Mr. Jones' course was consistent with other patients [redacted], and that the medical personnel did not cause Mr. Jones' death. Dr. Simmons believes that Mr. Jones was nearing the end of his life-expectancy when he moved into the home and disagrees with Dr. Miller's estimate of an additional life expectancy of 4-5 years.

V. Damages

There are no economic or compensatory damages claimed in this case. There are no medical bills to consider. Ms. Jones testified in her deposition that she was not responsible for any medical expenses and she is not making a claim for loss of future income or earning capacity. [redacted] and is not alleging she is not able to maintain her living expenses just as before his death.

All of Mr. Jones' biological children live out of state. [redacted]. As noted above, Mr. Jones' stepdaughters are not eligible statutory beneficiaries under Arkansas law.

VI. Conclusion

In sum, the parties disagree on the how and why of the events of this case. To Claimant, her husband's death was caused by the medical personnel. Respondent disagrees, and believes that, unfortunately, [redacted] and that his death was not caused by any alleged negligent action or inaction on the part of the Veterans Home.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: Jordan Broyles

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Senior Assistant Attorney General
Justin Brascher, Ark. Bar No. 2023029
WA Bar No. 58371
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Jordan Broyles, hereby certify that on October 20, 2023, a copy of the foregoing was submitted to the Arkansas Claims Commission in hardcopies and via electronic mail. The parties did not exchange pre-hearing briefs.

Jordan Broyles
Jordan Broyles

IN THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administration of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CASE NO. CC-200817**

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS **RESPONDENT**

RESPONDENT'S WITNESS AND EXHIBIT LISTS

Witness List

1. Dr. Scott Simmons (Respondent's Medical Expert)
2. Respondent reserves the right to cross-examine any witness Claimant calls to testify at the hearing.

Exhibit List

EX. NO.	BATES NOS.		DESCRIPTION
Arkansas State Veterans Home Medical Records (4/12/2018 thru 12/27/2018):			
1	ADVA 12	ADVA 19	Admission and Discharge Documents
2	ADVA 24		State Home Program Application for Veteran Care Medical Certification
3	ADVA 28	ADVA 33	Arkansas DHS Evaluation of Medical Need Criteria
4	ADVA 213	ADVA 267	Care Plans
5	ADVA 269	ADVA 290	Physician's Notes
6	ADVA 292	ADVA 326	Physician's Orders
7	ADVA 328	ADVA 388	Nursing Notes
8	ADVA 390	ADVA 512	Medication Administration Records (MARs)
9	ADVA 514	ADVA 522	Treatment Records
10	ADVA 524	ADVA 608	C.N.A. Flowsheets
11	ADVA 617	ADVA 631	[redacted]
12	ADVA 633	ADVA 636	Nutritional Notes
13	ADVA 638	ADVA 645	Rehabilitation notes
14	ADVA 647	ADVA 664	[redacted]
15	ADVA 1430	ADVA 1449	Fall Notes and Response Assessments
Outside Medical Records:			
16	OOJ-AVA-374	OOJ-AVA-380	MEMS 1 (2018.12.18)

EX. NO.	BATES NOS.		DESCRIPTION
17	OOJ-AVA-367	OOJ-AVA-373	MEMS 2 (2018.12.18)
18	OOJ-AVA-381	OOJ-AVA-387	MEMS 3 (2018.12.27)
19	OOJ-AVA-388	OOJ-AVA-1086	VA Hospital Medical Records (2018.12.27-2019.01.03)
Additional Materials:			
20	ADVA 1369		Floor Plan – Heroes Home 6
21	ADVA 1370		Floor Plan – Heroes Home 7
22	ADVA 1372		Floor Plan – Community Building
23	ADVA 1813	ADVA 1814	Arkansas State Veterans Home Brochure
24	ADVA Expert 1	ADVA Expert 4	Curriculum Vitae of Scott Simmons M.D.
	Any exhibits on Claimants Exhibit List or Exhibits discovered after the submission of the Pre-Hearing Brief		

Respectfully submitted,

TIM GRIFFIN
Attorney General

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CERTIFICATE OF SERVICE

I, Jordan Broyles, hereby certify that on October 20, 2023, a copy of the foregoing was submitted to the Arkansas Claims Commission in four hardcopies and via electronic mail, and served on all counsel of record via e-mail:

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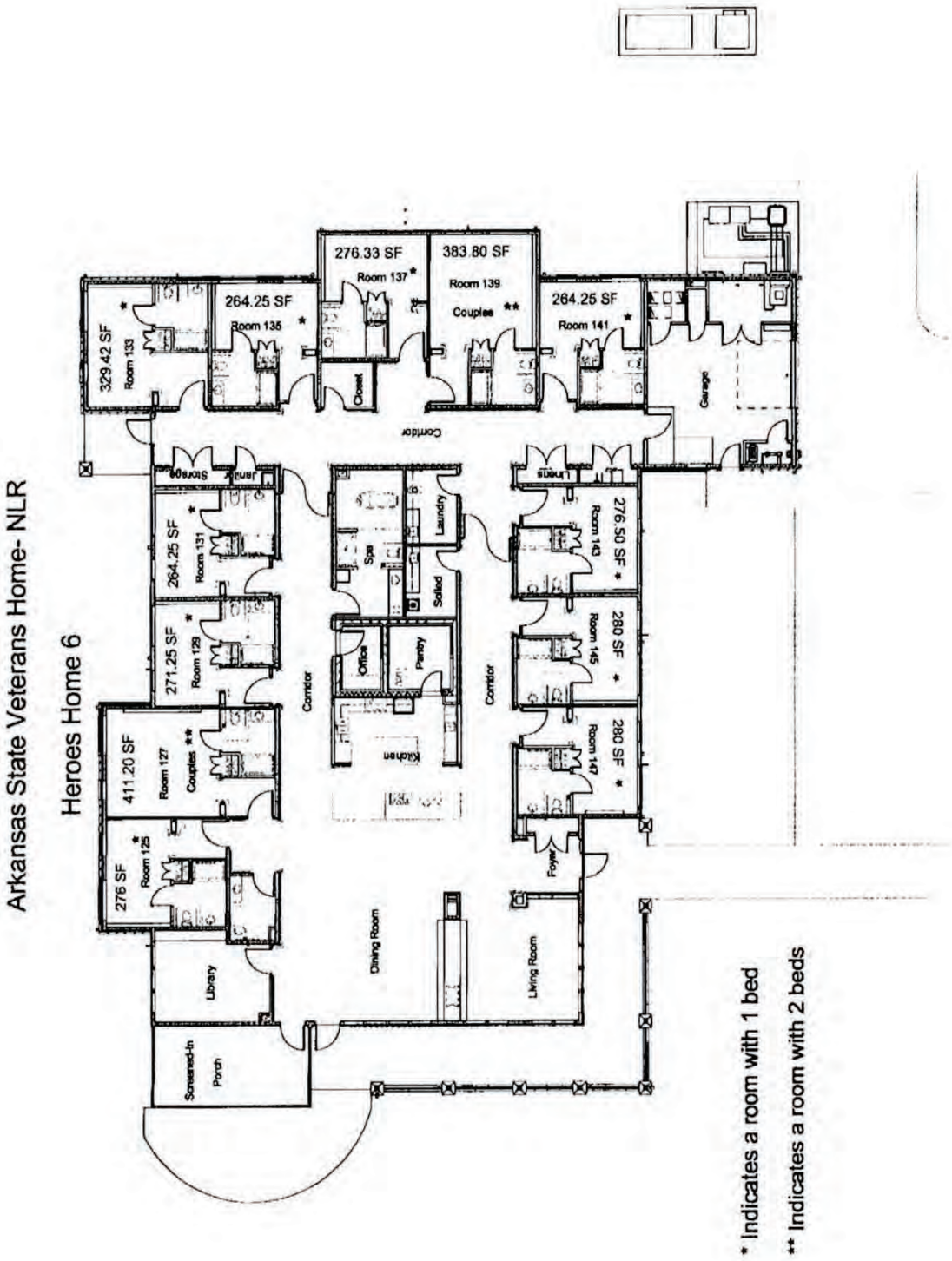
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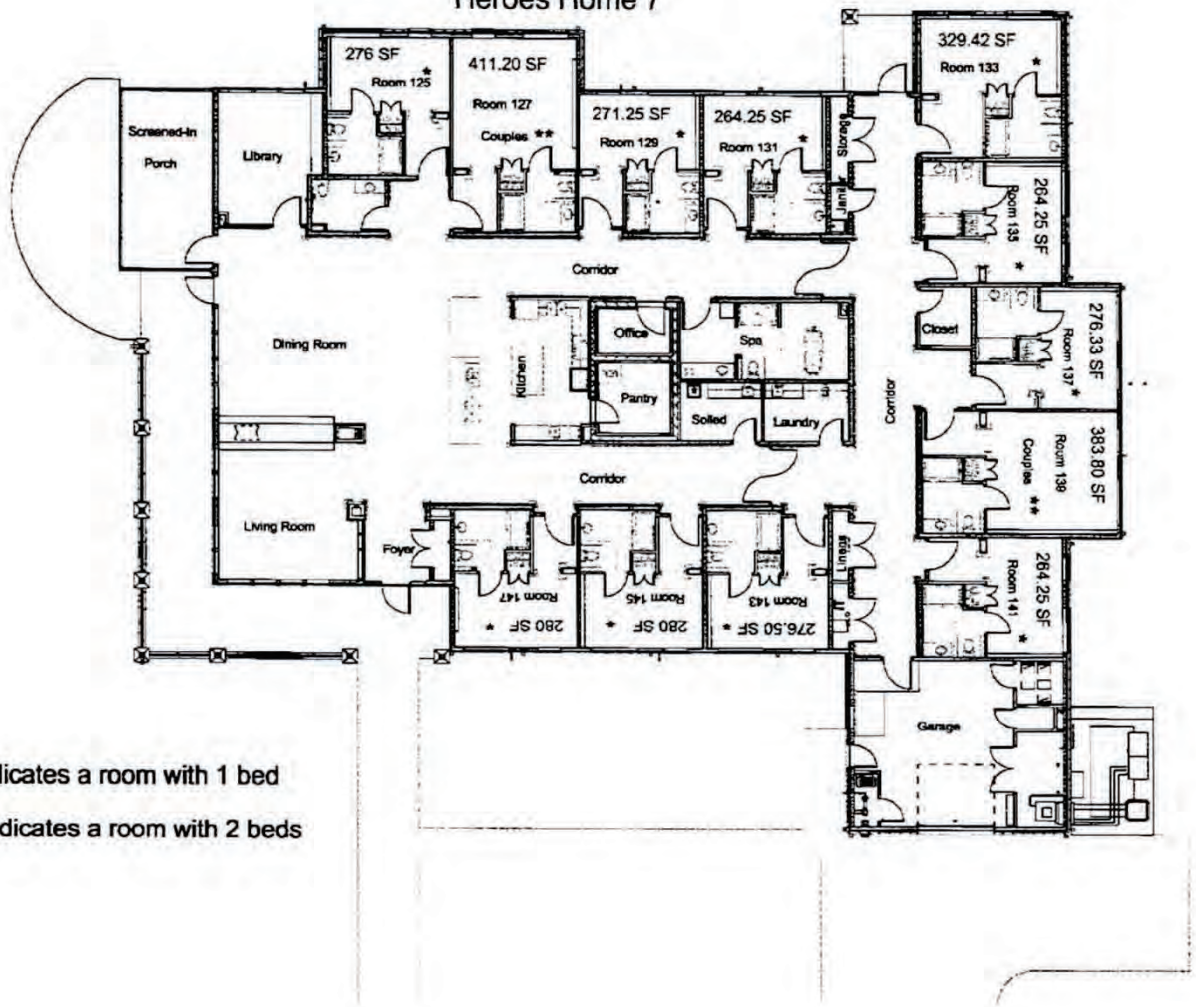
411.20 SF
Room 127
Couples
276 SF
Room 125
Spa
Laundry
Soiled
Office
Pantry
Kitchen
Corridor
Linens
276.50 SF
Room 143
280 SF
Room 145
280 SF
Room 147
Foyer
Library
Dining Room
Living Room
Screened-In Porch
* Indicates a room with 1 bed
** Indicates a room with 2 beds

Arkansas State Veterans Home- NLR

Heroes Home 7

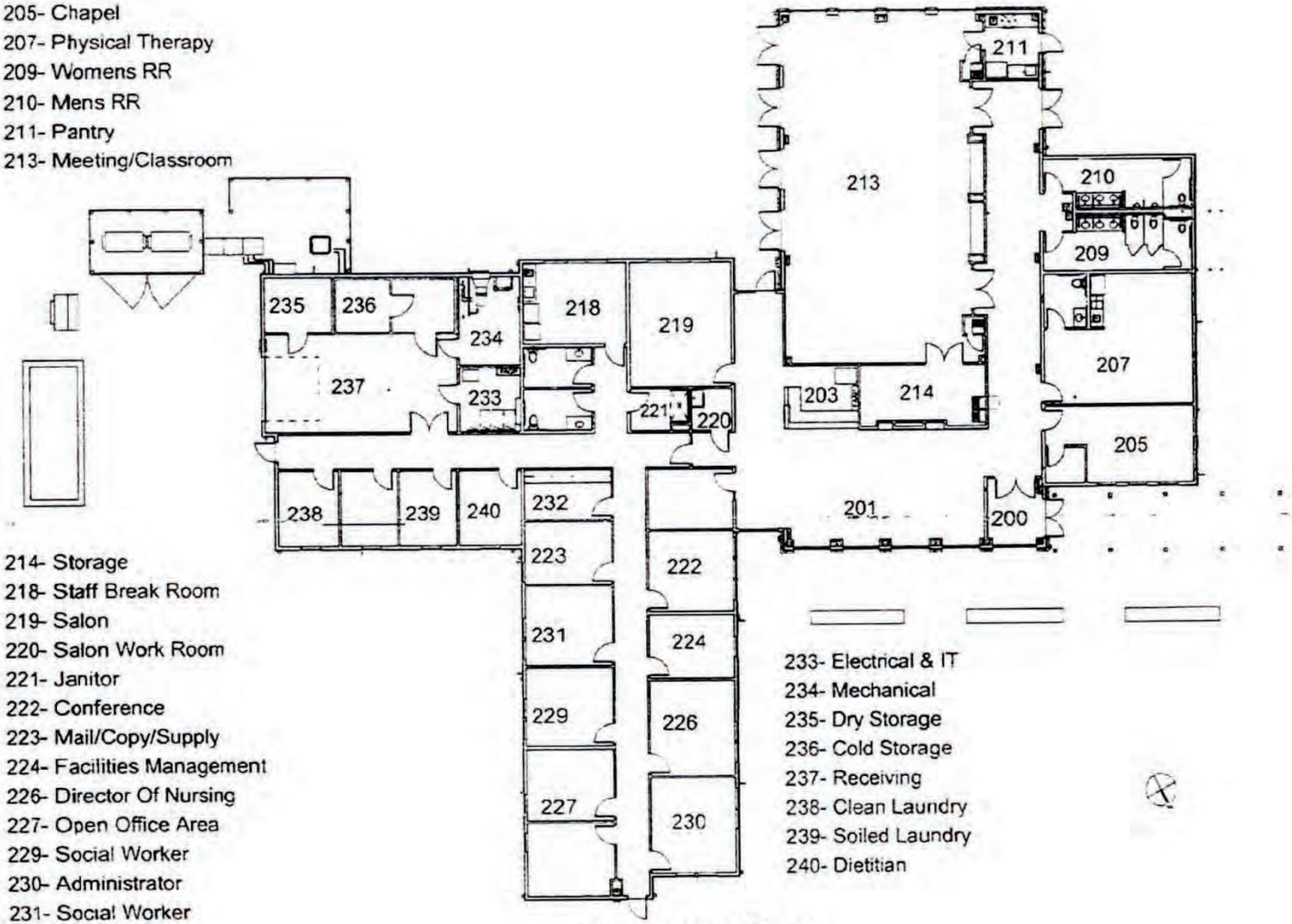


* Indicates a room with 1 bed

** Indicates a room with 2 beds

Community Building

200- Vestibule
201- Entry Lobby
203- Reception
205- Chapel
207- Physical Therapy
209- Womens RR
210- Mens RR
211- Pantry
213- Meeting/Classroom



214- Storage
218- Staff Break Room
219- Salon
220- Salon Work Room
221- Janitor
222- Conference
223- Mail/Copy/Supply
224- Facilities Management
226- Director Of Nursing
227- Open Office Area
229- Social Worker
230- Administrator
231- Social Worker
232- Records

233- Electrical & IT
234- Mechanical
235- Dry Storage
236- Cold Storage
237- Receiving
238- Clean Laundry
239- Soiled Laundry
240- Dietitian

Evacuation Plan

ACTIVITIES AT OUR HOME

Our Activity Director and Universal Workers lead a variety of activities throughout the day. Our activities include bingo, cookouts, musical entertainment, fishing, special performances, exercises, inspirational/Church Services, seasonal activities, poker games and more. Whatever your interest, you'll find lots of activities to keep you entertained throughout the day.

ADVA

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

We live the **ADVA** Values:

High Quality Service: Provide outstanding service to those who served us.

Accountability: Unquestionable integrity in all we do.

Compassion: Consistently demonstrate care and empathetic concern for Veterans and one another.

Communication: Provide accurate and timely "two-way" communication with our customers, customers, the public and key stakeholders, while fostering a culture of cooperation and collaboration with counties, other agencies, Veteran service organizations and businesses to connect Veterans to resources and promote the value of Veterans to Arkansas.

2401 John Ashley Drive
North Little Rock, Arkansas 72114-1825
(501) 683-2382
(501) 682-0357 (Fax)

Welcome Home

VETERANS!

ADVA

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS

Arkansas State Veterans Home
at
North Little Rock

ADVA Docs. p. 1813

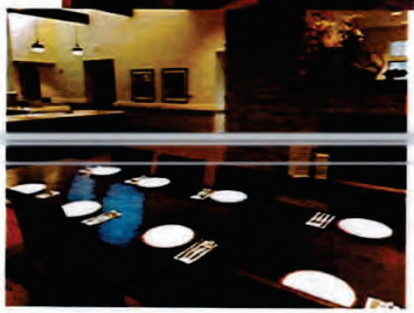
OUR SERVICES

Our bottom line is the comfort and care of our Veterans and their family. Our staff to resident ratio exceeds the Office of Long Term Care's standards. We also provide 24/7 RN coverage, not provided by most skilled nursing facilities. We are committed to providing a warm, caring home for your loved one!

* Medical Director
* RN, LPN and Universal Worker skilled nursing around the clock in our "home-style" setting
* Physical, Occupational and speech therapy
* Social Worker
* Transportation available
* DirecTV
* Personal laundry done at no additional charge
* Designated smoking area
* Active Resident and Family Councils

MEET YOUR NEW HOME

Arkansas State Veterans Home at North Little Rock (ASVH-NLR) is a 96 bed skilled nursing facility. Utilizing the "home-style" concept of service delivery, the ASVH-NLR provides a comfortable and supportive atmosphere for our Veterans. We encourage family/friend visits and participation in activities held at the facility. There is also a Community Building for community meetings and other activities held at ASVH-NLR.



CRITERIA FOR ADMISSION

* Honorable discharge
* Have a medical need for skilled-nursing home placement & care
* Must be a Veteran, Veteran's Spouse or Gold Star Parent to apply for admission.

All veterans admitted to the Arkansas State Veterans Home in North Little Rock will be given a "big warm welcome" to their new home and a Community Binder with all information about our facility and its activities.

We also have multiple payment sources, one of which will work for you! For more information contact the Social Worker at (501) 682-4017.

ADVA Docs. p. 1814

SCOTT SIMMONS, MD

Simmons Geriatric Medicine & Long Term Care
[redacted]

Education

Geriatric Fellowship University of Arkansas for Medical Sciences, Little Rock, AR	2000-2001
Internal Medicine Internship and Residency University of Arkansas for Medical Sciences, Little Rock, AR	1997-2000
Medical School Louisiana State University, Shreveport, LA	1993-1997
Graduate Level Studies Northwestern State University, Natchitoches, LA	1992-1993
Bachelor of Science in Biology, Minor in History Northwestern State University, Natchitoches, LA	1987-1992

Professional Experience

Attending Physician, Arkansas Hospice, Little Rock, AR	2022-present
Simmons Geriatric Medicine & Long Term Care, P.A.	2016-present
Integrated Care Professionals, Liaison Physician, Little Rock, AR	2016-present
Long Term Care Division Director, Department of Geriatrics University of Arkansas for Medical Sciences, Little Rock, AR	2006-2016
Associate Professor, Department of Geriatrics University of Arkansas for Medical Sciences, Little Rock, AR	2013-2016
Assistant Professor, Department of Geriatrics University of Arkansas for Medical Sciences, Little Rock, AR	2005-2013
Adjunct Professor, Department of Geriatrics Northwest Medical Center, Springdale, AR	2001-2005
Staff Physician, Department of Geriatric Veterans Administration, Little Rock, AR	2000-2001

Medical Directorships

Encore of West Little Rock, Little Rock, AR	2021-present
North Little Rock Veteran's Administration	2019-present
Allay Health and Rehabilitation, Little Rock, AR	2017-2022
Barrow Creek Health and Rehabilitation, Little Rock, AR	2010-2014, 2016-2022

ADVA Expert 1

Cottage Lane Health and Rehabilitation, Little Rock, AR	016-present
Robinson Nursing and Rehabilitation, North Little Rock, AR	2016-2021
Sherwood Nursing and Rehabilitation, Sherwood, AR	2016-2021
Valley Ranch Nursing and Rehabilitation, Little Rock, AR	2016-2022
West Markham Sub-acute and Rehabilitation, Little Rock, AR	2013-2015
Capitol Health and Rehabilitation, Little Rock, AR	2012-2015, 2016-2018
Presbyterian Village Living Center, Little Rock, AR	2010-2015
Chenal Heights Health and Rehabilitation, Little Rock, AR	2010-2014
Woodland Hills Health and Rehabilitation, Little Rock, AR	2006-2015, 2016-2018
Northridge Health and Rehabilitation, North Little Rock, AR	2006-2010
Springdale Nursing and Rehabilitation, Springdale, AR	2003-2005
Butterfield Trail Village, Fayetteville, AR	2002-2005
Fayetteville Health and Rehabilitation, Fayetteville, AR	2002-2005
North Hills Health and Rehabilitation, Fayetteville, AR	2002-2004

Certification and Licensure

Arkansas State Medical License	2000-present
Board Certification, Geriatric Medicine	2002, 2015
Board Certification, Internal Medicine	2001

Committees and Public Service

Arkansas State Long Term Care Advisory Board Appointed by Governor Mike Huckabee	2005-present
Physician Orders for Life Sustaining Treatment Arkansas Legislative Committee	2014
Presbyterian Village Memory Center Advisory Board	2013-2015
Fellowship Bible Church Medical Clinic, Volunteer Physician	2013-2014
President, Arkansas Medical Directors Association	2010-2016
Arkansas Foundation for Medical Care	2009-2015
UAMS Geriatrics Update & Long Term Care Committee Co-director	2008-2012

ADVA Expert 2

UAMS College of Medicine Curriculum Committee	2008-2011
UAMS Department of Geriatric Grand Rounds Committee Chairman	2008-2011
Vice President, Arkansas Medical Directors Association	2008-2010
UAMS Department of Geriatrics Education Committee	2006-2015
Northwest Medical Center Quality Assurance Committee	2002-2005
Circle of Life Hospice Ethics Committee	2001-2005

Publications

UAMS American Geriatric Society Annual Scientific Assembly 2014
Comparison of Differences in Practice Patterns in Elderly Patients Treated on Distinct Geriatrics Versus Primary Care Inpatient Teaching Services in a University Hospital

University of Arkansas Press 2007
Inpatient Geriatric Medicine: A Curriculum for Resident Education

Honors and Awards

Best Doctors in America	2013, 2014
Dean's Educational Incentive Award	2011, 2012, 2013
Eugene J. Towbin Award for Excellence in Teaching Geriatric Medicine	2010
Summa Cum Laude, Northwestern State University, Natchitoches, LA	1992

Academia: University of Arkansas Medical Sciences

Combined Internal Medicine/Geriatric Medicine Residency Planning Committee Founder, 2009

Geriatric Psychiatry Inpatient Consultation Service Developer and Co-director, 2008-2015

Geriatric Hospitalist Service Developer and Co-director, 2005-2014

Junior Medical Student Educator in Inpatient and Long Term Care, 2005-2014

Geriatric Fellowship Inpatient Medicine Rotation Preceptor, 2005-2016

Introduction to Clinical Medicine II Preceptor, 2006-2016

Geriatric Fellowship Inpatient Consult Rotation Preceptor, 2006-2016

Geriatric Fellowship Long Term Care Rotation Preceptor, 2007-2016

Senior Medical Student Advisor, 2008-2015

ACE (Acute Care for the Elderly) Unit Development Team, 2012-2015
Geriatric and Long Term Care Update: *Diabetes Mellitus and Long Term Care*, September 2011

ADVA Expert 3

Arkansas Medical Directors Association Spring Meeting, *Infection Control and Long Term Care*, April 2011

Geriatric and Long Term Care Update, *Infection Control in Long Term Care*, September 2010

Geriatric Myeloma Consultation Service Co-director, July 2010-2015

Geriatric Grand Rounds, *Elder Delirium: An Update*, October 2009

Internal Medicine Grand Rounds, *Elder Delirium: An Update*, September 2009

Internal Medicine Intern Core Lecture Series, *Behavioral Management in the Geriatric Hospitalized Patient*, July 2009

Family Practice Clinical Lecturer, *Dehydration and the Elderly*, January 2009

Surgical Subspecialty Geriatric Series, *Orthopedic Post-operative Care and Delirium Management*, 2008-2009

Surgical Subspecialty Geriatric Series, *Otolaryngology Post-operative Care and Delirium Management*, 2008-2009

Geriatric and Long Term Care Update, *Post-operative Management of the Geriatric Patient*, October 2007

Internal Medicine Subspecialty Conference Series, *Inpatient Geriatric Medicine: A Curriculum for Resident Education*, July 2007-2015

Family Practice Clinical Lecturer, *Inpatient Geriatric Care*, summers 2007-2015

Lecture Series at Butterfield Village, Fayetteville, AR, quarterly 2001-2005

From: Jordan Broyles
To: Kathryn Irby
Cc: Justin Brascher; Brianna McDonough; Jennifer Winn; Jeff Priebe
Subject: Jones V. ADVA CC-200817 - Respondent"s Witness and Exhibit Lists and Exhibits
Date: Friday, October 20, 2023 10:58:38 AM
Attachments: image001.jpg
Respondent"s Witness and Exhibit Lists (2023.10.20).pdf

Ms. Irby,

Please see attached Respondent's Witness and Exhibit Lists.

The exhibits can be accessed and downloaded via the following link:
https://www.dropbox.com/scl/fo/prj061ph0blzbgcngyztf/h?rlkey=cmv9t28lu9tu0k49lcjv17964&dl=0

Best regards,

Jordan Broyles

Jordan Broyles
Senior Assistant Attorney General
Special Litigation Section – Civil Division
Direct: (501) 682-9482 | Main: (501) 682-2007
jordan.broyles@arkansasag.gov

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

From: Justin Brascher
To: ASCC Pleadings
Cc: Kathryn Irby; Brianna McDonough; Jeff Priebe
Subject: Jones v. ADVA CC-200817
Date: Monday, October 30, 2023 12:42:18 PM
Attachments: image003.png
Jones Motion to Continue Hearing.pdf

Please see the Respondent's attached motion for continuance in the above matter. It is my understanding that the Claimant opposes the motion.

IN THE ARKANSAS CLAIMS COMMISSION

MARY ANN JONES, as special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones	**CLAIMANT**
v.	**NO. CC-200817**
ARKANSAS DEPARTMENT Of VETERANS AFFAIRS	**RESPONDENT**

MOTION FOR CONTINUANCE

Respondent ADVA states the following:

1. Lead counsel on this case, Jordan Broyles, [redacted] It is currently set for a Final Hearing on November 9, 2023.

2. [redacted], and Respondent's counsel needs more time to prepare for the hearing, or, in the alternative, the hearing needs to be postponed until [redacted].

3. Therefore, the Respondent requests a 90-day continuance of the hearing. In the alternative, the Respondent requests that the current November 9 hearing date be postponed.

4. The Respondent has conferred with the Claimant's counsel, and this motion is opposed by the Claimant.

WHEREFORE, the State asks that the Court grant its motion for continuance and for all other just and proper relief.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: Justin Brascher
Ark. Bar No. 2023029
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
(501) 503-4335
(501) 682-2591 fax
Justin.brascher@arkansasag.gov

Attorneys for the Respondent

From:	Kathryn Irby
To:	Justin Brascher; Jeff Priebe; ASCC Pleadings
Cc:	Brianna McDonough; Jennifer Winn
Bcc:	Kathryn Irby
Subject:	SPECIAL HEARING SCHEDULED: Jones v. ADVA CC-200817
Date:	Monday, October 30, 2023 2:16:00 PM
Attachments:	Jones v. ADVA -- 200817 -- special hearing ltr (MTC).pdf image001.png

Jeff and Justin, please see attached hearing letter and Zoom invitation.

Thanks,
Kathryn

From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Monday, October 30, 2023 2:04 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Jeff Priebe <jpriebe@rainfirm.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: RE: Jones v. ADVA CC-200817

Respondent is agreeable to March 8.

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, October 30, 2023 1:58 PM
To: Jeff Priebe <jpriebe@rainfirm.com>; Justin Brascher <justin.brascher@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: RE: Jones v. ADVA CC-200817

Jeff and Justin, I have room on the docket to move this claim to March 8. Jeff, if that is not agreeable, then you are welcome to file a response to Justin's motion. I will check with the Commission to see if it wants to set a special hearing on Justin's motion.

Kathryn

From: Jeff Priebe <jpriebe@rainfirm.com>
Sent: Monday, October 30, 2023 12:46 PM
To: Justin Brascher <justin.brascher@arkansasag.gov>; ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: RE: Jones v. ADVA CC-200817

Mrs. Irby,

I can file a formal response if the Commission wants me to, however, I would request that the Commission keep the existing hearing date set for November 9.

Thank you,

Jeff R. Priebe

From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Monday, October 30, 2023 12:42 PM
To: ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jeff Priebe <jpriebe@rainfirm.com>
Subject: Jones v. ADVA CC-200817

WARNING: This email was generated OUTSIDE of Rainwater Holt and Sexton. Take caution before clicking links or opening attachments.

Please see the Respondent's attached motion for continuance in the above matter. It is my understanding that the Claimant opposes the motion.

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 30, 2023

Mr. Jeff Priebe (*via email*)
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Mr. Justin Brascher (*via email*)
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as special administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs***
Claim No. 200817

Dear Mr. Priebe and Mr. Brascher,

The Commission has scheduled a special hearing on ADVA's continuance motion for **Thursday, November 2, 2023**, beginning at 8:00 a.m. All parties will attend via Zoom. The Zoom invitation is enclosed.

As this is a motion hearing, no additional prehearing materials are requested by the Commission, although Claimant is free to file a response to the motion prior to hearing.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- special hearing
Time: Nov 2, 2023 08:00 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/81196651196?pwd=MpJXCchbS4FTRFKZq09cPDiwxFkXTa.1

Meeting ID: 811 9665 1196
Passcode: vhWMX4

One tap mobile
+16469313860,,81196651196#,,,,*848945# US
+19294362866,,81196651196#,,,,*848945# US (New York)

Dial by your location
• +1 646 931 3860 US
• +1 929 436 2866 US (New York)
• +1 301 715 8592 US (Washington DC)
• +1 305 224 1968 US
• +1 309 205 3325 US
• +1 312 626 6799 US (Chicago)
• +1 719 359 4580 US
• +1 253 205 0468 US
• +1 253 215 8782 US (Tacoma)
• +1 346 248 7799 US (Houston)
• +1 360 209 5623 US
• +1 386 347 5053 US
• +1 507 473 4847 US
• +1 564 217 2000 US
• +1 669 444 9171 US
• +1 669 900 6833 US (San Jose)
• +1 689 278 1000 US

Meeting ID: 811 9665 1196
Passcode: 848945

Find your local number: https://us06web.zoom.us/u/kf4mJxC92

From: Jeff Priebe
To: Kathryn Irby; Justin Brascher; ASCC Pleadings
Cc: Brianna McDonough; Jennifer Winn
Subject: RE: SPECIAL HEARING SCHEDULED: Jones v. ADVA CC-200817
Date: Monday, October 30, 2023 3:08:26 PM
Attachments: image001.png

Mrs. Irby,

Thank you. Also, I wanted everyone to know that my client [redacted] and that is the main reason why she wants to keep the November date. She wanted me to let everyone know that she is not trying to be difficult.

Thank you again,

Jeff

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, October 30, 2023 2:17 PM
To: Justin Brascher <justin.brascher@arkansasag.gov>; Jeff Priebe <jpriebe@rainfirm.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: SPECIAL HEARING SCHEDULED: Jones v. ADVA CC-200817

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Thanks,
Kathryn

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Sent: Monday, October 30, 2023 2:04 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Jeff Priebe <jpriebe@rainfirm.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: RE: Jones v. ADVA CC-200817

Respondent is agreeable to March 8.

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To: Jeff Priebe <jpriebe@rainfirm.com>; Justin Brascher <justin.brascher@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jennifer Winn <jwinn@rainfirm.com>
Subject: RE: Jones v. ADVA CC-200817

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Kathryn

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Subject: RE: Jones v. ADVA CC-200817

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Thank you,

Jeff R. Priebe

From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Monday, October 30, 2023 12:42 PM
To: ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Brianna McDonough <brianna.mcdonough@arkansasag.gov>; Jeff Priebe <jpriebe@rainfirm.com>
Subject: Jones v. ADVA CC-200817

WARNING: This email was generated OUTSIDE of Rainwater Holt and Sexton. Take caution before clicking links or opening attachments.

Please see the Respondent's attached motion for continuance in the above matter. It is my understanding that the Claimant opposes the motion.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, DECEASED, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES **CLAIMANT**

V. **CLAIM NO. 200817**

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS **RESPONDENT**

ORDER

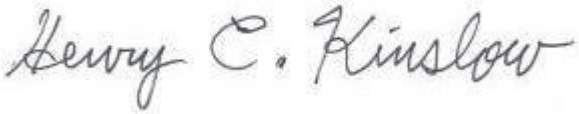
Now before the Arkansas State Claims Commission (the "Commission") is the motion filed by the Arkansas Department of Veterans Affairs (the "Respondent") seeking a continuance of the hearing set for November 9, 2023, regarding the claim of Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones (collectively referred to herein as the "Claimant") following [redacted]. At the November 2, 2023, special hearing, Jeff Priebe appeared on Claimant's behalf, and Justin Brascher appeared on behalf of Respondent.

At the hearing, counsel for Claimant strongly objected to the continuance.

However, the Commission voted unanimously to GRANT Respondent's motion and to continue the claim hearing to March 8, 2024. The chair commissioner noted that, if the Commission had been aware of the proximity between the November hearing and [redacted], the hearing would likely have been scheduled in early 2024 instead of November 2023.

IT IS SO ORDERED.

ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow

ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: November 2, 2023

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Justin Brascher; Jeff Priebe; ASCC Pleadings
Cc:	Brianna McDonough; Jennifer Winn
Subject:	ORDER AND HEARING LTR: Jones v. ADVA, Claim No. 200817
Date:	Thursday, November 2, 2023 2:09:00 PM
Attachments:	Jones v. ADVA -- 200817 -- hearing ltr (continued to Mar 2024).pdf Jones v. ADVA, 200817 -- order re continuance motion.pdf

---

Jeff and Justin, please see attached hearing letter and order from today's special hearing.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

November 2, 2023

Mr. Jeff Priebe (*via email*)
Jeff Priebe Law Firm
Post Office Box 7481
Little Rock, Arkansas 72217

Ms. Jordan Broyles (*via email*)
Mr. Justin Brascher
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs***
Claim No. 200817

Dear Counselors,

Pursuant to the Order entered by the Commission today, the Commission has continued this claim hearing until on **Friday, March 8, 2024**, beginning at 9:00 a.m. This hearing is scheduled to take place at the Commission offices.

The parties do not need to re-submit prehearing materials that have already been submitted. However, to the extent that either party would like to revise its prehearing materials or to submit additional prehearing materials, those submissions are due on or before **February 16, 2024**. Please coordinate with me regarding those submissions.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

From: Jennifer Winn
To: Kathryn Irby
Cc: Justin Brascher; ASCC Pleadings; Brianna McDonough; Jeff Priebe
Subject: Jones v. ADVA, Claim No. 200817 - Claimant"s Deposition Summaries Supplement
Date: Wednesday, January 24, 2024 12:45:29 PM
Attachments: image001.jpg
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Claims Commission Letter filing Claimant"s Deposition Summaries - Supplement 1.24.2024.pdf
Claimant"s Deposition Summary - Supplement 1.24.2024.pdf

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Mrs. Irby,

Attached please find correspondence from Jeff Priebe as well as Claimant's Deposition Summaries – Supplement for filing in the above referenced case.

Please let me know if you need anything additional for this filing.

Thank you,
Jennifer

Jennifer Winn
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JEFF PRIEBE LAW FIRM

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January 24, 2024

Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

RE: ***Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones v. Arkansas Department of Veterans Affairs d/b/a North Little Rock - Veterans Home f/k/a Arkansas State Veterans Home at North Little Rock***
Arkansas Claims Commission, Claim No. 200817

Dear Claims Commissioner:

Enclosed please find Claimant's Deposition Summaries – Supplement which contains summaries of the two depositions that were received after the original summaries were provided to the Commission. The original transcripts were delivered on a thumb drive to the Commission along with Claimant's Pre-Hearing Packet containing the original Deposition Summaries on October 19, 2023. I ask that this Supplement be filed with the Commission in anticipation of the March 8, 2024 hearing.

If you have any questions, please let me know. Also, I am copying the attorneys for the Respondent on this communication.

Very truly yours,

JEFF PRIEBE LAW FIRM

Jeff R. Priebe

JRP/jw

Enclosures

cc: Justin Brascher

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, as Special Administrator of the Estate of Oscar Odell "Bill" Jones **CLAIMANT**

v. **CLAIM NO. 20-00817**

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS d/b/a NORTH LITTLE ROCK – VETERANS AFFAIRS f/k/a ARKANSAS STATE VETERANS HOME AT NORTH LITTLE ROCK **RESPONDENT**

CLAIMANT'S DEPOSITION SUMMARIES - SUPPLEMENT

Since the filing of the Claimant's initial deposition summaries, there have been two additional depositions taken in this case. The first is Nurse Luanne Trahant who is being called the Claimant as an expert in the nursing home industry to discuss the violations of the standard of care by the Arkansas State Veteran's Home. The second deposition is from Dr. Scott Simmons who the Respondent is calling at their expert physician witness.

Nurse Expert Luanne Trahant[1]

Nurse Luanne Trahant has been a nurse for 31 years and has worked at nursing homes as a nurse, charge nurse, director of nursing, administrator, hospice nurse, and a family nurse practitioner. (52). When she worked at the nursing homes, Nurse Trahant was employed by them as an employee. She also teaches young nursing students in a clinical setting – where they are taking care of patients. She has taught nursing students in a nursing home setting. (53). When she served as a nursing home administrator and director of nursing, she was over the nurses at the nursing homes. In her years of experience, she has worked with certified nursing assistants and employees such as universal workers who worked at the Arkansas State Veteran's Home. She does medical legal consulting for both families and insurance companies. (54). She has testified as a nurse expert many times in Arkansas courts including Pulaski County. In her review of Mr. Jones' records in this case, she has used the same type of records and worked with

[1] In this deposition summary, we started with my direct questing of Nurse Trahant that began on page 52. We then went back and started at the beginning on her deposition after page 90. This was done to improve the flow of this deposition summary.

the same type of people. (55). She worked in a nursing home very similar to the Arkansas State Veteran's Home in which Mr. Jones was a resident. She is familiar with the federal and state regulations and the policies and procedures that were used in this case. The standard of care that she applies in this case is what a reasonable nurse would do in a same or similar setting in connection with the federal and state regulations and policies and procedures. (56). Lindsey Clyburn, the former administrator at the Arkansas State Veteran's Home testified that he expected the employees of Arkansas State Veteran's Home to follow the policies and procedures.

When Mr. Jones was admitted to the Arkansas State Veteran's Home in April of 2018, [redacted] After admission, the Arkansas State Veteran's Home put into place a Care Plan for Mr. Jones. A Care Plan is a road map of a resident's care that is used by staff. Every area of the resident's care is looked at and addressed on the Care Plan. (59). **The Arkansas State Veteran's Home assessed Mr. Jones** [redacted] **in April of 2018**. (61). Part of the nursing interventions that were put into place to address [redacted]

By August of 2018, Arkansas State Veteran's Home moved Mr. Jones to a different house and [redacted] The Care Plans should have been updated to reflect the fact that he needed more and more care and assistance. **Mr. Jones' Care Plans were not updated at all in this case.** [redacted]. This care would have been provided by the universal workers and the universal workers filled out the ADL (activities of daily living) documentation. (65). The staff fills out the ADLs documents to memorialize what care was being provided to Mr. Jone. This documentation is a communication tool that helps show what is happening with a resident. (66). **On Mr. Jones' ADLs there are numerous blanks which represent either the care was not provided, or staff did not have time to document the care that was provided**. **When looking at his documentation, there are multiple weeks, multiple shifts, multiple days where there are blanks.** [redacted] **This charting is not acceptable.** (67). The former employees of the Arkansas State Veteran's Home, Beverly and Rosa, both testified that they were

supposed to look at this documentation. So, we do not know what care was being provided. **This failure to chart violates the federal and state regulations and the Arkansas State Veteran's Home's own policies. This is not good nursing practice**. (68). Mr. Jones' Care Plan should have been updated and it was not.

By November and December of 2018, [redacted] **At no time did the Arkansas State Veteran's Home change Mr. Jones' Care Plan – this failure violated the standard of care, federal and state regulations, and their own policy**. The blanks in the ADL violated the standard of care, the state and federal regulations, and their own policy. (71). [redacted] **and the lack of documentation and lack of care would violate the standard of care and good nursing practice**. (77).

In her expert opinion, Nurse Trahant states that the Arkansas State Veteran's Home had a lack of sufficient staffing based on the records and testimony. The Arkansas State Veteran's Home has a definition of neglect – failing to provide goods or services to a resident. (78). **The Arkansas State Veteran's Home's failures related to documentation,** [redacted] **amounted to neglect**. The Arkansas State Veteran's Home also failed to properly communicate with Mr. Jone's family and keep them informed of his care and his issues. The Arkansas State Veteran's Home failed [redacted] in December to Mr. Jones. (79). [redacted]. (80). Physician orders are required to be followed. Nurse Trahant is familiar with the

Arkansas Resident Right's Act including Mr. Jones' right to be treated with dignity and respect. By its actions, the Veteran's home violated Mr. Jones' Resident Rights. (81). Nurse Trahant's opinions are based on her 31 years of experience and training and are given within a reasonable degree of nursing certainty. (81-82).

[redacted]

Nurse Trahant reviewed the depositions of Mary Ann Jones, Mr. Jones' children, Rosa Page, Beverly Hamelback Byrd, and Lindsey Clyburn. She did not review the deposition of the Plaintiff's expert physician, Dr. Miller. (5). She reviewed the records from the Arkansas Veteran's Home, MEMS, and the VA records. (6). She reviewed the accident reports, the federal regulations for nursing homes, the Arkansas Office of Long-Term Care regulations, and the Veteran's Home policies and procedures. (7). Nurse Trahant is currently an adjunct professor at the Louisiana Christian College and as an adjunct professor, she works in clinical settings including hospitals, nursing homes, clinics, and public health facilities. (9). Nurse Trahan currently works at a private clinic as well. (10). She was the director of nursing at a private nursing home in Louisiana and they offered services to a state facility that had a pod system (similar to the Arkansas Veteran's Home). (11). Her notes reflect breaches in the standard of care. Most of the issues she has in this case occurred after he switched houses at eh Veteran's Home in August of 2018. (14). [redacted] (17). Nurse Trahant has the opinion that the Arkansas State Veteran's Home failed to provide sufficient staff, including not having sufficient staff to watch and care for Mr. Jones. The depositions of the former staff members reflect that they did not have enough staff. Also, in the records, there were a lot of policy violations. (18). Staff depositions also reflect that other staff members were not trained appropriately and were not properly supervised. (19). Nurse Trahant does not have a problem with non-licensed personnel working at the facility, however Mr. Jones' required a higher level of care in November and December of 2018, and she is not sure that the non-licensed care givers could do that work. (20). Her staffing opinions are based partially on the testimony of former employees and the lack of documentation in the chart. (21).

A resident's Care Plan must be updated every quarter and as the resident's needs change. (22). Mr. Jones' Care Plan does not reflect that it was being changed or updated appropriately. (24). While the Arkansas State Veteran's Home was making changes to his care, those changes were not documented in the Care Plan. (25). A Care Plan is a map of the care being provided to a resident and Mr. Jones' care plan was deficient and he suffered because of those deficiencies. (26). After Mr. Jones moved to House 6 in August of 2018 [redacted]). Nurse Trahant's concerns start on September 27, 2018. [redacted] These breaches of the standard of care should have been identified and addressed. (35). His meals were not documented every shift and were not documented properly. (36). This results in Mr. Jones not getting the care he needs, and [redacted] (41). There are inconsistencies in the records regarding what he was consuming, and we know there were multiple days [redacted] This supports the fact that the Arkansas State Veteran's Home did not have enough staff. (43). [redacted]

[redacted] (48-49). The Arkansas State Veteran's Home violated their own policy and the federal regulation by not properly care planning on Mr. Jones. The Arkansas State Veteran's Home also failed to ensure that Mr. Jones received the quality of life and dignity that he deserved. (50).

Defendants' Expert Physician Dr. Scott Simmons

This was Dr. Simmons' first deposition. (4). Dr. Simmons grew up in Louisiana and went to medical school at LSU Shreveport. He did his residency in Little Rock, in 1997. His current practice is in Little Rock. (7). He does not have an offer and does not see patients at a clinic, he sees patients in nursing homes and hospice. His business name is Simmons Geriatric Medicine and Long-Term Care. He has had it since 2016. (8) He has been the Medical Director of the Arkansas State Veteran's Home since the summer of 2019. He was not involved with the Arkansas State Veteran's Home prior to 2019 and was never at that facility prior to the summer of 2019. He is not a state employee but a contractor with the State of Arkansas through his business. (9) His business is paid $3,500 monthly from the State of Arkansas. When he sees patients at the Arkansas State Veteran's Home, he is also paid for patient visits through the VA, Medicare, or Medicaid. (10). He believes that he started in August 2019. This is the first time he served as medical director of a cottage type facility. (11). He worked for UAMS in 2016 in the geriatric department. He would see patients in nursing homes. (12). He would contract with Integrated Care Professionals to work with nurse practitioners at various facilities. (14). He works with Arkansas Hospice and see patients and also see patients at St Vincent's with Arkansas Hospice. He usually doesn't see those patients. (16). With Arkansas Hospice, he does not typically make the hospice decision. (17). He is currently the medical director at Encore West nursing home. He stopped being medical director at certain facilities due to corporate issues. (18). He was on the Arkansas State Long-Term Care Advisory Board which is no longer active and has not been for years. (20). As medical director he deals with issues at the nursing home. (21). He is familiar with the federal OBRA regulations. (22). The federal OBRA Regulations govern nursing homes, and the regulations are mandatory. **He is not offering any opinions in this case relating to the federal regulations**. He is familiar with the state regulations. (23). **He is not offering any opinions regarding the state regulations in this case.** He is not involved with staffing at his facilities. He would not know if a facility is short of staff. He will review his patient's chart. (24). He relies on the chart and can see the ADLs, MARs, TARs, but he usually does not look at them. (25). He does not look at the Care Plans or MDS. He does not review incident and accident reports. He is familiar with a facility's policies and procedures. (26). **He is not going to offer any opinions on policies related to the Arkansas State Veteran's Home.** (27). **He has not been a certified nursing assistant or a nurse and is not going to be offering any nursing opinions in this case**. CNAs at a facility provide the majority of hands-on care to the patients in a

nursing home. (28). He values the opinions of CNAs and nurses, and they help him treat his patients. Communication with families is important. (29). He has reviewed four to five cases in the last ten years. (30). He has only reviewed cases for the Friday law firm. He has never looked at a case for a family or resident. He has never testified as an expert in a civil case. (31). He has spent five to six hours on this case. (32). He bills the nursing home and insurance company at $350 an hour and $400 for testimony. (33).

He reviewed all of the medical records from the Veteran's Home for Mr. Jones and the VA hospital records. (34). **He has no criticism of Dr. Miller's education, training, or background.** (35). Dr. Simmons is not board certified in hospice or palliative care. **He has no criticisms of Nurse Trahant's education, training, or experience.** He reviewed the death certificate, and Lindsey Clyburns' deposition. (36). He reviewed depositions of former employees Rosalind and Beverly. He also reviewed [redacted]. He did not review the family depositions, [redacted], or the policies and procedures of the Arkansas State Veteran's Home. (37). He did not look at the OLTC records, surveys, or billing records. (38). If he looks at additional records or changes opinions, then he will tell me. (39). He did not do any outside or internet research. (41). His opinions are primarily causation related and related to the injuries that Mr. Jones received. (42). **He is not going to offer standard of care opinions or whether the staff followed the policies or regulations.** His main opinion is that Mr. Jones followed the natural course of [redacted]. (43). [redacted] Dr. Simmons expects someone to live 7 to 11 years after that diagnosis and Mr. Jones had it for five years, so he was on the back edge. (46). [redacted] **Dr. Simmons expects his orders to be followed by the nursing home**. (50). It is below the standard of care to not follow physician orders. It was never recommended that Mr. Jones be placed on hospice during his time at the Arkansas State Veteran's Home. (51). **Mr. Jones' primary physician did not recommend that he be put on hospice.** [redacted] 2).

was a typical nursing home resident when he was admitted. (58). He is not critical of the family for placing Mr. Jones at the Arkansas State Veteran's Home. Mr. Jones was a behavior problem but was not physically violent with staff or others. (59). He doesn't recall seeing that Mr. Jones refusing care from the staff at the Arkansas State Veteran's Home. He saw some holes in the ADLs. (60). He is not going to offer opinions on the ADL documentation – you just don't know what happened. If it is not documented, we do not know what happened. He cannot make assumptions when there is nothing in the medical records. (61). His definition of neglect is not providing care intentionally. (62). His definition of neglect includes intent. (63). Neglect can occur if services are not provided to a resident. He wants correct documentation on residents. (64). **In December of 2018, Dr. Simmons agrees that the Arkansas State Veteran's Home knew that Mr. Jones was** **He is not going to offer opinions as to the Care Plan or standard of care related to the Care Plan.** (65). He is not critical of the VA hospital. He agrees with the family decision to place Mr. Jones on hospice in January of 2019. He was close to the point of no return on admission into the VA Hospital. (66). (75). Dr. Simmons disagrees with Dr. Miller on life expectancy and Dr. Simmons would have given Mr. Jones a year after admission to live. (76). **Dr. Simmons said that he expected Mr. Jones to live another year or two after admission.** (77). Dr. Simmons agrees that the purpose of a Care Plan is to document a patient's care needs and how they have changed. (78). The lack of documentation cannot be the cause of death in this case. (79).

(82). He cannot say any neglect of the Arkansas State Veteran's Home caused Mr. Jones' death or that he would have lived another four to five years. (83). Just because Mr. Jone's changed condition does not mean neglect. (84).

Dr. Simmons does not offer standard of care opinions. He expects regulations and the facility policies and procedures to be followed. Important to have sufficient staff to meet the needs of residents. (89). He did not read the depositions of the family members. (90).

Respectfully submitted,

By: Jeff R. Priebe

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Attorneys for Claimant

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MARY ANN JONES, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF OSCAR ODELL "BILL" JONES, DECEASED, AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF OSCAR ODELL "BILL" JONES **CLAIMANT**

V. **CLAIM NO. 200817**

ARKANSAS DEPARTMENT OF VETERANS AFFAIRS **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Commission") is the claim filed by Mary Ann Jones, as Special Administrator of the Estate of Oscar Odell "Bill" Jones, Deceased, and on behalf of the wrongful death beneficiaries of Oscar Odell "Bill" Jones (collectively referred to herein as the "Claimant") against the Arkansas Department of Veterans Affairs (the "Respondent"). At the hearing held on March 8, 2024, Jeff Priebe appeared on behalf of Claimant, and Jordan Broyles and Justin Brascher appeared on Respondent's behalf. The Commission's hearing panel included Commissioners Dee Holcomb, Henry Kinslow, and Paul Morris as chair.

Procedural History and Witness Testimony

1. Claimant filed her claim in February 2020 alleging damages related to the death of Oscar Odell Jones (herein referred to as "Mr. Jones") on January 3, 2019. Prior to Mr. Jones' death, he was a resident at Respondent's Arkansas State Veterans Nursing Home (the "Nursing Home") in Little Rock.

2. Respondent filed an answer denying liability.

3. The parties conducted extensive discovery in preparation for the hearing in this matter.

4. At the beginning of the hearing, upon a question from the chair commissioner, Respondent confirmed that it did not object to the introduction of the depositions submitted by Claimant in lieu of live testimony, and the following depositions were admitted into evidence:

- Mary Ann Jones
- Jerrie Ann Stokes
- Cynthia Bartlett
- Rhonda Brostrom
- [redacted]
- Lindsey Clyburn
- Beverly Byrd
- Rosalind Page
- Dr. Keith Miller
- Nurse Luanne Trahant

5. Upon a question from the chair commissioner, Respondent confirmed that it did not object to Claimant's Exhibit Nos. 1–25, and those exhibits were admitted into evidence.

6. Upon a question from the chair commissioner, Claimant confirmed that she did not object to Respondent's Exhibit Nos. 1–24, and those exhibits were admitted into evidence.

7. Both parties presented opening statements.

8. Upon a question from the chair commissioner as to the issue of causation, Claimant stated that Nurse Trahant and Dr. Miller both provided testimony as to the standards of care. Dr. Miller provided testimony as to how the Nursing Home's failures were the cause of Mr. Jones' death.

9. [redacted]

10. Upon a question from the chair commissioner as to whether there is any testimony that the contradicts whether the standard of care was breached, Respondent agreed that Ms.

Trahant's testimony as to the breaches of standard of care were unrefuted, but if the failure to chart on a day was negligence, then that would amount to a strict liability standard.

Testimony of Mary Ann Jones

11. Claimant introduced the deposition testimony of Mary Ann Jones in lieu of live testimony.

12. Mrs. Jones testified that this claim is about the care that her husband did not receive.[1]

13. She was born and raised in Little Rock.[2] She has two children from her first marriage, Jerrie Ann Stokes and Karen Lynn.[3] She did not have any children from her second marriage.[4] She married Mr. Jones approximately two years after her second marriage ended.[5]

14. Mrs. Jones met Mr. Jones at an American Legion dance.[6] She and Mr. Jones did not have children, but Mrs. Jones' children, Jerrie and Karen, looked at Mr. Jones as their dad.[7] When Mrs. Jones and Mr. Jones married, Karen was approximately sixteen years old, and Jerrie was eighteen or nineteen years old.[8]

15. Mr. Jones enlisted in the United States Army when he was seventeen years old.[9] He was sent to Korea right after his basic training was completed.[10] He did two tours in Korea as part

[1] Jones Deposition Transcript at p. 4.
[2] *Id*. at p. 5.
[3] *Id*. at p. 6–7.
[4] *Id*. at p. 6.
[5] *Id*. at p. 7.
[6] Jones Deposition Transcript at p. 7.
[7] *Id*. at p. 8.
[8] *Id*.
[9] *Id*. at p. 9.
[10] *Id*. at p. 10.

of the Fifth Special Forces.[11] He was also stationed in Germany and did two tours in Vietnam.[12] He was in the military for a total of 21 years.[13]

16. After Mr. Jones left the military, he worked in Alaska.[14] He was married once before he and Mrs. Jones were married.[15] Mr. Jones had three children from his previous marriage: Cynthia Bartlett, [redacted] and Rhonda Brostrom.[16] [redacted]

17. Mr. Jones came from a large family, but none of his siblings were still alive in January 2019.[21]

18. Mr. Jones smoked when he was in the military but quit in the early 1980s.[22]

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[11] Jones Deposition Transcript at p. 10–11.
[12] *Id*. at p. 11–12.
[13] *Id*. at p. 12.
[14] *Id*. at p. 13–14.
[15] *Id*. at p. 14.
[16] Jones Deposition Transcript at p. 14.
[17] *Id*. at p. 14–16.
[18] *Id*. at p. 16.
[19] *Id*.
[20] *Id*. at p. 17.
[21] Jones Deposition Transcript at p. 11–12.
[22] *Id*. at p. 18–19.

19. Mr. Jones and Mrs. Jones married in 1979.[23] They lived in North Little Rock until 1985, when they moved to Hinesville, Georgia for ten years.[24] In 1995, they came back to Arkansas and bought a house in Bryant close to Mrs. Jones' mother.[25]

20. Mr. Jones loved to fish.[26] He had many talents, including fixing up houses and restoring old jukeboxes and radios.[27]

21. Mrs. Jones noticed some changes in Mr. Jones in 2012, and [redacted]

22. [redacted]

23. [redacted]

24. Mrs. Jones learned that the Nursing Home was opening from a VA social worker.[36] [redacted]

[23] *Id*. at p. 20.
[24] *Id*. at p. 20–21.
[25] *Id*. at p. 21.
[26] Jones Deposition Transcript at p. 19.
[27] *Id*. at p. 21–22.
[28] *Id*. at p. 23.
[29] *Id*. at p. 24–25.
[30] *Id*. at p. 25.
[31] Jones Deposition Transcript at p. 26.
[32] *Id*. at p. 26–27.
[33] *Id*. at p. 27–29.
[34] *Id*. at p. 30.
[35] *Id*. at p. 34.
[36] Jones Deposition Transcript at p. 31.

[redacted].[37] She did not have to pay anything to place him in the Nursing Home because of his military service.[38]

25. Mr. Jones had a private room at the Nursing Home.[39] [redacted]

26. There was an incident while he was a resident of the Nursing Home where Mr. Jones was able to leave the building and was trying to find an unlocked car.[42] Mrs. Jones heard about that incident when the staff called her.[43] She was very upset that this incident happened.[44]

27. There was another incident a few weeks later where Mrs. Jones arrived to find Mr. Jones on the porch unsupervised.[45]

28. [redacted][46] She also noticed other residents wearing Mr. Jones' clothes and him wearing clothes that were not his.[47] She brought up these issues to the Nursing Home.[48] [redacted], but the clothing issues did not.[49]

29. When Mr. Jones was moved from House 7 to House 8, there were very few issues with Mr. Jones' [redacted] or clothing.[50] [redacted].[51]

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[37] *Id*. at p. 31–33.
[38] *Id*. at p. 36.
[39] *Id*. at p. 42–43.
[40] *Id*. at p. 39–42.
[41] Jones Deposition Transcript at p. 39, 41.
[42] *Id*. at p. 43–44.
[43] *Id*. at p. 44–45.
[44] *Id*. at p. 46.
[45] *Id*. at p. 44.
[46] Jones Deposition Transcript at p. 47.
[47] *Id*.
[48] *Id*. at p. 48.
[49] *Id*. at p. 50.
[50] *Id*. at p. 50–51.
[51] Jones Deposition Transcript at p. 53.

30. In the last few weeks that Mr. Jones was at the Nursing Home, Mrs. Jones noticed that [redacted].[52]

31. Mrs. Jones said it was unprofessional that the staff was trying to get Mr. Jones to [redacted].[53] She only saw that happen once.[54]

32. Mrs. Jones saw him on December 24th and 25th of that year and [redacted].[58]

33. Mrs. Jones was upset that Mr. Jones [redacted].[59]

34. [redacted].[60]

35. [redacted].[63]

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[52] *Id*. at p. 54.
[53] *Id*. at p. 56.
[54] *Id*.
[55] *Id*. at p. 57.
[56] Jones Deposition Transcript at p. 57.
[57] *Id*.
[58] *Id*. at p. 69.
[59] *Id*. at p. 63.
[60] *Id*. at p. 64.
[61] Jones Deposition Transcript at p. 60–61.
[62] *Id*. at p. 61.
[63] *Id*.

36. At the VA hospital, Mrs. Jones could see [redacted][66]

Testimony of Jerrie Ann Stokes

37. Claimant introduced the deposition testimony of Jerrie Ann Stokes in lieu of live testimony.

38. Ms. Stokes is the daughter of Mrs. Jones and Gerald Fay Reynolds.[67] Mr. Jones was a stepfather to her and to her sister, Karen Lynn Garson.[68] Mr. Jones also had three biological children.[69] Ms. Stokes was not close with her stepsiblings.[70] [redacted][71]

39. [redacted].[72] He quit smoking 20 to 30 years ago.[73]

40. Ms. Stokes took Mr. Jones to [redacted].[75]

41. Ms. Stokes lives next door to the home where Mr. Jones previously lived with Mrs. Jones.[76]

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[64] *Id*. at p. 64.
[65] *Id*. at p. 67.
[66] Jones Deposition Transcript at p. 67.
[67] Stokes Deposition Transcript at p. 6.
[68] *Id*. at p. 6, 8.
[69] *Id*. at p. 6.
[70] *Id*. at p. 8–9.
[71] *Id*. at p. 10–11.
[72] Stokes Deposition Transcript at p. 18–19.
[73] *Id*. at p. 18.
[74] *Id*. at p. 19.
[75] *Id*. at p. 20.
[76] *Id*. at p. 21–22.

42. The issue that caused him to be moved to the Nursing Home [redacted].[77] The people that Mrs. Jones had come in [redacted] recommended the Nursing Home.[78] Ms. Stokes and Mrs. Jones went with Mr. Jones to move him into the Nursing Home.[79]

43. Ms. Stokes was able to visit Mr. Jones every other week on Sundays, with some other days in there too.[80] When Ms. Stokes went to the Nursing Home, Mrs. Jones typically went with her.[81]

44. In April, Mr. Jones seemed pretty happy.[82] They would usually visit him around mealtime so that they could eat with him and watch television with him in the living room afterwards.[83] Mr. Jones had a hospital bed in his bedroom, but Ms. Stokes did not spend much time in there.[84]

45. When Mr. Jones first came to the Nursing Home, he was able to walk on his own.[85] Ms. Stokes saw him outside in a rocking chair one time when they arrived to visit him.[86] By November, though, Mr. Jones [redacted].[87]

46. Mrs. Jones was the primary contact for the Nursing Home, and Ms. Stokes with the secondary contact.[88] Ms. Stokes did receive a call once, although she cannot recall the timeframe or purpose for the call.[89]

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[77] Stokes Deposition Transcript at p. 24–25.
[78] *Id*. at p. 25.
[79] *Id*. at p. 28.
[80] *Id*. at p. 30.
[81] *Id*.
[82] Stokes Deposition Transcript at p. 33.
[83] *Id*. at p. 34.
[84] *Id*. at p. 35.
[85] *Id*. at p. 36.
[86] *Id*.
[87] Stokes Deposition Transcript at p. 37.
[88] *Id*. at p. 38.
[89] *Id*.

47. Ms. Stokes saw Mr. Jones wearing clothes that were not his while at the Nursing Home.[90] This was pointed out to the Nursing Home staff at a family meeting around May.[91] There were [redacted] that the Nursing Home should have taken Mr. Jones to, and Ms. Stokes and Mrs. Jones discussed this issue with the staff at the family meeting.[92] Ms. Stokes ended up taking Mr. Jones to the [redacted] twice while he was at the Nursing Home.[93]

48. Ms. Stokes noticed a change [redacted].[97] Ms. Stokes never saw him not eat his meal.[98] Although she was working two jobs, she still tried to maintain visiting Mr. Jones every other Sunday.[99]

49. When Ms. Stokes' two children came to visit Mr. Jones, it was with Ms. Stokes, so they would have the same information as Ms. Stokes.[100]

50. Mr. Jones had a [redacted].[101] Ms. Stokes and her children saw him on Christmas Eve or Christmas Day,

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[90] *Id*. at p. 40.
[91] *Id*. at p. 40–41.
[92] Stokes Deposition Transcript at p. 40–41.
[93] *Id*. at p. 42–43.
[94] *Id*. at p. 46–47.
[95] *Id*. at p. 47.
[96] *Id*. at p. 52.
[97] Stokes Deposition Transcript at p. 52.
[98] *Id*. at p. 54.
[99] *Id*. at p. 51.
[100] *Id*. at 50.
[101] *Id*. at p. 53.

and that was tough because Mr. Jones was i[redacted].[102] He did not look good at all.[103]

51. Ms. Stokes does not have any complaints about the cleanliness of the Nursing Home.[104]

52. When Mr. Jones was moved to another house in the Nursing Home, Ms. Stokes saw him wearing other people's clothes less frequently, but there was no improvement on the big concern that Ms. Stokes had about the first house he was in, which was Mr. Jones' health.[105]

53. Ms. Stokes thinks that the Nursing Home knew she was coming by on Sundays, so they would get him dressed.[106] If she had varied her routine, she thinks that she would have found Mr. Jones flat in his bed.[107] They put a lot of trust in the Nursing Home and were foolish not to mix up their routine to check on him more.[108]

54. Mr. Jones was always dressed in long sleeves and pants, so she never saw bruises or scrapes on him.[109] Ms. Stokes does not recall seeing any scrapes or cuts on his hands, and she never saw him restrained.[110]

55. Ms. Stokes recalls that Mr. Jones' [redacted] was a concern for her because he was [redacted].[111] These issues were brought up at the family meeting.[112]

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[102] Stokes Deposition Transcript at p. 53.
[103] *Id*.
[104] *Id*. at p. 49.
[105] *Id*. at p. 55.
[106] *Id*. at p. 56.
[107] Stokes Deposition Transcript at p. 56.
[108] *Id*.
[109] *Id*. at p. 57.
[110] *Id*.
[111] *Id*.
[112] Stokes Deposition Transcript at p. 57–58.

56. After Christmas, the next time Ms. Stokes saw Mr. Jones was [redacted][116] Ms. Stokes was the only one there at the time of his death.[117]

57. Ms. Stokes did [redacted].[120]

58. Around New Year's Day, when it was obvious that Mr. Jones was never going back to the Nursing Home, Ms. Stokes and her son went to get as many personal belongings from the Nursing Home as she could.[121] She told an African-American employee in her sixties that she was collecting Mr. Jones' belongings and that they were going to move him to another healthcare facility when he got well.[122] Ms. Stokes recalled that the employee told Ms. Stokes that she had put in her resignation.[123]

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[113] *Id*. at p. 58.
[114] *Id*. at p. 59.
[115] *Id*.
[116] *Id*.
[117] Stokes Deposition Transcript at p. 59.
[118] *Id*. at p. 60.
[119] *Id*.
[120] *Id*.
[121] *Id*. at p. 61.
[122] Stokes Deposition Transcript at p. 61.
[123] *Id*. at p. 61.

59. Ms. Stokes does not recall seeing the same employees each time she went to the Nursing Home.[124] She recalled one familiar individual that she saw regularly, along with someone in the kitchen and the head nurse.[125]

60. Mr. Jones did not provide any financial support to Ms. Stokes.[126] She has never seen Mr. Jones' will.[127] She does not know what Mr. Jones' biological children received in the will.[128]

61. When Mr. Jones retired and moved back to Arkansas, he built a shop and was able to repair a car, build a house, or repair a jukebox.[129]

Testimony of Cynthia Bartlett

62. Claimant introduced the deposition testimony of Cynthia Bartlett in lieu of live testimony.

63. Ms. Bartlett was Mr. Jones' eldest daughter. Her mother and Mr. Jones were married 23 years before they divorced.[130]

64. Ms. Bartlett and Mr. Jones had a very close relationship.[131] He was an amazing, talented, wonderful person.[132] There was a cordial relationship between Mr. Jones, Mrs. Jones, Ms. Bartlett's mother, and Ms. Bartlett's mother's new husband.[133]

65. [redacted]

[124] *Id*. at p. 62.
[125] *Id*.
[126] *Id*. at p. 63.
[127] Stokes Deposition Transcript at p. 64.
[128] *Id*. at p. 64–65.
[129] *Id*. at p. 63–64.
[130] Bartlett Deposition Transcript at p. 5.
[131] *Id*. at p. 6.
[132] *Id*.
[133] *Id*. at p. 8–9.
[134] *Id*. at p. 9.

[redacted].[138] She misses Mr. Jones and has grieved his loss.[139]

66. Ms. Bartlett knew that Mr. Jones was going into the Nursing Home because it was too much for Mrs. Jones to care for him.[140] Ms. Bartlett and her siblings discussed it and agreed that the Nursing Home was the best avenue.[141]

67. Ms. Bartlett heard from her sister that Mr. Jones was not being cared for as he should have been, including being left alone when he should not have been left alone.[142] Ms. Bartlett's sister visited him at the Nursing Home.[143]

68. [redacted].[144] [redacted]

[135] Bartlett Deposition Transcript at p. 9.
[136] *Id*. at p. 9–10.
[137] *Id*. at p. 10.
[138] *Id*.
[139] *Id*. at p. 18.
[140] Bartlett Deposition Transcript at p. 10–11.
[141] *Id*. at p. 11–12.
[142] *Id*. at p. 12–13.
[143] *Id*. at p. 13.
[144] *Id*. at p. 14.
[145] Bartlett Deposition Transcript at p. 14.
[146] *Id*. at p. 15.
[147] *Id*. at p. 16.

69. Ms. Bartlett was financially independent and did not receive any money from Mr. Jones.[148]

Testimony of Rhonda Brostrom

70. Claimant introduced the deposition testimony of Rhonda Brostrom in lieu of live testimony.

71. Ms. Brostrom is Mr. Jones' youngest daughter.[149] Her mom and Mr. Jones were married 21 years before the divorce.[150] She was sixteen years old when her parents divorced, and she moved to Arkansas with Mr. Jones after the divorce.[151]

72. Ms. Brostrom had a good relationship with Mr. Jones.[152] She and her second husband went to see Mr. Jones quite often.[153] She became aware that Mr. Jones [redacted].[156]

73. [redacted], but Mrs. Jones and Ms. Brostrom's mother got along, so it was okay.[157]

74. Ms. Brostrom learned that Mr. Jones was going to move into the Nursing Home when she went to visit Mr. Jones and saw that Mrs. Jones was having a hard time taking care of him.[158] Ms. Brostrom was not there when Mr. Jones moved into the Nursing Home and was unable to visit with while he was at the Nursing Home because of her husband's work schedule and her

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[148] *Id*.
[149] Brostrom Deposition Transcript at p. 5.
[150] *Id*. at p. 5.
[151] *Id*. at p. 6.
[152] *Id*. at p. 7.
[153] *Id*. at p. 7–8.
[154] Brostrom Deposition Transcript at p. 7–8.
[155] *Id*. at p. 8.
[156] *Id*.
[157] *Id*.
[158] *Id*. at p. 9.

schedule.[159] She was on her way to visit him when he passed away.[160] The last time that Ms. Brostrom saw Mr. Jones was a month or so before he moved into the Nursing Home.[161]

75. [redacted][63]

76. Ms. Brostrom and her siblings agreed that it was best for Mr. Jones to be moved into the Nursing Home.[164] She loved her father and has grieved his loss.[165]

77. Ms. Brostrom was financially independent from Mr. Jones and did not receive any money from him.[166]

Testimony of [redacted]

78. Claimant introduced the deposition testimony of [redacted] in lieu of live testimony.

79. [redacted] is the son of Mr. Jones and Mr. Jones' first wife.[167] He was sixteen when his parents divorced, at which point he went into the United States Marine Corps.[168] He had an excellent relationship with Mr. Jones and talked two to three times each week until Mr. Jones' [redacted].[169]

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[159] Brostrom Deposition Transcript at p. 10.
[160] *Id*.
[161] *Id*. at p. 10–11.
[162] *Id*. at p. 11–12.
[163] Brostrom Deposition Transcript at p. 12.
[164] *Id*. at p. 13.
[165] *Id*. at p. 15.
[166] *Id*. at p. 15–16.
[167] Black Deposition Transcript at p. 4.
[168] *Id*. at p. 5.
[169] *Id*.

80. [redacted] first learned of Mr. Jones' [redacted] from Mrs. Jones.[170] When [redacted] learned of [redacted].[171]

81. [redacted] probably made two trips to see Mr. Jones from 2010 to 2015.[172] He noticed on the second trip that Mr. Jones [redacted].[173] [redacted] also visited him in the months before Mr. Jones went into the Nursing Home, and that was the last time [redacted] saw Mr. Jones.[174] In that last visit, [redacted].[175]

82. [redacted][176] Prior to Mr. Jones going into the Nursing Home, [redacted] and Mrs. Jones would speak weekly about Mr. Jones' [redacted].[177] [redacted] and his siblings discussed it and agreed that Mr. Jones might need nursing home care.[178]

83. [redacted] was only able to get through to speak to Mr. Jones at the Nursing Home one time, but he left a lot of messages with the Nursing Home that were not returned.[179] Almost all of the information that [redacted] received about Mr. Jones was from Mrs. Jones.[180]

84. [redacted][181]

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[170] *Id*. at p. 6.
[171] *Id*.
[172] Black Deposition Transcript at p. 7.
[173] *Id*.
[174] *Id*. at p. 8–9.
[175] *Id*. at p. 9.
[176] *Id*. at p. 8.
[177] Black Deposition Transcript at p. 9.
[178] *Id*. at p. 9–10.
[179] *Id*. at p. 10.
[180] *Id*. at p. 11.
[181] *Id*. at p. 12.

85. [redacted]

86. [redacted] was financially independent and did not receive any money from Mr. Jones.[186]

87. [redacted] has grieved the loss of his father.[187]

Testimony of Lindsey Clyburn

88. Claimant introduced the deposition testimony of Lindsey Clyburn in lieu of live testimony.

89. Mr. Clyburn has been the administrator of Barnes Health Care in Lonoke since 2019.[188] Before that, he was the administrator of the Nursing Home from 2016 until around Christmas of 2018.[189] He became a licensed administrator in 1996.[190]

90. When Mr. Clyburn became the administrator for the Nursing Home, the Nursing Home was not yet open.[191] The Nursing Home had a new design where there were eight pods or

[182] Black Deposition Transcript at p. 12–13.
[183] *Id*. at p. 13–14.
[184] *Id*.
[185] *Id*. at p. 15.
[186] *Id*. at p. 14.
[187] Black Deposition Transcript at p. 17.
[188] Clyburn Deposition Transcript at p. 9.
[189] *Id*. at p. 10.
[190] *Id*. at p. 13.
[191] *Id*. at p. 16.

homes instead of one big facility.[192] Each home had a nice wrap-around screened porch, dining room, kitchen, sitting room, and twelve private rooms.[193]

91. Mr. Clyburn's responsibilities as administrator included staffing, the facilities, financial and budget oversight, the wellbeing of the residents, and building the census of the Nursing Home.[194] To be eligible to move into the Nursing Home, a patient had to have been honorably or medically discharged from the military.[195]

92. Mr. Clyburn reviewed the brochure for the Nursing Home and stated that Respondent's values included high quality service, accountability, unquestionable integrity, compassion, and accurate and timely communication.[196]

93. At the Nursing Home, instead of having housekeeping staff, dietary staff, and laundry staff, you had universal workers that performed all of those duties to mimic how a caregiver at home would operate.[197] Certified nursing assistants (CNAs) were hired with a typical CNA skill set, and then the Nursing Home would train them to do the rest of the functions of a universal worker.[198] Three universal workers and one nurse were assigned to each home for a day shift, with a nursing supervisor floating amongst the homes.[199] For the evening shift, there were less universal workers for each home, although there was still a nurse and nursing supervisor.[200] For the night shift, there were two universal workers per home and one nurse for the whole facility.[201] The nurses assigned to each house were limited practice nurses (LPNs), not registered

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[192] *Id*. at p. 20.
[193] Clyburn Deposition Transcript at p. 20–21.
[194] *Id*. at p. 22–23.
[195] *Id*. at p. 25–26.
[196] *Id*. at p. 28. *See also* Ex. 1 to the Clyburn Deposition Transcript.
[197] Clyburn Deposition Transcript at p. 33–34.
[198] Clyburn Deposition Transcript at p. 34.
[199] *Id*. at p. 34–35.
[200] *Id*. at p. 35.
[201] *Id*.

nurses (RNs), although the nursing supervisor was an RN.[202] The Nursing Home also had a nurse practitioner (APRN) to provide an additional layer of clinical oversight.[203]

94. Regarding minimum staffing requirements, with universal workers, the federal and state regulations required the Nursing Home to have sufficient staff to meet the needs of the residents.[204] The Nursing Home was subject to the rules and regulations of the Office of Long-Term Care (OLTC) and the VA.[205] The Nursing Home was also subject to its own policies and procedures.[206]

95. The Nursing Home's abuse and neglect policy required Mr. Clyburn to be on the lookout for any failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness.[207]

96. The Nursing Home's policies on charting and documentation required that "[a]ll services provided to the resident or any changes in the resident's medical or mental condition shall be documented in the resident's medical record."[208] Universal workers were required to document the activities of daily living (ADLs), including bathing, bowel movements (or no bowel movement), incontinence, and transfers.[209]

97. While Mr. Clyburn cannot recall whether the Nursing Home had a wound care nurse the entire time he was there, at some point there was a wound care nurse who was responsible for anything related to skin integrity and skin assessments.[210] If a wound care nurse was not there,

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[202] *Id*. at p. 36.
[203] Clyburn Deposition Transcript at p. 87.
[204] *Id*. at p. 38.
[205] *Id*. at p. 39.
[206] *Id*.
[207] *Id*. at p. 46–47. *See also* Exhibit 6 to the Clyburn Deposition Transcript.
[208] Clyburn Deposition Transcript at p. 48. *See also* Exhibit 7 to the Clyburn Deposition Transcript.
[209] Clyburn Deposition Transcript at p. 49–50.
[210] *Id*. at p. 51.

the nurse would pick up that responsibility.[211] Mr. Clyburn cannot recall whether the Nursing Home had an outside wound care nurse come in.[212] A wound care nurse would have had the ability to talk with CNAs or universal workers or other nurses.[213] The medical director comes once a month.[214] If a resident had a physician other than the medical director, the physician would not be there every day either.[215] The APRNs answered to the medical director and rounded on the residents once per week.[216]

98. When a resident was admitted to the Nursing Home, a comprehensive assessment was done to identify potential issues, and regulations required the staff to put a care plan into place that was specific to that resident and that addressed each potential issue.[217] Each care plan was created in coordination with doctors and listed the interventions that were going to be put in place to address the issues.[218] The care plans were reviewed each quarter unless a resident's condition changed, in which case the care plans would be reviewed to create new interventions.[219]

99. The Nursing Home had a pressure ulcer risk assessment policy in 2018, which stated that pressure ulcers can form when a resident remains in the same position for an extended period of time causing increased pressure or a decrease of circulation blood flow to that area which destroys tissue.[220] The most common sites for pressure ulcers are bony prominences including the tailbone.[221] When a resident was admitted to the Nursing Home, a risk assessment was done

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[211] *Id*.
[212] *Id*. at p. 94.
[213] Clyburn Deposition Transcript at p. 95.
[214] *Id*.
[215] *Id*. at p. 96.
[216] *Id*. at p. 97, 105.
[217] *Id*. at p. 53.
[218] Clyburn Deposition Transcript at p. 53–54.
[219] *Id*. at p. 54.
[220] *Id*. at p. 56.
[221] *Id*. at p. 56–57.

regarding pressure ulcers.[222] This is also why a full body assessment is completed on every new resident to determine if there are any skin tears, reddened areas, or pressure sores.[223] Additionally, weekly skin assessments are done on the residents.[224]

100. If there is suspected abuse or neglect, a nurse would fill out an incident and accident report (INA), which triggers an investigation.[225] The INA is reviewed by the administrator (to determine whether it rises to the level of being reported to the State), the medical director, nurse, and the director of nursing (DON).[226]

101. CNAs, or universal workers, are the backbone of the Nursing Home.[227] Given the expanded job duties, a universal worker is going to have more interactions and more hands-on care with a resident than a typical CNA.[228]

102. [redacted][32] Mr. Clyburn stated that the DON handled staffing and that he had been on vacation four or five days.[233] Mr. Clyburn

[222] *Id*. at p. 57.
[223] Clyburn Deposition Transcript at p. 57.
[224] *Id*.
[225] *Id*. at p. 58.
[226] *Id*.
[227] *Id*. at p. 61.
[228] Clyburn Deposition Transcript at p. 61.
[229] *Id*. at p. 64.
[230] *Id*.
[231] *Id*. at p. 65. *See also* Exhibit 10 to the Clyburn Deposition Transcript.
[232] Clyburn Deposition Transcript at p. 65.
[233] *Id*. at p. 65–66.

[redacted] The DON at the time, Lisa Valencia, is now working in Texas, but Mr. Clyburn has not communicated with her in years.[235]

103. The OLTC can come into a facility to perform a survey, review records, talk with staff, and make a decision whether a facility is following federal and state regulations.[236] Any deficiencies are assigned a letter, with A being the lowest, L being the highest, and I, J, K, and L being immediate jeopardy (IJ) tags.[237]

104. In February 2019, the OLTC performed a survey and set out three IJs.[238] Mr. Clyburn stated that these IJs related to abuse and neglect allegations that took place after he was gone.[239] Mr. Clyburn learned this information from reading the newspaper.[240]

105. Mr. Clyburn struggled to remember details about Mr. Jones, including his medical conditions, his family, and the details surrounding his admission.[241] This may be because Mr. Clyburn was gone from the Nursing Home for about two months in the spring of 2018 to do interim work for the other VA nursing home in Arkansas.[242] He does not recall Mr. Jones' care and treatment or whether he had pressure sores.[243]

106. When shown Mr. Jones' ADL charts for December 2018, Mr. Clyburn stated that he was familiar with these types of documents.[244] There is missing information on the first page.[245] At some point, if information is not entered, it will be escalated to the nurse.[246] The chart for

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[234] *Id*. at p. 69.
[235] *Id*. at p. 69–70.
[236] *Id*. at p. 66–67.
[237] Clyburn Deposition Transcript at p. 67–68.
[238] *Id*. at p. 68.
[239] *Id*.
[240] *Id*.
[241] *Id*. at p. 70–72.
[242] Clyburn Deposition Transcript at p. 71.
[243] *Id*. at p. 77.
[244] *Id*. at p. 73. *See also* Exhibit 12 to the Clyburn Deposition Transcript.
[245] Clyburn Deposition Transcript at p. 73–74.
[246] *Id*. at p. 74–75.

December 1 shows that Mr. Jones [redacted].[249] Mr. Clyburn agreed that information not included in the ADL chart might have been documented elsewhere by a nurse.[250]

107. Mr. Clyburn stated that the Nursing Home was a beautiful facility that was very expensive to build.[251] The small-home model was a beautiful thing, and residents loved having private rooms and the ability to eat with their family members at the big dining table.[252] Employees were taken to Camp Robinson and to a military museum to feel a sense of the people they were caring for at the Nursing Home.[253]

108. [redacted][254] Patients at the Nursing Home could set their own schedules, and the model that the Nursing Home allowed the patients to do that.[255]

109. The Nursing Home did not have to accept every resident, and the choice was made based on whether the Nursing Home could meet that resident's needs.[256] A few times in Mr. Clyburn's career, he had to say that a facility could no longer care for a resident, which starts a 30-

[247] *Id*. at p. 75.
[248] *Id*.
[249] *Id*. at p. 75–76.
[250] Clyburn Deposition Transcript at p. 80.
[251] *Id*. at p. 81.
[252] *Id*. at p. 81–82.
[253] *Id*. at p. 82–83.
[254] *Id*. at p. 85–86.
[255] Clyburn Deposition Transcript at p. 90–91.
[256] *Id*. at p. 92.

day discharge process and a conversation with the family.[257] A facility would not just kick a resident out to the curb, though.[258]

Testimony of Beverly Byrd

110. Claimant introduced the deposition testimony of Beverly Byrd in lieu of live testimony.

111. Ms. Byrd currently works as an LPN at an assisted living facility in Conway.[259] She has been a nurse for 25 years.[260]

112. Ms. Byrd previously worked as an LPN at the Nursing Home.[261] She began working at the Nursing Home a few months after it opened and worked there from 2017 to 2019.[262] When Ms. Byrd worked twelve-hour shifts, she would work three days per week, and when she worked ten-hour shifts, she would work four days per week.[263] She answered to the DON and to Mr. Clyburn.[264] She trained in Home 2 at the Nursing Home and later worked in Homes 4, 5, and 6.[265]

113. Ms. Byrd supervised the universal workers.[266] When she arrived, she would make sure that all of her staff had reported, which meant that she had two staff members in the kitchen, two on the floor, and one on each side of the halls.[267] If a staff member was not there, then she would call the DON and let the DON know that she needed another worker.[268] A lot of times Ms. Byrd was told to make do.[269]

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[257] *Id*. at p. 92–93.
[258] *Id*. at p. 93.
[259] Byrd Deposition Transcript at p. 6–7.
[260] *Id*. at p. 7.
[261] *Id*. at p. 8.
[262] *Id*. at p. 9.
[263] *Id*.
[264] Byrd Deposition Transcript at p. 10.
[265] *Id*. at p. 11.
[266] *Id*. at p. 12.
[267] *Id*.
[268] *Id*. at p. 13.
[269] Byrd Deposition Transcript at p. 13.

114. Each private room had a locked medicine cabinet, so Ms. Byrd could just take her computer into a room and get the patient's medications, as opposed to pushing a cart.[270] She would talk to each patient, see how they were doing, and give the medications, and make handwritten notes.[271] When Ms. Byrd completed her visit of each room, she would go back to her office, add her notes to the patient's computer chart, and shred the handwritten notes.[272] This process repeated at lunch and then again at supper.[273]

115. Ms. Byrd was not responsible for wound care.[274] In 2018, Kayla was the wound care nurse.[275] Ms. Byrd would fill out a total body skin assessment when a patient was admitted but did not do wound assessments after that point.[276] The universal worker would see any wounds when a patient was dressed in the morning or undressed at bedtime.[277] While Ms. Byrd could do skin care if there was a little skin tear or scratch, she could not do wounds, including pressure sores.[278]

116. Ms. Byrd was very busy each day.[279] She was not in charge of scheduling universal workers or other staff.[280] There was not enough staff to safely take care of the patients in her two houses.[281] That meant that medications were often late in one of the houses.[282] Ms. Byrd talked to the DON and the assistant director of nursing (ADON) about her staffing concerns a lot, and she

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[270] *Id*.
[271] *Id*. at p. 13–14.
[272] *Id*.
[273] *Id*. at p. 13.
[274] Byrd Deposition Transcript at p. 14–15.
[275] *Id*. at p. 15.
[276] *Id*. at p. 16.
[277] *Id*. at p. 17.
[278] *Id*. at p. 17–18.
[279] Byrd Deposition Transcript at p. 18.
[280] *Id*. at p. 18.
[281] *Id*. at p. 18–19.
[282] *Id*. at p. 19.

was told that it was fine.[283] She was also told to ask for the DON or ADON if she needed help, but she never got any help.[284] Ms. Byrd sometimes had to stay after her shift until the oncoming nurse arrived.[285]

117. Ms. Byrd recalls Mr. Jones and stated that he was one of her favorite patients.[286] He reminded Ms. Byrd of her father, and she got attached to him.[287] [redacted].[288] He could go for walks with Ms. Byrd until the end.[289] Ms. Byrd stated that the [redacted]

118. In reviewing Mr. Jones' chart, Ms. Byrd stated that on December 27, she notified the APRN of [redacted].[292] On December 26, Mr. Jones needed [redacted].[293] There were also notes that day that Mr. Jones was [redacted][294] On December 22, Ms. Byrd charted that Mrs. Jones had called to request that

[283] *Id*.
[284] Byrd Deposition Transcript at p. 19.
[285] *Id*. at p. 20.
[286] *Id*.
[287] *Id*.
[288] *Id*. at p. 21.
[289] Byrd Deposition Transcript at p. 21.
[290] *Id*. at p. 21–22.
[291] *Id*. at p. 23–24. *See also* Exhibit 4 to Byrd Deposition Transcript.
[292] Byrd Deposition Transcript at p. 24. *See also* Exhibit 4 to Byrd Deposition Transcript.
[293] Byrd Deposition Transcript at p. 24–25. *See also* Exhibit 4 to Byrd Deposition Transcript.
[294] Byrd Deposition Transcript at p. 26. *See also* Exhibit 4 to Byrd Deposition Transcript.

she be kept informed of all things related to her husband, good or bad, and that she planned to be there soon to see him.[295]

119. Ms. Byrd recalled that Mr. Jones did not care for applesauce, but he liked the strawberry Yoplait yogurt that Ms. Byrd would bring from home for him.[296]

120. Ms. Byrd does not recall any nurse telling her that Mr. Jones had [redacted].[297]

121. Ms. Byrd gave Mr. Jones and all of her patients care to the best of her ability.[298] If Ms. Byrd saw something concerning, she told her supervisor.[299]

122. [redacted].[300]

123. Ms. Byrd does not recall behavioral issues with Mr. Jones after his first day.[301] She never witnessed any neglect of Mr. Jones.[302]

124. Ms. Byrd experienced instances whether she could not chart every single thing that she did in a day.[303]

125. Mrs. Jones did not like when Ms. Byrd allowed Mr. Jones to choose orange juice instead of milk in the mornings.[304] She also did not like the clothes that Mr. Jones was put in, but Mrs. Jones did not bring that many clothes for him.[305] It was an unfortunate accident when Mr.

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[295] *Id*. at p. 27.
[296] *Id*. at p. 28–29.
[297] *Id*. at p. 29.
[298] *Id*. at p. 34–35.
[299] Byrd Deposition Transcript at p. 35.
[300] *Id*. at p. 30–31.
[301] *Id*. at p. 37–40.
[302] *Id*. at p. 49.
[303] *Id*. at p. 45.
[304] Byrd Deposition Transcript at p. 51.
[305] *Id*.

Jones was put in a shirt that had someone else's initials in it.[306] Mrs. Jones was more involved than a lot of other people's family members were.[307]

126. It was part of Ms. Byrd's routine to chart when Mrs. Jones came to see him or called the Nursing Home.[308]

127. Ms. Byrd did not have any complaints about Rosalind Page.[309]

128. The CNAs were responsible for filling out the ADL charts, not Ms. Byrd.[310] If Ms. Byrd had a question about whether a patient had a bowel movement, she would usually ask the universal workers instead of going to look at the ADL chart.[311]

129. If medication was not charted, Ms. Byrd could do a late entry.[312]

130. It is not acceptable to document that a patient got a bath or got medication when that patient was not in the building.[313]

Testimony of Rosalind Page

131. Claimant introduced the deposition testimony of Rosalind Page in lieu of live testimony.

132. Ms. Page currently works at Central Arkansas Veterans Health Systems.[314] She has been an LPN for more than 33 years.[315]

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[306] *Id*. at p. 51–52.
[307] *Id*. at p. 60–61.
[308] *Id*. at p. 53.
[309] Byrd Deposition Transcript at p. 53–54.
[310] *Id*. at p. 55–56.
[311] *Id*. at p. 57.
[312] *Id*. at p. 57–59.
[313] *Id*. at p. 62.
[314] Page Deposition Transcript at p. 4.
[315] *Id*. at p. 5.

133. Ms. Page worked at the Nursing Home from 2017 to 2019.[316] She worked the night shift.[317] She was typically assigned to two houses at the Nursing Home, but occasionally worked three houses.[318]

134. In her capacity as an LPN on the night shift, Ms. Page oversaw the CNAs, gave out medications if needed, charted, did care plans, and did other nursing duties.[319]

135. When medication was given, that was documented electronically, whether it was a dose scheduled for a particular time or based on a patient complaint.[320] It is important to document medication so the next shift will know what a particular patient has had.[321] If a patient refused medication or if a medication was not given for a particular reason, that was also documented.[322]

136. There was always an APRN available on-call.[323]

137. Ms. Page did not treat wounds or pressure sores.[324] While there was not a wound nurse when Ms. Page initially started, eventually Kayla Phillips came to work at the Nursing Home as the wound nurse.[325] The wound nurse also did weekly skin assessments.[326] Head-to-toe assessments are done upon admission or if there are some changes, but they are not done every shift.[327] Nurses did do monthly skin checks to look for bruises or skin tears or any other skin changes.[328]

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[316] *Id*. at p. 5–6.
[317] *Id*. at p. 6.
[318] *Id*. at p. 6–7.
[319] Page Deposition Transcript at p. 7.
[320] *Id*. at p. 7–9.
[321] *Id*. at p. 9.
[322] *Id*. at p. 8–10.
[323] *Id*. at p. 10.
[324] Page Deposition Transcript at p. 10.
[325] *Id*. at p. 10–11.
[326] *Id*. at p. 11.
[327] *Id*.
[328] *Id*. at p. 12.

138. The universal workers did the majority of ADL care.[329] They also did the ADL documentation.[330] If a universal worker saw a skin issue while bathing or otherwise helping a resident, the universal worker would immediately come to Ms. Page.[331]

139. Ms. Page reviewed the ADL documentation.[332] Where there were no initials or documentation, Ms. Page called those holes.[333] ADL documentation had to be done so that the next shifts knew what happened with a patient.[334] She is familiar with the saying that if something is not charted, it was not done.[335]

140. The Nursing Home would allow staff to stay late and work overtime if they needed to finish charting.[336]

141. On the night shift, Ms. Page had two universal workers in each house.[337] In 2018 and 2019, the staffing levels had gotten low with universal workers and with nurses.[338] There were times when, instead of five nurses at night, there would only be three nurses for the whole Nursing Home.[339] Ms. Page brought this up in staff meetings, and the Nursing Home was trying to hire people.[340]

142. Ms. Page did not take care of Mr. Jones, but she did meet him on a couple of occasions.[341] She did not know [redacted].[342]

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[329] Page Deposition Transcript at p. 11.
[330] *Id*. at p. 12.
[331] *Id*. at p. 11–12.
[332] *Id*. at p. 13.
[333] *Id*.
[334] Page Deposition Transcript at p. 13–14.
[335] *Id*. at p. 14.
[336] *Id*. at p. 14–15.
[337] *Id*. at p. 16.
[338] *Id*. at p. 16–17.
[339] Page Deposition Transcript at p. 17.
[340] *Id*.
[341] *Id*. at p. 19–20.
[342] *Id*. at p. 20.

Others described Mrs. Jones as being overly involved, but Ms. Page did not have any interactions with her.[343]

143. One time, a CNA called over to the house where Ms. Page was working and said that Mr. Jones had [redacted].[344] Ms. Page said for the CNA to tell the agency nurse, but the CNA said that the agency nurse would not do anything.[345] An agency nurse is a temporary nurse from a staffing agency.[346] Ms. Page went over there and saw that Mr. Jones had [redacted][351] Ms. Page said that the acting DON basically told her to leave it alone.[352] She had no further interaction with Mr. Jones after that incident.[353]

144. Ms. Page left the Nursing Home because of the poor staffing issues.[354] Everyone on the night shift came to her with issues, and management basically told her to be quiet.[355] Ms. Page did not want to be fired, and nurses get fired when they make a lot of noise.[356]

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[343] *Id*. at p. 21.
[344] Page Deposition Transcript at p. 22.
[345] *Id*.
[346] *Id*. at p. 28.
[347] *Id*. at p. 22–23.
[348] *Id*.
[349] Page Deposition Transcript at p. 23.
[350] *Id*. at p. 23–24.
[351] *Id*. at p. 24.
[352] *Id*. at p. 25.
[353] *Id*.
[354] Page Deposition Transcript at p. 25.
[355] *Id*. at p. 25–26.
[356] *Id*. at p. 26–27.

145. Where Ms. Page was the only staff nurse on the night shift, there were also temporary agency nurses there.[357] The staffing challenges were not unique to the Nursing Home.[358]

146. Ms. Page did not see anything that set alarms off until Mr. Jones' dressing needed changing.[359]

147. Ms. Page knew Ms. Byrd as Mr. Jones' day shift LPN. Ms. Page interacted with her professionally, although they did not work in the same house, and Ms. Page did not have any concerns about Ms. Byrd keeping up with her work.[360] Ms. Byrd did have a hearing deficit, so there were times when she could not hear what was going on, and Ms. Page believes that the universal workers took advantage of that.[361]

148. Houses 6 and 8 were the difficult houses to work with, and Mr. Jones had his preferences about who he liked to be with or not.[362]

149. The charts contain the notable things, not every little interaction with a patient.[363]

150. Universal workers were not all CNAs.[364] Ms. Page believed that universal workers were paid less than CNAs and that the Nursing Home should get rid of the universal workers and go back to CNAs.[365] CNAs are essential because they see things that change very quickly and see them before a nurse will.[366] Universal workers are not looking for anything.[367] Mr. Jones' family complained about [redacted], [redacted]

[357] *Id*. at p. 28–29.
[358] *Id*. at p. 29–30.
[359] Page Deposition Transcript at p. 32.
[360] *Id*. at p. 33.
[361] *Id*. at p. 33–34.
[362] *Id*. at p. 35–36.
[363] *Id*. at p. 37.
[364] Page Deposition Transcript at p. 40.
[365] *Id*. at p. 41.
[366] *Id*. at p. 41–42.
[367] *Id*. at p. 42.

[redacted].[368] That may be why Mr. Jones was [redacted].[369] [redacted] is not uncommon in long-term care.[370]

Testimony of Keith Miller

151. Claimant introduced the deposition testimony of Dr. Keith Miller in lieu of live testimony.

152. Dr. Miller completed his undergraduate education at Baylor University and medical school at the University of Arkansas, including a residency in family medicine.[371] Dr. Miller completed his residency in 1988.[372] He has practiced medicine for over 35 years.[373] Dr. Miller was trained at the VA medical centers in Little Rock and North Little Rock.[374] He is board certified in family medicine and hospice and palliative care.[375] Dr. Miller previously worked as the medical director of a nursing home.[376] He has treated veterans, including those with the same medical diagnosis, background, and needs as Mr. Jones, the entire time he has practiced medicine.[377]

153. Dr. Miller has treated and seen patients in a facility using the same housing model as the Nursing Home.[378]

154. The standard of care in this case is what a reasonable physician or healthcare provider would do in the same or similar circumstances with the same or similar patient and in the

[368] *Id*. at p. 43.
[369] Page Deposition Transcript at p. 43.
[370] *Id*. at p. 43–44.
[371] Miller Deposition Transcript at p. 73–74. *See also* Exhibit 1 to Miller Deposition Transcript.
[372] Miller Deposition Transcript at p. 74. *See also* Exhibit 1 to Miller Deposition Transcript.
[373] *Id*.
[374] *Id*.
[375] *Id*. at p. 77.
[376] *Id*. at p. 75.
[377] Miller Deposition Transcript at p. 75–77.
[378] *Id*. at p. 79.

same or similar locality.[379] A statutory regulation does not establish the standard of care, but regulations reflect the standard of care and communicate the standard of care to others.[380] Policies and procedures should reflect the standard of care and should communicate to healthcare staff how to treat patients.[381]

155. In reviewing a case, Dr. Miller is trying to determine what standards of care apply and whether the standards were met or breached.[382] If the standards were not met, then Dr. Miller determines what damage resulted from that failure to meet the standards of care.[383]

156. [redacted][386]

157. [redacted][387]

[379] *Id*. at p. 79–80.
[380] *Id*. at p. 80.
[381] *Id*. at p. 81.
[382] Miller Deposition Transcript at p. 84.
[383] *Id*.
[384] Miller Deposition Transcript at p. 85. *See also* Exhibit 3 to Miller Deposition Transcript.
[385] Miller Deposition Transcript at p. 85–86. *See also* Exhibit 3 to Miller Deposition Transcript.
[386] Miller Deposition Transcript at p. 86. *See also* Exhibit 3 to Miller Deposition Transcript.
[387] Miller Deposition Transcript at p. 86–87. *See also* Exhibit 3 to Miller Deposition Transcript.

158. Dr. Miller agreed with the decision made by Mr. Jones' family to place him on [redacted].[388]

159. [redacted].[393] Dr. Miller opined that, [redacted].[394]

160. It is possible for [redacted].[397]

161. Dr. Miller did not see that Mr. Jones' [redacted].[398] [redacted]

[388] Miller Deposition Transcript at p. 88.
[389] *Id*. at p. 89.
[390] *Id*. at p. 89–90.
[391] *Id*. at p. 90.
[392] *Id*.
[393] Miller Deposition Transcript at p. 90.
[394] *Id*. at p. 90–91.
[395] *Id*. at p. 104–05.
[396] *Id*. at p. 105.
[397] *Id*. at p. 106.
[398] Miller Deposition Transcript at p. 91.

[redacted].[402]

162. [redacted].[403] By December 2018, Mr. Jones would have been at a [redacted].[406]

163. In December 2018, Mr. Jones had to be [redacted].[407] Mr. Jones needed help [redacted].[408] On December 27, 2018, Mr. Jones [redacted].[409]

164. Mr. Jones' ADLs, including [redacted] should have been documented every shift to determine if there is a problem or if something is

[399] *Id*. at p. 92.
[400] *Id*.
[401] *Id*.
[402] *Id*. at p. 93. *See also* Exhibit 5 to Miller Deposition Transcript.
[403] Miller Deposition Transcript at p. 99.
[404] *Id*.
[405] *Id*.
[406] *Id*. at p. 99–100.
[407] *Id*. at p. 94.
[408] Miller Deposition Transcript at p. 94–95.
[409] *Id*. at p. 95.

not working, whether it is an ADL or a plan of care.[410] His needs changed from April to December 2018, and he became more dependent on Nursing Home staff.[411]

165. Dr. Miller opined that the Nursing Home failed to meet the standard of care regarding Mr. Jones' [redacted].[412] He also opined that, to a reasonable degree of medical certainty, the lack of sufficient staff and lack of consistent care was the thing that tied the [redacted] together:

[redacted]

166. Dr. Miller had five areas of concern: [redacted].[414] These all developed at roughly the same period of time with Mr. Jones.[415] It was well documented and particularly concerning to see testimony from employees and former employees of the Nursing Home about understaffing and the refusal of frequently used agency nurses to do tasks like [redacted].[416]

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[410] *Id*. at p. 95–96.
[411] *Id*. at p. 97.
[412] *Id*. at p. 100–01.
[413] Miller Deposition Transcript at p. 101.
[414] *Id*. at p. 14–15.
[415] *Id*. at p. 15.
[416] *Id*.

167. Mrs. Jones did not realize that some of these problems had developed until Mr. Jones [redacted].[417] Because she did not find out these problems until later, she did not know which medical care provider was responsible.[418]

168. The testimony regarding staffing issues came from Ms. Page and Ms. Byrd, but there was no testimony of incidents specific to Mr. Jones.[419]

169. Dr. Miller cannot say what employees did or did not do something wrong on a particular date.[420]

170. The chief reason that Mr. Jones came into the Nursing Home was because he had [redacted].[421] Before he came to the Nursing Home, [redacted].[422]

171. [redacted].[424]

172. [redacted].[425] [redacted].[426]

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[417] *Id*. at p. 16.
[418] Miller Deposition Transcript at p. 17.
[419] *Id*. at p. 18.
[420] *Id*. at p. 20.
[421] *Id*. at p. 20–21.
[422] *Id*. at p. 21.
[423] Miller Deposition Transcript at p. 21.
[424] *Id*.
[425] *Id*. at p. 22.
[426] *Id*. at p. 22–23.

173. Mr. Jones did not [redacted].[427] When patients are in their rooms, they are not observed at all times or on camera at all times, and they do not need to be.[428]

174. [redacted].[431] Dr. Miller does not have an opinion that the falls had a direct impact on his death.[432] Dr. Miller did opine that, more likely than not, seven falls in eight months means that Mr. Jones had an [redacted].[433] Dr. Miller reviewed the [redacted].[435]

175. Mr. Jones [redacted].[437] Employees cannot force a patient to take medication or restrain a patient to prevent free ambulation, and there was no evidence of physical restraints used on Mr. Jones.[438]

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[427] *Id*. at p. 23.
[428] Miller Deposition Transcript at p. 23.
[429] *Id*. at p. 24–25.
[430] *Id*.
[431] *Id*. at p. 28.
[432] *Id*. at p. 25.
[433] Miller Deposition Transcript at p. 25–26.
[434] *Id*. at p. 26–27.
[435] *Id*. at p. 28.
[436] *Id*.
[437] *Id*. at p. 29.
[438] Miller Deposition Transcript at p. 29.

176. Referencing page 20 of Dr. Miller's report regarding intentional conduct on the part of the Nursing Home that caused damages or injury to Mr. Jones, Dr. Miller stated that it was not an accident that no one was around [redacted].[439] It was an intentional act that the Nursing Home staff was not there at the time that Mr. Jones fell out of his wheelchair.[440] A reasonable, prudent staff should have known that [redacted] should not be allowed to have free access to wheelchairs, walkers, or assistive devices because, if they do, more likely than not, they are going to suffer injuries, as happened to Mr. Jones.[441] The staff made a conscious choice that it was okay to leave Mr. Jones with free access to wheelchairs.[442]

177. Referencing page 21 of Dr. Miller's report, he listed an indefinite list of interventions to prevent falls and injuries in patients such as Mr. Jones, including [redacted][443] There is no documentation in the medical records that these measures were utilized as to Mr. Jones.[444] Because [redacted], it is impossible for Dr. Miller to point to exactly which measures would have prevented the falls.[445] However, had all of those measures been put into place, it is more likely than not that Mr. Jones would not have [redacted] at those times.[446] While there is documentation of the falls, the documentation does not specify whether any interventions were in place to prevent the falls.[447]

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[439] *Id*. at p. 30.
[440] *Id*.
[441] *Id*. at p. 30–31.
[442] *Id*. at p. 31.
[443] Miller Deposition Transcript at p. 33, 35–36.
[444] *Id*. at p. 33.
[445] *Id*. at p. 34.
[446] *Id*.
[447] *Id*. at p. 35.

178. Referencing the medical records regarding actions taken by the Nursing Home after Mr. Jones fell one particular time, Dr. Miller agreed that the Nursing Home staff took Mr. Jones' [redacted].[448] Dr. Miller clarified, however, that the list of actions taken happened after the fall and had nothing to do with preventing the fall.[449] The interventions listed in Dr. Miller's report are well known to prevent falls in nursing home patients, and that is what he wanted to see documented in this situation.[450]

179. Not every fall in a nursing home can be prevented.[451] Falls have occurred in the nursing homes where Dr. Miller has worked.[452] It is possible for falls to happen in the absence of negligence of a medical care provider, and it is possible for falls to occur without an intentional bad act or inaction by a medical care provider.[453]

180. Mr. Jones fell on July 1, 2018, and the records listed the fall [redacted].[455] Dr. Miller stated that Mr. Jones should have been escorted as he ambulated from place to place.[456] Dr. Miller noted that there was no documentation of what kind of footwear Mr. Jones was wearing when he fell or whether any of the interventions were in place.[457] Dr. Miller stated that to a

[448] Miller Deposition Transcript at p. 37–38.
[449] *Id*.
[450] *Id*. at p. 38.
[451] *Id*.
[452] *Id*. at p. 39.
[453] Miller Deposition Transcript at p. 39.
[454] *Id*. at p. 40.
[455] *Id*.
[456] *Id*.
[457] *Id*. at p. 40–41.

reasonable degree of medical certainty, that fall was the result of negligence of the Nursing Home personnel.[458] He could not identify a specific member of the staff that was negligent.[459]

181. Dr. Miller did not see in the medical records any falls that occurred when Mr. Jones was [redacted].[460] He did not see any times where Mr. Jones fell, and a physician was not notified.[461] However, it would have been a good use of medical records to see the number of falls that Mr. Jones was experiencing and to put new interventions into place to prevent additional falls.[462] There was no time where the medical records document a discussion about putting interventions into place to keep Mr. Jones from falling.[463] What is missing from the medical records is what, had it been done, would have prevented future falls to a reasonable degree of medical certainty.[464] Dr. Miller specified that:

> …my concern is not really what happened after each of the falls. As I have said, my concern is that there's no documentation saying, "Hey, Doctor, Mr. Jones has fallen four times in four months. Do you think, perhaps, we need to consider implementing different interventions doing something differently to prevent this fifth fall before . . . it occurs."[465]

The doctor could have ordered specific interventions, but staff is the eyes and ears of the doctor, given that the doctor is there a very limited amount of time.[466] But that does not relieve the Nursing Home staff of their obligation to point out to the doctor if interventions are needed.[467]

182. A medical record should be a very interactive, dynamic, ongoing thing:

> …After the first fall, after the second fall, after the third fall, "Hey, Doc, you know, Mr. Jones is falling, you know, on an average, once a month here. You know, is

[458] Miller Deposition Transcript at p. 41.
[459] *Id*.
[460] *Id*. at p. 42.
[461] *Id*.
[462] *Id*. at p. 44–45.
[463] Miller Deposition Transcript at p. 45.
[464] *Id*.
[465] *Id*. at p. 55–56.
[466] *Id*. at p. 56.
[467] *Id*.

> there something else that you think we can do?" And the doctor would have said, "Okay. Well, let's try interventions A, B, and C."
>
> After another fall, then the nursing home staff says, "You know, Doc, you know, he's still falling. We think A and B are helping, but I don't think C is doing so much." Then the doctor will say, "Okay. Well, now let's put in D and E." After another month, the same thing.
>
> That's what you would expect to see in the medical record, a very dynamic, interactive, ongoing process, not just one thing put into place and then hoping that helps. And despite having a similar bad outcome over and over and again, not changing what you are doing to – to change the outcome."[468]

183. Mr. Jones' [redacted] began during his stay at the Nursing Home.[469] Dr. Miller does not know which staff members were responsible for his [redacted].[470] Mrs. Jones testified that she did not think the staff was spending enough time [redacted].[471] There is only one thing that causes [redacted].[472] There was no documentation of [redacted].[476] Dr. Miller cannot say for what period of time Mr. Jones was allegedly [redacted].[477] To a reasonable degree of medical certainty, certain standards and interventions were not put in place, which, if they had been put in place, would have kept Mr. Jones from

[468] Miller Deposition Transcript at p. 57.
[469] *Id*. at p. 46.
[470] *Id*. at p. 46–47.
[471] *Id*. at p. 47–48.
[472] *Id*. at p. 48.
[473] Miller Deposition Transcript at p. 48.
[474] *Id*. at p. 52.
[475] *Id*.
[476] *Id*. at p. 53.
[477] *Id*. at p. 48–49.

[redacted] [redacted].[478] The [redacted] likely worsened during Mr. Jones' stay at the Nursing Home, but there was no documentation of that.[479]

184. Dr. Miller took issue with the questions about why he cannot point to a specific part of a medical record for his opinion:

> Q. And my problem with this is what you are giving me in general. And what happens at the Claims Commission is people review your testimony to understand and make a decision in this case, and so my goal is to provide them with specific so they can evaluate your testimony. And so what I'm hearing repeatedly is you can't point to any specifics in the medical records.
>
> A. Well, here's the problem with your argument. You know, your argument over and over again has been, you know, what I cannot point to in the medical record. And if there is no documentation, you can't point to anything. I mean, by your reasoning, your logic, I, as a physician, should never write anything down. I should never put anything in the medical record. And then I'll say, "All right. Well, show me where I did something wrong in the medical record. And you can't do it, well, I'm off the hook." That does not get you off the hook of the standards of care that you're obligated to follow just because you don't put anything down in the records. I – I don't know how else to say it, but you know, I can't point to a specific instance for these things because there is nothing – there is nothing down, you know, documented who – who was not doing their job, who was not feeding Mr. Jones adequately. I – it's quite obvious, I think, the staff did not want to implicate themselves, and there's nothing down there just saying that. . . .[480]

185. Dr. Miller's opinions regarding Mr. Jones' [redacted] would be pretty much the same as with his [redacted].[481] It is possible for [redacted] and [redacted] to occur in the absence of negligent care.[482] Dr. Miller cannot say when Mr. Jones was not provided [redacted] or [redacted] during his stay at the Nursing Home.[483] Dr. Miller would have expected the following in Mr. Jones' medical records:

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[478] Miller Deposition Transcript at p. 53.
[479] *Id*. at p. 53–54.
[480] *Id*. at p. 49–50.
[481] *Id*. at p. 54.
[482] *Id*.
[483] Miller Deposition Transcript at p. 54.

> . . . [where] a nursing staff said, "I spent a certain amount of time feeding Mr. Jones today. It was difficult to do. He – he didn't seem to like the foods that he was taking. Hey, Doc, here's what happening. What can you suggest we do to change – to change this process?"
>
> And the doctor says, "Okay. Let's implement these measures, you know, one, two, three." You try those. You reassess those. You put in new interventions. You assess the effectiveness of those things and on and on. That's the way medical records, you know, should work, not just documenting a bad result, you know, what happens after a fall, and that's it.
>
> The purpose of medical records is to improve patient care for most. That's what you would have expect[ed] to have seen in the case of hydration status and nutrition status, also, and none of that is there. Something – something was wrong with his feeding and his providing fluids. And there's no indication, first of all, what the problem was, most likely, not providing – him not taking in enough fluids, him not taking in enough nutrition."
> . . .[484]

Dr. Miller's criticism is the lack of information in the records about Mr. Jones not getting adequate [redacted] and what was going to be done about those issues.[485]

186. There is nothing in the Nursing Home records that gives detail about the extent of Mr. Jones' [redacted].[486] When Mr. Jones got to the hospital, there are [redacted].[487] [redacted][488] [redacted].[489]

[484] *Id*. at p. 58–59.
[485] *Id*. at p. 59.
[486] *Id*. at p. 59–60.
[487] *Id*. at p. 60.
[488] Miller Deposition Transcript at p. 60.
[489] *Id*.

187. Dr. Miller agreed that [redacted] can occur in the absence of negligence.[490] It is possible that [redacted] even under the standard of care.[491] It is possible that [redacted] can occur in the absence of intentional bad conduct or inaction.[492] It is possible for [redacted] to occur in a patient in the absence of negligence.[493] [redacted].[494] It is possible for a patient to develop [redacted] in the absence of negligence.[495] It is possible for a patient to develop [redacted]y in the absence of negligence.[496] It is possible that a patient could follow the course that Mr. Jones did in the absence of negligent care.[497]

188. Dr. Miller saw no evidence of abuse.[498] The medical records did not reflect any criticism of the Nursing Home staff by the physicians at the VA hospital.[499]

189. Dr. Miller is not a nursing expert.[500]

190. Dr. Miller cannot specify when the Nursing Home was inadequately staffed.[501] This type of facility should have been appropriate to give Mr. Jones the care that he needed.[502]

191. Had it not been for the [redacted] at the Nursing Home, Dr. Miller opined that Mr. Jones would have lived another four to five years.[503] [redacted].[504] Life expectancy is

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[490] *Id*. at p. 61.
[491] *Id*.
[492] *Id*.
[493] Miller Deposition Transcript at p. 61–62.
[494] *Id*.
[495] *Id*. at p. 63.
[496] *Id*.
[497] *Id*. at p. 68.
[498] Miller Deposition Transcript at p. 61.
[499] *Id*.
[500] *Id*. at p. 64.
[501] *Id*. at p. 65.
[502] *Id*. at p. 67.
[503] Miller Deposition Transcript at p. 67.
[504] *Id*.

an average, not a guarantee.[505] Dr. Miller did not consult life tables, statistical analysis, or calculations in arriving at his conclusion.[506] Mr. Jones' external signs and symptoms showed that he had an adequate quality of life when he entered the Nursing Home.[507] In his board certification for hospice and palliative care, Dr. Miller had to make decisions regarding life expectancy.[508] At the time that Mr. Jones came to the Nursing Home, [redacted] such that Dr. Miller believed that Mr. Jones would have survived another four or five years with adequate care.[509]

192. Dr. Miller's criticisms in this case are very fundamental for care in nursing homes and are the types of things that physicians who care for nursing home patients know and deal with every day.[510]

Testimony of Luanne Trahant

193. Claimant introduced the deposition testimony of Luanne Trahant in lieu of live testimony.

194. Ms. Trahant currently serves an adjunct professor at Louisiana Christian College and as a nurse practitioner in a private practice called Consulting Concepts.[511] She has practiced as a nurse for 31 years.[512] She has held many positions at nursing homes, including charge nurse, DON, administrator, hospice nurse, and family nurse practitioner.[513] She has supervised and taught nurses and worked with CNAs.[514]

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[505] *Id*. at p. 68–69.
[506] *Id*. at p. 69–70.
[507] *Id*. at p. 71.
[508] Miller Deposition Transcript at p. 78.
[509] *Id*. at p. 87–88.
[510] *Id*. at p. 69.
[511] Trahant Deposition Transcript at p. 9–10.
[512] *Id*. at p. 52.
[513] *Id*.
[514] *Id*. at p. 53–54.

195. Ms. Trahant was director of nursing for a private facility that utilized a pod-style setting like the Nursing Home, but that facility worked with developmentally disabled individuals who were not necessarily elderly.[515] A pod-type of facility is different than a standard nursing home in that it is like having a private home for a set of residents, as opposed to an institutionalized setting.[516] Ms. Trahant does not have any complaints about the facilities at the Nursing Home.[517]

196. The standard of care is what a reasonable nurse would do in a similar situation based on their education, training, and experience in this particular setting within the confines of the federal and state regulations and the policies and procedures.[518]

197. In April 2018, when the Nursing Home assessed Mr. Jones, [redacted].[521] It was fine for him to roam around the house or eat by himself.[522] The Nursing Home then put a care plan into place:

> Q. … tell us, in your explanation, what is a care plan?
>
> A. When a nurse assesses a resident, they develop nursing diagnoses, which means what can we do as nurses to maintain their quality of life, or at least recognize if they have a deterioration in their quality of life, how we can make them more comfortable if they're dying.
>
> That is the road map. That's the plan. So everything that they're potentially at risk for is memorialized in that particular document.

[515] *Id*. at p. 10–11.
[516] Trahant Deposition Transcript at p. 11.
[517] *Id*. at p. 11.
[518] *Id*. at p. 56.
[519] *Id*. at p. 57–58.
[520] *Id*. at p. 84.
[521] Trahant Deposition Transcript at p. 84–85.
[522] *Id*. at p. 85.

> And that care plan says this is what the nursing staff is going to do. This is what, in this case, the universal workers are going to do to help preserve as much quality of life, dignity, as we can.
>
> Q. And what areas of a resident's life or care are addressed in a care plan?
>
> A. Every area. You look at their physical well-being. So you would look at their potential problems for skin breakdown, nutrition, hydration, activities. Their psychosocial abilities or any problems with their psychiatric condition. You're going to look at their ADLs, their bathing, their grooming, their toileting. So it's the whole person. It's not just medical plans.[523]

Mr. Jones' April 24, 2018, care plan included a [redacted].[524] The goal was that he would not have any undetected signs and symptoms of infection.[525] The care plan included a target date of July 19, 2018, at which point the care plan should be evaluated to see if the goal was met and to revise if the patient remains at risk.[526] If a resident has a significant change, either good or bad, the regulations and policy require that the care plan be updated.[527] The interventions listed on the care plan are intended to reduce or eliminate a patient's risk of [redacted].[528] On Mr. Jones' care plan, the interventions were to provide [redacted].[529] [redacted].[530] The care plan put in place in April 2018 was a good care plan.[531]

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[523] *Id*. at p. 59–60.
[524] *Id*. at p. 60–61. *See also* Exhibit 2 to Trahant Deposition Transcript.
[525] Trahant Deposition Transcript at p. 61.
[526] *Id*. at p. 61. *See also* Exhibit 2 to Trahant Deposition Transcript.
[527] Trahant Deposition Transcript at p. 61–62.
[528] *Id*. at p. 62.
[529] *Id*.
[530] *Id*. at p. 63.
[531] *Id*.

198. While nearly all care plans for residents in nursing homes [redacted], Ms. Trahant stated that each care plan should be individualized for a resident and updated to change or add interventions as that individual resident changes.[532]

199. The bulk of the issues that Ms. Trahant has with Mr. Jones' care started after he switched houses on August 13, 2018, because one of the reasons for the switch was Mr. Jones' [redacted].[533] The Nursing Home was not a one-on-one care environment.[534] In April 2018, [redacted] but could provide most of his ADLs.[535] Mr. Jones was [redacted] by then, though, and he had behavioral disturbances associated with [redacted].[536]

200. By August and September 2018, Mr. Jones was [redacted].[537] His care plan should have been updated with how much assistance he was requiring, who was providing the assistance, who was supervising, what [redacted].[538] But his care plans were not updated at all.[539]

201. The care given to Mr. Jones for [redacted].[540] Those universal

[532] Trahant Deposition Transcript at p. 85–86.
[533] *Id*. at p. 14–15.
[534] *Id*. at p. 15.
[535] *Id*. at p. 82.
[536] *Id*. at p. 82–83.
[537] Trahant Deposition Transcript at p. 63–65.
[538] *Id*. at p. 64.
[539] *Id*. at p. 64, 68–69.
[540] *Id*. at p. 65.

workers or CNAs fill out the ADLs to document the care that they have provided.[541] The ADLs are a communication tool between shifts to understand what is happening with a particular patient.[542] Where there are blanks on the ADLs, either care was not provided, or the care was not documented.[543] There are multiple holes on multiple shifts on multiple days, and Mr. Jones was deteriorating while the ADLs were not being documented correctly.[544] While Ms. Trahant would not expect to see a chart with every single blank filled in, the ADL charting in September was unacceptable.[545] Both Ms. Byrd and Ms. Page testified that they were supposed to look at this documentation, but when they were stretched thin and did not have time to do the job they were tasked with, documentation may not be reviewed or verified.[546]

202. Based on the blanks in the ADLs in September, October, November, and December, Ms. Trahant opined that the Nursing Home violated its own policies as well as the federal and state regulations that govern long-term care facilities about charting.[547] This also violated good nursing practice.[548]

203. In November and December, Mr. Jones' care needs changed because he [redacted].[550] Additionally, there was nothing in the record where the nursing staff identified that Mr. Jones was [redacted]

[541] *Id*. at p. 65–66.
[542] Trahant Deposition Transcript at p. 66.
[543] *Id*. at p. 67. *See also* Exhibit 3 to Trahant Deposition Transcript.
[544] *Id*
[545] *Id*. at p. 67–68.
[546] *Id*.
[547] Trahant Deposition Transcript at p. 68.
[548] *Id*.
[549] *Id*. at p. 69.
[550] *Id*. at p. 69, 79–80, 89–91.

[redacted].[551] From a nursing perspective, [redacted], which means that the Nursing Home failed to follow the physician's orders.[553]

204. Between September and November/December, Mr. Jones went [redacted][554] [redacted][555] But his care plan was not updated in November or December, although it should have.[556]

205. The failure of the Nursing Home to change Mr. Jones' care plan in September and again in December violated the standard of care, as well as the Nursing Home's policy and the federal and state regulations that govern care plans.[557]

206. [redacted].[560]

207. [redacted].[561] The only documentation from the Nursing Home

[551] *Id*. at p. 69.
[552] Trahant Deposition Transcript at p. 79–80.
[553] *Id*. at p. 80.
[554] *Id*. at p. 70.
[555] *Id*.
[556] *Id*. at p. 70–71.
[557] Trahant Deposition Transcript at p. 71.
[558] *Id*. at p. 72.
[559] *Id*.
[560] *Id*. at p. 73.
[561] *Id*. at p. 74.

related to the [redacted] was that on December 25, Mr. Jones had [redacted].[562] In his ADLs for December, [redacted] was noted on December 25, but there was no indication of [redacted] on December 26 or December 27.[563] This is concerning because if the Nursing Home staff was [redacted].[564] Ms. Page testified that she saw [redacted].[565] Ms. Trahant opined that the delineation of the lines for the nurses were not reasonable because any nurse should have been trained to identify and document [redacted] not just to depend upon a [redacted].[566] This [redacted] would have also required an update to Mr. Jones' care plan.[567]

208. Ms. Trahant criticized the Nursing Home's lack of documentation of [redacted].[568] That lack of documentation and lack of care of the [redacted] was a breach of the standard of care and a breach of good nursing practice.[569]

209. Ms. Trahant opined that the breaches of the standard of care, the lack of documentation, the delays in treatment, and the failure to treat at times were consistent with inadequate staffing.[570] Inadequate staffing violated a federal regulation requiring the Nursing Home to have sufficient staffing to meet the needs of the residents in its care.[571]

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[562] Trahant Deposition Transcript at p. 74–75.
[563] *Id*. at p. 75.
[564] *Id*.
[565] *Id*. at p. 75–76.
[566] *Id*. at p. 76.
[567] Trahant Deposition Transcript at p. 76–77.
[568] *Id*. at p. 77.
[569] *Id*.
[570] *Id*. at p. 78.
[571] *Id*.

210. Ms. Trahant opined that the Nursing Home failed to provide sufficient staffing, including staff to watch, care for, or protect Mr. Jones.[572] Her opinion was based on the depositions of Ms. Byrd and Ms. Page. When Ms. Trahant is looking at a record, she tries to evaluate what is not in the record, like updates to care plans when something is going on with a resident, or incomplete documentation when a resident has changing conditions like [redacted] or has a risk of [redacted].[573] When she sees a record with a lot of missing information, a lot of policy violations, and a lot of regulatory violations, that is either because a staff member is not properly trained to provide the care they are supposed to provide or because a staff member is not being supervised correctly or because there are not enough staff members to properly communicate about changes in a patient.[574] Regarding the training, Ms. Page testified that the universal workers did not always know their jobs or that they were not CNAs, so that could be an issue.[575] Regarding the supervision, the DON would have been responsible for making sure that the Nursing Home had adequate staff and that the staff was addressing the patients' issues.[576] Ms. Trahant did not review staffing logs.[577] She is relying on testimony and missing documentation in the record, as well as a lack of updates to the care plan.[578]

211. Regarding Ms. Page's concerns about the universal workers, Ms. Trahant has supervised nonlicensed personnel in state and federal entities and does not have a problem with universal workers as long as the resident does not require care that would require the universal workers to have a specific type of training.[579] Because Mr. Jones' condition changed to such an

[572] Trahant Deposition Transcript at p. 17–18.
[573] *Id*. at p. 18.
[574] *Id*. at p. 18–19.
[575] *Id*. at p. 19.
[576] *Id*.
[577] Trahant Deposition Transcript at p. 19.
[578] *Id*. at p. 21–22.
[579] *Id*. at p. 19–20.

extent in November and December, [redacted].[580] In this case, Ms. Trahant cannot say whether the issue was the universal workers' training or judgment.[581]

212. The Nursing Home had a definition of neglect in its policies, which was consistent with the definition in the state and federal regulations.[582] The definition of neglect is the failure to provide goods and services that are necessary to avoid physical harm, mental anguish, or mental illness.[583] Ms. Trahant opined that the Nursing Home's failures related to the care plan, the documentation, and the treatment of Mr. Jones met the Nursing Home's definition of neglect.[584]

213. When the Nursing Home identified a [redacted] regulations and policy required them to contact the family, but that did not happen in Mr. Jones' case.[585]

214. [redacted] to be given to Mr. Jones, if the Nursing Home was having trouble following the order, the staff would have to either change the [redacted].[586]

215. There is no evidence of intentional neglect or intentional abuse in this case.[587]

216. Mr. Jones' [redacted] were limited to December 2018.[588]

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[580] *Id*. at p. 20.
[581] *Id*. at p. 21.
[582] Trahant Deposition Transcript at p. 78.
[583] *Id*.
[584] *Id*. at p. 78–79.
[585] *Id*. at p. 78–79, 86.
[586] *Id*. at p. 81.
[587] Trahant Deposition Transcript at p. 10.
[588] *Id*. at p. 17.

217. Ms. Trahant agreed that falls can occur in the absence of a failure to supervise.[589] The [redacted].[590] An issue with Mr. Jones' care is that he was [redacted].[591]

218. According to regulation, care plans, once developed, should be reviewed every three months, with revisions made for changes in a patient's condition.[592] If an intervention is added on a particular date, the care plan should be changed within a few days because that is one way for the nursing staff to know.[593] Because we are human, verbal reports may not include everything, so an updated care plan helps with the communication.[594] In Mr. Jones' case, he was admitted on April 12, 2018, so the care plan should have been updated every three months from that date.[595]

219. Mr. Jones' care plan was initiated on April 24, 2018, and it was revised in October 2018 and January 2019.[596] But the only changes to the care plan involved the day that the Nursing Home would [redacted].[597] What should have happened was a conference with Ms. Byrd or Ms. Page or another nurse, the DON, and the universal workers caring for Mr. Jones, in which they would discuss the plan, what is being done to maintain where Mr. Jones is at, how to improve if there are areas needing improvement, and how to prevent any deterioration or neglect.[598]

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[589] *Id*. at p. 16.
[590] *Id*.
[591] *Id*.
[592] Trahant Deposition Transcript at p. 22–23.
[593] *Id*. at p. 22.
[594] *Id*. at p. 22–23.
[595] *Id*. at p. 23.
[596] *Id*. at p. 23–24.
[597] Trahant Deposition Transcript at p. 24.
[598] *Id*. at p. 24–25.

220. Ms. Trahant agreed that there is information in the record showing changes to Mr. Jones' plan, but where a nurse is taking care of one house with twelve people or two houses with 24, it is important to have a document like a quick guide.[599] The nurse would not have time to go through all the notes or other documents that pertain to Mr. Jones.[600] Ms. Trahant looks at the process that the nursing staff is going through to make sure these things are being done and the process for the DON to supervise the care.[601] The only way for Ms. Trahant to do that is to look at what interventions are carried out and what reassessments are completed.[602] In some of the areas, that was not being done here, and the reasonable conclusion is that someone was not sitting down to look at the care plan.[603] The care plan is like the map to show how to get from A to B.[604] In this case, Ms. Trahant opined that Mr. Jones had very disjointed care and that [redacted], although she clarified that she is not offering any specific causation opinions.[605]

221. In August 2018, within a few weeks of moving to a new house within the Nursing Home, there are notes that Mr. Jones is [redacted].[606] [redacted][607] At that point, the nurse or DON should have started talking to the nurses and universal workers and [redacted].[608] His [redacted].[609] [redacted],

[599] *Id*. at p. 25.
[600] *Id*.
[601] *Id*. at p. 25–26.
[602] Trahant Deposition Transcript at p. 26.
[603] *Id*.
[604] *Id*.
[605] *Id*.
[606] *Id*. at p. 27.
[607] Trahant Deposition Transcript at p. 27.
[608] *Id*.
[609] *Id*.

[redacted].[610] But, during this time, Mr. Jones' [redacted].[612]

222. Where Mr. Jones' [redacted] were not documented, there is no way to evaluate them.[613] If, for example, if Mr. Jones was only eating 25 percent of his evening meals in August, the expectation would have been that the staff would have documented what alternative they were giving him.[614] Ms. Byrd testified that she purchased strawberry Yoplait yogurt with her money because he liked that food item, and that was commendable, but if she had talked to the DON about purchasing those for him, that would have given the information to every person.[615]

223. Ms. Trahant's real concern starts on September 27, 2018.[616] The Nursing Home staff was [redacted].[617] The documentation is that he is sitting in the recliner, going for walks with Ms. Byrd, and [redacted]s, but an evaluation by the dietician showed that Mr. Jones then [redacted][618] That should have been a serious concern to everyone, especially when the dietician documents that he normally [redacted]

[610] *Id*.
[611] *Id*. at p. 27–28.
[612] Trahant Deposition Transcript at p. 28.
[613] *Id*. at p. 28–29.
[614] *Id*. at p. 29.
[615] *Id*.
[616] *Id*. at p. 30.
[617] Trahant Deposition Transcript at p. 30.
[618] *Id*.

[redacted].[619] But the September ADLs do not consistently say that Mr. Jones was [redacted].[620] Three weeks later, there is an [redacted], but that was a big delay.[621] Ms. Trahant opined that no one properly reviewed Mr. Jones' [redacted].[622]

224. On October 18, 2018, a dietary manager person identified that Mr. Jones needed to [redacted].[623] At that point, they indicate that [redacted][624] But at that point, there is an identification that Mr. Jones may not be [redacted] for some reason, which can happen with [redacted] p[redacted][625] [redacted].[627]

225. The documentation showed time and time again that Mr. Jones was [redacted].[628] [redacted]

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[619] *Id*.
[620] *Id*. at p. 30–31.
[621] *Id*. at p. 31.
[622] Trahant Deposition Transcript at p. 31.
[623] *Id*. at p. 32.
[624] *Id*.
[625] *Id*.
[626] *Id*.
[627] Trahant Deposition Transcript at p. 32.
[628] *Id*. at p. 32–33.

[redacted].[629] Changing the timing would have been a simple intervention, but that did not register to whoever was looking at the documents.[630] While it is possible that the staff gave it to Mr. Jones and did not note the change of time in the records, but the problem is that this had to be documented in the medical records per the policies.[631] If the staff noticed that Mr. Jones was frequently asleep at 9:00 a.m., then the time to offer the [redacted] should have been changed to not waste the nurse's time.[632] Based on Mr. Jones' [redacted][633]

226. [redacted][634]

227. In November, Mr. Jones had [redacted] At that point, the [redacted] plan should have been changed to reflect that [redacted].[636] But there are still multiple days in the record where staff documented that Mr. Jones was independent or just needed set up assistance, which means that Mr. Jones was not getting the care he needed and the help he needed to eat.[637] The missing documentation issues existed in November records, too, in that not all meals were documented, which is what was needed for a dietary person or nurse to

[629] *Id*. at p. 33.
[630] *Id*.
[631] *Id*. at p. 33–34.
[632] Trahant Deposition Transcript at p. 34.
[633] *Id*.
[634] *Id*. at p. 34–35.
[635] *Id*. at p. 36.
[636] *Id*.
[637] Trahant Deposition Transcript at p. 36–37.

monitor what was going on and to come up with alternatives if a meal was not eaten.[638] Where Mr. Jones was documented as eating independently or with set up help only, the documentation that exists showed that he ate [redacted][640]

228. In November, [redacted].[641] This was an unreasonable delay.[642] During that delay, the documentation shows [redacted].[646]

229. On November 30, the nurse practitioner followed up because Mr. Jones had [redacted]

[638] *Id*. at p. 36.
[639] *Id*. at p. 37.
[640] *Id*.
[641] *Id*. at p. 37–38.
[642] Trahant Deposition Transcript at p. 38.
[643] *Id*.
[644] *Id*.
[645] *Id*. at p. 38–39.
[646] *Id*. at p. 39.
[647] Trahant Deposition Transcript at p. 39–40.

[redacted].[648] This was an example of the disjointed care that Mr. Jones received because on November 30, when the nurse practitioner came in, Mr. Jones [redacted].”[649] [redacted][651]

230. [redacted].[653] This goes back to whether there was sufficient staff.[654] If there was, Ms. Trahant would expect the documentation to reflect that people were doing what Mr. Jones needed.[655] [redacted].[656]

231. Ms. Trahant’s [redacted][657] [redacted] but the care plan was

[648] *Id*.
[649] *Id*. at p. 40.
[650] *Id*. at p. 41.
[651] *Id*. at p. 42.
[652] Trahant Deposition Transcript at p. 43.
[653] *Id*.
[654] *Id*.
[655] *Id*.
[656] *Id*. at p. 43–44.
[657] Trahant Deposition Transcript at p. 44.

not updated beyond the [redacted].[658] Once Mr. Jones was [redacted].[660]

232. [redacted].[664]

233. Ms. Trahant's concern with the [redacted].[666] Where there is a line drawn between what a regular nurse does versus a [redacted] nurse, then an [redacted] can occur, especially if the universal workers are not

[658] *Id*.
[659] *Id*. at p. 44–45.
[660] *Id*. at p. 45.
[661] *Id*. at p. 45–46.
[662] Trahant Deposition Transcript at p. 46.
[663] *Id*.
[664] *Id*. at p. 46–47.
[665] *Id*. at p. 47.
[666] *Id*.

reporting to the nurses that something is wrong or if the nurses are not looking at the patients' bodies.[667]

234. The part of the VA records that concerned Ms. Trahant was that Mr. Jones had a [redacted].[671]

235. Federal and state regulations, along with the polices and the education, training, and experience of the nurses and workers, establish a standard of care.[672]

236. Ms. Trahant took issue with what the Nursing Home staff did and did not chart.[673] She also took issue with the Nursing Home's failure to ensure that the care plan is updated and that the information in the care plan is communicated.[674] Additionally, the Nursing Home should have recognized that if Mr. Jones had gotten to the point where he needed care outside of the Nursing Home's abilities, either due to insufficient staff or a lack of training, that information should have been transmitted to Mrs. Jones so that an alternative facility could be found.[675]

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[667] Trahant Deposition Transcript at p. 47–48.
[668] *Id*. at p. 48–49.
[669] *Id*. at p. 49.
[670] *Id*.
[671] *Id*.
[672] Trahant Deposition Transcript at p. 50.
[673] *Id*. at p. 51.
[674] *Id*.
[675] *Id*.

Testimony of Scott Simmons

237. After being sworn in to testify live, Dr. Simmons stated that he is board certified in internal medicine specializing in older people. He has practiced medicine for almost 25 years. He went to medical school at Louisiana State University, did his residency at the University of Arkansas for Medical Sciences (UAMS), and did a fellowship in geriatrics. He practiced medicine in Springdale before coming back to UAMS. He is now the medical director of the Nursing Home.

238. Dr. Simmons did not have any issues with the qualifications of Dr. Miller or Ms. Trahant.

239. Dr. Simmons sees a lot of [redacted] patients. [redacted] and [redacted] are the main two reasons these patients are admitted into a nursing home.

240. [redacted]

241. [redacted].

242. [redacted]

243. A patient with [redacted] can [redacted]. We lose muscle as we get older, and muscle is where water is stored in our bodies, so elderly persons have less water in their bodies. Any challenge can make that worse.

244. Everyone in nursing homes is at risk for skin issues and incontinence.

245. Mr. Jones had [redacted]

246. Referring to Mr. Jones' medical records as to [redacted]

247. Dr. Simmons disagreed with Dr. Miller's opinion that Mr. Jones would have lived four or five years longer. Dr. Simmons stated that, because of Mr. Jones' [redacted] he had a life expectancy of one to two years. Dr. Simmons noted that Mr. Jones also [redacted]

248. Dr. Simmons agreed with Dr. Miller that the [redacted] also agreed with Dr. Miller that what happened to Mr. Jones could occur in the absence of negligence, that falls can occur in the absence of negligence, that [redacted] and [redacted] can occur in the absence of negligence, and that [redacted] and [redacted] can occur in the absence of negligence.

249. Dr. Simmons agreed with Ms. Trahant that there was no evidence of abuse or intentional harm in this case.

250. On cross-examination, Dr. Simmons stated that he is not offering an opinion as to any federal or state regulations. He is also not offering an opinion as to the Nursing Home's

[676] Respondent's Exhibit No. 19 at p. OOJ-AVA-000535.

policies and whether those policies were followed. Additionally, he is not offering an opinion as to the Nursing Home's ADL charting. Dr. Simmons is familiar with the maxim "not documented, not done." He is not involved in staffing and is not offering an opinion on nursing. He works with nurses and CNAs and value their opinions, as nurses and CNAs are front line workers.

251. When Mr. Jones was admitted to the Nursing Home, the Nursing Home knew of Mr. Jones' risk for UTIs, pressure sores, sepsis, malnutrition, and dehydration. But not all residents develop UTIs, sepsis, and pressure sores.

252. Referring to Mr. Jones' assessment when he was admitted to the Nursing Home, Dr. Simmons agreed that Mr. Jones [redacted].[679]

253. Prior to December 27, 2018, Mr. Jones did not [redacted]. Dr. Simmons did not see any other references to [redacted] prior to December 2018. Regarding Mr. Jones' [redacted]

254. [redacted]l.

255. Dr. Simmons agreed with the [redacted].

256. Dr. Simmons agreed that there were blanks in the ADLs, that the nurses reported staffing issues, and the [redacted]. It is important to have sufficient staff. Without sufficient staff, residents can get [redacted] and [redacted].

[677] Respondent's Exhibit No. 14 at p. 648.
[678] *Id*. at p. 651.
[679] *Id*. at p. 653.

257. On redirect, Dr. Simmons agreed that the Nursing Home records showed that Mr. Jones was [redacted].[680] On November 30, 2018, the progress note showed that the staff worked together on Mr. Jones' case.[681] Dr. Simmons stated that the progress notes showed that interventions were put in place for Mr. Jones.[682] There were multiple instances where it [redacted].

258. Upon a question by a commissioner as to what the term "[redacted] meant on the initial assessment of Mr. Jones' level of consciousness, Dr. Simmons stated that [redacted][683]

Closing Arguments

259. Claimant argued that policies and regulations form part of the standard of care and must be followed. Claimant pointed to Dr. Miller's expert report regarding the breaches of the standard of care by the Nursing Home.[684] Claimant also argued that Dr. Miller's testimony set out the proximate cause of Mr. Jones' death.[685] Claimant argued that the Commission should award $1,000,000 to Mr. Jones' estate and another $1,000,000 to all beneficiaries.

260. Respondent argued that Claimant had the burden of proof to show that the Nursing Home breached the standard of care and that the breach proximately caused the injury and death of Mr. Jones. Respondent also argued that Claimant cannot point to a specific thing where a negligent act harmed Mr. Jones. Respondent noted that Mr. Jones was 86 years old with [redacted]

[680] Respondent's Exhibit No. 5 at p. 270.
[681] *Id*. at p. 280.
[682] Respondent's Exhibit No. 7.
[683] Respondent's Exhibit No. 14 at p. 653.
[684] Miller Deposition Transcript at Ex. 2.
[685] Miller Deposition Transcript at p. 90–91.

[redacted]. Respondent pointed to Mr. Jones' chart [redacted], such that he was not neglected and left alone.[686] Respondent argued that the Nursing Home did the best it could with someone in [redacted] As to Mr. Jones' [redacted]. Respondent argued that Dr. Miller could not identify a specific person that did anything wrong.[687] The Nursing Home followed the standard of care as to Mr. Jones' falls by assessing him for injuries and calling his wife. As to damages, Respondent noted that there was no testimony about lost earnings, funeral costs, headstone costs, other loss of life damages, medical costs, or how Mr. Jones valued his life. Respondent stated that charting issues are not acts of negligence.

261. Upon a question from a commissioner, Claimant confirmed that Claimant is seeking loss of life damages.

262. Claimant argued, in rebuttal, that Mr. Jones' life had value to his wife and children.

Relevant Policies and Regulations

263. 42 CFR 483.10(a) provides that a resident "has a right to a dignified existence, self-determination, and communication. . . ." Subsection (a)(1) specifies that:

> A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident.

264. 42 CFR 483.20(b) provides that:

> A facility must make a comprehensive assessment of a resident's needs, strengths, goals, life history and preferences, using the resident assessment instrument specified by CMS. The assessment must include at least the following: (i) identification and demographic information, (ii) customary routine, (iii) cognitive patterns, (iv) communication, (v) vision, (vi) mood and behavior patterns, (vii)

[686] Respondent's Exhibit No. 13 at p. 644.
[687] Miller Deposition Transcript at p. 39, 54, 61, 63, 68.

> psychosocial well-being, (viii) physical functioning and structural problems, (ix) continence, (x) disease diagnoses and health conditions, (xi) dental and nutritional status, (xii) skin condition, (xiii) activity pursuit, (xiv) medications, (xv) special treatments and procedures, (xvi) discharge planning, (xvii) documentation of summary information regarding the additional assessment performed on the care areas triggered by the completion of the Minimum Data Set, and (xviii) documentation of participation in assessment . . . [including] direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

Subsection (b)(2)(i) requires a comprehensive assessment to be completed within fourteen calendar days after admission. Subsection (b)(2)(ii) requires that a comprehensive assessment be completed within fourteen calendar days after a facility determines or should have determined that "there has been a significant changed in the resident's physical or mental condition."

265. 42 CFR 483.35 provides that:

> The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity, and diagnoses of the facility's resident population. . . .

266. Rule 601 of Arkansas's Office of Long Term Care Rules for Nursing Homes requires a facility to "maintain an individual record on all residents admitted in accordance with accepted professional standards and practices." Additionally, the "record service must have sufficient staff, facilities, and equipment to provide records that are completely and accurately documented, readily accessible, and systematically organized."

267. Arkansas Model Jury Instruction No. 1504 provides that a nursing home must use ordinary care to furnish a patient the care and attention reasonably required by his mental and physical condition and to follow the orders and direction of the patient's attending physician.

268. The Nursing Home had a policy that "[e]ach resident shall be cared for in a manner that promotes and enhances quality of life, dignity, respect, and individuality."[688] The policy defined "treated with dignity" to mean that the "resident will be assisted in maintaining and enhancing his or her self-esteem and self-worth."[689]

269. The Nursing Home had the following policy regarding charting:[690]

> All services provided to the resident, or any changes in the resident's medical or mental condition, shall be documented in the resident's medical record.

This policy included a "policy interpretation and implementation," which stated that "[a]ll observations, medications administered, services performed, etc., must be documented in the resident's clinical records."[691]

270. The Nursing Home had a neglect policy, which defined 'neglect' as "the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.[692]

Findings of Fact and Conclusions of Law

Based upon a review of the claim file, the testimony and evidence presented by the parties, and the law the State of Arkansas, the Commission hereby unanimously finds as follows:

271. The Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204.

272. The Commission finds that Claimant's claim is based on the quality of care that Mr. Jones received while at the Nursing Home from April 2018 until his admission to the VA hospital in late December 2018.

273. The Commission found the testimony of the witnesses to be credible.

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[688] Claimant's Exhibit No. 19.
[689] *Id*.
[690] Claimant's Exhibit No. 20.
[691] *Id*.
[692] Claimant's Exhibit No. 21.

274. The Commission finds that Claimant had the burden of proving (1) the standard of care; (2) a breach of the standard of care; and (3) injuries that were proximately caused by the breach.[693]

275. The Commission agrees with Dr. Miller and Ms. Trahant that the standard of care is what a reasonable healthcare provider would do in the same or similar circumstances with the same or similar patient. The Commission also agrees that while regulations and policies do not establish a standard of care, regulations and policies do reflect the standard of care and communicate the standard of care to others. The Commission finds that a number of regulations and policies reflect the standard of care in this case, including that the Nursing Home was required to promote the maintenance of Mr. Jones' quality of life,[694] to complete comprehensive assessments when Mr. Jones' physical or mental condition significantly changed,[695] to provide a sufficient number of staff members with appropriate training for Mr. Jones to maintain the highest practicable physical, mental, and psychosocial well-being,[696] and to maintain complete and accurate records as to Mr. Jones as to observations, medications, and services performed.[697]

276. The Commission finds that the Nursing Home failed to meet the standard of care regarding Mr. Jones' care plan. Between April and December 2018, Mr. Jones' condition [redacted], but the care plan was not modified to address these changes, as the Nursing Home was required to do under federal regulation and the Nursing Home's

[693] Ark. Code Ann. § 16-114-206(a), as modified by *Broussard v. St. Edward Mercy Health Sys., Inc.*, 2012 Ark. 14, 386 S.W.3d 385.
[694] 42 CFR 483.10(a)(1); Claimant's Exhibit No. 19.
[695] 42 CFR 483.20(b)(2)(ii).
[696] 42 CFR 483.35.
[697] Arkansas OLTC Rules for Nursing Homes, Rule 601; Claimant's Exhibit No. 20.

own policy.[698] As Ms. Trahant testified, a care plan is the "road map" or the "plan" or "a quick guide" and should include everything for which a patient may be at risk. Updated care plans are effective and more time-efficient to communicate a patient's current needs, as opposed to a nurse having to go through a patient's entire chart. Similarly, as Dr. Miller described about the importance of looking at possible interventions:

> …After the first fall, after the second fall, after the third fall, "Hey, Doc, you know, Mr. Jones is falling, you know, on an average, once a month here. You know, is there something else that you think we can do?" And the doctor would have said, "Okay. Well, let's try interventions A, B, and C."
>
> After another fall, then the nursing home staff says, "You know, Doc, you know, he's still falling. We think A and B are helping, but I don't think C is doing so much." Then the doctor will say, "Okay. Well, now let's put in D and E." After another month, the same thing.
>
> That's what you would expect to see in the medical record, a very dynamic, interactive, ongoing process, not just one thing put into place and then hoping that helps. And despite having a similar bad outcome over and over and again, not changing what you are doing to – to change the outcome."[699]

277. The Commission finds that the Nursing Home failed to meet the standard of care regarding Mr. Jones' ADL charts for September 2018 and December 2018. There are many missing entries regarding Mr. Jones' [redacted] which is especially concerning because federal regulations and the Nursing Home's own policy require consistent, detailed charting (and supervisory oversight to ensure that the standard of care was met) and because Mr. Jones was at an [redacted] The Commission finds that the Nursing Home knew the importance of keeping Mr. Jones [redacted] and failed to do so, as evidenced by the fact that Mr. Jones [redacted] when he was [redacted]

[698] 42 CFR 483.20(b)(2)(ii); Claimant's Exhibit No. 19.
[699] Miller Deposition Transcript at p. 57.

278. The Commission finds that the Nursing Home failed to meet the standard of care regarding Mr. Jones' [redacted]. The disconnect between Mr. Jones' [redacted] when he was [redacted] is remarkable, [redacted]). Ms. Page testified that she saw [redacted] but there is no [redacted] treatment of the [redacted] The Commission finds Ms. Page's testimony and Ms. Trahant's concern about this topic to be especially persuasive.

279. The Commission finds that the Nursing Home failed to meet the standard of care regarding Mr. Jones' [redacted]. The Commission finds Ms. Trahant's testimony to be persuasive as to this issue, including as to the poor documentation of Mr. Jones' meals. Ms. Trahant noted that this poor documentation made it impossible to get a good idea of why Mr. Jones was [redacted], especially in light of the fact that some of [redacted]. She also noted that there were significant delays in the issuance of the order to give [redacted]. Further, Ms. Trahant explained that simple interventions, such as changing the time for the supplement, could have helped, since many of the supplements were not given to Mr. Jones because he was [redacted]. Mr. Jones' [redacted] should have been changed in November when the speech therapist determined that [redacted], but the feeding plan was not, which meant that Mr. Jones continued to be [redacted].

280. The Commission finds that the Nursing Home failed to meet the standard of care regarding [redacted] such that Mr. Jones was severely [redacted] At the very latest, on December 18, when Mr. Jones was [redacted]

281. The Commission finds that the Nursing Home failed to meet the standard of care regarding charting the administration of the [redacted] for Mr. Jones' [redacted] in December 2018, [redacted].[700] Moreover, as Ms. Trahant testified, there is nothing in the record to show that the Nursing Home staff noticed that Mr. Jones [redacted]. The Commission notes that if the [redacted] the Nursing Home staff violated federal regulations re charting, and if the [redacted] were not given, the Nursing Home staff failed to follow the physician's orders.

282. The Commission finds it significant that Dr. Miller and Ms. Trahant both found the underlying issue to be a lack of sufficient and consistent care. Dr. Miller stated that the "lack of nursing care is the one thing that ties" [redacted] and "unfortunately, it makes all of the pieces of the puzzle fit."[701] This is supported by the testimony of Ms. Byrd and Ms. Page as to general staffing issues.

283. The Commission finds that the cumulative effect of these failures was that by December 27, 2018, Mr. Jones was [redacted]

[700] Respondent's Exhibit No. 8.
[701] Miller Deposition Transcript at p. 101.

[redacted]. The Commission found Dr. Miller's testimony as to the cause of Mr. Jones' death to be simple, persuasive, and compelling:

> Q. And so just to make it basic, do you have the opinion that the [redacted]?
>
> A. Yes. I think it's pretty clear from there.
>
> . . .
>
> Q. And did that [redacted]
>
> A. Unfortunately, that is my opinion, and that's what it says in the death certificate and in the medical records.
>
> Q. And take it to the next step, the [redacted] correct?
>
> A. Unfortunately, yes.[702]

As such, the Commission finds that Nursing Home's care of Mr. Jones, as described in this order, breached the standard of care and that the breach was the proximate cause of Mr. Jones' death. The Commission finds that Respondent offered no expert testimony to rebut Dr. Miller's opinion regarding causation. For these reasons, the Commission finds that Respondent is liable for Mr. Jones' death.

284. As for damages, the Commission must consider the damages for Mr. Jones' estate as well as the mental anguish damages for Mr. Jones' wrongful death beneficiaries (his wife and biological children).

285. Regarding Mr. Jones' estate, the Commission finds that the estate is entitled to recover $100,000 in damages associated with Mr. Jones' loss of life and $100,000 for Mr. Jones'

[702] Miller Deposition Transcript at p. 90–91.

pain and suffering and mental anguish. As such, the Commission finds that Mr. Jones' estate's total damages are $200,000.

286. Regarding Mr. Jones' wife, the Commission finds the testimony that she presented to be moving and persuasive. As such, the Commission finds that Mrs. Jones should be awarded mental anguish damages of $100,000.

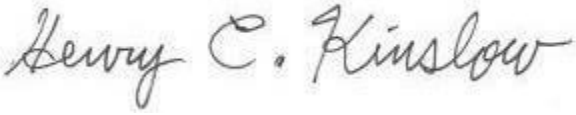
287. Regarding Mr. Jones' biological children, the Commission was unpersuaded by the testimony that an award for mental anguish is appropriate.

Conclusion

288. The Commission AWARDS the Estate of Oscar Odell "Bill" Jones a total of $200,000. The Commission further AWARDS Mary Ann Jones $100,000. Pursuant to Ark. Code Ann. § 19-10-215(b), the Commission refers this total award of $300,000 to the General Assembly for review, approval, and, if approved, placement on an appropriations bill.

IT IS SO ORDERED.

ARKANSAS STATE CLAIMS COMMISSION
Dee Holcomb



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow

ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, chair

DATE: July 25, 2024

Notice(s) which may apply to your claim

(1) A party has forty (40) days from transmission of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from transmission of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Jeff Priebe; Jordan Broyles; Justin Brascher
Subject:	ORDER : Jones v. ADVA, Claim No. 200817
Date:	Thursday, July 25, 2024 3:12:00 PM
Attachments:	Jones v. ADVA, 200817 -- order.pdf

Mr. Priebe, Ms. Broyles, and Mr. Brascher, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Kathryn Irby
To: Justin Brascher; Jeff Priebe; Jordan Broyles
Subject: RE: ORDER : Jones v. ADVA, Claim No. 200817
Date: Thursday, August 29, 2024 10:59:00 AM
Attachments: image001.png

Mr. Brascher, your email is sufficient. I will prep this claim file to be sent to the Legislature in the next few weeks. I have to transmit an unredacted copy of the claim file and a redacted copy of the claim file, and I will be sending the redacted copy to the parties before I send it to the Leg for review to make sure everyone is comfortable with what I've redacted (and what I have not redacted).

More information to come soon.

Thanks,
Kathryn Irby

From: Justin Brascher <justin.brascher@arkansasag.gov>
Sent: Wednesday, August 28, 2024 12:35 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Jeff Priebe <jpriebe@rainfirm.com>; Jordan Broyles <jordan.broyles@arkansasag.gov>
Subject: Re: ORDER : Jones v. ADVA, Claim No. 200817

Ms. Irby,

Respondents would like to appeal this decision. What process do the Respondents have to follow in order to properly appeal?

Justin Brascher

Assistant Attorney General

Special Litigation Section – Civil Division

Office of Arkansas Attorney General Tim Griffin

323 Center Street, Suite 200

Little Rock, Arkansas 72201

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From: Jeff Priebe
To: Justin Brascher; Kathryn Irby; Jordan Broyles
Cc: Shelley Adams; jwinn@rainfirm.com
Subject: Re: ORDER : Jones v. ADVA, Claim No. 200817
Date: Thursday, August 29, 2024 11:24:14 AM
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Jeff

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Thursday, August 29, 2024 11:20 AM
To: Justin Brascher <justin.brascher@arkansasag.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>
Cc: Shelley Adams <sadams@rainfirm.com>; Jennifer Irwin <jirwin@arktla.org>
Subject: Fw: ORDER : Jones v. ADVA, Claim No. 200817

Going forward, please use this email address for me for this case.

Thank you,

Jeff

Jeff Priebe
Jeff Priebe Law Firm
PO Box 7481
Little Rock, AR 72217
[redacted]

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, August 29, 2024 10:59 AM
To: Justin Brascher <justin.brascher@arkansasag.gov>; Jeff Priebe <jpriebe@rainfirm.com>; Jordan Broyles <jordan.broyles@arkansasag.gov>
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(501) 682-2822

From: Kathryn Irby
To: Misty Scott
Subject: UPDATE DATABASE : Jones v. ADVA, Claim No. 200817
Date: Monday, October 21, 2024 2:36:23 PM
Attachments: image001.png

New address for Cl atty. Please upload email and update atty address. Thank you!

From: Jeff Priebe <jeff@jeffpriebelawfirm.com>
Sent: Monday, October 21, 2024 2:25 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Justin Brascher <justin.brascher@arkansasag.gov>; Jordan Broyles <jordan.broyles@arkansasag.gov>; Shelley Adams <sadams@rainfirm.com>
Subject: Fw: ORDER : Jones v. ADVA, Claim No. 200817

Mrs. Irby,

I need to update my mailing address with the Commission on this case. In the future, can all correspondence be sent to the following address?

Jeff Priebe Law Firm
PO Box 17250
Little Rock, AR 72222

Thank you,

Jeff

Jeff Priebe
Jeff Priebe Law Firm
PO Box 17250
Little Rock, AR 72222
[redacted]

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Sent: Thursday, August 29, 2024 10:59 AM
To: Justin Brascher <justin.brascher@arkansasag.gov>; Jeff Priebe <jpriebe@rainfirm.com>; Jordan Broyles <jordan.broyles@arkansasag.gov>
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